

MEETING  
STATE OF CALIFORNIA  
LANDS COMMISSION

STATE CAPITOL  
ROOM 112  
SACRAMENTO, CALIFORNIA

THURSDAY, JUNE 28, 2007

10:07 A.M.

JAMES F. PETERS, CSR, RPR  
CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 10063

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

BOARD MEMBERS

Mr. John Garamendi, Lieutenant Governor, Chairperson

Mr. John Chiang, State Controller, also represented by  
Mr. Ron Placet

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

STAFF

Mr. Paul Thayer, Executive Officer

Mr. Jack Rump, Chief Counsel

Mr. Colin Connor, Assistant Chief, Land Management  
Division

Ms. Barbara Dugal, Chief, Land Management Division

Ms. Kimberly Lunetta, Executive Assistant

Mr. Dave Plummer, Regional Manager, Land Management  
Division

ATTORNEY GENERAL

Mr. Alan Hager, Deputy Attorney General

ALSO PRESENT

Mr. Gordon Bennett, Sierra Club

Mr. Bob Gressens, Cambria Community Services District

Mr. J.B. Morais

Mr. Bob Vellanoweth

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1 PROCEEDINGS

2 CHAIRPERSON GARAMENDI: We're going to start the  
3 meeting. So if you could take your places and we'll be  
4 underway here in a few moments.

5 Controller John Chiang will be joining us  
6 shortly. But we have sufficient members of the Commission  
7 to begin the meeting, as in we have a quorum. Two of us.

8 I'm John Garamendi, Lieutenant Governor and  
9 current Chair of the State Lands Commission.

10 We have an agenda today that we want to move  
11 through expeditiously, but also allow people to  
12 participate as they choose.

13 We're going to take a couple items off the  
14 consent calendar.

15 Paul, which ones are those? I think you said  
16 there were two that we were going to take off the consent  
17 calendar.

18 EXECUTIVE OFFICER THAYER: Yes. I'm looking for  
19 the on switch button. It sounds like it's on.

20 CHAIRPERSON GARAMENDI: Yeah, I looked for that,  
21 and I don't think you have them.

22 EXECUTIVE OFFICER THAYER: I think it's on. Is  
23 it on?

24 Okay. There are two items we'd like to take off  
25 consent and here today. Often when there's last-minute

1 opposition to items, we put them over for a future meeting  
2 in an attempt to resolve those differences. But there are  
3 various deadlines associated with these two, that we'd  
4 like to add them to the regular calendar and conduct the  
5 hearing. And those are Items 14 and 42.

6 We also have some other items where there were  
7 last-minute glitches and for which we think we have enough  
8 time to work them out before the next Commission meeting.  
9 And so if the Chair would like, I can read you those as  
10 well.

11 CHAIRPERSON GARAMENDI: Yeah, let's deal with  
12 those. I'm aware of what they are. But let's make sure  
13 everybody in the audience is.

14 EXECUTIVE OFFICER THAYER: Sure. Those would be  
15 items 37 and 38, 40, 41 --

16 CHAIRPERSON GARAMENDI: Tell us which items they  
17 are as you go through.

18 EXECUTIVE OFFICER THAYER: Sure.

19 Items 37 and 38 are offers to dedicate public  
20 access-ways easements in Malibu. They will expire in  
21 October. The Commission has a record of accepting these  
22 to prevent them from expiring. There was last-minute  
23 opposition from a property owner. If we hear this  
24 September 13th we'll still have the opportunity to be  
25 timely with our acceptance. He called late last night or

1 this morning.

2           Next two, items 40 and 41, are rent reviews for  
3 Tesoro, two different oil terminals. We will have the  
4 opportunity to hear this again in September. And it won't  
5 change the revenues to the state at all. We'll backdate  
6 if they have to pay back rent for anything that's changed  
7 because of putting it over two and a half months.

8           Item 49 is an item involving a new powerline  
9 across the Colorado River proposed by the Western Area  
10 Power Administration. There's a disagreement as to  
11 whether or not the feds want to enter into a lease with  
12 us. And so we need to straighten that out. And again it  
13 won't affect the project, the timing of the project.

14           Item 54 is a memorandum of understanding  
15 involving mitigation for L.A. diversion of water from the  
16 Owens River. There are a number of parties that need to  
17 be part of this amendments to the memorandum, including  
18 Fish and Game; Sierra Club; the Owens Valley Committee,  
19 which is an environmental group. And not all those  
20 parties have agreed to all the terms. So we'll bring that  
21 back in September as well.

22           Finally, Item 63 is the North Baja Pipeline. And  
23 that was originally scheduled for today. But staff found  
24 that, in working with the consultant, that we didn't think  
25 that the documents would be prepared in a timely enough

1 way so the public would have an opportunity to adequately  
2 review them. Specifically, the statement of findings for  
3 the Commission adoption wasn't going to be able to go up  
4 until this week on the Internet. And that's 240 pages  
5 long.

6 So as a result, as I think all the Commissioners  
7 know, we've rescheduled this for a special hearing on July  
8 13th at 3:30 probably at the STRS office. But we'll be  
9 posting details for that meeting on the web probably  
10 tomorrow.

11 CHAIRPERSON GARAMENDI: I know there are several  
12 people in the audience that were here for that specific  
13 issue of the North Baja Pipeline. We will now hear that  
14 on July 13th. Details and locations to be announced.

15 EXECUTIVE OFFICER THAYER: That's correct.

16 CHAIRPERSON GARAMENDI: All right. Those items  
17 we will take off the consent and off the calendar and take  
18 them up -- two items come off the consent and will be  
19 dealt with today, and the remaining items will be dealt  
20 with at subsequent meetings.

21 Okay. Lets move on to the minutes.

22 ACTING COMMISSIONER SHEEHAN: If there are no  
23 changes, I'll move approval of the minutes.

24 ACTING COMMISSIONER PLACET: Second.

25 CHAIRPERSON GARAMENDI: So moved. Unanimously



1 approved. So the minutes have been adopted.

2 The Executive Officer's Report.

3 Mr. Thayer.

4 EXECUTIVE OFFICER THAYER: Thank you.

5 There are a couple items I want to discuss. I'd  
6 like to lead off with further details about our public  
7 trust workshops.

8 The Commission will recall that earlier this year  
9 there were some discussion about time shares and whether  
10 or not we wanted to gather some additional information.  
11 And the Commissioners agreed that the way to approach this  
12 would be to redo something we've done in the past, which  
13 is to conduct some public trust workshops up and down the  
14 state. And so as we did four or five years ago, we're  
15 having workshops in San Francisco, Los Angeles and San  
16 Diego.

17 The dates have been sent out to all interested  
18 parties, and details. But basically it will be July 6th  
19 in San Francisco at 4 in the San Francisco -- the Port of  
20 San Francisco's Hearing Room; July 13th in Los Angeles at  
21 the Port's Hearing Room; and July 17th in San Diego, also  
22 at the Port Board Room. All these meetings will be from 4  
23 to 7. Staff will be giving a presentation on the Public  
24 Trust Doctrine. There will be a representative from the  
25 Attorney General's Office there to answer the legal

1 questions.

2           We'll discuss time shares during the San Diego  
3 meeting. There are local issues at each of the other  
4 locations, in San Pedro and San Francisco area, that will  
5 be under discussion.

6           We'll also have a panel involving -- at each of  
7 these meetings involving representatives of the port,  
8 environmental groups, and industry, so we can get a good  
9 exchange of ideas.

10           And once those workshops are completed, we'll  
11 report back to the Commission on highlights of them.

12           CHAIRPERSON GARAMENDI: Sometime ago you shared  
13 with me a brochure that describes the Public Trust. I  
14 think we may want to consider updating that, making that  
15 available, not only on the website -- an updated version  
16 of it on the website, but also available for the public  
17 who attend our hearings and others who might be  
18 interested, so that there's better understanding of what  
19 this incredibly important concept principle's all about.

20           EXECUTIVE OFFICER THAYER: I think that's a great  
21 idea. The Commission three or four years ago had formally  
22 gone through a hearing process and adopted a public trust  
23 policy in conjunction with a report primarily prepared by  
24 the AG's Office. And both of those are on the website.  
25 But we've been looking at a brochure in Hawaii that they

1 used to explain the Public Trust Doctrine, and it's  
2 written in a much easier, more comprehensive -- or  
3 comprehensible manner.

4 CHAIRPERSON GARAMENDI: You've got about 20  
5 people behind you saying that that would be a great idea.

6 (Laughter.)

7 EXECUTIVE OFFICER THAYER: So we're trying to  
8 work up a California version of that.

9 CHAIRPERSON GARAMENDI: Good.

10 Okay. Let's move that little project along.

11 EXECUTIVE OFFICER THAYER: Then the next item I  
12 wanted to talk about -- unless there are any questions  
13 about the public trust workshops -- is that we have a  
14 number of retirements actually. And there's one in  
15 particular that I think perhaps now is the right time to  
16 do.

17 I'd like to note that Alan Hager, sitting to my  
18 right, has been the representative of the Attorney  
19 General's Office for State Lands Commission matters, a  
20 variety of matters, for over 30 years. He's been sitting  
21 at this table for fewer of those. But even when he wasn't  
22 here, he was kind of the lead guy on the Long Beach oil  
23 matters. The state has as much money as it does, there  
24 hasn't been as bad financial shape because of his good  
25 work. He has been stalwart on, as I say, oil issues. But

1 also he supplied, I can say personally, a key memorandum  
2 dealing with the San Francisco waterfront a couple years  
3 ago.

4           And so, as important as he has been to the  
5 Commission's deliberations and the staff's work, it's as  
6 much as we're going to miss him. So we have a memento  
7 that we'd like to have presented to him on behalf of the  
8 Commissioners. And I think the Chair has that up there.

9           Alan, if you want to join --

10           CHAIRPERSON GARAMENDI: Alan, come on up. We  
11 really value and appreciate all that you've have done.  
12 And we, you know -- photo. Paul, if you and Jack could  
13 come up and join us.

14           (Thereupon a photo was taken.)

15           CHAIRPERSON GARAMENDI: Don't hurt yourself.

16           (Laughter.)

17           CHAIRPERSON GARAMENDI: Paul, why don't you take  
18 that side.

19           Okay. On the official website.

20           Thank you so much.

21           (Applause.)

22           DEPUTY ATTORNEY GENERAL HAGER: Thank you.

23           CHAIRPERSON GARAMENDI: I know that everyone in  
24 the audience and certainly the staff at the State Lands  
25 Commission and the Governor's staff as well as the

1 Controller's staff and certainly my staff depend heavily  
2 on your work, Alan. We know that when we get that work,  
3 it's going to be well reasoned and factually correct. And  
4 we thank you so very, very much for that.

5 And we don't here debate about your analysis.

6 (Laughter.)

7 CHAIRPERSON GARAMENDI: We certainly here debate  
8 about my analysis.

9 (Laughter.)

10 CHAIRPERSON GARAMENDI: So, Alan, thank you very  
11 much.

12 John.

13 COMMISSIONER CHIANG: Mr. Chair, thank you very  
14 much.

15 Alan, I just wanted to express our office's  
16 deepest gratitude. You've provided extraordinary and  
17 exceptional service to the residents of California and,  
18 frankly, we're stronger as a state because of your  
19 service. Thank you very much.

20 DEPUTY ATTORNEY GENERAL HAGER: Thank you. I  
21 certainly enjoyed every minute of it.

22 CHAIRPERSON GARAMENDI: Now, we do have a program  
23 called retired annuitant.

24 (Laughter.)

25 DEPUTY ATTORNEY GENERAL HAGER: Yes.

1           CHAIRPERSON GARAMENDI:  So if you get a call,  
2 please respond positively.

3           DEPUTY ATTORNEY GENERAL HAGER:  I understand the  
4 paperwork has been signed yesterday.

5           (Laughter.)

6           EXECUTIVE OFFICER THAYER:  We hope to benefit  
7 from his advice as a retiree.  As you say, retired  
8 annuitant with some time to come.  He'll be back on  
9 special projects.

10          CHAIRPERSON GARAMENDI:  Thank you.

11          Paul, please proceed.

12          EXECUTIVE OFFICER THAYER:  There is one other  
13 retirement.  We don't have a resolution or a lot of frills  
14 for this because he's -- the gentleman specifically asked  
15 that we not do this.  So I'm just going to say --

16          (Laughter.)

17          EXECUTIVE OFFICER THAYER:  -- I'm just going to  
18 announce that Dave Plummer is also retiring.  He's  
19 probably been working for the Lands Commission even longer  
20 than Alan's been working for the Attorney General's  
21 Office.  He has specialized in base closures, to ensure  
22 the state got back the public trust lands that originally  
23 went into those bases.  And he's also specialized in  
24 northern California work.  He worked very hard on the same  
25 San Francisco waterfront project that alluded to earlier

1 in connection with Alan. And that would be Dave Plummer.

2 (Applause.)

3 LAND MANAGEMENT DIVISION REGIONAL MANAGER

4 PLUMMER: -- call that four days.

5 (Laughter.)

