

MEETING
STATE OF CALIFORNIA
LANDS COMMISSION

STATE CAPITOL
ROOM 444
SACRAMENTO, CALIFORNIA

MONDAY, DECEMBER 3, 2007

1:19 P.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, represented by
Mr. Jim Lombard

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

STAFF

Mr. David Brown, Chief Administrative Officer

Mr. Jack Rump, Chief Counsel

Mr. Curtis Fossum, Assistant Chief Counsel

Ms. Marina Brand, Assistant Chief, Environmental Planning
Management Division

Ms. Nicole Dobroski, Environmental Scientist, Marine
Facilities Division

Ms. Barbara Dugal, Chief, Land Management Division

Ms. Mary Hays, Public Land Manager, Land Management
Division

Ms. Kimberly Lunetta, Executive Assistant

Mr. David Mercier, Chief, Audit Section

ATTORNEY GENERAL

Mr. Matt Rodriguez, Deputy Attorney General

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APPEARANCES CONTINUED

ALSO PRESENT

Dr. Denny Anspach, California State Railroad Museum
Foundation

Mr. Jim Burroughs, AT&T

Mr. Graham Forbes, Unite Here Local 30

Mr. Paul Hammond, California State Railroad
Museum/California State Parks

Mr. Milton Jones

Mr. Ed Manning, Thomas Enterprises

Mr. Gerald Murphy, representing Robert Hulbert

Ms. Kris Otto, representing Shawn Berrigan

Mr. Robert Rawlings

Ms. Tamara Rawlings, Courtland Town Council

Mr. Pietr Reysner, representing Shawn Berrigan and Diane
House

Mr. Michael Warburton, Public Trust Alliance

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CHAIRPERSON GARAMENDI: Okay. We're in session here. The State Lands Commission meeting is now in session.

Joining us today representing the Controller is Jim Lombardo?

ACTING COMMISSIONER LOMBARD: Lombard.

CHAIRPERSON GARAMENDI: Lombard. Excuse me.

And Anne is with us once again, a familiar face, on this side.

So we're going to move through this calendar. We always start with the report of the Executive Officer, who is not with us today. But Jack Rump, number 2, is going to give us the report of the Executive Officer.

CHIEF COUNSEL RUMP: I'd be happy to do that. I understood we have to go back to approve the minutes as well.

CHAIRPERSON GARAMENDI: Okay. Let's start with the minutes.

Any questions about the minutes?

ACTING COMMISSIONER SHEEHAN: No. I'll move approval if there are no comments or edits.

ACTING COMMISSIONER LOMBARD: Second.

CHAIRPERSON GARAMENDI: So approved.

Now, Jack.

1 CHIEF COUNSEL RUMP: All right. I'm addressing a
2 topic I know that the Lieutenant Governor has asked us to
3 talk about today. And that has to do with the oil spill
4 in San Francisco Bay.

5 The outbound containership Cosco Busan struck the
6 San Francisco Bay Bridge at approximately 8:30 a.m. on
7 November 7th. Tragically when the vessel collided on the
8 port side with the bridge fender system, it tore away a
9 section of the vessel, causing 100 foot by 12 foot long
10 gash cutting into two fuel tanks and one ballast tank.

11 Initially officials had estimated that only 140
12 gallons of fuel oil had spilled into the bay. It took
13 more than 12 hours for officials to publicly announce the
14 spill was actually 50,000 gallons.

15 The U.S. Coast Guard responded to the incident,
16 along with the Department of Fish and Game, Office of Oil
17 Spill Prevention and Response, the Governor's Office of
18 Emergency Services, the National Oceanographic Atmospheric
19 Administration, the National Park Service, the National
20 Marine Sanctuaries, and other state and local agencies.

21 CHAIRPERSON GARAMENDI: And a gazillion media.

22 CHIEF COUNSEL RUMP: Absolutely.

23 As the spill spread, a half dozen beaches and a
24 marina in San Mateo County were fouled with oil and devoid
25 of people. Seven more beaches in San Francisco and Point

1 Reyes, Marin County, were closed for cleanup. These
2 include Baker Beach, China Beach, Fort Funston, Ocean
3 Beach, and Crissy Field, amongst others. Twenty other
4 beaches in the region, particularly in the East Bay, were
5 affected. Angel Island was of particular concern because
6 the island is difficult to clean because of all the cracks
7 and crevices along its rocky shoreline.

8 Before us there, we have an exhibit which shows
9 some of the oil concentration as it finally distributed.
10 On the blue areas there were no traces of oil. The green
11 is very light. Yellow is light oiling, orange is
12 moderate, and red is heavy. And you can tell there was
13 quite a distribution, some around the bay, both north and
14 south because of the tidal activity. And then as it
15 turned, it went out the Golden Gate, spread north up
16 towards Point Reyes and south towards Pacifica. So this
17 was where the response efforts were focused.

18 So we've began to look at all of these for our
19 state ownership. And although they commission its Marine
20 Facilities Program, we're not involved in the incident.
21 Our staff and our services were immediately made --
22 offered to OSPR.

23 We're at a new stage at this point. Because as
24 the cleanups phase down and the fisheries are reopened for
25 the area, now a natural resource damage assessment, or

1 NRDA, action is being formulated.

2 We found out Friday that the federal government
3 filed suit against the owners and the pilot of the
4 containership. This suit, filed in federal court in San
5 Francisco, seeks compensation for cleanup costs and harm
6 done to natural resources due to the heavy bunker oil.

7 The suit was filed against Regal Stone Limited of
8 Hong Kong, which owns the Cosco Busan containership; the
9 company's insurer, Ship Owners Insurance Guaranty Company;
10 and pilot John Cota. The suit did not specify an amount
11 of damages, but said the Cosco Busan should be forfeited
12 or sold to defray the costs.

13 We are now at a point where the Commission should
14 decide if it wishes to participate in a claim for damages
15 for the injuries to the public lands under its
16 jurisdiction.

17 CHAIRPERSON GARAMENDI: Jack, thank you very
18 much. I asked you and the staff to take a long look at
19 this and to prepare for this meeting a discussion of the
20 role of the State Lands.

21 The beaches and Angel island and some other areas
22 that were fouled with the oil are the property of the
23 people of California. It is trust land.

24 CHIEF COUNSEL RUMP: That's correct.

25 CHAIRPERSON GARAMENDI: And, therefore, the State

1 Lands Commission has specific authority and responsibility
2 to act to protect and to maintain and, if possible,
3 enhance those lands. Therefore, I wanted the Commission
4 to take this up and hopefully authorize the staff to
5 pursue all legal avenues to fully mitigate the losses and
6 the damage -- the losses to the state, both in terms of
7 recreational opportunities, economic opportunities, and
8 also mitigate -- the funds to mitigate the damage that the
9 state's lands have incurred.

10 Since the federal government has filed I think
11 it's either the first or the second of what will
12 undoubtedly be a series of lawsuits, it is in my view
13 imperative that we act today to authorize our staff to
14 enter this fray for the protection of the public's
15 interest and to seek mitigation and compensation as is
16 appropriate or as may be appropriate through what may be a
17 long and arduous process.

18 I was at the Department of Interior a couple
19 years after the Exxon Valdez incident. And we spent the
20 three years that I was there working on those mitigation
21 issues, seeking the amount of damages and then the
22 distribution of the money. We have to be -- we, the
23 people of California, have to be at the table as this
24 process moves forward. And, therefore, I think it's
25 imperative that we act today to authorize the State Lands

1 Commission staff to get to the table in whatever method is
2 necessary, including the potential of a suit if that's
3 required.

4 Jack.

5 CHIEF COUNSEL RUMP: Yes. I would add to that
6 we've involved the Office of the Attorney General. And I
7 know Matt has been in contact with some of the parties
8 already.

9 CHAIRPERSON GARAMENDI: They are our attorney.
10 Matt.

11 DEPUTY ATTORNEY GENERAL RODRIQUEZ: Yes, I can
12 just tell the Commission that OSPR, the Oil Spill
13 Prevention and Response Office, is looking into this
14 matter right now. They are in contact with the owners of
15 the Cosco Busan. They've determined that we do have --
16 the state does have, as I understand it, a billion dollar
17 insurance policy that they can call upon in this case.
18 And so OSPR is taking the lead I think right now for the
19 state in preparing the state response.

20 But I do think it certainly would be appropriate
21 for State Lands Commission, and it would be my intent, to
22 talk to OSPR about State Lands Commission, making sure the
23 State Lands Commission is involved in that whole process
24 and working with them, and also working with the staff to
25 take a look at other options that the Commission may have

1 to make sure that the state does receive complete
2 remediation and compensation for all the damages that
3 occurred.

4 CHAIRPERSON GARAMENDI: I have great confidence
5 in OSPR. But I will not hand over my authority or my
6 responsibilities to that organization or to any other
7 organization. If you're representing them, then you're
8 also representing us. And we're not standing in second
9 place to OSPR or to any other organization, federal,
10 state, local. We have specific responsibilities because
11 it was indeed -- it is indeed -- most of the land that was
12 fouled is state land. And, therefore, OSPR will not lead
13 me. Now, they may lead others, but they're not going to
14 lead me as long as I'm Chairman of this Commission.

15 DEPUTY ATTORNEY GENERAL RODRIQUEZ: Certainly it
16 was not my intent to say that the State Lands Commission
17 would be a second fiddle in this approach, if you will. I
18 just wanted to note that there was an effort underway to
19 take a look at this at this point. And we will work with
20 the staff and come back to you with a recommendation on
21 what's the most effective way for the State Lands
22 Commission to make sure that they obtain, as I said,
23 compensation and remediation for the damages here.

24 CHAIRPERSON GARAMENDI: I thank you for that.
25 I'm not saying OSPR is not capable. But we have specific

1 authority and responsibilities as trustees of this land.

2 Anne.

3 ACTING COMMISSIONER SHEEHAN: Yeah, just a
4 clarification.

5 Much of the land is under a legislative grant to
6 the city or county --

7 CHIEF COUNSEL RUMP: In the Bay Area
8 particularly.

9 ACTING COMMISSIONER SHEEHAN: In the -- right.
10 And then we have --

11 CHIEF COUNSEL RUMP: There are many other
12 overlapping --

13 ACTING COMMISSIONER SHEEHAN: -- what are
14 directly our jurisdiction.

15 CHIEF COUNSEL RUMP: Correct. So one of our
16 parts of this analysis, what we -- what interests there
17 are that have been affected and what effect those grants
18 would have.

19 ACTING COMMISSIONER SHEEHAN: Yeah, because it
20 would be -- you know, we have some that are directly ours
21 and others that the city or county --

22 CHIEF COUNSEL RUMP: Correct. Obviously in this
23 damage assessment there will be plenty of counties and
24 parks and other affected parties. And we'll try to sort
25 that out and make sure that our interests are protected

1 and recognized.