6 CHAIRPERSON GARAMENDI: Is he still employed?

7 EXECUTIVE OFFICER THAYER: Still employed.

8 CHAIRPERSON GARAMENDI: Well, then maybe we  
9 should tell him he's going to get a picture taken anyway.

10 (Laughter.)

11 (Applause.)

12 CHAIRPERSON GARAMENDI: Other duties as assigned.

13 Can we have that -- you can't read the writing.

14 (Laughter.)

15 CHAIRPERSON GARAMENDI: Kind of fuzzed this part.

16 (Laughter.)

17 CHAIRPERSON GARAMENDI: Thank you.

18 (Applause.)

19 CHAIRPERSON GARAMENDI: Paul, we'll go ahead and  
20 continue on here.

21 Are we losing any more key people?

22 (Laughter.)

23 EXECUTIVE OFFICER THAYER: I hope not for a  
24 while.

25 CHAIRPERSON GARAMENDI: I hope not, not for a

1 while anyway.

2           When you mentioned the base closure issue, I  
3 think I was on the other side of several of those issues  
4 with Dave when I was back at the Department of Interior.  
5 And we were wrestling over who actually owned the land.  
6 At that point I now admit, that I was wrong representing  
7 the federal government.

8           (Laughter.)

9           LAND MANAGEMENT DIVISION REGIONAL MANAGER

10          PLUMMER: Well, thank you.

11          CHAIRPERSON GARAMENDI: Finally. But anyway,  
12 over the years we actually changed positions.

13          (Laughter.)

14          CHAIRPERSON GARAMENDI: Take a different  
15 position.

16          EXECUTIVE OFFICER THAYER: Well, thank you. It's  
17 a big man would can admit those sorts of things.

18          (Laughter.)

19          CHAIRPERSON GARAMENDI: Circumstances.

20          (Laughter.)

21          EXECUTIVE OFFICER THAYER: And then the only  
22 other announcements I had have already been foreshadowed.  
23 But, again, our next Commission meeting we expect will be  
24 a one-item-only meeting on July 13th regarding North Baja  
25 at the STRS building. There may be one or two other items



1 if they can't wait for the September meeting.

2           And the September 13th meeting will be the next  
3 regular meeting. It will be conducted in Oakland. And,  
4 again, details will be posted on the web and sent to you  
5 when they're arranged.

6           And that concludes the staff -- the Executive  
7 Officer's Report.

8           CHAIRPERSON GARAMENDI: Any questions?

9           Very good. The next thing on our agenda is the  
10 consent calendar. We have taken two items off the consent  
11 calendar. Actually more than two, I think. And we will  
12 then have the consent calendar before us with the  
13 exception of those items that were previously announced  
14 and moved.

15           Any questions from --

16           ACTING COMMISSIONER SHEEHAN: I'll move approval  
17 of the consent agenda.

18           COMMISSIONER CHIANG: I'll second that.

19           CHAIRPERSON GARAMENDI: Any objection from me, I  
20 suppose?

21           No.

22           So it passes unanimously.

23           The consent calendar's been adopted.

24           We now have items -- which items are we moving  
25 to, Paul?

1 EXECUTIVE OFFICER THAYER: I think Item 62, the  
2 dock deck, the Vellanoweth issue is probably the first  
3 thing up.

4 CHAIRPERSON GARAMENDI: All right. Item 52 is  
5 now before us.

6 EXECUTIVE OFFICER THAYER: And that would be --  
7 Item 62 will be presented by Barbara Dugal from the staff.  
8 And this is back on. Commissioners heard it at the last  
9 meeting, with a discussion of generally whether or not the  
10 Commission wanted to approve decks on private docks. And  
11 this item's back for our vote.

12 LAND MANAGEMENT DIVISION CHIEF DUGAL: Good  
13 morning, Mr. Chairman and Commissioners. I'm Barbara  
14 Dugal. I'm the Chief of the Land Management Division.  
15 And I'm presenting information for you today on Calendar  
16 Item 62.

17 You will recall that the application before you  
18 today was presented to the Commission at the May 10th  
19 meeting. The staff recommendation to approve the dock and  
20 a boathouse but not the deck because non-water dependent  
21 private use of the public's waterways raised issues and  
22 had not been previously addressed before.

23 At the May meeting, the Commission Chair  
24 suggested that the Vellanoweth application might be  
25 approved subject to certain criteria and if restrictions

1 were made a part of that lease.

2 This criteria included the following:

3 That the railing around the deck could be  
4 provided but only for public safety purposes. The design  
5 of the roof would be for the purpose of shading the boat  
6 and not to enhance the use of the ridge of the deck. And  
7 no permanent deck-related improvements like wet bars,  
8 barbecues, grills, hot tubs, refrigerators, sinks, and sun  
9 shades, those types of improvements, would not be allowed  
10 to be constructed or placed on the deck.

11 No permanent roof or other enclosure would be  
12 constructed or permitted above the deck. And any of the  
13 improvements that could be construed as a residential use  
14 such as enclosed patio, a bathroom, a sunroom, an office,  
15 a studio or apartment would be prohibited.

16 The Chair also proposed that rent would be  
17 charged for a deck which is part of a recreational pier.  
18 While staff has analyzed the Chair's proposal, staff  
19 remains concerned that dock decks are a non-water  
20 dependent private use of the public's waterways and are  
21 akin to a private residential backyard and should be  
22 located on private uplands or non-public lands.

23 However, the following responds to the Chair's  
24 proposal:

25 The Commission has been given the responsibility

1 as the trustee under the public trust to manage  
2 California's waterways on behalf of the public. That  
3 trusteeship obligates the Commission to act as a fiduciary  
4 in protecting the public's rights and means associated  
5 with its navigable waters.

6 Public trust lands are to be protected for and  
7 used in furtherance of not only the traditional commercial  
8 and recreational navigation and fishing, but also for  
9 ecological preservation.

10 In addition to the Public Trust Doctrine, the  
11 public's access to and fishing on navigable waters are  
12 rights protected in the California Constitution.

13 The Commission determines what uses are be made  
14 of public trust lands on a case-by-case basis, and based  
15 upon the factual and legal circumstances involving a  
16 particular location and proposed use.

17 So then the question to be answered is, if a deck  
18 like the one proposed in the Vellanoweth application is a  
19 private recreational improvement located on state public  
20 waters, is it consistent with the public trust?

21 The public trust is a common law doctrine. It's  
22 not static. But it is subject to the changing needs of  
23 the public. There are traditional uses such as harbors,  
24 waters, marinas, and boat docks that have been constructed  
25 in support of navigation and fishing and are accepted

1 trust consistent uses; and other such uses such as private  
2 residences or general commercial uses such as office and  
3 non-visitor serving retail that are inconsistent with the  
4 public trust. Dock decks fall somewhere in between.

5           The Attorney General's Office representative has  
6 informally opined that decks are not sufficiently  
7 residential to be per se inconsistent with the Public  
8 Trust Doctrine. As the trustee, the Commission generally  
9 looks to those uses that benefit the public and the  
10 public's use of trust lands. However, other uses that are  
11 ancillary incidental to trust uses can be considered.

12           Therefore, the Commission may legally issue a  
13 lease for a deck if under the particular circumstances  
14 they do not interfere with the public's rights and needs  
15 of the navigable waterway, and that the lessee compensates  
16 the public for the value of the property being used for  
17 its own private purpose.

18           The other question that was raised during the May  
19 10th meeting was as to what types of improvements would  
20 qualify for a rent-free recreational pier lease. Under  
21 California law, construction of a dock or a pier in the  
22 state waters is a privilege and not a right. However,  
23 pursuant to the provisions of Public Resources Code  
24 section 6503.5 enacted in 1977 and 1978, no rent is  
25 charged for any private recreational pier constructed on

1 state property for the use of a littoral landowner.

2           A littoral landowner is defined as a natural  
3 person or a person who owns littoral land that has  
4 improved the land and used it for a single family  
5 dwelling, or any association of or any nonprofit  
6 corporation consisting of natural persons who own parcels  
7 of land, each of which is known to be used solely for a  
8 single family dwelling.

9           Further, a recreational pier lease can only be  
10 issued if the improvement is solely used for the docking  
11 or mooring of the boat, and is used by the littoral  
12 landowner. Therefore, any other type of a structure, such  
13 as a sun deck or a swim float or a mark buoy, that is not  
14 used solely for the docking or mooring of the boats would  
15 not qualify for a rent-free recreational pier lease. In  
16 these situations a general lease recreational use would be  
17 issued, and then rent would be charged for that portion of  
18 the improvement that does not qualify for rent-free  
19 status.

20           Should the Commission decide to approve the  
21 Vellanoweth application, staff would recommend that rent  
22 be for the deck.

23           Another issue that was brought up was compliance.  
24 The Commission's Land Management staff is responsible for  
25 managing over four million acres of sovereign lands and

1 over four thousand leases. Prior budget cuts and  
2 significant staff reductions have resulted in Land  
3 Management staff focusing its attention on various  
4 priority matters such as new applications, replacement of  
5 existing leases, responding to public inquiries and rent  
6 reviews. Even with these reductions, staff is diligent  
7 when it's made aware of a concern regarding any lease of  
8 the Commission -- by the Commission.

9           However, because of the these budget cuts in the  
10 large area that staff is responsible for, staff really  
11 relies on public agencies and the general public to advise  
12 on the compliance on leases issued by the Commission.

13           Currently staff's enforcement options are  
14 limited. The Commission does not have the statutory  
15 authority to levy monetary penalties or to issue cease and  
16 desist orders requiring the movement of unauthorized  
17 improvements.

18           More fundamentally, while approval of minimalist  
19 effects that minimize conversion of public trust lands to  
20 residential-like uses, there is likely to be a fundamental  
21 tension between those restrictions and the intended use of  
22 the deck.

23           Because decks will be located away from the  
24 lessee's home, the lessee is more likely to want to  
25 construct prohibited improvements to facilitate eating,

1 drinking, or other activities that typically would occur  
2 on a residential deck. This is likely to increase  
3 enforcement issues for a dock deck.

4           Should the Commission approve the Vellanoweth  
5 application, staff would monitor the lease to make sure  
6 that its compliance was constructed as approved if it is  
7 approved.

8           As outlined in the staff report that's before you  
9 today, staff continues to recommend the dock deck for the  
10 Vellanoweth application not be approved. However, staff  
11 believes that the Commission has the authority to approve  
12 the issuance of a general lease recreational use for the  
13 Vellanoweth dock and deck.

14           Finally, if the Commission decides to act on the  
15 Vellanoweth application, individual applications will  
16 continue to be -- excuse me -- will continue to need to be  
17 evaluated on a case-by-case basis.

18           And this concludes my presentation.

19           CHAIRPERSON GARAMENDI: Let's go into this in a  
20 little more detail here.

21           What exactly do we have before us today?

22           EXECUTIVE OFFICER THAYER: An application for a  
23 revised dock, which would include -- which would generally  
24 meet the rec pier requirements except that it is -- there  
25 is a proposed deck on the roof of that dock.



1 CHAIRPERSON GARAMENDI: Okay. So the dock itself  
2 is not an issue of concern?

3 EXECUTIVE OFFICER THAYER: No.

4 CHAIRPERSON GARAMENDI: And the size of the dock  
5 is not an issue of concern?

6 EXECUTIVE OFFICER THAYER: It is not. It's  
7 reasonably consistent with the other docks that are built  
8 under these leases.

9 CHAIRPERSON GARAMENDI: And the location in which  
10 the dock is to be built or has been built is not of  
11 concern?

12 EXECUTIVE OFFICER THAYER: That's correct. There  
13 are other docks in the vicinity, the Corps has been  
14 consulted with, and we don't see any particular issues  
15 with this.

16 CHAIRPERSON GARAMENDI: So the issue is about the  
17 additional use to which the dock would be placed?

18 EXECUTIVE OFFICER THAYER: Correct.

19 CHAIRPERSON GARAMENDI: And in this case it is a  
20 deck on top of a covered area that otherwise would cover a  
21 boat -- or I guess not otherwise -- but does cover a boat?

22 EXECUTIVE OFFICER THAYER: Yes, sir.

23 CHAIRPERSON GARAMENDI: So the issue is the  
24 additional use to which that roof is put?

25 EXECUTIVE OFFICER THAYER: Exactly.

1           CHAIRPERSON GARAMENDI: Okay. And as I recall  
2 the discussion from before, we had a question of  
3 whether -- how big the dock -- the platform area of the  
4 dock could be. Access to the boat, is it two feet, twenty  
5 feet wide, so forth? That could also be a question. If  
6 it was a very large -- I'm speaking about as you come down  
7 the gangway and you enter on to the dock itself. Is it  
8 wide enough for a boat? Or was it wide enough for a  
9 fraternity party?

10           EXECUTIVE OFFICER THAYER: If it were a very  
11 small fraternity --

12           (Laughter.)

13           EXECUTIVE OFFICER THAYER: But in general, it's  
14 sized in a way that is appropriate for its use to  
15 accommodate a boat. I mean you need a certain amount of  
16 space to leave your water ski or assemble, that kind of  
17 thing. And so it's going to be more than two feet wide.  
18 But it is not unreasonably large, what's proposed.