2 ACTING COMMISSIONER SHEEHAN: Right.

3 DEPUTY ATTORNEY GENERAL RODRIQUEZ: And in but
4 under the Lempert-Keene-Seastrand Act, there is a specific
5 provision that allows local governments to work with the
6 state to obtain compensation for any damages that occurred
7 to property that is under control of local governments as
8 well. So I know that that effort is being made to work
9 with the local governments, and I believe San Francisco
10 has already evidenced some interest in pursuing an action.

11 ACTING COMMISSIONER SHEEHAN: Okay. Can I just
12 get a clarification as to the Chairman's -- so if staff
13 understands and at least this member understands what it
14 is we're asking them to do is then to come back with us at
15 a subsequent meeting?

16 CHAIRPERSON GARAMENDI: I would recommend that we
17 authorize the staff to pursue all -- I'm wondering -- Jim,
18 you have some comments. Why don't you put your comments
19 on the table and then I'll sum it up. Okay?

20 ACTING COMMISSIONER LOMBARD: Just wanted to say
21 that we encourage the Commission to take strong action to
22 receive any just compensation that's due to the state as a
23 result of this. So the Controller concurs with some
24 action.

25 CHAIRPERSON GARAMENDI: Well, let me try to sum

1 it up. That is, that we authorize the staff working with
2 the Attorney General to pursue all necessary actions,
3 including potential for a lawsuit -- that will have to
4 come back to us to get final authority on that -- to
5 provide for the full mitigation of damages and losses
6 resulting from the spill to state property.

7 CHIEF COUNSEL RUMP: Okay.

8 CHAIRPERSON GARAMENDI: Very good.

9 Without objection, that will be the action taken.

10 CHIEF COUNSEL RUMP: Very good. Thank you.

11 And that concludes the Executive Officer's
12 report.

13 CHAIRPERSON GARAMENDI: Okay. We have a consent
14 calendar. I think we can get that disposed of quickly,
15 and then move on to two items.

16 I asked that one item be taken off the consent
17 calendar. That's the AT&T matter.

18 CHIEF COUNSEL RUMP: Right. And also were you
19 interested in C 29, the mineral and land audit?

20 CHAIRPERSON GARAMENDI: Yes.

21 CHIEF COUNSEL RUMP: Okay. I'll put it on the --
22 I see that we have speaker slips for C 21 as well. So
23 that would be C 21, C 26, and C 29.

24 CHAIRPERSON GARAMENDI: Well, then we best take
25 those off.

1 Okay. We'll take those off the calendar.

2 Then the remaining items.

3 Anne.

4 ACTING COMMISSIONER SHEEHAN: Yeah, I'll move
5 approval of the remaining items on the consent calendar.

6 ACTING COMMISSIONER LOMBARD: Second.

7 CHAIRPERSON GARAMENDI: Without objection, that
8 will be the action. Unanimous approval of the consent
9 calendar.

10 I'd like now to go to the issue of the rail yard
11 here in Sacramento, which is one of the items. It's not a
12 consent item -- it's

13 CHIEF COUNSEL RUMP: Correct. It's regular Item
14 37.

15 CHAIRPERSON GARAMENDI: Regular Item 37.

16 CHIEF COUNSEL RUMP: Correct.

17 ASSISTANT CHIEF COUNSEL FOSSUM: Mr. Chairman.
18 I'm Curtis Fossum, Assistant Chief Counsel Commissioners,
19 good morning -- good afternoon.

20 The staff report for Item 37 provides a detailed
21 historical background involving the issues before you.
22 And I don't intend to recite in detail -- those details in
23 my presentation. However, I will mention certain
24 significant issues and reasons for this item being brought
25 before you today, as well as a summary of the elements

1 involved in the proposed exchange.

2 Initially I will take one minute approximately to
3 read from Section 1 of Chapter 585 of the Statutes of
4 2005, which were enacted by the Legislature with only one
5 dissenting vote in 2006, and it was signed by the Governor
6 in October -- excuse me, of 2005.

7 The People of the State of California do enact as
8 follows:

9 Section 1: The Legislature finds and declares
10 all of the following:

11 Section 25 of Article 1 and Sections 3 and 4 of
12 Article 10 of the California Constitution were adopted to
13 protect and promote public access to the State's
14 waterways. The State's sovereign interest in tidal lands,
15 submerged lands, and the beds of nontidal navigable
16 waterways, whether filled or unfilled, are entrusted to
17 the State Lands Commission to be protected as public trust
18 lands pursuant to the California Constitution and the
19 Common Law Public Thrust Doctrine.

20 As trustee of public trust lands, the Commission
21 has a duty to protect and promote the public's access to
22 and use of these lands for public trust purposes,
23 including commerce and navigation and fishing. As trustee
24 of public trust lands, the Commission also has a duty to
25 protect and promote other public trust values such as

1 preserving waterways and adjacent lands in their natural
2 state as open space and as environments that provide food
3 and habitat for wildlife.

4 Since 1850 many of the lands in and along the
5 state's waterways have been altered by natural or human
6 actions, changing the location of the waterways and their
7 shorelines. Thus, in some areas current conditions no
8 longer reflect the ownership and boundaries of the
9 waterways and adjacent uplands, leaving parcels of land
10 with little or no utility for public trust purposes, while
11 other lands can be used more effectively for public trust
12 purposes.

13 Waterways and lands nearby are often subject to
14 unresolved boundary and title issues that impair the use
15 of public trust lands for public trust purposes and burden
16 other lands with a cloud on the title. In certain cases
17 and with appropriate findings, we will further public
18 trust purposes to acquire lands not currently subject to
19 the public trust or to settle title to lands subject to
20 conflicting title claims.

21 That's the Section 1 of the act that enacted --
22 reenacted Section 6307 of the Public Resources Code, which
23 gives us -- gives the Commission the authority to do an
24 exchange agreement.

25 A copy of this as well as the new provisions in

1 6307 can be found in Exhibit E to this item.

2 Given the just-described obligations of this
3 agency to serve as trustee of this public property rights,
4 as well as the roles that the Commissioners each serve in
5 their Constitution or cabinet roles in protecting and
6 state's assets and promoting the general welfare of the
7 state, your staff has sought for nearly 20 years to assist
8 the City of Sacramento and potential developers of the
9 rail yard in clearing residual sovereign interests --
10 public property interests from the former -- of the
11 American River to allow redevelopment to proceed.

12 The agenda item before you today provides that
13 opportunity in a fair and expeditious way that resolves
14 several outstanding issues and reflects the proposed
15 settlement and exchange agreed to by the parties'
16 representatives in 2005 and 2006.

17 It's an undisputed fact that at the time of
18 statehood when California became vested with title as
19 trustee of tide and submerged lands and navigable waters
20 within it's boundaries, the American River flowed through
21 what later became the railyards. All surveys located from
22 this error reflect a similar configuration and location of
23 the river and its banks.

24 Your staff has concluded that the best evidence
25 of the last natural location of the American River prior

1 to its diversion is the Doherty survey and map of 1859.
2 That map reflects approximately 24 acres of riverbed lying
3 in railyards project boundaries.

4 Although California and Sacramento's early
5 history are fascinating topics and I'd love to get into
6 them, the importance of the here and now and what you're
7 being asked to approve today to facilitate one of the
8 largest urban redevelopment projects in the United States
9 is the impetus and focus of Agenda Item 37. Although
10 initially brought to the city's attention in 1988 and
11 again in '89, '90 and '91, it was not until January of
12 2004 that the latest round of discussions began.

13 In 2004 your staff sent letters to and met with
14 representatives of the city and Millennia, which is a
15 limited liability company controlled by Thomas
16 Enterprises. By early 2005 Union Pacific and the
17 California Department of Parks and Recreation also joined
18 the negotiations. And by April of 2005 the parties had
19 requested that the Commission approve the title settlement
20 and exchange agreement at its meeting scheduled for April
21 26th, 2005.

22 The item was noticed for the meeting but removed
23 from consideration as a result of an appellate court
24 decision three days before the meeting occurred. That
25 decision interpreted the Commission's authority to conduct

1 exchanges in a narrow manner.

2 Legislation to clarify the Commission's authority
3 was enacted in October, as previously mentioned, and the
4 settlement agreement was then noticed in the Commission's
5 meeting of October 20th, 2005.

6 The item was again postponed and removed from the
7 agenda, this time because the environmental insurance
8 policy to provided to and protect the state from any
9 claims had not been finalized with the carrier.

10 Discussions continued in to 2006. However, in
11 the latter half of 2006 Thomas Enterprises sought
12 substantial infrastructure contributions from State Parks
13 and later repudiated a 2003 letter of intent that agreed
14 to convey State Parks certain land and buildings. That
15 dispute is apparently continuing, although we hope
16 progress is being made in that regard.

17 At the same time the city at Thomas Enterprises'
18 request has adopted an expedited processing of
19 entitlements to develop the railyards. The vote to
20 approve a number of significant actions, including zoning,
21 redevelopment agreement, and a tentative parcel map is
22 scheduled for next Tuesday.

23 Commission staff has objected both in writing and
24 in testimony before the city council that resolution of
25 the public trust property interest issue should take place

1 before approval of entitlements. Lieutenant Governor has
2 also sent a written objection to the city. Hundreds of
3 citizens and a number of newspaper editorials have raised
4 issue with the speed of the city's processing and the
5 unresolved issues involving both State Parks and State
6 lands.

7 Recognizing the desire of the city and Thomas
8 Enterprises to expedite the entitlement program as part of
9 their desire to seek between 100 and \$200 million in State
10 1C bond funds approved by the voters in 2006 and the fact
11 that the parties had previously negotiated an agreement
12 and urged the Commission to act on that agreement, staff
13 believes the approval of the agreement at this time will
14 facilitate and expedite and not unnecessarily delay the
15 opportunity to resolve the issues involving the
16 outstanding state property interests and give city and
17 Thomas a better opportunity at obtaining the state bond
18 funds.

19 With those goals in mind, I will summarize the
20 elements of the settlement agreement and four-party
21 exchange described in the staff report and authorized by
22 the recommended findings. Exhibit F identifies the
23 location of the parcels I will discuss.

24 State Parks would transfer the waterfront parcel
25 to the Commission. The City would convey any public trust

1 property interests it holds in the Former American River
2 Parcel, and Railyards Parcel as a trustee and its
3 interests in the Sand Cove Parcels to the Commission. The
4 Commission would accept the interests conveyed in the
5 Waterfront, Sand Cove, Former American River, and
6 Railyards Parcel and hold them as public trust lands.

7 The Commission would make findings in this item
8 that effective on close of escrow it will terminate any
9 state sovereign public trust interests in the former
10 American River bed and railyards parcel and to quitclaim
11 any interest to Thomas Enterprises, thereby clearing title
12 to the entire 240 acres within the railyards.

13 Thomas Enterprises would convey the rail shops
14 parcel to State Parks as described in Exhibit 1 and shown
15 on Exhibit 2, and have the state named as an additional
16 insured on its environmental insurance policy.

17 The Commission would lease the waterfront parcel
18 and sand cove parcels back to the city and agree to seek
19 legislation granting those parcels to the city to be held
20 in trust for public trust purposes.

21 Approval of this item does not bind any of the
22 other parties. They must make their own judgments of
23 what's in their best interests. In fact I received an
24 e-mail this afternoon from an attorney representing Thomas
25 Enterprises asking the Commission to postpone the item

1 until all the parties have agreed to the terms.

2 We also received a letter from a law firm
3 representing the Sacramento Downtown Plaza folks who are
4 objecting to approval of Item 35 -- excuse me -- 37.

5 Staff believes the result of the Commission
6 approving this item should be considered an offer to the
7 other parties to enter into this agreement and will
8 facilitate rather than delay development of opportunities
9 for Thomas and the city and State Parks, while protecting
10 the state's sovereign property rights entrusted to the
11 Commission.

12 Staff recommends adoption of the findings set
13 forth in Item 37.

14 I'll be happy to answer any questions.

15 CHAIRPERSON GARAMENDI: Thank you very much for
16 your description of more than 140 years of history here.
17 Actually more than that.

18 This is a long and tortuous process that has gone
19 on here over these many decades. But it's one that leaves
20 me as Chairman of this Commission, and I think the
21 Commission, in a situation where there is a claim that the
22 state has to some 25 acres of the rail yard. Now, my
23 personal belief is it's a strong claim. And others can
24 agree or disagree with that. But, nonetheless, there's a
25 claim here, and I believe that we have an obligation as

1 trustees to pursue that claim and to take every action
2 that is warranted to obtain a satisfactory resolution of
3 the claim.

4 There are always options. You can always go to
5 court and seek a quiet title action. And that would
6 always be available to us if we are unable to achieve a
7 negotiated settlement.

8 The negotiated settlement that was worked on by
9 the four parties prior to the 2006 termination of
10 discussions seems to me to be one that works. I know a
11 lot of staff time went into the evaluation issues and that
12 the staff was satisfied that the values in the trade were
13 appropriate and met the requirements of the law as to
14 exchanges. And apparently all four parties at one time
15 were in agreement that it was satisfactory. There were
16 intervening facts such as the appellate court and then
17 later a question of the insurance policy that intervened
18 and withheld final approval.

19 This issue is much debated in Sacramento. It is
20 a timely issue. It's one in which I personally believe
21 we -- that I have a responsibility to make it clear where
22 we stand as a commission, to protect the interests of the
23 public and the property. There are some that said we
24 should wait. I think that's incorrect, that we'd be much
25 better off putting on the table our position and that this

1 is where we stand in this matter, recognizing that further
2 discussions and negotiations are inevitable since there
3 are three other parties that would have to agree if this
4 kind of an agreement were to proceed.

5 So I would recommend to my colleagues here that
6 we act today to put on the table our negotiating position:
7 Here's where we are. And where we are is where we were.
8 We had come to a conclusion some years ago that this was a
9 satisfactory resolution of a very complex matter of title.

10 Now, my personal views about the museum may be
11 well known. But that's not a subject for this discussion.
12 That's a discussion elsewhere.

13 I would hope that we don't have to go to court on
14 a quiet title action. That's a lengthy process that could
15 require many different entities being involved.

16 I understand that the City of Sacramento took
17 over part of our trustee responsibilities. Is that
18 correct?

19 ASSISTANT CHIEF COUNSEL FOSSUM: Part of the
20 issues involved in this case is the fact that the
21 Legislature passed a number of enactments in the early
22 part of the statehood. And one of them in 1868 granted
23 lands to the city. And part of the issue is whether or
24 not the courts would interpret that as an outright grant
25 and termination of the trust interests, which we believe

1 it did not do. The other parties presumably believe it
2 does. Not the other parties, but at least Thomas believes
3 that. However, we are aware that the title insurance
4 that's being issued in some of this area does have an
5 exception for the state's claims, so we think that title
6 companies would agree with our position on that.

7 CHAIRPERSON GARAMENDI: Okay. So in fact the
8 City of Sacramento may be a trustee also.

9 ASSISTANT CHIEF COUNSEL FOSSUM: That's correct.

10 CHAIRPERSON GARAMENDI: And have trustee
11 responsibilities to protect the public's interest in
12 ownership of the --

13 ASSISTANT CHIEF COUNSEL FOSSUM: Yes. In fact,
14 the agreement that we're asking you to approve today
15 designates them as the trustee under the 1868 statute and
16 to make the particular trust termination findings which
17 only the Commission has the authority under legislation to
18 do. Well, that's why they would quitclaim those areas to
19 the State Lands Commission and thereby allow the
20 Commission to terminate the trust lands and party
21 exchange.

22 CHAIRPERSON GARAMENDI: So they have some sort of
23 fiduciary responsibilities as trustees to protect the
24 public's interests in this 25 acres?

25 ASSISTANT CHIEF COUNSEL FOSSUM: That's certainly

1 one position that one can interpret in this, yes.

2 CHAIRPERSON GARAMENDI: Well, this lawsuit would
3 be an interesting thing. Hopefully we won't get there.

4 ASSISTANT CHIEF COUNSEL FOSSUM: Hopefully.

5 CHAIRPERSON GARAMENDI: Anne, you had a question?

6 ACTING COMMISSIONER SHEEHAN: Yeah, I've got a
7 couple of questions.

8 First of all, I don't disagree, that I think the
9 Commission does have a role in terms of resolving the
10 issues that we have on the titles to these lands. Where I
11 am a little bit concerned is in the course of the
12 agreements sort of taking a position on some of the
13 negotiations that are going on.

14 So I guess my question would be: You know, are
15 there -- well, let me ask this question. Are any of the
16 other three parties here in the audience that could answer
17 some questions?

18 CHAIRPERSON GARAMENDI: They in fact want to
19 speak.

20 ACTING COMMISSIONER SHEEHAN: Okay.

21 CHAIRPERSON GARAMENDI: Thomas and the State
22 Railroad Museum Foundation and apparently the State Parks.

23 ACTING COMMISSIONER SHEEHAN: But the city is not
24 here, is that -- is anyone from the city here?

25 CHAIRPERSON GARAMENDI: I suspect they're here.

1 But they haven't yet decided to speak. They may not want
2 to talk.

3 ACTING COMMISSIONER SHEEHAN: Well, what --

4 CHAIRPERSON GARAMENDI: Do we want to --

5 ACTING COMMISSIONER SHEEHAN: Sure, we can hear
6 them and then answer --

7 CHAIRPERSON GARAMENDI: Do you have question too?

8 Well, then let's here from the public.

9 Let's start with Thomas.

10 Ed manning I believe is representing Thomas
11 Enterprises here.

12 MR. MANNING: Thank you, Mr. Chairman and
13 members, Mr. Rump. My name is Ed Manning with KP Public
14 Affairs. We have been working with Thomas for several
15 years on this project.

16 This project, as the Chairman noted, is the
17 subject of much interest. It's one of the most difficult,
18 complex redevelopment -- in-fill redevelopment sites in
19 the country, if not the most; and there are many, many,
20 many issues to work through.

21 Currently Thomas has spent over \$150 million
22 investing in the property and then going through a
23 cleanup -- complex cleanup overseen by DTSC to get the
24 site back into position of reuse.

25 This site has been attempted and failed for

1 development for over 27 years. And we feel that we're
2 finally at a point where there's some light at the end of
3 the tunnel.

4 We believe approving this today, however, is
5 premature. And the reason for that is, as was hinted at
6 by Ms. Sheehan, Thomas and the city have currently not
7 agreed to everything in here. We are in discussions with
8 the Department of Parks, which are going we think in a
9 positive direction to try to resolve outstanding issues
10 over the shop buildings, the future use, and the terms and
11 conditions of that.

12 And the agreement as outlined in the agenda
13 specifically does refer to that parcel and the land swap
14 involving that which is not ready to happen now, but we
15 hope very soon will. We have offered in the past to
16 resolve the State Lands Commission claims I believe that
17 the city has independent of the parks issue. We have been
18 told by staff that that would not be appropriate, that
19 they wanted us to work out the parks issue first, which we
20 have worked diligently on and continue to meet as late as
21 Friday afternoon with various interested parties.

22 So at this time, Mr. Chairman and members, we
23 don't think it would be helpful to approve the item. We
24 think it would be more helpful to the process to see if we
25 can reach agreement with Parks very soon, which we think

1 we will, and then come back with all the parties in
2 agreement including the city, Thomas, Parks, and the
3 Commission.

4 Thank you.

5 CHAIRPERSON GARAMENDI: Just a couple of
6 questions before you leave.

7 When do you finalize your situation with the
8 city?

9 MR. MANNING: The hearing I believe is next week,
10 Mr. Chairman

11 CHAIRPERSON GARAMENDI: And I understand that you
12 have suggested to the city that this issue be a condition
13 of the Map Act.

14 MR. MANNING: Correct.

15 CHAIRPERSON GARAMENDI: How does that work?

16 MR. MANNING: The way that it would be resolved
17 is that the parcels where State Lands Commission has
18 claims could not be developed or used until settlement
19 with State Lands Commission.

20 CHAIRPERSON GARAMENDI: What I've seen at the
21 development plans, that was -- that area happens to be one
22 of the areas that you would first develop, at least if I
23 read the newspaper correctly.

24 MR. MANNING: That -- no. As a matter of fact,
25 the city would specifically prohibit us from developing it

1 until we are able to resolve the claim with State Lands
2 Commission. And we will do that as soon as we're resolved
3 with Parks, which I think is what everybody wants to
4 happen.

5 CHAIRPERSON GARAMENDI: You spent \$150 million
6 already?

7 MR. MANNING: Yes.

8 CHAIRPERSON GARAMENDI: Thomas's money?

9 MR. MANNING: Yes.

10 CHAIRPERSON GARAMENDI: All of it?

11 (Laughter.)

12 MR. MANNING: Yes. The City has also spent some
13 money as well.

14 CHAIRPERSON GARAMENDI: Very good.

15 Questions?

16 ACTING COMMISSIONER SHEEHAN: Well, I guess the
17 clarification, that Thomas, if I understand you correctly
18 in negotiations with the city, that there is a commitment
19 to resolve the concerns of the Lands Commission, address
20 it before you move forward on developing those parcels; is
21 that correct?