19           CHAIRPERSON GARAMENDI: So we don't have concern  
20 about that?

21           EXECUTIVE OFFICER THAYER: No, sir.

22           CHAIRPERSON GARAMENDI: The concern in this  
23 specific case is the deck or the top of -- the roof, the  
24 top, that has potential of being used for a small  
25 fraternity party?

1 EXECUTIVE OFFICER THAYER: Exactly. And, you  
2 know, the staff had brought this to the Commission  
3 because, although some have been approved, there hadn't  
4 been that many proposed so far. And the staff believe  
5 that the Commission had never consciously expressly  
6 addressed this issue about whether or not it wanted these  
7 to be public waterways. So basically this is the decision  
8 point to decide how we want to proceed.

9 CHAIRPERSON GARAMENDI: A docket is brought to  
10 us -- a proposal that's brought to us, that is, its  
11 purpose of which is to moor the boat. I think the sizes  
12 move up -- is there a specific size limit about which  
13 we've said, "What amendment?" Now, you've got a  
14 commercial operation. So 40 feet, 100 feet, 140 feet.

15 EXECUTIVE OFFICER THAYER: We informally look at  
16 all docks with that analysis in it. The dock is heading  
17 above, say, 50 or 60 feet, we ask them, you know, if you  
18 have about the same effort, is what's the purpose for  
19 that? So we do look at that as a criterion.

20 CHAIRPERSON GARAMENDI: Okay. So up to a size  
21 50, 60 feet, that would be routine?

22 EXECUTIVE OFFICER THAYER: Yes.

23 CHAIRPERSON GARAMENDI: And sufficient space to  
24 answer the agreement goods, food, equipment on to the boat  
25 of sufficient size, that would be routine?

1 EXECUTIVE OFFICER THAYER: Yes, sir.

2 CHAIRPERSON GARAMENDI: If it gets to be a dance  
3 floor, that's not routine?

4 EXECUTIVE OFFICER THAYER: That's correct.

5 CHAIRPERSON GARAMENDI: If it gets to be a hot  
6 tub, that's not routine?

7 EXECUTIVE OFFICER THAYER: No.

8 CHAIRPERSON GARAMENDI: Okay. And in this case  
9 we're talking about a railing around the dance floor --  
10 no, excuse me -- the deck?

11 EXECUTIVE OFFICER THAYER: Yes, sir.

12 CHAIRPERSON GARAMENDI: Okay. And we would  
13 consider that not to be routine and subject to a review --  
14 a different kind of review?

15 EXECUTIVE OFFICER THAYER: Yes, sir. And that's  
16 the fundamental question, whether this ancillary use  
17 should be allowed on these docks.

18 CHAIRPERSON GARAMENDI: Now, ancillary use in and  
19 of itself is not prohibited; is that correct?

20 EXECUTIVE OFFICER THAYER: If they're associated  
21 with the enjoyment of the water. So, for example -- Alan  
22 can step in here in a second because I'm going to trip --  
23 a restaurant or a hotel are considered -- or a restaurant  
24 are ancillary uses. So they're not directly --

25 CHAIRPERSON GARAMENDI: Let me rephrase my

1 question.

2 EXECUTIVE OFFICER THAYER: Okay. Sorry.

3 CHAIRPERSON GARAMENDI: The previous discussion  
4 that I had about the specifics of a dock, mooring of a  
5 boat up to a reasonable size, 50, 60 feet, sufficient  
6 space on the deck around the boat to ingress and egress  
7 with food, equipment, so forth, no problem. Okay.

8 Now, when you go beyond that and it becomes more  
9 than that in effect, we then may be allowing it but it may  
10 be that it has to be paid for?

11 EXECUTIVE OFFICER THAYER: Yes, sir.

12 CHAIRPERSON GARAMENDI: Okay. So that's where  
13 the distinction comes. In other words, we could allow a  
14 deck, but they're going to have to lease the land and pay  
15 for that privilege?

16 EXECUTIVE OFFICER THAYER: Yes.

17 CHAIRPERSON GARAMENDI: Is that the way we  
18 describe this?

19 EXECUTIVE OFFICER THAYER: And this is what we've  
20 done in the past from the few that have been approved.

21 CHAIRPERSON GARAMENDI: And so we're going to  
22 make a decision here about whether to allow this rooftop  
23 deck to be built free of charge or to be built at all or  
24 to be built and charged -- or paid in some sort of a lease  
25 format --

1 EXECUTIVE OFFICER THAYER: That's correct.

2 CHAIRPERSON GARAMENDI: -- is that basically it?

3 EXECUTIVE OFFICER THAYER: I would -- Alan can  
4 weigh in on this again. But I think that the Commission  
5 probably would be obligated to charge rent, that there's  
6 less of a question about that. The more fundamental  
7 question is whether to allow them at all, because we don't  
8 think they meet the definition of a recreational pier.

9 Alan --

10 DEPUTY ATTORNEY GENERAL HAGER: Yes, I agree,  
11 because of the statute -- and I won't say what it is --  
12 that authorizes rent-free recreational piers, so it stays  
13 only for the docking or mooring of boats. And anything  
14 that goes beyond that does not fit in within the  
15 definition of a rent-free lease.

16 CHAIRPERSON GARAMENDI: Rent free. Now --

17 DEPUTY ATTORNEY GENERAL HAGER: If it's more than  
18 that, you have to charge rent.

19 CHAIRPERSON GARAMENDI: Okay. So we have to  
20 charge rent, some sort of a fee.

21 Are we prohibited from allowing them to be -- for  
22 that additional space to be built for an activity in  
23 addition to mooring a boat?

24 DEPUTY ATTORNEY GENERAL HAGER: I don't believe  
25 so under the Public -- there's nothing in the statute that

1 would prevent you. And the question would be under Public  
2 Trust Doctrine. And as Paul has said, you know, it's not  
3 per se prohibited. I think one of the things that staff  
4 is concerned with is mansionization, if I may use that  
5 word. I think that could be -- that that that's the  
6 problem and --

7 ACTING COMMISSIONER SHEEHAN: Mansion --

8 DEPUTY ATTORNEY GENERAL HAGER: Mansionization.  
9 Big deal in Los Angeles.

10 ACTING COMMISSIONER SHEEHAN: What's that mean?

11 DEPUTY ATTORNEY GENERAL HAGER: Turning them into  
12 a mansion.

13 EXECUTIVE OFFICER THAYER: I think that might be  
14 part of it. But I think, no matter the size of the deck,  
15 the staff's concern is whether or not this is more of a  
16 residential private use of what is otherwise public  
17 property and whether or not the Commission wants to allow  
18 that or not.

19 CHAIRPERSON GARAMENDI: So the issue really is  
20 one, are we going to allow these enhanced docks to be  
21 built at all?

22 EXECUTIVE OFFICER THAYER: Correct.

23 CHAIRPERSON GARAMENDI: And if we choose to allow  
24 them to be built, what are the limits, if any?

25 EXECUTIVE OFFICER THAYER: Yes, sir.

1 CHAIRPERSON GARAMENDI: And then a subsequent  
2 question is: How much are they -- what would be the rent?  
3 I don't think we're debating whether there should or  
4 should not be rent; if we allow them, there should be  
5 rent, correct?

6 EXECUTIVE OFFICER THAYER: Yes. And we  
7 usually -- we're required by law to charge a fair market  
8 rent. And we'll bring in an appraiser who will look at  
9 the square footage and that kind of thing. It's fairly  
10 mechanistic.

11 CHAIRPERSON GARAMENDI: Do these enhanced  
12 docks -- is that a fair way to describe it and use that as  
13 sort of a word that would deal with it?

14 EXECUTIVE OFFICER THAYER: Sure.

15 CHAIRPERSON GARAMENDI: Do these enhanced docks  
16 now exist along the rivers and lakes?

17 EXECUTIVE OFFICER THAYER: Yes. There are not a  
18 great number of them, but there are some.

19 CHAIRPERSON GARAMENDI: How do we -- you say put  
20 this into fair market value. How would you go about  
21 determining that?

22 EXECUTIVE OFFICER THAYER: I think Colin -- he's  
23 an appraiser and he can give you a lot of details. But  
24 basically it involves comparing with nearby dry land how  
25 much -- you know, comparables. And then there's usually a



1 deduction if it's an exclusive use. But I don't know if  
2 you want more detail --

3 CHAIRPERSON GARAMENDI: Yeah, let's have a  
4 discussion about that. It seems to me if we're to allow  
5 these things at all, somebody's going to have to pay a  
6 handsome sum of money.

7 Colin Connor's our Assistant Division Chief for  
8 Land Management but is also -- works on appraisals.

9 LAND MANAGEMENT ASSISTANT DIVISION CHIEF CONNOR:  
10 Mr. Thayer is correct. We're basically using a  
11 sales comparison approach and finding sales of similar  
12 upland properties. If the use excludes the public from  
13 the area, then we do not provide any sort of discount.  
14 It's typically just straight up market value for that  
15 portion -- that area.

16 CHAIRPERSON GARAMENDI: The deck is 200 square  
17 feet. The upland property is worth a thousand dollars a  
18 square foot. Is that --

19 LAND MANAGEMENT ASSISTANT DIVISION CHIEF CONNOR:  
20 That would be basically -- and the rent is based  
21 on 9 percent of annual rate of return. So we're looking  
22 at 9 percent of whatever the fair market value is. The 9  
23 percent is stipulated in the Code of Regulations.

24 CHAIRPERSON GARAMENDI: Anne.

25 ACTING COMMISSIONER SHEEHAN: Yes. Have we

1 figured out based on their design what the rent would be  
2 for this one?

3 LAND MANAGEMENT ASSISTANT DIVISION CHIEF CONNOR:  
4 I have not done any analysis on that at this  
5 point.

6 ACTING COMMISSIONER SHEEHAN: Okay.

7 CHAIRPERSON GARAMENDI: So you take the land  
8 value adjacent to the dock. Say it's a five-acre parcel  
9 and it's worth \$200,000. How many square feet do we have  
10 here? Something like 300 -- almost 400,000 -- over  
11 400,000 square feet?

12 LAND MANAGEMENT ASSISTANT DIVISION CHIEF CONNOR:  
13 Forty-three hundred -- or 43,560 times whatever,  
14 yeah.

15 CHAIRPERSON GARAMENDI: Okay. Simple division  
16 and simple application to the square footage of that deck?

17 LAND MANAGEMENT ASSISTANT DIVISION CHIEF CONNOR:  
18 That is correct.

19 CHAIRPERSON GARAMENDI: Okay. Well, at least we  
20 understand. We don't have a number yet.

21 What is the square footage of this proposed deck?  
22 Do you have any idea?

23 EXECUTIVE OFFICER THAYER: The applicant may.

24 CHAIRPERSON GARAMENDI: Yeah, we're going to have  
25 to hear from the applicant here in a few moments.

1           Now, the staff recommendation is to don't allow  
2 it, period?

3           EXECUTIVE OFFICER THAYER: Staff recommendation  
4 is to approve the top but without the deck, yes.

5           ACTING COMMISSIONER SHEEHAN: Can I ask a  
6 question?

7           CHAIRPERSON GARAMENDI: Yeah, sure.

8           ACTING COMMISSIONER SHEEHAN: Correct me if I'm  
9 wrong, and my memory may be hazy on this. It's not so  
10 much the roof that we object to; it is the railing on the  
11 roof?

12          EXECUTIVE OFFICER THAYER: -- and the use that's  
13 contemplated.

14          ACTING COMMISSIONER SHEEHAN: -- that would go --  
15 am I correct in that?

16          LAND MANAGEMENT DIVISION CHIEF DUGAL: That's  
17 correct.

18          ACTING COMMISSIONER SHEEHAN: So while we have  
19 approved docks, you know, that have a roof, you know, and  
20 you park the boat underneath, it is the deck around the  
21 roof and then obviously, you know, the access to the roof,  
22 you know, and then the use of that?

23          EXECUTIVE OFFICER THAYER: That's correct.

24          ACTING COMMISSIONER SHEEHAN: Because what we  
25 have, staff is comfortable with the roof, you know, for

1 the purposes of, you know, storing and keeping it out of  
2 the -- it is really putting the railing on?

3 EXECUTIVE OFFICER THAYER: Putting the railing  
4 and the use itself.

5 So I mean obviously if you're just using it for a  
6 roof that might be corrugated aluminum, it might bear some  
7 of your weight or it might be comfortable to walk on, it  
8 might not. But if you're actually doing a deck, there  
9 will be railings but there will also be some kind of  
10 decking and basically that's --

11 ACTING COMMISSIONER SHEEHAN: Yes, because  
12 that's -- as I recall the pictures in term of that.

13 But at some point we will hear from the  
14 applicant, right?

15 CHAIRPERSON GARAMENDI: Oh, yes.

16 ACTING COMMISSIONER SHEEHAN: Okay.

17 CHAIRPERSON GARAMENDI: I want to -- before we  
18 hear from the applicant, the issue of the enforcement was  
19 raised. So I'd like to go into that.

20 LAND MANAGEMENT DIVISION CHIEF DUGAL: You mean  
21 the list -- did you --

22 EXECUTIVE OFFICER THAYER: Well, to just  
23 summarize, I think there are -- there are two issues. One  
24 is -- I mean we, like every other agency, have received  
25 cuts. But since about 1991, they've been fairly dramatic.