22 Curtis, I don't know if you want to answer that,
23 or if Ed can answer that.

24 ASSISTANT CHIEF COUNSEL FOSSUM: Well, the city
25 had worked on some language for conditioning the map. But

1 at the planning commission level, on November 13th, we
2 were told at Thomas's behest that language was modified
3 from what the city staff had recommended, and we think
4 severely limited the protection for the state. So we are
5 concerned. We're still talking to the city about what
6 conditions might be more appropriate. And given what Mr.
7 Manning said today, that might help matters as well.

8 ACTING COMMISSIONER SHEEHAN: Okay. Because I
9 guess -- you know, one of the issues that I have is that
10 we do have an issue with the lands -- our issue at the
11 Lands Commission. Setting aside the discussion on the
12 rail shops and all of those, I think there is probably --
13 I mean I don't want to speak for my fellow Commissioners.
14 But I think there is, you know, agreement amongst the
15 Commissioners that we do have a legitimate claim, we've
16 got to get this resolved before everything moves forward.

17 And I think that would be -- at least my
18 perspective, that is something that we should send a
19 signal to both -- well, to all the parties I guess in that
20 regard.

21 Where I feel it is not appropriate for us to get
22 involved is on those -- besides the other negotiations
23 that are currently going on. I guess we are hearing from
24 the rail -- from -- so maybe I'll wait and ask my
25 questions of them. But I think we have an issue. But

1 what I'd like to do is try and discuss, you know, how the
2 two relate and do we need to do something on that issue?
3 From what I read in the newspaper, there seems to be
4 enough people involved in those negotiations; I'm not sure
5 we need to inject ourselves into those.

6 But I do think we need to protect what is our
7 legitimate issue that we have. I think that's extremely
8 important to do.

9 So perhaps we can hear from the other folks on
10 that issue.

11 CHAIRPERSON GARAMENDI: We will.

12 Mr. Manning, I may want you to come back and
13 answer some questions.

14 MR. MANNING: Be happy to do.

15 CHAIRPERSON GARAMENDI: Specifically on the Map
16 Act language.

17 Okay. There are two people.

18 Denny Anspach, with the California State Railroad
19 Museum Foundation, and Paul Hammond, Museum Director of
20 the California State Railroad Museum, and State Parks.

21 Let's hear from Denny first.

22 Denny Anspach.

23 And, Paul, if you're stuck in the isle back there
24 or in a row, you may want to, yes, extricate yourself and
25 work your way up here.

1 DR. ANSPACH: I'm Denny Anspach. I'm a retired
2 Sacramento physician that has been involved with the
3 California State Railroad Museum project starting in 1958,
4 and currently continue to be an officer.

5 And it's hard -- you know, I understand the
6 issues here. This is lands and this is state. But of
7 course the railroad museum is the elephant in the room to
8 a certain extent.

9 I would urge the Commission to support the staff
10 report. The staff report is consistent, it's unchanged
11 since 2005, and at one time was considered to be okay by
12 almost everybody involved. But extraneous events derailed
13 it. And in that regard, really nothing has changed. And
14 I guess that would be my message today.

15 CHAIRPERSON GARAMENDI: Thank you.

16 Questions?

17 Thank you very much. I was also involved in the
18 original legislation that built the museum, together with
19 Senator Roddick. We were the coauthors of it.

20 DR. ANSPACH: I remember you well.

21 CHAIRPERSON GARAMENDI: And I remember you,
22 Doctor. Thank you.

23 State Parks. Paul Hammond.

24 MR. HAMMOND: Good afternoon, Chairman and
25 members of the Commission. My name's Paul Hammond and I

1 am the Museum Director of the California State Railroad
2 Museum, which is the entity that would be building the
3 proposed railroad technology museum if and when it come to
4 fruition. But I'm also going to try and stay away from
5 that in this because I do just want to say here today that
6 State Parks remains fully in support of the proposed title
7 settlement and exchange agreement that you have in front
8 of you. We believe it meets the public interest by
9 resolving outstanding issues with two different state
10 entities, from the State Parks and you, the Lands
11 Commission.

12 We understand that additional negotiations may be
13 necessary to come to a final agreement and we're fully
14 prepared to engage in those. But I think I would just
15 chime on to your comments, Chair, that it puts an offer on
16 the table at a time when that would seem to be necessary
17 in the current negotiations.

18 CHAIRPERSON GARAMENDI: Thank you. I appreciate
19 the specificity of your remarks.

20 Well, the issue is before this Commission. I'll
21 state my view very clearly here, that this matter must be
22 resolved. I would urge the city to seek resolution of
23 this matter prior to finalization of a map. I think it
24 would put this Commission and our work in jeopardy,
25 because -- well, let's hear. What were those conditions?

1 Looks as though our staff thinks that perhaps the
2 map conditions may not be as straightforward as you
3 suggested them to be, Mr. Manning.

4 Do you want to comment on that again?

5 MR. HAMMOND: Well, if I could add one thing too
6 which I neglected. It's in the agreement, but of course
7 State Parks -- there is a parcel of property that is along
8 the riverfront. So that's included, again not directly
9 related to the railroad technology museum proposal, but it
10 is something that's necessary for the railroad -- rail
11 yard's development to go forward.

12 Thank you.

13 CHAIRPERSON GARAMENDI: Understood. I understand
14 the complexity of the long-term -- the long negotiations
15 that led to that almost settlement.

16 MR. MANNING: Mr. Chairman, I'm not familiar with
17 the language that was changed at the hearing. But I can
18 put State Lands Commission staff or yourself in touch with
19 Mr. Kato at Thomas or the attorney who's working on the
20 entitlements for them. But I'm not aware of what the
21 current state of the language is.

22 CHAIRPERSON GARAMENDI: And then at the moment
23 I'm going to rely upon Curtis's -- Curtis Fossum's
24 suggestion -- or his comment that it may not be as
25 advantageous a position as you suggested, Mr. Manning, for

1 us in other words.

2 So my comment is this: That as a trustee of the
3 public's land, we should be acting to protect those
4 interests, as Anne said a few moments ago.

5 There are two ways we could act. We could simply
6 stand by and then eventually wind up with a lawsuit, a
7 quiet title action. I don't think that's in anybody's
8 interests. It could jeopardize a great portion of this
9 project, to say nothing of museums and the rest.

10 I think the best solution is a negotiated
11 settlement. I think that there were -- I know that there
12 was a deal put together. It was complex. It involved
13 four parties, the city, the State Parks and the developer
14 Thomas, and the State Lands Commission.

15 At that time, the State Lands Commission staff
16 argued, I think appropriately, that the values were of
17 such a nature that we could meet the standards of the law
18 with regard to exchanges. And we were prepared to move
19 forward, that is, this Commission was prepared to move
20 forward. That didn't happen.

21 We're now back into a position of where do we go
22 from here? Where I would like us to go from here is to
23 put our position clearly on the table, that this is where
24 we are as a commission -- this is where we were and this
25 is where we are today. To my knowledge, no intervening

1 facts have changed the valuations or our own assertion of
2 title here.

3 And so I will put this on the table and we'll see
4 where it goes from here. I think it's important for the
5 city and Thomas Enterprises and the museum -- State Parks
6 to know where we stand on this issue. And this 2005
7 settlement agreement I think lays out very clearly where
8 we stand.

9 And so if somebody wants to come and talk to us,
10 here we are, or here we'll be.

11 Anne.

12 ACTING COMMISSIONER SHEEHAN: Yeah. I guess,
13 if -- and I guess this is a question for Curtis, because
14 I'm -- as I said at the outset, I understand our issue in
15 terms of preserving ours. Where I am a bit concerned is
16 that we know there are other parts of this agreement that
17 are being negotiated right now, and that may change. So
18 we adopt this. If they come up with something, we're
19 going to have to come back and do something else anyway.

20 ASSISTANT CHIEF COUNSEL FOSSUM: Yes. And I
21 think that the rationale by doing it now is to try and get
22 on record before the city takes its action next Tuesday.
23 If the city acts, the momentum goes towards that. And we
24 can certainly notice a meeting -- if the parties agree
25 today on a new deal, we could be meeting in 10 or 11 days

1 and approve a different agreement.

2 But I think the point is that this is an
3 opportunity for at least the Commission to state its
4 position, and it was prepared to approve this in the past
5 and it's prepared to approve it today.

6 ACTING COMMISSIONER SHEEHAN: Well, I guess where
7 I -- I am prepared to approve something that states our
8 issue has got to be resolved before the city acts next
9 week to grant those.

10 Where I do not want to -- and we can either do an
11 addendum to this agreement or a notwithstanding that we
12 are not -- at least this member -- we should not take a
13 position on the negotiations as the one building, one and
14 a half, two buildings, for exactly the reason that
15 gentleman said - it helps in the negotiations. I do not
16 believe it's our place to inject ourselves into
17 negotiations with Parks and Thomas and the city on those
18 issues.

19 Our place is our issue, and that -- and I am with
20 the Chairman 100 percent on that. But it is clear to me,
21 as the gentleman said, that it helps his negotiations if
22 we approve this.

23 So I just want people to know, if in fact it
24 passes, that's why -- unless we make some changes, that's
25 why we're taking the action.

1 ASSISTANT CHIEF COUNSEL FOSSUM: Our goal is to
2 help, yeah, our position.

3 ACTING COMMISSIONER SHEEHAN: Our goal is to help
4 our position. That's the role of the State Lands
5 Commission, is to address those issues and the public
6 trust, absolutely.

7 And, you know, having sat on this Commission for
8 three years, I will go to the death fighting for that.
9 But where I'm not going to be is to be used by others --
10 and these are my words -- so that we can inject ourselves
11 into those negotiations. That is not our role. I think
12 it's inappropriate. I think we'd be upset if somebody
13 tried to do that to us on one of our negotiations. So
14 that's where I am on this.

15 So if it is -- you know, if we take the language
16 out and our neutral on those negotiations or -- you know,
17 I am prepared to entertain another -- you know, to provide
18 another resolution, a substitute that clearly protects our
19 role as the State Lands Commission. And the city should
20 not act without knowing that we have an interest in this.

21 But on that other one, I'm not prepared. We're
22 in the midst of negotiations -- or they're in the midst of
23 negotiations, and I don't think that's our role.

24 CHAIRPERSON GARAMENDI: Anne, thank you very much
25 for your view.

1 My personal view is that we should be putting a
2 settlement on the table so that everyone knows where we
3 are and what the deal for us that was acceptable. That
4 2005 deal, in my view, was acceptable. All parties had
5 apparently come to at least close to an agreement on that.

6 And I understand that you -- your position about
7 exactly where the State lands. But the totality of the
8 proposal we have before us is a settlement and it does
9 deal with State Lands. We have -- unless we have a quiet
10 title action and go to court on that alone, we have to
11 offer something of value. And what we're offering to
12 accept -- what we're offering of value is 25 acres that we
13 think we have a title to, at least partial title to. What
14 we want in return are specific pieces of property. In
15 order to get those we have to work with the State Parks.

16 Now, apparently the State Parks wants the museum.
17 That's what is in this agreement. That's what the
18 gentleman just said, they want what is in this agreement.

19 So apparently there are two of four parties that
20 are willing to go along. I don't know where the city is
21 and I don't know where Mr. Thomas is except -- well, I
22 think I do know where Mr. Thomas is, but we won't get into
23 that right now.

24 But I think this gives us the totality of an
25 agreement that we can move forward. So I'd like to move

1 the entire proposal as recommended by staff, put it on the
2 table. We've got two of four that apparently like it
3 State parks and at least one Commissioner, perhaps two,
4 and maybe three.

5 (Laughter.)

6 CHAIRPERSON GARAMENDI: And let's see where it
7 goes. Maybe Mr. Thomas and the Thomas Enterprises and
8 their lawyers will see the value of it, maybe the city
9 will see the value of it, and this thing will be done, and
10 we can come back 11 days from now and sign on a final
11 agreement and this project can move forward.

12 So I'd like to put the whole thing on the table
13 and go from there.

14 Jim, comment?

15 ACTING COMMISSIONER LOMBARD: The development of
16 the Sacramento rail yard has been on the table since the
17 1980s. And the strong action at the state and local level
18 is needed to expedite this long awaited project. The
19 State Lands Commission's approval is a small but necessary
20 step for this redevelopment effort. And I would hope that
21 it should be granted without delay.

22 The multi-property transfer before us will assist
23 in providing the land needed for thousands of commercial
24 and residential units on 240 acres, which will stimulate
25 the local economy, generate job growth, and become a

1 vibrant part of the greater Sacramento region's future.

2 This reasonable agreement will make additional
3 parks open space and the civilian access to the Sacramento
4 River possible and preserve some historic sites for the
5 State Department of Parks and Recreation to be used as
6 museums. This will -- interest in the historical
7 significance of the area while providing for its future
8 development.

9 CHAIRPERSON GARAMENDI: Well, we need a motion to
10 move this thing.

11 ACTING COMMISSIONER LOMBARD: Okay. I would move
12 the staff's recommendation.

13 CHAIRPERSON GARAMENDI: I will second that.

14 We have a vote.

15 Anne.

16 ACTING COMMISSIONER SHEEHAN: I'll abstain on
17 this one.

18 CHAIRPERSON GARAMENDI: And two ayes and an
19 abstention.

20 Okay. Now, we'll move on to the next items on
21 the agenda.

22 CHIEF COUNSEL RUMP: All right, Mr. Chair. We
23 had pulled off the consent calendar, if you wanted to
24 return to that matter. We have items C 21, C 26, and
25 C 29.

1 CHAIRPERSON GARAMENDI: Twenty-one and 26?

2 CHIEF COUNSEL RUMP: And 29.

3 CHAIRPERSON GARAMENDI: Okay. Let's start with
4 21. We'll go sequentially here.

5 We have four -- five speaks on C 21 -- Item 21.

6 And if they can move up to the front, find a chair in
7 front or stand, I think it will move us along more
8 quickly.

9 Okay, let's go here. Staff, if you could explain
10 the item.

11 CHIEF COUNSEL RUMP: All right. This is a lease
12 on the Sacramento River at Courtland. And Barbara Dugal
13 of our LAND Management Program will briefly describe the
14 project.

15 LAND MANAGEMENT DIVISION CHIEF DUGAL: Good
16 afternoon, Mr. Chairman, Commissioners. As Jack
17 mentioned, my name is Barbara and I'm the Chief of Land
18 Management Division.

19 And the item that is before you today regards an
20 application that was submitted by a Shawn Berrigan and a
21 Diane House. It's for an existing marina facility that's
22 down in the town of Courtland. It's for operation and
23 maintenance of a commercial marina facility, and for
24 berthing of boats in an existing dock.

25 Staff is recommending approval of the ten-year

1 lease. On October 22nd, 2007, annual rent would be \$2100
2 and a percentage of gross.

3 Staff has also negotiated back rent in the amount
4 of -- let me get it here for you -- \$5,895, which is from
5 the date that the applicants acquired the ownership of the
6 upland property.

7 And that's just a real brief overview of the item
8 that's before you here today. And I believe that we've
9 got the applicant here and their representation and maybe
10 some members of the public that have some comments on
11 that.

12 So I will stand aside and be available for
13 questions.

14 CHAIRPERSON GARAMENDI: Why don't you sit aside.

15 LAND MANAGEMENT DIVISION CHIEF DUGAL: I'll do
16 that.

17 (Laughter.)

18 CHAIRPERSON GARAMENDI: Is there some order? I
19 don't know if you've got -- if the five speakers are in
20 support

21 MR. RAWLINGS: I am in opposition.

22 MS. RAWLINGS: I am in opposition.

23 MR. JONES: I'm in opposition.

24 CHAIRPERSON GARAMENDI: Well, then anybody in
25 support amongst those five, well, let's here from the

1 support.

2 CHIEF COUNSEL RUMP: We have two in support, I
3 believe.

4 CHAIRPERSON GARAMENDI: Please introduce
5 yourself, if you would.

6 MR. REYSNER: Good afternoon. My name is Pietr
7 Reysner. I'm the attorney for Shawn Berrigan and Diane
8 House, and I'm appearing here on their behalf. We
9 obviously support the staff's recommendation. We feel
10 this matter should be approved.

11 The dissent that you will be hearing is going to
12 be from individuals who have been involved in many, many
13 lawsuits with my clients over the past number of years.
14 They have previously claimed ownership interest in the
15 land that's being presented here today. They've lost that
16 bid for ownership. It has been confirmed as belonging to
17 my clients. And everything I think you're about to hear
18 is going to be trying to continue on a lawsuit that is
19 pretty much over.

20 (Thereupon an outburst from the
21 audience occurred.)

22 CHAIRPERSON GARAMENDI: Well, hang on. We do
23 things differently here. We don't debate this as you
24 might on the street in a Courtland.

25 Please complete your testimony.

1 MR. REYSNER: Certainly. There's really no
2 reason to deny this lease. And we will comply with all
3 the terms of the lease. It has been signed. The back
4 rent has been negotiated. There has been initial deposit
5 paid this morning for the first year's rent. They're in
6 compliance with all the terms of the lease and there's
7 really no reason to not go forward.

8 And that's really all I have, short and sweet.

9 CHAIRPERSON GARAMENDI: Short it is.

10 Questions?

11 Next witness on the support side.

12 MS. OTTO: I'm Kris Otto. I also represent
13 Berrigan and House. And I am doing the Government side as
14 far as getting the applications through the process and
15 stuff. I am only here to answer questions that may come
16 up in the opposition.

17 CHAIRPERSON GARAMENDI: Thank you.

18 Okay. Let's hear from the opposition.

19 If you'll introduce yourself.

20 MS. RAWLINGS: Yes, hi. I'm Ms. Tamara Rawlings.
21 And am not just a litigant in a lawsuit. I am an elected
22 member as a representative of the Township of Courtland as
23 part of our town council. And I'm also the coordinator
24 for Neighborhood Watch. And although our town's small, we
25 are big in voice.

1 I would like to read to you a letter from State
2 Lands to Mr. Berrigan and Ms. House. And this is
3 outlining why they were not open for approval back in
4 2005.

5 The thing about this application is that these
6 conditions still exist. Nothing's ever been done.
7 Nothing's been removed. They've never removed their boat.

8 The letter goes as this. It was written on
9 August 3rd, 2005.

10 "Dear Mr. Berrigan and Ms. House:
11 This letter is to respond to the several
12 communications you have had with Mr. Tim
13 Lipscomb, Public Land Management
14 Specialist, concerning your application
15 for a Commission lease for the facility
16 known as Courtland Docks.

17 "On May 9th, 2005, Mr. Lipscomb sent
18 a letter to you requesting additional
19 information concerning your application.
20 You requested that the application be
21 held in abeyance pending resolution of
22 the dispute over the adjacent parcel.
23 Ms. Lipscomb advised he would seek
24 direction" -- "then get back to you.

25 "This letter is to advise you we do

1 not believe it would be appropriate to
2 defer action on your application and we
3 wish to proceed with the application
4 process. Therefore, you will need to
5 provide the additional information we
6 requested in our May 9th letter so that
7 we can continue our evaluation as to
8 whether can recommend to the Commission
9 approval of a lease to you for this
10 facility.

11 "In addition, it appears that you
12 are engaging in activities that have not
13 been authorized by the State Lands
14 Commission. First, you have occupied
15 state sovereign lands adjacent to your
16 property in Courtland by occupying docks
17 previously placed there and by
18 installing additional docks, all without
19 the authority given by or compensation
20 paid to the Commission on behalf of the
21 state.

22 "An application for a lease is not
23 sufficient authority to occupy the
24 state's lands. Please remove your boat
25 from the premises until the Commission

1 has approved a lease for you on the
2 premises.

3 "It is also our understanding that
4 you're living aboard your boat at this
5 facility. As you know, the Commission
6 does not permit residential use of its
7 sovereign lands except in a few narrow
8 circumstances. The Commission has not
9 yet determined whether you qualify for
10 such an exception. It's a determination
11 that would be made in the course of your
12 application for a lease.

13 "Consequently, you are directed to
14 stop living aboard your boat or to move
15 it to another location where residential
16 use is permitted and there is no state
17 ownership interest.

18 "Lastly, it is our understanding
19 that you are renting out some of these
20 docks to third parties. Such businesses
21 may only be conducted on state lands
22 after the state has entered into a
23 lease with the business owner." Note, I
24 say, "after." "In this instance there
25 is no lease between you and the

1 Commission and the Commission has not
2 authorized you to conduct marina
3 activities on its lands.

4 "In short, you are in occupancy of
5 state property without authority and
6 without the payment of any rent to the
7 state and you are charging third parties
8 for use of state property. Therefore,
9 you're directed to stop engaging in such
10 business -- . Not one of these things
11 have been stopped. You have not
12 complied with not one request from the
13 State Lands."

14 So now you're going to reward someone for
15 basically spitting in your face, because that's -- they
16 have no -- well, they have no respect for the law, what
17 State Lands requests or anything. The boat is still
18 there. They're still living on their vessel. All of this
19 is still being done. Nothing has changed. And now you're
20 going to reward them with a lease. That does not make any
21 sense to me. I mean the Public Trust Doctrine, as you
22 stated, is crucial. And the town of Courtland is
23 basically stating -- I'm sorry.