1 And so we don't have a staff to get out there on site as  
2 much as we wish. But we do have some mechanisms for  
3 enforcement. There's a five-year rent review. And  
4 when -- and there's a ten-year renewal on the lease. We  
5 have the opportunity -- we ask for pictures when we renew  
6 the lease. So we have an opportunity to review it that  
7 way.

8 So that's one aspect is whether or not we are  
9 going to be able to monitor this to meet your criteria.

10 CHAIRPERSON GARAMENDI: Essentially the  
11 enforcement is, "You cheated. You've put a dance floor on  
12 top of your roof and you didn't tell us about it. And  
13 therefore you're not going to get a renewal. Remove  
14 your" --

15 EXECUTIVE OFFICER THAYER: That's right, we can  
16 tell you to remove that, yeah.

17 CHAIRPERSON GARAMENDI: -- "remove the dock"?

18 EXECUTIVE OFFICER THAYER: That's right.

19 CHAIRPERSON GARAMENDI: Okay. What other  
20 enforcement options do we have?

21 EXECUTIVE OFFICER THAYER: That's the primary --  
22 that's the primary one, is if they're in violation of the  
23 lease, then we could go in court and have them remove the  
24 improvements that are in violation.

25 CHAIRPERSON GARAMENDI: Now, that was different.

1 That's a different one. The first one is you don't get a  
2 renewal.

3 EXECUTIVE OFFICER THAYER: That's correct.

4 CHAIRPERSON GARAMENDI: Okay. The second one you  
5 just said we'd go to court and tell them to yank it out.

6 EXECUTIVE OFFICER THAYER: Well, yes, they're in  
7 violation of the lease. And so if we found out, for  
8 example, before the lease was being renewed, you know,  
9 what should we do? We would probably come to the  
10 commission and ask for authority to enforce the conditions  
11 of the lease.

12 Furthermore, if we didn't renew the lease  
13 ultimately, unless the applicant in fact did remove the  
14 improvements, then we would have to go court.

15 CHAIRPERSON GARAMENDI: Do we have any other  
16 enforcement? Looking at the memo here, we have no  
17 authority to fine?

18 EXECUTIVE OFFICER THAYER: No.

19 LAND MANAGEMENT DIVISION CHIEF DUGAL: None.

20 CHAIRPERSON GARAMENDI: No authority to issue a  
21 cease and desist on our own?

22 EXECUTIVE OFFICER THAYER: No, sir.

23 CHAIRPERSON GARAMENDI: We'd have to get a court  
24 to approve -- or to enforce our request for a cease and  
25 desist?

1 EXECUTIVE OFFICER THAYER: Yes, sir.

2 CHAIRPERSON GARAMENDI: Anne.

3 ACTING COMMISSIONER SHEEHAN: Do we have  
4 authority to put in the lease other provisions that would  
5 require some sort of financial remuneration, additional  
6 lease payments if they were in violation?

7 EXECUTIVE OFFICER THAYER: I think Jack can  
8 answer that.

9 CHIEF COUNSEL RUMP: We determine a negotiation.  
10 I'm not sure there would be a set amount. The question is  
11 is whether or not some form of liquidated damage or what  
12 the provision is.

13 ACTING COMMISSIONER SHEEHAN: Because the issue  
14 we get -- I understand we don't have a cease and desist  
15 penalty. And we've had this discussion before I know with  
16 the staff over the past few years. But I guess my issue  
17 is since we are signing a lease, which is really a  
18 contract, you know, and you put in what the other side  
19 agrees to contractually, and both sides sign, you know,  
20 they are well aware of what they are obligated to in the  
21 lease, in the contract, and I guess the question that I  
22 just -- I discussed this -- is additional provisions in  
23 the contract, in the lease that could be added, you know,  
24 that both sides would sign on the dotted line and agree.  
25 And that -- and it could be short of going to court, you

1 know, to get it done. If it is being abused, they take  
2 down the deck or some sort of financial enhancement to the  
3 lease payment if we feel that they've gone beyond the use  
4 of what has been authorized, would be the suggest that I  
5 would have.

6 EXECUTIVE OFFICER THAYER: Right. I think your  
7 question would be is whether or not the financial burden  
8 is sufficient to really discourage the conduct. In other  
9 words would people just say, "Well, really I can get what  
10 I want," and there's a certain amount. So I don't know if  
11 the amount would be sufficient to really stop that or do  
12 they think it's just an additional charge.

13 CHAIRPERSON GARAMENDI: We may still have to go  
14 to court to enforce the contracts?

15 CHIEF COUNSEL RUMP: Yes.

16 DEPUTY ATTORNEY GENERAL HAGER: I was just going  
17 to say, I mean -- I think your object would be to remove  
18 the inappropriate use. And you may still have to go to  
19 court to do that.

20 CHAIRPERSON GARAMENDI: To get that done. So we  
21 could write into the contract, but we're still going to --  
22 our only real enforcement is the court?

23 ACTING COMMISSIONER SHEEHAN: Right. But I guess  
24 the issue is if both sides agree to the contract upfront,  
25 you know, and understand, you know, what a court would



1 do -- you know, maybe you don't know -- but at least it's  
2 in there.

3 DEPUTY ATTORNEY GENERAL HAGER: Well, if you  
4 wrote a provision that had some sort of -- well, I will  
5 call it liquidated damages, or whatever, then would we --  
6 do we -- we have to make it very clear that that isn't in  
7 lieu of going to court and getting the thing -- the  
8 inappropriate -- yeah, because it could be saying -- the  
9 argument could be made that, "Well, fine, you can enhance  
10 the use of the dock as long as you pay more money for it."

11 ACTING COMMISSIONER SHEEHAN: Well, I guess --

12 DEPUTY ATTORNEY GENERAL HAGER: And you don't  
13 want to get into that bind.

14 ACTING COMMISSIONER SHEEHAN: That is correct. I  
15 understand it's, you know, in terms of sort of, you know,  
16 financial disincentives in lieu of a penalty or a cease  
17 and -- you know, a fix-it type of ticket, type of a thing.

18 CHAIRPERSON GARAMENDI: So the question  
19 here -- this issue of enforcement applies to a standard  
20 or -- a normal lease for a dock only, purpose of which is  
21 to access the boat. This issue would also apply if we  
22 decide to move forward with allowing decks. So this  
23 enforcement applies either way.

24 EXECUTIVE OFFICER THAYER: That's correct.

25 CHAIRPERSON GARAMENDI: Would also apply to

1 somebody that we issue a lease for a standard deck --  
2 excuse me -- a standard dock and they decide to build a  
3 deck.

4 EXECUTIVE OFFICER THAYER: That's correct.

5 CHAIRPERSON GARAMENDI: Okay. So the fundamental  
6 question before us is whether to allow a deck on a dock.

7 (Laughter.)

8 CHAIRPERSON GARAMENDI: Okay. Let's hear from  
9 the applicant.

10 I think -- why don't you take this one right  
11 here.

12 How many of you are there? Just the two of you?

13 Okay. Go up there then.

14 MR. VELLANOWETH: Good morning, staff and  
15 Commission. My name is Rob Vellanoweth. I'm the  
16 applicant for the proposed lease, as you know, on the  
17 Sacramento River.

18 J.B. will be covering most of our arguments  
19 and -- a lot of them.

20 CHAIRPERSON GARAMENDI: Do you have a light on  
21 that microphone?

22 MR. VELLANOWETH: It's on now. Is that better?

23 CHAIRPERSON GARAMENDI: Good. Start over.

24 MR. VELLANOWETH: Okay. Good morning. My name  
25 is Rob Vellanoweth. I'm the applicant for the proposed

1 lease on the Sacramento River. You probably recall most  
2 of our arguments from the last meeting that took place,  
3 you know, for about an hour almost. But J.B. will be  
4 covering most of those arguments again briefly so we don't  
5 take up much of your time.

6 I just want to talk to you about myself on a  
7 personal note and this lease. I'm generally not an  
8 individual who's geared to make strong opposition in any  
9 type of situation; but, you know, especially when you guys  
10 are dealing with multi-million dollar projects. You know,  
11 I'm just a little guy on the totem pole. It seems like  
12 it's become a big issue.

13 But I feel my proposed lease isn't out of the  
14 norm, you know, it's somewhere I live. And I am making it  
15 an issue because, you know, I plan on living there in this  
16 house for some time. And I think having an upper deck  
17 isn't out of the norm, especially the way my house sits  
18 compared to, you know, other properties that are outside  
19 the City of Sacramento.

20 A couple things that I'd like to point out based  
21 on two points that the staff made on the last  
22 presentation. It seems like two of the main arguments  
23 were: 1) Blocking the public's view. And my specific,  
24 you know, situation the way my house is laid out there's  
25 no view to block, one, because it's private and, two,

1 there's a dense population of Oak trees. So really that's  
2 not what I consider an issue there.

3           And, secondly, you know, it seems like one of the  
4 main arguments was that people are building outside of  
5 their permits. And I can totally cope with the staff in  
6 that situation, because, you know, two people within a  
7 mile of my boat dock were permitted to build these  
8 structures, and built these enormous things way outside  
9 their permits, and, you know, have huge deck areas and,  
10 you know, are making my application look bad. I've been  
11 stuck in the middle of this, which -- what it seems like  
12 I've been in the permit process for two and a half years  
13 now.

14           I've been very thorough about going about this  
15 the right way. I could have, you know, gone outside my  
16 permit like these individuals. But I decided to go about  
17 this the right way and have gotten permits from six  
18 different agencies, and you guys were number 7. So, you  
19 know, I don't think it's something that's definitely out  
20 of the norm. You know, I do appreciate your consideration  
21 on this matter, you guys taking the time to discuss this  
22 thoroughly. And, you know, I do feel that they should be  
23 looked at on a case-by-case situation versus, you know,  
24 just saying yes or no. Because in my situation I don't  
25 think it's quite out of the norm. But thanks.

1 MR. MORAIS: Good morning. My name is Jay  
2 Morais. I'm the contractor.

3 After the last meeting, I was under the  
4 assumption that the project would be approved if we made  
5 sure that we were within the parameters discussed. And we  
6 checked with our staff representative and made sure that  
7 they understood that we would not construct any ancillary  
8 or residential structures on this dock or any other items  
9 that the Commission desired to restrict.

10 Up until a week ago we thought that the staff was  
11 busy crafting the policy discussed in May. And  
12 unfortunately we were informed that they again planned to  
13 recommend denial.

14 After reading the memorandum dated June 19th  
15 that's on the website, I was somewhat relieved to see the  
16 staff write, quote, "Representatives of the Attorney  
17 General's Office have said that decks are not sufficiently  
18 residential to be per se inconsistent with the Public  
19 Trust Doctrine." And they say, "Therefore, the Commission  
20 may issue leases for decks if under particular  
21 circumstances they do not interfere with the public's  
22 rights and needs in the navigable waterways and the lessee  
23 compensates the public for the value of the property being  
24 used for its own private purposes."

25 Commissioners, we intend to compensate the state.

1 We are applying for a general lease and not the rent-free  
2 lease. And we feel this project in no way interferes with  
3 the public's rights and needs in the navigable waterway.

4 I believe that the critical definition here is  
5 the allowable use. And I believe that at the last meeting  
6 and in the memorandums it's the consensus that  
7 recreational activities such as sunbathing, picnicking,  
8 relaxing, or just hanging out on the dock is allowed. And  
9 if these uses are allowed on the lower portion of the dock  
10 or a regular dock without an upper deck, they should be  
11 allowed on an upper deck.

12 It's really just a design change, moving the  
13 usable space from the lower level to the upper level.

14 Conversely, if there's a use that's not allowed  
15 on a regular dock, including installing -- kitchens,  
16 affixed barbecues, et cetera, then that shouldn't be  
17 allowed on an upper deck. The mere construction of an  
18 upper deck is not going to promulgate residential uses and  
19 encourage people to build an outdoor kitchen, for example,  
20 up there.

21 Believe me, in my line of work, as a dock  
22 builder, I've seen it all. And there's residential uses  
23 at water level on docks all over California. And to my  
24 knowledge there's only one example of that large dock that  
25 was built outside of its permits that actually has

1 something built up on the top deck.

2 Bottom line, this applicant is not asking for or  
3 planning to do anything on the upper deck that's not  
4 allowed at water level. We agree that there should not be  
5 permanent accessories on decks. We've never requested any  
6 of these items. And because one lessee went ahead with  
7 the type of improvement that -- that does not mean that  
8 every applicant coming along will do the same.

9 If a lessee is allowed to gather, sunbathe, have  
10 a picnic, read a book or just stare out at the water,  
11 which they consider recreation, there should be no reason  
12 why he has to be limited to remaining at water level and  
13 not allowed to do it on an upper deck. It should be the  
14 use that's defined and not the location.

15 In conclusion, I would like to quote from the  
16 staff's conclusion in the memo of June 19th, which quotes,  
17 "Staff believes the Commission has the authority to  
18 approve the decks consistent with the Public Trust  
19 Doctrine. The conditions to be inserted into the lease  
20 would minimize the impact of the decks by requiring the  
21 docks not be designed to enhance the decks and by keeping  
22 backyard improvements like barbecues off of them."

23 Staff goes on to say that the Commission  
24 determines what uses are to be made on public trust lands  
25 on a case-by-case basis, and based upon factual and legal

1 circumstances involving the particular location and  
2 proposed use.

3           Commissioners, please remember that in this case  
4 the applicant's house is on the other side of the levee  
5 with no view of the water. Also, the river side of the  
6 levee is a steep, unusable levee, basically a rock wall.  
7 The only way for this upland owner to recreate on or use  
8 or even see the river would be from this dock.

9           We will accept your conditions and -- we'll  
10 accept the conditions that will result in this dock being  
11 consistent with the public trust doctrine. We have no  
12 desire to construct this dock and utilize the dock outside  
13 of your conditions.

14           Once again, I urge you to support this concept  
15 and to approve this dock with the upper deck.

16           Thank you.

17           CHAIRPERSON GARAMENDI: Thank you very much.

18           Questions, Anne?

19           ACTING COMMISSIONER SHEEHAN: Yeah. I guess the  
20 question I'd have for staff is the point about what they  
21 could do on, you know, a regular dock, that just goes  
22 straight out, the recreational use, you know, could be  
23 done on the upper one.

24           Can you -- do you disagree with that? Do  
25 you -- but that's kind of what I'm struggling with,



1 because it's -- you know, the point he makes is because of  
2 the way it is, I think, you use the upper deck. So you  
3 can -- if somebody takes a chair out to enjoy the water,  
4 recreational use, on just a regular deck, and he says we  
5 want to do this on the upper one --

6 EXECUTIVE OFFICER THAYER: We would not -- and I  
7 think we've talked about this a little bit in the last  
8 meeting. Our view is we're not going to go out there and  
9 tell somebody not to sit out there in a chair and read a  
10 book or even bring a sandwich down there to eat or that  
11 kind of thing.

12 But, again, in terms of looking at the design of  
13 the dock itself, we would be concerned if there were  
14 features of that dock that weren't consistent with its use  
15 for the boating. And so, if people put railings around  
16 their dock or put in other things there that facilitated  
17 the non-dock use, then we would have some concerns.

18 I might also say that -- respond to one argument  
19 that Mr. Morais made, which is that these are merely  
20 moving space from the dock up to the roof. Our view is  
21 that the size of the dock can only be built, as the Chair  
22 was describing, to accommodate the boating use. It cannot  
23 be built larger in order to accommodate the other kinds of  
24 uses you're talking about, the chairs and that kind of  
25 thing. So there's no movement of space here. It's the

1 same size no matter what. It's the size you need to get  
2 in and out of the boat.

3           The other thing I wanted to respond to is, since  
4 the last meeting we appreciated the tips -- the discussion  
5 about the other uses. We hadn't been looking at those.  
6 And we've gone out and inspected one of those and we're  
7 working on the other one. So we're following up on those.  
8 But they didn't generate our approach to this dock. It  
9 was the larger issue of statewide what -- you know, what  
10 does the Commission want out there? And feeling that the  
11 Commission hadn't looked at this. And so from a staff's  
12 perspective I think the applicant's right. You know, we  
13 believe it's within your authority to go either way. And  
14 we just want the Commission to -- decide what it wants to  
15 do with it.

16           ACTING COMMISSIONER SHEEHAN: Okay.

17           CHAIRPERSON GARAMENDI: Do we have a -- we  
18 approve these things case by case. Each one is unique and  
19 we handle it uniquely.

20           I'd like to see the plans. Do you happen to have  
21 them with you?

22           MR. VELLANOWETH: I do.

23           CHAIRPERSON GARAMENDI: I've got them.

24           ACTING COMMISSIONER SHEEHAN: Do you have any  
25 other drawings, pictures of what it --

1 EXECUTIVE OFFICER THAYER: We have some  
2 additional ones here that are condensed versions of -- Mr.  
3 Morais has some he's giving you.

4 CHAIRPERSON GARAMENDI: I assume this is going to  
5 look like this Steakhouse boathouse after it was  
6 downsized.

7 Are the sides open or the sides closed?

8 MR. MORAIS: It's a boathouse where the sides are  
9 enclosed.

10 CHAIRPERSON GARAMENDI: And it's opened at one  
11 end?

12 MR. MORAIS: Yes.

13 MR. VELLANOWETH: Enclosed there, basically to be  
14 able to leave the boat there and secure it.

15 CHAIRPERSON GARAMENDI: Close it up and secure  
16 it.

17 And you're using the float to lift it up?

18 MR. VELLANOWETH: We intend to.

19 ACTING COMMISSIONER SHEEHAN: Yeah, I guess --  
20 this is a difficult one. I understand the staff's  
21 concern. And I also understand the applicant who got into  
22 this process at the time that we had these other ones. So  
23 we're sort of, you know, stuck in this -- you know, you're  
24 really stuck in this sort of bureaucratic timeline. And,  
25 you know, just sort of in fairness I'm very sympathetic to

1 that in terms of, okay, you've got these other ones, and  
2 now all of a sudden I'm the one who has to do this.

3 I guess where I am predisposed is -- you know,  
4 because the application process started what, two and a  
5 half years ago through this --

6 MR. VELLANOWETH: February 2005, I believe it  
7 was.

8 ACTING COMMISSIONER SHEEHAN: You know,  
9 reluctantly, you know, you got stuck in this without us  
10 sort of giving people a warning that we're going this way.

11 I am extremely concerned though about making sure  
12 that -- I do think we need to develop some better policy  
13 and communicate to people about what we're doing and what  
14 is allowed and what isn't allowed going forward.

15 I also do believe -- and, you know, heaven  
16 forbid, in terms of dealing in this building, you know,  
17 some sort of ability for us to -- not you, but use the --  
18 you know, penalize, you know, where they have abused the  
19 Public Trust Document, because it is a privilege in term  
20 of us providing that right, you know, that access to you  
21 in terms of that.

22 You know, my feeling is if -- and then this is  
23 why it talked about staff -- you know, if we see and we  
24 don't have the enforcement. But, you know, we do have  
25 people going up and down the river reporting back abuses,

1 you know, that you've got to tear down the railing if it's  
2 abused. I don't know if we can put that in the lease,  
3 but, you know --

4 MR. VELLANOWETH: Yeah. I would say terminate  
5 the lease, you know, period, is going to be quite  
6 devastating on the applicant. And that right there alone  
7 is sufficient to keep someone from abusing it.

8 ACTING COMMISSIONER SHEEHAN: I mean I don't know  
9 what we -- you know, in terms of the lawyers -- you  
10 terminate the lease immediately. I think we need to  
11 publish and, you know, let people know the direction that  
12 we are going. Because we will have other leases coming to  
13 us for renewal that they know we're out of  
14 compliance -- that could be out of compliance at that  
15 point in time with what would be a new policy that we are  
16 taking in terms of this.

17 So I don't say that makes sense. But it at least  
18 begins to focus that discussion on what clarification we  
19 are making, you know, as the policymaking body over the  
20 public trust document.

21 CHAIRPERSON GARAMENDI: Well, at this point we're  
22 dealing with individual leases and we're trying to apply  
23 the Public Trust Document and the law on a case-by-case  
24 basis. Now, it may be that we should undertake at some  
25 point in the future a process to establish a specific

1 regulation or policy. That's not where we are today. And  
2 I understand what you're saying about that task.

3 ACTING COMMISSIONER SHEEHAN: Yeah. I mean that  
4 can be separate.

5 CHAIRPERSON GARAMENDI: And I'd like to make sure  
6 that's a separate task from where we are at this moment.

7 I share a concern that the staff has, this  
8 recreational enhanced docks. Enhanced docks can, and in  
9 fact I know from my own view of the river, has gotten out  
10 of control. And so we must pursue this.

11 At this point, the one thing that I find that is  
12 likely to trouble us as we move forward is the design of  
13 the railing. I hate to get into this. But that railing  
14 design gives the impression that this is really something  
15 spectacular, different. I don't know what you can do  
16 about that. But just looking at it, people are going to  
17 go, "Oh, I can do that and I'll do it a little bit bigger  
18 and I'll do a little more." I don't know.

19 I'm prepared to move forward with this one. And  
20 then I'm going to make you pay a fee for that little  
21 enhancement deck on the dock. If I have one more vote we  
22 will.

23 So that's where I'm looking at this thing, in  
24 that view, that I'm prepared to allow this to go forward.  
25 I want it to be very clear that I am very, very concerned

1 about where this may lead. And I want to start a process  
2 that will make -- will better define how we should move  
3 forward with this.

4 In this case, your deck on the dock -- your deck  
5 on the boathouse on the dock is, in my view, beyond the  
6 requirements of the -- or the allowance of the current  
7 state law, which allows you to have a free dock. My view,  
8 you can have a free dock, but your deck you're going to  
9 pay for. Okay. We've heard how that can be -- how the  
10 value can be determined. And that process will -- and  
11 assuming I have one more vote, will be allowed, will go  
12 into place.

13 And I want to make it clear that if you do more,  
14 there's a penalty. And I like your penalty. Your lease  
15 is terminated and you will remove the dock, the deck, the  
16 boat house. The boat you can leave there if you can tie  
17 it to a tree.

18 Okay. I think I've covered what I want to cover.

19 Anne.

20 ACTING COMMISSIONER SHEEHAN: I am comfortable  
21 with supporting the Chair's motion if we also begin that  
22 other process that I had discussed in terms of, you know,  
23 really beginning to rationalize what we are doing and  
24 communicating with people.

25 CHAIRPERSON GARAMENDI: Paul, we have a meeting

1 on the -- excuse me, Anne.

2           ACTING COMMISSIONER SHEEHAN: Sure.

3           CHAIRPERSON GARAMENDI: We have meeting on July  
4 13th. And if you or your staff can come back with how we  
5 might fulfill Anne's request and what might be entailed in  
6 that discussion at that time.

7           EXECUTIVE OFFICER THAYER: If I could have just a  
8 little bit more detail on what Commission Sheehan is  
9 suggesting.

10           So you're talking about perhaps some guidelines  
11 or policies specific to this particular issue?

12           ACTING COMMISSIONER SHEEHAN: Yeah, to this --  
13 well, this application will be behind us. But letting  
14 people know we are beginning to undertake the development  
15 of some guidelines, policies on this issue that we feel,  
16 while we have provided these applications, it's been  
17 abused, you know, by some people, they've gone beyond what  
18 their authority is; and the fact that the Lands Commission  
19 is beginning to look at this issue and will be taking  
20 steps on these at least renewals and new applications,  
21 that type of thing.

22           That's what I am -- so that people know when they  
23 start the process --

24           CHAIRPERSON GARAMENDI: -- here are the  
25 parameters.



1           ACTING COMMISSIONER SHEEHAN: Right, what is the  
2 expectation and they know what the rules are.

3           EXECUTIVE OFFICER THAYER: Certainly. We'll come  
4 back with sort of a plan for that. You're right, we're  
5 going to have to look at ones that have already been  
6 approved and how we want to apply this, or whether we want  
7 to grandfather in what they've already got.

8           ACTING COMMISSIONER SHEEHAN: Yeah, you've got  
9 those. And then you've got, you know, ones to come, as we  
10 know.

11          EXECUTIVE OFFICER THAYER: And of course there's  
12 going to be a discussion about whether we can adopt the  
13 guidelines without making them regs or whether we just  
14 want to say, okay, let's adopt some regs.

15          So we'll investigate that and come back with --  
16 not the full report, but with kind of an outline of where  
17 we think we're going so we have some --

18          ACTING COMMISSIONER SHEEHAN: How do we proceed  
19 in terms of --

20          CHAIRPERSON GARAMENDI: Give us a road map.

21          EXECUTIVE OFFICER THAYER: Right.

22          CHAIRPERSON GARAMENDI: How do we proceed and  
23 some time frames of what it would take to do -- to carry  
24 it out, whether it's a guideline or a regulation, and if  
25 there's a difference between the two, what that might be.

1           Okay. I think we've covered this specific issue.  
2 I wanted to be quite sure that it's clear what we're doing  
3 here.

4           We are going to approve this application as  
5 presented in the design. Is what's before the Commission?  
6 Is this actually the design?

7           EXECUTIVE OFFICER THAYER: Yes.

8           MR. MORAIS: We also have a copy of it.

9           ACTING COMMISSIONER SHEEHAN: This is actually  
10 it.

11          CHAIRPERSON GARAMENDI: Okay. And the size is --  
12 this is what you're going to build, correct?

13          MR. VELLANOWETH: Exactly.

14          MR. MORAIS: Correct.

15          CHAIRPERSON GARAMENDI: Including the railing,  
16 which I have some troubles with, but I'm not going to go  
17 that way right now.

18          How's the gangway get to this?

19          MR. MORAIS: After the last meeting we had  
20 talked -- we went out and remeasured and decided that we  
21 can have the gangway come to the upper deck, which is  
22 going to be -- one of the benefits of this design is  
23 having a less steep gangway, have it come to the upper  
24 deck. From there a staircase will go down to the lower  
25 deck.