24 CHAIRPERSON GARAMENDI: Time.

25 Thank you.

1 Please.

2 MR. RAWLINGS: Good afternoon, ladies and
3 gentlemen. My name is Robert Rawlings. I live in the
4 town of Courtland.

5 I've worked to try to do something about the
6 Courtland Docks since 1996. We have wrote letters to
7 different agencies and worked with The Reclamation Board,
8 Reclamation -- Water Resources, and every agency that
9 governs that area. The people that are there now, like
10 their predecessor, again have not complied. They were
11 told to take all the old dilapidated docks, pull out all
12 the old pilings and start from scratch, so it would be
13 brought up to code and up to par and be something the
14 community could be proud of. They've refused to do it.

15 As my wife said a little while ago, they refused
16 to quit living on their boat and trying to change the area
17 into a residence area. They have been told to stop it.
18 They won't. They thumb their nose at every agency.

19 They have large containers on the levee without
20 permits. They put them there. And Reclamation Board, the
21 reclamation district and Water Resources, none of them has
22 given approvals. They don't care. They do what they
23 want. They thumb their nose.

24 And, yes, they've offered you some money. "We'll
25 pay you this." In fact, they laughed and joked about the

1 fact that they had \$10,000 to bribe whoever they wanted.

2 And lawyers, lots of lawyers.

3 I'm saying -- and the town -- I feel that I
4 represent over 70 percent of the town of Courtland who do
5 not want those docks there or an approval, period.

6 That's all I have to say. Thank you.

7 CHAIRPERSON GARAMENDI: Excuse me. Question for
8 you. You don't want the docks there or you want good
9 docks there?

10 MR. RAWLINGS: Well, the town would like good
11 docks that have municipal use. Right now it would be
12 private dockage controlled under a general lease, and I
13 think that's stepping a little out of line. It was always
14 a small boat dockage, only about nine boats at a time.
15 They kind of got out of hand and grew. The docks are
16 dilapidated. The pilings were put in illegal. They're
17 old. One fell down and it is an endangerment to
18 navigation at this time. They don't follow any of the
19 rules.

20 We know that they dropped raw sewage into the
21 river from their 750 gallon boat tank. We reported it.
22 We couldn't get nothing done.

23 CHAIRPERSON GARAMENDI: Okay. Thank you very
24 much.

25 Next witness.

1 MR. JONES: Good afternoon, Mr. Chairman, members
2 of the Board. My name is Milton Jones. I'm a retired
3 person from the Department of Water Resources. And I did
4 a lot of work with the Division of Water Rights and Water
5 Resources.

6 I moved -- I had a houseboat and I moved on to
7 the Courtland Docks in 1990. And I've been there since
8 then.

9 And then when Mr. Berrigan and Ms. House moved
10 in, I was asked if I was friends with the Rawlings, and I
11 said, "Yes, I am." And several days later I got a letter
12 to remove my boat. So that's been about the way it's
13 gone.

14 And I am a witness to the things that Mr.
15 Rawlings has said that the -- I'm aware of the permit
16 procedures for water resources. And I'm aware that the
17 permit procedures have certainly not permitted the
18 containers and the work that the Berrigans have been
19 doing.

20 I'm not aware of the staff recommendations for
21 this. But as a private citizen concerned with the river
22 and the banks of the river, I would recommend that the
23 Board not recommend their application at this time.

24 Thank you.

25 Any questions?

1 CHAIRPERSON GARAMENDI: No. I do have a question
2 of staff.

3 The question is -- the issue has been raised as
4 to the quality of the marina. What assurances do we have
5 that the dilapidated unsatisfactory conditions will be
6 repaired and that --

7 LAND MANAGEMENT DIVISION CHIEF DUGAL: I believe,
8 you know, that there's a term in the lease -- and some
9 from the staff, if they have a copy of the lease, that
10 would be great -- that we have a repair plan contained in
11 the lease; and that there are -- the condition of a
12 portion of the facilities, there is some repair that needs
13 to be -- that needs to take place. But staff believe that
14 it was in our best interests to have them under lease, to
15 get them under lease, to start collecting rent, to
16 have -- to make them comply with the best management
17 practices. And so, therefore, it was our decision to go
18 forward at this time.

19 CHAIRPERSON GARAMENDI: Could you describe best
20 management practices? Or would you have somebody describe
21 best management practices?

22 LAND MANAGEMENT DIVISION CHIEF DUGAL: It's what
23 we put in all of our commercial marina operations. And
24 those would include, you know, pump-outs, you know,
25 petroleum products, not repairing the boats, painting,

1 those types of things that are included in all our
2 commercial marinas, that those types of activities would
3 not take place on sovereign lands.

4 CHAIRPERSON GARAMENDI: And if the best practices
5 are not followed, what authority does --

6 LAND MANAGEMENT DIVISION CHIEF DUGAL: Then we
7 would write to them and advise them that they're indeed
8 not following the terms of the lease, and they would need
9 to remedy that as outlined in the lease.

10 CHAIRPERSON GARAMENDI: And what are the
11 remedies?

12 LAND MANAGEMENT DIVISION CHIEF DUGAL: They would
13 have 90 days to cure if it's non-financial. There would
14 be a 90-day cure period.

15 CHAIRPERSON GARAMENDI: If they're
16 non-financial --

17 LAND MANAGEMENT DIVISION CHIEF DUGAL:
18 -- non-financial such that it's not an immediate
19 cure if their bond or, you know, financial insurance, that
20 sort of thing, had lapsed.

21 CHAIRPERSON GARAMENDI: So they had 90 days to
22 cure it?

23 LAND MANAGEMENT DIVISION CHIEF DUGAL: Correct.

24 CHAIRPERSON GARAMENDI: Meaning take care of the
25 issues that have been raised by the members of the

1 Courtland citizens?

2 LAND MANAGEMENT DIVISION CHIEF DUGAL: Or if
3 staff became aware of a situation that was not compliant
4 to the terms of their lease, we would provide them with a
5 notice of default. And they would have 90 days in which
6 to cure that. If they couldn't cure it within 90 days,
7 then, you know, give us -- provide reasons as to why they
8 couldn't cure it. And then that time could be extended if
9 the Commission felt that it was appropriate to do so.

10 And regarding the discussion of the sewage, you
11 know, staff did take that seriously and we contacted all
12 the regulatory parties. And there was no violation that
13 had been reported or observed or noted by the county.

14 CHAIRPERSON GARAMENDI: The upland area, the
15 containers on the side of the levee --

16 LAND MANAGEMENT DIVISION CHIEF DUGAL: I'm sorry.
17 I'm not aware of that because that --

18 CHAIRPERSON GARAMENDI: Is that our authority and
19 our jurisdictional area?

20 LAND MANAGEMENT DIVISION CHIEF DUGAL: No, it
21 would be outside of our jurisdiction.

22 MS. RAWLINGS: Sir, I have just one --

23 CHAIRPERSON GARAMENDI: Okay. I want to -- the
24 lawyer can come back up.

25 MR. REYSNER: Thank you.

1 CHAIRPERSON GARAMENDI: Are you aware that people
2 cannot live in houseboats on the Sacramento River?

3 MR. REYSNER: Mr. Chairman, we are very well
4 aware of that. And we understand that that is an absolute
5 requirement for approval of this lease. My clients have
6 obtained a physical residence. They are no longer living
7 aboard the boat. We have provided the assurances of that
8 to the staff this morning. I have the physical address
9 here, if you would like it. And you have our assurances
10 that they will not be living aboard this boat, period.

11 CHAIRPERSON GARAMENDI: Is that the fishing
12 deck -- old fishing boat, is that the boat you're
13 referring to that's been docked out there forever and a
14 day?

15 MR. REYSNER: It's a hundred foot --

16 CHAIRPERSON GARAMENDI: It's about a hundred-foot
17 100-year-old fishing boat?

18 MR. REYSNER: The boat that was referred to in
19 the 2005 letter, there was a boat that State Lands had a
20 problem with. It was removed approximately a year ago.
21 The boat that is there now is their personal vessel. But
22 they're not living aboard it.

23 MS. RAWLINGS: They are too.

24 CHAIRPERSON GARAMENDI: Well, that's -- wait.
25 Hang on. Just hang on a second.

1 Okay. So one of the conditions of the lease is
2 that there's nobody living on board a boat the condition
3 of lease

4 LAND MANAGEMENT DIVISION CHIEF DUGAL: Yes.

5 MR. REYSNER: It is a condition of the lease and
6 it is being complied with.

7 CHAIRPERSON GARAMENDI: All right. How about the
8 maintenance of the facility?

9 MR. REYSNER: Mr. Chairman --

10 CHAIRPERSON GARAMENDI: Is there a maintenance
11 plan, a rehabilitation plan?

12 MR. REYSNER: There is. One of the problems that
13 we've had is that we know maintenance has been allowed.
14 As Ms. Rawlings indicated, no maintenance was permitted
15 pending approval of the lease. And then Mr. Rawlings got
16 up and told you there's been no maintenance. Well, the
17 lack of maintenance was at the direction of the State
18 Lands Committee -- or rather the staff.

19 Brand new docks have already been purchased.
20 They are sitting and waiting for this lease to be
21 approved. And I believe within 90 days of approval of the
22 lease they will be installed. I have physically seen
23 these docks. They are brand new. We're just waiting for
24 State Lands' approval to be able to put them on site.

25 And one of the reasons for the dilapidation is

1 because we haven't had boats there to protect the marina.
2 So the gangways and the docks have been simply subject to
3 the tides and the water and the waves, and it's caused
4 destruction that we've been un -- we haven't been allowed
5 to repair. There is a repair plan in place to almost
6 replace the entire set of docks now.

7 So the issue of dilapidation is going to be a
8 non-issue as soon as this lease gets approved.

9 CHAIRPERSON GARAMENDI: And the schedule is
10 clear?

11 MR. REYSNER: Yes. Yes, it is. It will be
12 within 90 days. So obviously it will -- if there's a
13 notice of violation because it's dilapidated, we've got 90
14 days regardless. But --

15 CHAIRPERSON GARAMENDI: Has a notice of violation
16 been sent by the staff?

17 LAND MANAGEMENT DIVISION CHIEF DUGAL: No.

18 CHAIRPERSON GARAMENDI: Why don't you send one
19 today.

20 LAND MANAGEMENT DIVISION CHIEF DUGAL: We'll do
21 that.

22 CHAIRPERSON GARAMENDI: Okay. Are we aware of
23 the -- are we sufficiently aware of what's going on out
24 there to send a violation notice?