1 CHAIRPERSON GARAMENDI: Okay.

2 ACTING COMMISSIONER SHEEHAN: To access the boat.

3 MR. MORAIS: To access the boat, correct.

4 CHAIRPERSON GARAMENDI: And the access of the  
5 boat will be inside the boathouse or outside the  
6 boathouse?

7 MR. VELLANOWETH: The point I made, Mr.  
8 Garamendi, was that typically on the bottom deck people  
9 get on and off the boat. And it makes sense to have a  
10 railing on the upper deck because people can be standing  
11 there scheduling to get on and off the boat where it's not  
12 as practical --

13 CHAIRPERSON GARAMENDI: My question is really --  
14 we're into such detail here. I really don't like to see  
15 us having to do this. But it is a case by case, so  
16 proceed.

17 Okay. This was the design and that's what you're  
18 going to build.

19 MR. MORAIS: And the answer of your question  
20 there is three feet access on each side inside the  
21 boathouse, which is --

22 CHAIRPERSON GARAMENDI: Outside the boathouse  
23 it's three feet also.

24 MR. MORAIS: The minimum that we can -- you know,  
25 you can safely walk. And, you know, we didn't try and go

1 beyond what was a minimum.

2 CHAIRPERSON GARAMENDI: All right. Now, the  
3 remaining -- the other issue is the question of the  
4 valuation of the deck -- or the value of the deck. And  
5 you will pay accordingly, okay, based upon the discussion  
6 we had earlier, and that's standard operating procedure?

7 EXECUTIVE OFFICER THAYER: Yes. Usually we try  
8 and have that worked out before the Commission acts so  
9 it's clear. I'm trying to think about how -- you folks  
10 want to start construction as soon as possible, I presume.  
11 And so --

12 CHAIRPERSON GARAMENDI: Paul, there's a  
13 formula -- there's a standard operating formula, correct?

14 EXECUTIVE OFFICER THAYER: Okay.

15 CHAIRPERSON GARAMENDI: All right. And that is  
16 the valuation of the land -- adjacent land?

17 EXECUTIVE OFFICER THAYER: Right.

18 CHAIRPERSON GARAMENDI: Which as I understand,  
19 it's required that the dock owner has to own the land  
20 adjacent to the dock.

21 EXECUTIVE OFFICER THAYER: That's correct.

22 CHAIRPERSON GARAMENDI: Okay. And whatever that  
23 valuation is, that's determined by an appraisal and then  
24 the -- it's just a proportion.

25 EXECUTIVE OFFICER THAYER: Sure.

1 LAND MANAGEMENT DIVISION CHIEF DUGAL: Nine  
2 percent.

3 CHAIRPERSON GARAMENDI: I'm sorry.

4 LAND MANAGEMENT DIVISION CHIEF DUGAL: Nine  
5 percent.

6 CHAIRPERSON GARAMENDI: Nine percent of that.

7 EXECUTIVE OFFICER THAYER: And then of course  
8 we'll want to see --

9 CHAIRPERSON GARAMENDI: Pay once?

10 LAND MANAGEMENT DIVISION CHIEF DUGAL: Annually.

11 CHAIRPERSON GARAMENDI: Thank you. That's what I  
12 thought it would be.

13 ACTING COMMISSIONER SHEEHAN: So it's a five-year  
14 lease?

15 EXECUTIVE OFFICER THAYER: Five-year rent review,  
16 ten-year lease term. And we would want to see the revised  
17 plan as well to make sure they -- I mean I presume the  
18 Commission's intent is that the approval would accommodate  
19 the changes he's talking about and generally within about  
20 the same size as the present plans are.

21 CHAIRPERSON GARAMENDI: Well, let's -- is this  
22 what you're building?

23 MR. MORAIS: Yes.

24 ACTING COMMISSIONER SHEEHAN: Yes. They've  
25 changed the gangway access, as I understood --

1 MR. MORAIS: Well, before it just went to the  
2 lower deck. And We're just raising it up at a different  
3 angle so it rests on the upper deck. It's the same  
4 gangway -- same existing gangway.

5 CHAIRPERSON GARAMENDI: This is what I'm  
6 approving, sure.

7 EXECUTIVE OFFICER THAYER: And then, finally, I  
8 presume also the conditions that were -- that the Chair  
9 had outlined at this meeting, the last one, would apply to  
10 would apply to this lease as well and no additional  
11 improvements and that kind of thing? The same conditions  
12 you previously described.

13 CHAIRPERSON GARAMENDI: Correct.

14 Okay. I think we've covered it.

15 The one thing that I want to be quite clear about  
16 is the termination of the lease should this not be --  
17 something different -- greater than this be built. Okay?  
18 I want that in the lease.

19 EXECUTIVE OFFICER THAYER: Would that also apply  
20 if the criteria that you enumerated were violated or would  
21 you only apply that if --

22 CHAIRPERSON GARAMENDI: I'm sorry, Paul, would  
23 you repeat that. I didn't understand what you said.

24 EXECUTIVE OFFICER THAYER: I heard you describe  
25 that that penalty would be imposed if the deck was -- or

1 if the dock was constructed any different from these  
2 plans. Would that penalty as well apply if, for example,  
3 at some future -- four years from now they added a  
4 barbecue or a spa or violated one of the other criteria  
5 that you list there?

6 CHAIRPERSON GARAMENDI: Most definitely, yes.

7 EXECUTIVE OFFICER THAYER: Okay.

8 CHAIRPERSON GARAMENDI: No permanent barbecue, no  
9 hot tubs, wet bars, dry bars, et cetera, et cetera. Okay?  
10 Very good. I think that covers all of this.

11 And Anne's request, we'll talk again on the 13th  
12 about that.

13 EXECUTIVE OFFICER THAYER: Yes, sir.

14 CHAIRPERSON GARAMENDI: Okay. I don't know that  
15 I can make a motion. But I would if I could.

16 But you can.

17 ACTING COMMISSIONER SHEEHAN: I'll move --

18 CHAIRPERSON GARAMENDI: And I'll second and --

19 ACTING COMMISSIONER SHEEHAN: -- the motion as we  
20 discussed, with the conditions, the rent, the lease  
21 termination, the other conditions that were discussed.

22 CHAIRPERSON GARAMENDI: Very good.

23 Motion. Second?

24 I'll second it.

25 And it's approved on a two vote. Okay.

1           ACTING COMMISSIONER PLACET: No.

2           CHAIRPERSON GARAMENDI: Two to one vote.

3           All right. Moving on. Paul, I want you and your  
4 staff to know that this is -- these decks are of great  
5 concern to -- certainly to me, and I think also Anne is  
6 tending in perhaps that direction. Obviously Mr. Chiang  
7 and his staff are concerned about this. And we expect to  
8 have a -- give us a good road map and help us understand  
9 which way we are going here.

10           I think it's very clear that my concern is  
11 significant. And if somebody wants to bring in a -- what  
12 do you call them? -- mansion dock, they're in deep  
13 trouble.

14           I also want to -- I would like to have a  
15 discussion about enforcement of the existing docks. I  
16 think that we have docks out there in the rivers that are  
17 way beyond what was -- what has been presented to the  
18 Commission. A little overexuberance on behalf of the  
19 owner. And I'd like to have a discussion about that. It  
20 seems to me we ought to be able to find some interns and a  
21 small stipend and a boat and --

22           ACTING COMMISSIONER SHEEHAN: A lot of navigable  
23 waters.

24           CHAIRPERSON GARAMENDI: Well, we could start on  
25 the Sacramento River. We've already discussed this



1 possibility on lake Tahoe, a summer at Tahoe perhaps, and  
2 a canoe and a camera, and a lot of sunscreen.

3           ACTING COMMISSIONER SHEEHAN: Probably have a lot  
4 of volunteers.

5           CHAIRPERSON GARAMENDI: I'm sure we'll have a lot  
6 of volunteers.

7           (Laughter.)

8           CHAIRPERSON GARAMENDI: It sounds like half of  
9 the staff would do that.

10           Dave's willing to do that in his retirement for  
11 us.

12           But I think we ought to look at that as something  
13 that ought to be part of the commission of the Commission.

14           EXECUTIVE OFFICER THAYER: And we appreciate  
15 hearing support for that approach from the Commission.  
16 And, as I say, these two that were mentioned by Mr.  
17 Vellanoweth and Mr. Morais, we're investigating right now.  
18 And our preliminary review indicates that one of them was  
19 built much larger than the Commission approved and there's  
20 some other frills on it, a bathroom, things like this that  
21 we think are inappropriate. And so we're likely to return  
22 to the Commission. Given the amount of money that the  
23 owner has put into it, he's probably going to fight about  
24 this.

25           CHAIRPERSON GARAMENDI: That's okay. I don't

1 mind a fight. I'm well known for fighting.

2 (Laughter.)

3 ACTING COMMISSIONER SHEEHAN: I'd also add in  
4 terms of if staff, you know, in consultation with our  
5 legal counsel, feels we need more statutory enforcement  
6 authority. Because through this discussion the many  
7 months that we've had this, you know, penalty, cease and  
8 desist, you know, some other type of authority that would  
9 put a little more teeth into the leases and the permits,  
10 short of having to go fight everything out in court, would  
11 be very helpful. So that at least to me would be helpful.

12 EXECUTIVE OFFICER THAYER: Sure. We will review  
13 that.

14 CHAIRPERSON GARAMENDI: And early on, maybe at  
15 the first meeting, the issue of trespass came up. And  
16 we've talked about it, but I'm not sure we've had a good  
17 legal analysis of the -- just the trespass laws of the  
18 state and how that might relate to all of this.

19 EXECUTIVE OFFICER THAYER: And since that meeting  
20 staff -- I've talked to Commissioner Sheehan about this, I  
21 haven't with the other Commissioners -- is the staff has  
22 moved forward on a number of fronts to look at some of  
23 these issues, these related issues. We're conducting a  
24 comprehensive review of improvements that we know about  
25 that don't have any lease or on leases that have expired.

1 We look at trespasses kind of our first weapon on that.  
2 And we're going to be proceeding. We'll be bringing you  
3 enforcement actions that haven't occurred in the past from  
4 the Commission, because we think this is the only way to  
5 get a handle on this.

6 CHAIRPERSON GARAMENDI: Which means we may have  
7 to hire another summer intern with a cable cutter at  
8 Tahoe.

9 (Laughter.)

10 CHAIRPERSON GARAMENDI: Okay.

11 EXECUTIVE OFFICER THAYER: And the other thing is  
12 that we've been reviewing leases for rental rates. One  
13 thing that wasn't included in the discussion earlier about  
14 how we set our rents. On a case-by-case basis it's  
15 difficult because the amount of time it takes to do a new  
16 appraisal for each one is much too much time. So we  
17 establish benchmarks for different areas.

18 In the last six months we've redone the benchmark  
19 at Tahoe. So the rents there have increased dramatically  
20 to reflect that. And the Delta area is the next area  
21 we're going to to revise that. And I think that will get  
22 us closer to the fair market rent and get the public what  
23 it deserves for renting its property.

24 CHAIRPERSON GARAMENDI: Very Good. Thank you.

25 Let's move on. I think we have two items that

1 were on the consent calendar, were taken off the consent  
2 calendar, items 14 and 42; is that correct?

3 EXECUTIVE OFFICER THAYER: That's correct. And  
4 also the resolution.

5 CHAIRPERSON GARAMENDI: Let's take those up.  
6 Let's take up the two items. Then the resolution will be  
7 the last.

8 Let's take 14.

9 EXECUTIVE OFFICER THAYER: Okay. Calendar Item  
10 14, we have a staff presentation ready for that. This is  
11 the item that -- just by way of background, this is the  
12 item that deals generally with two experimental wells that  
13 are proposed for the -- by the Cambria Community Services  
14 District on a state beach.

15 There had been no opposition to this that we  
16 heard of up until two days ago when we received a fax  
17 letter which is part of -- I think your comment letter's  
18 up there -- it's included in your files. And then today I  
19 think we've got a -- received an e-mail on the same  
20 subject, raising objections. And I think staff is  
21 prepared to make a presentation.

22 Colin Connor from LNP will make that  
23 presentation.

24 LAND MANAGEMENT ASSISTANT DIVISION CHIEF CONNOR:

25 Good morning, Mr. Chairman, Commissioners. I'm

1 Colin Connor, Assistant Chief of the Commission's Land  
2 Management Division. I'll be presenting background  
3 information regarding the proposed project that you're  
4 considering today in Calendar Item No. 14.

5           The item involves the termination of an existing  
6 general lease - public agency use and the issuance of a  
7 new general lease - public agency use.

8           On October 25th, 1995, the Commission approved  
9 the issuance a 25-year general lease - public agency use  
10 to the Cambria Community Services District. That lease  
11 was for the construction of two 10-inch diameter intake  
12 lines, one 10-inch diameter outfall line, and other  
13 pertinent facilities enclosed within a 30-inch diameter  
14 2300-foot-long pipeline. These authorized improvements  
15 were never constructed, and staff is therefore  
16 recommending termination of this lease.

17           On May 17th of this year the district applied for  
18 a new General Lease - Public Agency Use for the  
19 construction, maintenance, and monitoring of two temporary  
20 groundwater monitoring wells. The purpose of the wells is  
21 to collect groundwater information that will be used in  
22 preparation of a future Environmental Impact  
23 Report/Environmental Impact Statement for proposed future  
24 desalination facilities. Data collected from the  
25 monitoring wells will be used to characterize the

1 groundwater that's available.

2           The district intends to share information  
3 gathered when the concept's developed from this project  
4 with other agencies within the state.

5           Each of the vertical wells will consist of a  
6 four- to six-inch diameter PUC pipe -- excuse me -- PUC  
7 pipe well casing that was drilled to a depth of up to 125  
8 feet. The top of the well was going to be capped  
9 approximately four feet below the surface of the beach.  
10 The well heads will be uncovered and uncapped only during  
11 periodic monitoring of the groundwater. The well heads  
12 will then be recapped and reburied. Only hand tools will  
13 be used during the periodic uncovering and reburying.

14           The proposed lease requires the district to  
15 perform weekly monitoring of the wells to ensure that they  
16 remain buried. If at any time during the lease term the  
17 well heads become uncovered, then the district will  
18 immediately rebury them. If needed, the district will  
19 recut and cap the well casings at a lower depth to prevent  
20 future occurrences.

21           The proposed lease also requires removal of the  
22 wells and restoration of all disturbed areas to the  
23 satisfaction of the Commission within 90 days of the  
24 expiration of the lease. Removal and restoration are to  
25 be performed at the district's expense.

1           Because of the nesting season of the threatened  
2 Western Snow Plover runs from mid-March to mid-September,  
3 and the winter storm season generally begins in November,  
4 the district's construction window is from late September  
5 through October, a period of approximately six weeks.  
6 While the actual drilling of the wells may take only five  
7 to ten days, the staging and set up prior to drilling may  
8 last several weeks.

9           In order for avoiding a breaching bluff in  
10 constructing an access ramp, a truck crane will be placed  
11 on the bluff above the drill sites, which will lower the  
12 drill rig to the beach.

13           The district, as lead agency for the California  
14 Environmental Quality Act, prepared and adopted on October  
15 25th, 2005, a mitigated negative declaration. Because  
16 portions of the project occur within the federal  
17 jurisdictional areas, the environmental assessment was  
18 also prepared in order to comply with National  
19 Environmental Protection Act. The U.S. Corps of Engineers  
20 is the lead agency for that topic.

21           Proposed circulation and commenting on the  
22 environment assessment concluded on February 2007. A  
23 finding of no significant impact, also known as FONSI, is  
24 currently being finalized.

25           The project has also received water quality

1 certification from the California Regional Water Quality  
2 Control Board, Central Coast Region. The project still  
3 requires approvals from the Coastal Commission, the United  
4 States Army Corps or Engineers, and the California  
5 Department of Parks and Recreation for access across San  
6 Simeon State Beach.

7           It should be noted that the district has received  
8 a letter from Department of Parks and Recreation that  
9 states it intends to grant the right of entry subject to  
10 the district continue all other necessary local, state and  
11 federal permits.

12           Based on concerns expressed during the public  
13 hearing process, the project has been modified as to well  
14 heads in access to and across the beach. The well heads  
15 will now be capped and buried to a minimum of four feet  
16 below the surface of the beach instead of extending above  
17 the beach and being set in concrete footings to the  
18 aprons.

19           Also, the project originally called for breaching  
20 of bluff and construction of an access ramp for the  
21 drilling rig. But the plan now calls for a crane to lower  
22 the drill rig to the beach.

23           In conclusion, there are two actions that the  
24 staff is asking the Commission to consider today:

25           First is the termination of the existing lease;



1 and the second is the issuance of a new general lease -  
2 public agency use for the construction, maintenance and  
3 monitoring of the two temporary groundwater monitoring  
4 wells for a term of two years.

5 This concludes the presentation. Staff is  
6 available so answer any questions you may have.

7 And Mr. Bob Gresens, District Engineer for the  
8 Cambria Community Services District, is also available to  
9 answer your questions.

10 Thank you.

11 CHAIRPERSON GARAMENDI: Are there people here in  
12 the audience opposed to this project -- opposed to the  
13 lease?

14 I think all we have are the letters before us; Is  
15 that correct?

16 LAND MANAGEMENT ASSISTANT DIVISION CHIEF CONNOR:

17 Yes, sir.

18 CHAIRPERSON GARAMENDI: I would like to hear from  
19 the representatives of the public service district.

20 Just sit next to the staff, please.

21 The objection letters that we have before us say  
22 that the project -- the scope of the project has been  
23 changed. How much change, if any, has occurred in the  
24 scope of the project?

25 MR. GRESENS: We do not believe with regard to

1 the two groundwater monitoring wells that are subject here  
2 has changed at all from our adopted initial study  
3 mitigated neg dec that occurred back in October of 2005.  
4 There are changes being recommended by the Coastal  
5 Commission that they believe would lessen the potential  
6 impacts of the project that we would be willing to do at  
7 the Coastal Commission level when we get to that point.  
8 And that's been discussed in an earlier Coastal Commission  
9 meeting on February 14th. But they've postponed their  
10 action at that point.

11 CHAIRPERSON GARAMENDI: So we're acting ahead of  
12 the Coastal Commission here with allowing the lease  
13 itself, and the lease itself is -- the lease is for the  
14 two wells, and there's been no change in what we're  
15 involved in, correct?

16 MR. GRESENS: I'm Sorry, but my hearing is a  
17 little --

18 CHAIRPERSON GARAMENDI: I'm saying we're  
19 approving a lease for two monitoring wells and there's  
20 been no change in that portion of the project?

21 MR. GRESENS: Correct.

22 CHAIRPERSON GARAMENDI: And the Coastal  
23 Commission will act subsequent to our action, assuming we  
24 act today?

25 MR. GRESENS: That's correct.

1           CHAIRPERSON GARAMENDI:   Okay.

2           EXECUTIVE OFFICER THAYER:   The Coastal Commission  
3 generally requires us to act first because they won't  
4 entertain applications unless the applicant can  
5 demonstrate that they have the property right to proceed.  
6 So they need a lease also for the -- moving forward too.

7           CHAIRPERSON GARAMENDI:   Thank you.

8           Appreciate the new information.  I'll learn along  
9 the way.

10          (Laughter.)

11          CHAIRPERSON GARAMENDI:   What are the wells for?

12          MR. GRESENS:   The wells are for gathering  
13 scientific information so that we can come up with  
14 alternatives that will be analyzed in the future  
15 Environmental Impact Report/Environmental Impact Statement  
16 for a desalination project.  The intent is to avoid  
17 entrainment and intentional issues that have plagued other  
18 projects by looking very closely at the subterranean  
19 conditions there.  So they serve as a means to gather the  
20 water quality characteristics at different depths.  And  
21 that's why we have a two-year timeframe.  We want to get  
22 some seasonal variation in that snapshot of information.

23          They will serve as a pumping test to determine  
24 hydraulic characteristics of the subterranean soil and  
25 sand mix as well as a seismic reflection study where

1 there's a device placed inside and it generates sound that  
2 allows us to get a clearer picture of what they call the  
3 lithology or the layering of the materials that have been  
4 deposited over geologic time.

5 CHAIRPERSON GARAMENDI: Well, we're going to have  
6 several of these issues before us over the next several  
7 months or year. Once-through cooling puts us into the  
8 same situation, as I understand it. And we have two or  
9 three desal proposals that have gone -- so they ended up  
10 working.

11 Okay. Well, I don't personally see any reason to  
12 delay you. And that's my personal opinion. And I'm  
13 prepared to move this thing forward, assuming I've got one  
14 or two other votes.

15 ACTING COMMISSIONER SHEEHAN: I am comfortable  
16 moving this forward just for the process. So I will move  
17 approval of the staff's recommendation.

18 Was there anybody else who -- we asked if there's  
19 anybody else who -- I'll move approval.

20 CHAIRPERSON GARAMENDI: I don't know if anybody  
21 else wants to speak to this from the audience.

22 ACTING COMMISSIONER PLACET: I just had a couple  
23 questions.

24 CHAIRPERSON GARAMENDI: Sure, please.

25 ACTING COMMISSIONER PLACET: Where are -- looking

1 at the map here. Are the wells being dug offshore, just  
2 into the water? Are we talking right on the beach or --

3 MR. GRESENS: We're on the beach where the  
4 drilling will be done. They're going to be looking at  
5 timetables to make sure they sequence the actual operation  
6 to avoid, you know, high tide periods. But it's the exact  
7 same equipment that we described in our earlier initial  
8 study mitigated neg dec. So just below the new high tide  
9 line.

10 ACTING COMMISSIONER PLACET: Okay. So once  
11 they're installed, how long do we go out to the site and  
12 check it?

13 MR. GRESENS: Well, the condition that's in the  
14 lease right now is once every week we would be checking to  
15 make sure they're not exposed. And we would lower them.  
16 We're flexible on that too, if you feel a more frequent  
17 checking. But we felt once per week was reasonable, that  
18 we would lower them should they become exposed.

19 ACTING COMMISSIONER PLACET: When the lease is  
20 over and you're done with your drilling and your testing,  
21 how long would it take to remove the wells?

22 MR. GRESENS: Our geologist believes that's going  
23 to take less than a day. Maybe a day's setup time. But  
24 they've told me that they've done hundreds of these where  
25 they'd remove these entirely. They use what they call a

1 hollow-stemmed auger machine, which has a drill head on  
2 the top of it, that has these sort of corkscrew flights.  
3 And when they drill down, they grind up the PVC pipe. And  
4 then these flights lift all the material to the surface,  
5 and that will be removed to safely disposed of away from  
6 the beach. So they'll make sure there's no more plastic  
7 pieces in that. They'll let it spin for a while.  
8 There'll be a geologist out there the whole time  
9 inspecting that to make sure that we remove that in its  
10 entirety.

11 ACTING COMMISSIONER PLACET: Okay. Then the  
12 depths of the wells is what?

13 MR. GRESENS: It will vary. The deepest they  
14 would ever be is about 125 feet. They may be from 60 to  
15 125 feet.

16 ACTING COMMISSIONER PLACET: All right. Thank  
17 you.

18 CHAIRPERSON GARAMENDI: Okay we have a motion.

19 ACTING COMMISSIONER PLACET: Second.

20 CHAIRPERSON GARAMENDI: And a second.

21 And approved.

22 Next issue is Item 42.

23 EXECUTIVE OFFICER THAYER: We have a proposal for  
24 a wetland restoration in Marin County in Tomales Bay where  
25 the National Parks Service would carry out that

1 restoration, but some of that would occur on state lands.  
2 And so they've asked for a lease from the state. We  
3 received a letter from the county I think late  
4 yesterday --

5 LAND MANAGEMENT DIVISION REGIONAL MANAGER

6 PLUMMER: Six o'clock last night.

7 EXECUTIVE OFFICER THAYER: -- six o'clock last  
8 night with concerns about whether there were enough  
9 trails. And I think we're prepared to respond to the  
10 issues raised.

11 LAND MANAGEMENT DIVISION REGIONAL MANAGER

12 PLUMMER: Good morning, Commissioners. My name  
13 is Dave Plummer. I'm the Regional Manager of the Land  
14 Management Division. And I'm here today to present some  
15 background on what is known as the Giacomini Wetland  
16 Restoration Project at Tomales Bay, a proposal by the  
17 National Park service.

18 There are four actions that the staff is asking  
19 the Commission to consider today:

20 The first is to certify the Environmental Impact  
21 Report that was prepared pursuant to CEQA.

22 Second is to adopt the mitigation monitoring  
23 program.

24 Third is to adopt the findings made in  
25 conformance with state CEQA guidelines.

1           And fourth is to authorize issuance of a General  
2 Lease - Public Agency Use to the National Parks Service  
3 for construction of the wetland project.

4           The Giacomini Wetland Restoration Project  
5 encompasses approximately 600 acres and includes the  
6 former Giacomini Ranch, which is owned by the Parks  
7 Service; Lagunitas Creek, which is under the Commission's  
8 Jurisdiction; and Olema Marsh. And I can show you that  
9 really fast.

10           Whole project area -- this is Olema Marsh; this  
11 is Lagunitas Creek, which is owned by State Lands  
12 Commission; and this is Giacomini Ranch, east and west  
13 parcels.

14           The potential importance to the health of Tomales  
15 Bay and the outer Marin coastline of restoring hydrologic  
16 connectivity between Giacomini Ranch and Olema Marsh and  
17 Tomales Bay is underscored by the relative scarcity of  
18 coastal wetlands present along the central California  
19 coastline. Giacomini Ranch and Olema Marsh account for as  
20 much as 12 percent of the historic wetlands present along  
21 the outer central California coast.

22           The proposed project would remove levees that  
23 were constructed in the 1940s to reclaim tidelands for the  
24 operation of a dairy. Removal of the levees would restore  
25 natural tidal and floodplain processes to the project



1 area. The project will improve rearing and smolting  
2 habitats of federally endangered Coho Salmon in Lagunitas  
3 Creek and address recommendations of the California  
4 Department of Fish and Game's recovery strategy for  
5 California Coho Salmon.