25 LAND MANAGEMENT DIVISION CHIEF DUGAL: Well,

1 again, I think there's a condition in the lease --

2 CHAIRPERSON GARAMENDI: So that 90 days from now
3 this thing gets cleaned up?

4 LAND MANAGEMENT DIVISION CHIEF DUGAL: Yes.

5 CHAIRPERSON GARAMENDI: Let's do that, so that we
6 have some time frames clearly in place.

7 LAND MANAGEMENT DIVISION CHIEF DUGAL: I just
8 would like to add for clarification one other item to
9 this, is that regarding the payment of back rent we have
10 negotiated an amount. And we have agreed to 12 monthly
11 payments at 7 percent interest. And I wanted to clarify
12 that as part of the -- they did not make it into the staff
13 report.

14 ACTING COMMISSIONER SHEEHAN: Now, the
15 only -- the question I would have is in light of the
16 concerns raised and what seems to be -- although I think
17 your colleagues may disagree. But the remediation plan,
18 is that I think it would be helpful to bring this issue
19 back at one of our subsequent meetings so we could make
20 sure the action was taken, address the concerns. And if
21 not, have further discussion. I would just add that it's
22 sort of redundant to approving the lease.

23 MR. REYSNER: And we would welcome that
24 opportunity to return to show that these repairs have been
25 made as promised.

1 ACTING COMMISSIONER SHEEHAN: Perfect.

2 CHAIRPERSON GARAMENDI: That's why I was pursuing
3 this issue of violation. That puts a time clock in play.

4 ACTING COMMISSIONER SHEEHAN: And then at the end
5 of that.

6 CHAIRPERSON GARAMENDI: At the end of that it
7 will be back here one way or the other. Hopefully it will
8 be back here as a positive situation. Okay.

9 With regard to the uplands and the containers and
10 so forth, that's something that will have to be dealt with
11 by others. We do not have jurisdiction.

12 Very good. Then a motion --

13 ACTING COMMISSIONER SHEEHAN: Yeah, I will
14 move --

15 CHAIRPERSON GARAMENDI: -- as amended?

16 ACTING COMMISSIONER SHEEHAN: Yeah, as amended
17 I'll move approval of the staff recommendation with the
18 amendment to that.

19 ACTING COMMISSIONER LOMBARD: Second the motion.

20 CHAIRPERSON GARAMENDI: Okay. We have a second,
21 we have a motion.

22 Thank you very much. The motion carries
23 unanimously.

24 MS. RAWLINGS: That means it is approved, sir?

25 CHAIRPERSON GARAMENDI: It is approved. And

1 there was a -- there's a change in the staff
2 recommendation. The change in the staff recommendation is
3 that the staff is instructed to issue a notice of
4 violation at its earliest possible time so that the 90-day
5 period begins to run immediately.

6 Thank you very much.

7 MS. RAWLINGS: For the town of Courtland and any
8 other people who wish to object to this, that they had no
9 opportunity to speak.

10 CHAIRPERSON GARAMENDI: You did, as did your
11 husband. Thank you.

12 Thank you very much.

13 CHAIRPERSON GARAMENDI: Okay. We're moving on to
14 Item 26 now.

15 CHIEF COUNSEL RUMP: C 26 is request authority
16 for AT&T installation of a fiber optic line.

17 Making the presentation for our Environmental
18 Planning Unit is Marina brand.

19 ENVIRONMENTAL PLANNING MANAGEMENT ASSISTANT CHIEF
20 BRAND: Good afternoon, Chairman, Commissioners. I am
21 Marina Brand and I am the Assistant Chief for the
22 Commission's Division of Environmental Planning
23 Management. And I will be providing you with a short
24 presentation regarding AT&T's fiber optic cable that
25 extends from Las Vegas, Nevada, to Victorville,

1 California, a distance of approximately 190 miles.

2 The fiber optic cable was originally installed in
3 1988 and 1989. At that time portions of the cable were
4 placed in conduit and buried. But also other portions of
5 the conduit -- or of the cable were not placed in conduit.
6 They were just directly buried into the ground.

7 Recently AT&T discovered that segments of the
8 directly buried cable are deteriorating, to the extent
9 that the functionality of the entire cable is threatened.
10 Therefore, these segments need to be replaced.

11 In order to do this, 35 miles of cable will need
12 to be replaced within California. Construction will
13 require digging a four-foot-deep trench using a D-9
14 Caterpillar tractor, laying the conduit -- and there's
15 three of them are being proposed -- and then running one
16 new fiber optic cable through one of the conduits.

17 The new construction would take place two to five
18 feet from parallel to the existing fiber optic cable. And
19 once construction is completed, the old cable would be
20 decommissioned and abandoned in place.

21 From an environmental perspective, we believe
22 that preparation of a mitigated negative declaration is
23 required in accordance with California Environmental
24 Quality Act, or CEQA.

25 Due to the physical disturbance that will be

1 required to bury the conduit, there is a potential for
2 impacts to both cultural and biological resources.
3 Specifically the cable segments proposed for replacement
4 within California lies in designated desert tortoise
5 habitat. This species is listed as threatened by both the
6 federal and the state governments.

7 In addition, the Victorville portion of the cable
8 is also the habitat of the Mojave ground squirrel. And
9 that species is listed as threatened in the state.

10 As required under CEQA, any project that has the
11 potential to remove habitat from a listed species does not
12 qualify for an exemption.

13 Implementation of the proposed project requires
14 that AT&T also receive approval from the Federal Bureau of
15 Land Management, or BLM. Due to potential impacts to the
16 desert tortoise, the BLM has prepared a biological
17 assessment and as of last Wednesday had submitted it to
18 the U.S. Fish and Wildlife Service requesting a biological
19 opinion be provided.

20 In addition, the BLM is using AT&T's consultant
21 to prepare an environmental assessment, or an EA, for the
22 project. The EA cannot be completed until the biological
23 opinion is issued.

24 We've had preliminary discussions with the BLM
25 regarding the possibility of preparing a joint mitigated

1 negative declaration environmental assessment. And the
2 BLM staff are very positive about this proposal. We also
3 feel that the issues that are being addressed in the EA
4 will adequately cover our concerns.

5 So as I mentioned earlier, the biological opinion
6 issued by the Fish and Wildlife Service must be completed
7 and its findings incorporated into the EA prior to
8 circulation.

9 Now the BLM has an agreement with the U.S. Fish
10 and Wildlife Service that they'll complete biological
11 opinions within 120 days of the request. If that time
12 frame cannot be met, then the Fish and Wildlife Service
13 has to tell the BLM why it can't be met and then provide
14 them with a date by which they think it can be provided.

15 Based on previous experiences that the BLM has
16 had with the Fish and Wildlife Services, some biological
17 opinions are prepared within that 120-day time frame or
18 less and some are not.

19 So Commission staff is recommending that we work
20 cooperatively with the BLM to prepare a joint document.
21 Staff from the BLM have been not available, shall we say.
22 And so I can't give you a precise timeline for preparation
23 of the joint document. But I am prepared to provide you
24 with an estimate based on what we currently know.

25 First of all, CSLC would hire a third-party

1 consultant to review the work of the BLM on behalf of the
2 Commission if you approve the item that's before you
3 today. Our consultant would provide those portions
4 required by CEQA but not by NEPA. And typically our
5 consulting process is three to four months. But we
6 believe we can shorten it down, such that we could have a
7 consultant under contract by January 24th if the contract
8 is less than \$50,000 and by February 7th if the contract
9 is greater than \$50,000.

10 We also suggest that while this process is
11 unfolding, that the applicant's consultant work directly
12 with CSLC staff in the same manner as they are working
13 with the BLM staff.

14 CHAIRPERSON GARAMENDI: Is that a pre-selection
15 of the consultant?

16 ENVIRONMENTAL PLANNING MANAGEMENT ASSISTANT CHIEF

17 BRAND: No, because we're providing a third party.

18 CHAIRPERSON GARAMENDI: Good. We don't want to
19 go there.

20 ENVIRONMENTAL PLANNING MANAGEMENT ASSISTANT CHIEF

21 BRAND: Exactly.

22 CHAIRPERSON GARAMENDI: So it's our staff that
23 would be --

24 ENVIRONMENTAL PLANNING MANAGEMENT ASSISTANT CHIEF

25 BRAND: It would be our staff working on it and providing

1 staff comments. And then our third-party consultant would
2 be providing the independent third-party review of the
3 applicant's consultant's work.

4 CEQA Guideline Section 15225 requires that joint
5 documents be prepared in compliance with the guidelines.
6 So with respect to MND, CEQA requires that it be noticed
7 and circulated for 30 days. This is a state law
8 requirement at four circulation after completion of the
9 document.

10 So that concludes my presentation. And I'm
11 available to answer any questions that you have.

12 CHAIRPERSON GARAMENDI: So 120 days from this
13 week, is that what you said, that BLM went to Fish and
14 Wildlife Service this week, last week?

15 ENVIRONMENTAL PLANNING MANAGEMENT ASSISTANT CHIEF

16 BRAND: Well, my understanding is November 28th.

17 CHAIRPERSON GARAMENDI: So 120 days, like March
18 1st?

19 ACTING COMMISSIONER SHEEHAN: No, end of March.

20 CHAIRPERSON GARAMENDI: End of March. Excuse me.
21 December, January, February --

22 ACTING COMMISSIONER SHEEHAN: Yeah, end of March.

23 CHAIRPERSON GARAMENDI: All right. Ninety days.
24 Okay. So it would be the end of March.

25 Questions?

1 ACTING COMMISSIONER SHEEHAN: Because BLM really
2 is the ultimate -- I mean most of it's on their land; is
3 that correct?

4 ENVIRONMENTAL PLANNING MANAGEMENT ASSISTANT CHIEF
5 BRAND: Yes, it is.

6 ACTING COMMISSIONER SHEEHAN: So, you know, we --

7 CHAIRPERSON GARAMENDI: We've got 1800 feet.

8 ACTING COMMISSIONER SHEEHAN: Well, we -- I know.

9 But because we are the agency in California
10 that's affected, we are by law the lead agency under CEQA?

11 CHIEF COUNSEL RUMP: Correct. BLM would do NEPA.
12 We would do CEQA.

13 ACTING COMMISSIONER SHEEHAN: Right, right. But
14 none of our --

15 CHAIRPERSON GARAMENDI: And of course the
16 negative dec.

17 ACTING COMMISSIONER SHEEHAN: Right. Yeah,
18 that's what it sounds --

19 CHAIRPERSON GARAMENDI: Mitigated negative dec.

20 ENVIRONMENTAL PLANNING MANAGEMENT ASSISTANT CHIEF
21 BRAND: We're the state agency that is required to provide
22 a discretionary action.