6 Expansion of the marshes is also designed to  
7 support growth of population of threatened Black Rails to  
8 sustainable numbers. It is important to note that because  
9 of its importance to wildlife, Tomales Bay as part of the  
10 Golden Gate biosphere reserve is a designated California  
11 critical coastal area. And in 2002 Tomales Bay was  
12 nominated as a wetland of international importance under  
13 an international treaty called the Convention on Wetlands,  
14 commonly known as the Ramsar Convention.

15 Marin County has written us a letter alleging  
16 inaccuracies in the final EIR/EIS. The letter mainly  
17 focuses on the selection of one project alternative over  
18 another, how the alternatives relate to public access, and  
19 whether the selected project alternative is consistent  
20 with the county plans.

21 Staff believes the EIR before you is in full  
22 compliance with CEQA and is consistent with currently  
23 adopted county plans.

24 Today, we have Mr. Eric Gillis from the Division  
25 of Environmental Planning and Management. And he's here

1 to describe the environmental process, the selection of  
2 alternative, and the inclusion of the public access  
3 component throughout the CEQA and NEPA review process.

4 Also here today is Don Neubacher, the  
5 Superintendent of Point Reyes National Seashore, and  
6 members of the staff, as that issue's raised in the  
7 county's letter, and are available for questions. And I  
8 also believe we have Mr. Gordon Bennett from Sierra Club  
9 here today.

10 CHAIRPERSON GARAMENDI: Let's hold -- what's the  
11 county up to.

12 EXECUTIVE OFFICER THAYER: I don't think there's  
13 anyone here.

14 CHAIRPERSON GARAMENDI: Is the county represented  
15 here?

16 EXECUTIVE OFFICER THAYER: I don't believe so.

17 CHAIRPERSON GARAMENDI: They sent us a letter and  
18 this is about access. What kind of access are we talking  
19 about here?

20 LAND MANAGEMENT DIVISION REGIONAL MANAGER

21 PLUMMER: It has to do with a, we suggest, a  
22 pump kind of access that would go from Point Reyes Station  
23 to Inverness. And there was public access workshops that  
24 have been held throughout the process. Selected  
25 alternative does not preclude public access. And really

1 their main focus is over a bridge over Lagunitas Creek,  
2 which ultimately would have to come back to the Commission  
3 for approval.

4 The selected alternative's an environmentally  
5 superior alternative. And it doesn't preclude the bridge  
6 from being constructed at a later date.

7 CHAIRPERSON GARAMENDI: What's the county's beef  
8 with it? What do they -- what's the problem they see?

9 EXECUTIVE OFFICER THAYER: Can you see this from  
10 there?

11 CHAIRPERSON GARAMENDI: Yes.

12 EXECUTIVE OFFICER THAYER: Okay. Basically the  
13 county would like to have a trail that comes from Point  
14 Reyes Station here over to Inverness. We have this large  
15 area that's being restored to wetlands.

16 The alternatives being looked at for this county  
17 trail is either along the road right here, the levee top  
18 road, or through the restored area, primarily in this area  
19 north of the creek, which parallels the road right here.  
20 And then potentially with a bridge crossing the creek and  
21 then continuing along, not on the road, but in the green  
22 area through here.

23 The county much prefers that second alternative  
24 than having it along the street here. However, during the  
25 public review process there was a lot of discussion about

1 whether that creek bridge here and the increased use that  
2 would occur if this trail would go straight through here  
3 would be incompatible with restoration goals, with the  
4 wetland habitat goals.

5           The final plan recommended for approval in the  
6 EIR does provide for a trail out to the creek here, but  
7 not the bridge across. So there's not the connection that  
8 the county wants. The county has some concerns as to  
9 whether or not it's practical to build the pedestrian  
10 walkway and the bicycle access along the road here,  
11 whether that's too dangerous or not.

12           The EIR ends up saying the environmentally  
13 preferable alternative is the one that has a big  
14 restoration, larger acres of restoration, and leave the  
15 bridge out. But it also specifically says that if enough  
16 funds are -- it's also a funding issue here as to whether  
17 there's enough money for the bridge. But the EIR leaves  
18 open a possibility that down the road if the county and  
19 the parks want to do a separate environmental review on  
20 that bridge, if you can find it's justified, it could be  
21 done at that point.

22           CHAIRPERSON GARAMENDI: So presumably the county  
23 wants us to delay this entire project so they can figure  
24 out what to do with the bridge?

25           EXECUTIVE OFFICER THAYER: How to get the bridge

1 and how to get that access there.

2           The reason staff did not wait for further  
3 discussions here, particularly with the comments coming so  
4 late from the county, is because there's a funding problem  
5 where there's a limited amount of federal funds in a  
6 particular fund. And unless all the approvals are  
7 accomplished by July --

8           CHAIRPERSON GARAMENDI: October 31st.

9           EXECUTIVE OFFICER THAYER: So -- yeah -- July  
10 31st, I think.

11          CHAIRPERSON GARAMENDI: Federal budget, not  
12 total --

13          ACTING COMMISSIONER SHEEHAN: Well, I think we  
14 have to do ours under ours to get some of those federal  
15 dollars. But, anyway.

16          EXECUTIVE OFFICER THAYER: So staff is concerned  
17 that waiting until September to hear this means that the  
18 project won't get funded.

19          CHAIRPERSON GARAMENDI: I thought I heard Finance  
20 say they had money.

21          (Laughter.)

22          ACTING COMMISSIONER SHEEHAN: I have a question.

23          So truly it is -- if we leave them sort of hold  
24 harmless, they could go either way.

25          EXECUTIVE OFFICER THAYER: Yes.

1           ACTING COMMISSIONER SHEEHAN: Because we allow  
2 them to do the trail up. They can decide on the bridge,  
3 or they could go by the roads, either way. So it's  
4 nothing -- it's sort of no harm, no foul if we move  
5 forward. The issue would be holding up all of this until  
6 we decide -- until they decide. Yeah, I'd be reluctant  
7 for the work that's gone in -- and especially since we  
8 haven't really, you know -- it's up to them as to which  
9 way they want to go in terms of moving forward in the  
10 future. We haven't in any way harmed them.

11           EXECUTIVE OFFICER THAYER: No, they would  
12 probably have to come back and get a lease from us because  
13 our land is basically the streambed through here. So I'm  
14 putting the bridge. They would need another lease. But  
15 we would consider it, certainly.

16           ACTING COMMISSIONER SHEEHAN: Unless I'm missing  
17 something.

18           EXECUTIVE OFFICER THAYER: No, I think the  
19 county -- I don't mean to speak unfairly for them. But I  
20 think they see -- they really would like to do this trail  
21 and they'd like the best trail possible. And they see  
22 this as a decision point that might enhance their ability  
23 to get that trail.

24           CHAIRPERSON GARAMENDI: Otherwise known as a  
25 leverage opportunity.

1           Okay. We've had a discussion. I would  
2 appreciate additional information, but I'm not sure that  
3 it's necessary.

4           ACTING COMMISSIONER SHEEHAN: Well, does the  
5 Sierra Club --

6           EXECUTIVE OFFICER THAYER: I think the Sierra  
7 Club member's here, who could probably testify as long as  
8 we want.

9           MR. BENNETT: I'm here if you want more  
10 information.

11           CHAIRPERSON GARAMENDI: I don't need more  
12 information.

13           Anne.

14           ACTING COMMISSIONER SHEEHAN: Don't you want to  
15 try and explain what the county's doing?

16           MR. BENNETT: Well, I think you used the word  
17 "holdup," and I think that's what this is.

18           I live right in this area. And the area that  
19 needs most of the trail is for -- I live further up. And  
20 so just from a local perspective, I'd rather see any money  
21 going into extending the trail where it's most dangerous.  
22 There's already a bridge there that people can use. It's  
23 not a great bridge. It could use improvement. But the  
24 county hasn't been part of this process the whole way  
25 through. We've sent letters asking them to be part of the

1 process. And now they're coming in at the last minute.  
2 You know, everyone needs to sit down at the table and work  
3 out a good solution, and we done have it now.

4 Thank you.

5 EXECUTIVE OFFICER THAYER: Your recommendation  
6 would be that the Commission move forward at this time?

7 MR. BENNETT: Absolutely. Please do not hold up  
8 this restoration. This is a separate project. There's no  
9 harm, no foul. We can go in. If the bridge ends up  
10 wanting to be there, it can be there. There's no reason  
11 to hold this restoration up at all. It's an important  
12 restoration and it needs to move forward.

13 CHAIRPERSON GARAMENDI: We need your name for the  
14 record.

15 MR. BENNETT: Gordon Bennett.

16 ACTING COMMISSIONER SHEEHAN: Well, if there are  
17 no further comments, I move staff's recommendation on this  
18 one.

19 ACTING COMMISSIONER PLACET: Second.

20 CHAIRPERSON GARAMENDI: We have a unanimous vote  
21 then to move this project.

22 Okay. We have one more, a resolution.

23 EXECUTIVE OFFICER THAYER: Yes, sir.

24 This is a calendar item that was requested by the  
25 Controller's Office. It's a resolution that is proposed



1 for adoption by the Commission. It deals with greenhouse  
2 gas and climate change.

3 California, as most people know, has adopted a  
4 leadership role in controlling greenhouse gas emissions.  
5 It was adopted in 2002, AB 1493, by Pavley, that would  
6 have the Air Resources Board adopt regulations to reduce  
7 greenhouse gas emissions from vehicles. And last year AB  
8 32, Nunez and Pavley, which would call for further  
9 regulations to regulate greenhouse gas emissions by the  
10 Air Resources Board.

11 The greenhouse gas emissions of course are  
12 attributed to causing climate change in the world. It  
13 affects California. In a recent meeting of the Ocean  
14 Protection Council, that the Chair was in attendance,  
15 there was testimony from a variety of agencies as to the  
16 impacts to California.

17 For the State Lands Commission those impacts are  
18 primarily going to come from sea level change. That will  
19 change our jurisdiction. It will also affect the public  
20 trust values that we're required to protect. It will  
21 diminish the size of beaches and affect wetlands that have  
22 already been supposedly saved but may be converted to  
23 something other than these wetlands by the increased  
24 water.

25 So there are genuine impacts to California and to

1 the jurisdiction of the State Lands Commission from sea  
2 level rise and climate change.

3 A representative in Congress, Rick -- I'm sorry,  
4 I'm going to mispronounce his name.

5 ACTING COMMISSIONER SHEEHAN: Boucher.

6 EXECUTIVE OFFICER THAYER: Boucher? -- has  
7 distributed draft legislation which if adopted would  
8 preempt all states including California from controlling  
9 greenhouse gas emissions particularly from vehicles.

10 This proposal was resisted. A letter was sent  
11 opposing this from -- signed by eight governors, one of  
12 them being California's Governor, and also signed by 14  
13 attorneys general from 14 different states, including  
14 California's Attorney General.

15 The OPC, the Ocean Protection Council, adopted a  
16 resolution last meeting two weeks ago on climate change in  
17 which it opposed this. To date Representative Boucher has  
18 dropped his proposal for the energy bill, which was now  
19 moving through Congress, but has indicated that although  
20 he's dropped it now --

21 CHAIRPERSON GARAMENDI: Paul, that's an excellent  
22 explanation. I think we got three votes now.

23 (Laughter.)

24 ACTING COMMISSIONER SHEEHAN: If you keep  
25 reading, we have less --

1 CHAIRPERSON GARAMENDI: If you keep reading,  
2 you're losing them.

3 (Laughter.)

4 EXECUTIVE OFFICER THAYER: Therefore, the staff  
5 recommends that the Commission approves -- adopts this  
6 resolution.

7 CHAIRPERSON GARAMENDI: All right. Obviously a  
8 very important issue, one that I know all three of us,  
9 Anne representing Governor Schwarzenegger and the  
10 Administration, and Mr. Chiang and myself are adamantly  
11 opposed to what Mr. Boucher and Mr. Dingell are trying to  
12 do.

13 Very good.

14 Without objection, then move, seconded, and  
15 adopted.

16 ACTING COMMISSIONER PLACET: Moved.

17 CHAIRPERSON GARAMENDI: Seconded.

18 Your motion then, right?

19 ACTING COMMISSIONER PLACET: Yes.

20 CHAIRPERSON GARAMENDI: Okay. Now, I think that  
21 completes our public work.

22 We have some private work to do.

23 EXECUTIVE OFFICER THAYER: And as well, I don't  
24 know if anybody wants to speak during the public comment  
25 period.

1           CHAIRPERSON GARAMENDI: Ah, public comment  
2 period. I assume -- nobody is rising to speak.  
3           We're now into the private section.  
4           Thank you all very much for participating thus  
5 far.  
6           You may leave.  
7           (Thereupon the State Lands Commission  
8 meeting adjourned at 11:54 a.m.)

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## 1 CERTIFICATE OF REPORTER

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

5 That I am a disinterested person herein; that the  
6 foregoing California State Lands Commission meeting was  
7 reported in shorthand by me, James F. Peters, a Certified  
8 Shorthand Reporter of the State of California, and  
9 thereafter transcribed into typewriting.

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

13 IN WITNESS WHEREOF, I have hereunto set my hand  
14 this 11th day of July, 2007.

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22 JAMES F. PETERS, CSR, RPR

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