23 ACTING COMMISSIONER SHEEHAN: Yeah, yeah, because
24 nobody else is affected by it. So we actually have to do
25 something even though we're only a little bit of a very

1 big --

2 CHAIRPERSON GARAMENDI: Yeah, the 1800 feet,
3 that's a lot --

4 ACTING COMMISSIONER SHEEHAN: Yeah, 193 miles,
5 and it's all in proportion to that.

6 All right. So we can get -- now, if they do not
7 do the biological opinion, everything would be delayed,
8 because that information would be necessary. I mean we
9 could do a lot of the other stuff, but that would be a
10 necessary critical part of either CEQA or NEPA, correct?

11 ENVIRONMENTAL PLANNING MANAGEMENT ASSISTANT CHIEF
12 BRAND: Correct.

13 ACTING COMMISSIONER SHEEHAN: So while we can do
14 everything we can to move it along, we're still -- well,
15 we and the project sponsors are still somewhat at the
16 mercy of BLM and --

17 CHIEF COUNSEL RUMP: Yes, we're all subject to
18 the same timelines. And, again -- in fact, the process
19 that Marina has described is an expedited one. Normally
20 our preference would be to do a full document. We're
21 trying to comply with a very shortened deadline that the
22 applicant has urged us to do. So this is an expedited,
23 trying to move it along. But there are statutorily
24 required, whether they're federal or State law, that we do
25 need to be --

1 ACTING COMMISSIONER SHEEHAN: We have to do
2 certain -- so this is as quickly as we can get it done,
3 assuming all the other pieces come into effect. And as I
4 say, even if we did our stuff, if the feds didn't act,
5 dirt could not turn over, as they say.

6 CHAIRPERSON GARAMENDI: Is the dirt turning over
7 in the roadway?

8 ENVIRONMENTAL PLANNING MANAGEMENT ASSISTANT CHIEF
9 BRAND: It's usually -- yes, within the roadway. The
10 current cable is down the centerline of the roadway. And
11 so this would be moved over about two to five feet. But
12 it's still within the roadway.

13 ACTING COMMISSIONER SHEEHAN: A question.

14 The two endangered --

15 CHAIRPERSON GARAMENDI: -- a squirrel and a
16 tortoise.

17 ENVIRONMENTAL PLANNING MANAGEMENT ASSISTANT CHIEF

18 BRAND: Yeah, the desert tortoise and the Mojave ground
19 squirrel.

20 ACTING COMMISSIONER SHEEHAN: They are protected
21 or are they noticed? Are they threatened?

22 ENVIRONMENTAL PLANNING MANAGEMENT ASSISTANT CHIEF

23 BRAND: They're threatened. They're both listed. They're
24 considered listed by both the state and the feds.

25 ACTING COMMISSIONER SHEEHAN: And that was

1 subsequent to when the cable originally went in, I assume?

2 ENVIRONMENTAL PLANNING MANAGEMENT ASSISTANT CHIEF

3 BRAND: I believe the Mojave ground squirrel was an issue
4 back in the late eighties. But the tortoise has been
5 listed subsequent to that.

6 CHAIRPERSON GARAMENDI: Yeah, they don't like
7 tortoises in ditches.

8 ACTING COMMISSIONER SHEEHAN: Or on the road.

9 CHAIRPERSON GARAMENDI: That's one of the
10 mitigating measures. I can guaranty you're going to be
11 there. Check your ditch before you backfill.

12 (Laughter.)

13 CHAIRPERSON GARAMENDI: Okay. Any sponsor have
14 any comments here?

15 CHIEF COUNSEL RUMP: Well, there was a speaker
16 slip for Jim Burroughs. It was taken off consent. I
17 don't know if he wishes to so speak.

18 MR. BURROUGHS: Yes, please.

19 CHAIRPERSON GARAMENDI: Somebody's here.

20 There we go.

21 Yeah, Jim Burroughs.

22 MR. BURROUGHS: Thank you, Mr. Chairman, members
23 of the Commission. I am Jim Burroughs. I'm outside
24 counsel to AT&T, working to pull the necessary permits and
25 authorizations to complete this project.

1 I appreciate the staff report that has been
2 given. And I -- there's not much that I would want to
3 disagree with Ms. Brand and what she has said.

4 Just to a point of clarification, that I
5 certainly -- nobody here can speak for the BLM, for the
6 U.S. Fish and Wildlife Service. But our working
7 understanding with the BLM is that they have intentions
8 and hopes and expectations of being able to turn around
9 and be all within the biological opinion within 60 days.
10 You know, that's just -- whether or not they can do that
11 or not, certainly we're going to be pushing them to do
12 that. But that's our working understanding at this point.

13 But even putting that aside, to go to the
14 schedule that we've been tentatively talking about here.
15 For the biological opinion to be finished within 120 days,
16 by the end of March, to incorporate that into the
17 environmental assessment, that the BLM then has to approve
18 and that then hopefully the State Lands Commission would
19 be approving the CEQA side of that document -- and, again,
20 not of course speaking for the Commission's schedule --
21 but as I understand from your website anyway, that your
22 next meeting is February 25th and then your following
23 meeting would be in April maybe.

24 CHAIRPERSON GARAMENDI: Well, let me speak to
25 that. We have a ten-day notice requirement to take up any

1 issue. So we can take a meeting any time after ten days.

2 MR. BURROUGHS: Okay. Well, then -- what I was
3 going to say is that hopefully we're going to be getting
4 this through with the BLM and then subsequently with State
5 Lands in the March time frame, by March 1 is what our
6 target date is here. And then be in a position hopefully
7 to bring it to the Commission for your approval shortly
8 thereafter.

9 CHAIRPERSON GARAMENDI: I want to put on the
10 record why you believe this to be urgent.

11 MR. BURROUGHS: Mr. Chairman, it's urgent because
12 this is a major trunk line, as we call it in the business,
13 between Las Vegas and Los Angeles through Victorville.
14 And it's part of a series of trunk-line connections that
15 is our nationwide and global network that AT&T operates.

16 And it was only last -- for me, anyway, it was
17 last spring. Maybe the end of last winter for the AT&T
18 technicians, who first realized and understood, the Bell
19 Lab technicians, that these certain segments of the cable
20 are subject to potential failure due to moisture and cold
21 conditions here on this particular route. And that were
22 these segments to fail, then -- of course a cable is only
23 as good as its weakest link -- the entire cable then would
24 have failed between Las Vegas and Los Angeles. And the
25 consequences of that are significant.

1 CHAIRPERSON GARAMENDI: Care to place your bet?

2 That's off the record.

3 (Laughter.)

4 MR. BURROUGHS: Would you like me to --

5 CHAIRPERSON GARAMENDI: No, that's sufficient.

6 Well, it's my view, and I think this is shared by
7 my colleagues here, that we understand the urgency and we
8 do not seek a delay at all. We'd like staff to keep us
9 informed of the progress, particularly, let's say, around
10 the early January period, within the first ten days of
11 January, to let us know where you are with this progress,
12 and any issues that may be anticipated that would cause
13 the state to create a delay.

14 Okay. And I'd let AT&T worry about the federal
15 government. And having some experience, I'd be worried if
16 I were AT&T.

17 Am I not helping here?

18 (Laughter.)

19 ACTING COMMISSIONER SHEEHAN: You're not making
20 him feel good.

21 MR. BURROUGHS: Thank you.

22 CHAIRPERSON GARAMENDI: Questions?

23 ACTING COMMISSIONER SHEEHAN: I'll move approval.

24 ACTING COMMISSIONER LOMBARD: Second.

25 CHAIRPERSON GARAMENDI: We have a motion, we have

1 a second, and a unanimous vote.

2 All right. Thank you very much.

3 The next item is C 29, a report concerning the
4 Mineral and Land Audit Program.

5 Dave Brown from Administrative Services Section
6 will make a brief presentation.

7 CHIEF ADMINISTRATIVE OFFICER BROWN: Good
8 afternoon, Mr. Chairman and Commissioners. My name is
9 David Brown, and I am the Chief Administrative Officer of
10 the Commission.

11 The report before you today was prepared in
12 response to supplemental report language in the 2006
13 Budget Act. The language read, "On or before January
14 10th, 2008, the State Lands Commission shall report to the
15 Chairs of the appropriate Policy committees and the Fiscal
16 committees of both houses on its audit program, including
17 information on the number of leases, the revenue generated
18 from each lease, and the frequency with which each is
19 audited given the current staffing. The Department shall
20 also report on the amount of additional revenues generated
21 by each audit."

22 The State Lands Commission staff administers more
23 than 100 sites on which oil companies have drilled some
24 1,000 wells that produce oil and gas from state lands.
25 The state lessees paid to the state a royalty on each

1 barrel of oil that is removed.

2 In addition, over 1300 wells produced oil from
3 granted tidelands in the City of Long Beach. The city
4 receives a share of the net profits from the oil operation
5 and pays a substantial portion to the state.

6 The revenues received from these oil and gas
7 operations are deposited in the state's general fund. The
8 allocation of those revenues is specified in Section 6217
9 of the Public Resources Code. The state has received over
10 \$7.5 billion in revenues from the extraction of oil and
11 gas on state lands. In the past four years alone the
12 Commission has deposited over a billion dollars into the
13 State Treasury.

14 CHAIRPERSON GARAMENDI: So approximately a
15 quarter of a billion a year?

16 CHIEF ADMINISTRATIVE OFFICER BROWN: In the last
17 four years, yes, sir.

18 The primary responsibility of the CSLC's Mineral
19 and Land Audit Section is to perform financial and
20 compliance audits to assure that the state receives
21 royalties, rents, and other compensation due and that the
22 state lessees otherwise comply with applicable laws and
23 the terms of their leases.

24 Chapter 138, Statutes of 1964, the first
25 extraordinary session, mandates annual audits of the Long

1 Beach unit. These audits are required as part of meeting
2 the Commission's obligation to the public to safeguard
3 state assets.

4 The Long Beach unit is the CSLC's largest source
5 of revenue and will provide well over \$200 million this
6 year alone.

7 Because of the dramatic reduction in staff size
8 in recent years, CSLC auditing staff has been unable to
9 meet the reasonable three- to five-year audit frequency of
10 revenue-producing leases. Over the past 12 years, the
11 number of audit staff has been reduced from seven auditors
12 to two, culminating with the Section 4.1 vacancy sweep in
13 2003-4, and from one clerical to zero.

14 Redirection of an administrative support position
15 increased the number of auditors to three and now includes
16 two specialists and one working supervisor. This was
17 augmented in July 2006, with a two-year limited-term
18 position, with the Legislature requesting a report on the
19 program that is before you today.

20 Assuming the expiration of the limited-term
21 position on June 30th, 2008, only three audit staff will
22 be left. As mentioned before, one staff person is
23 required each year to perform the Long Beach audit. The
24 remaining two auditors are responsible for all other
25 remaining leases.

1 At this level of staffing, and considering that
2 only the 14 highest revenue producing fields may be
3 audited, the audit cycle will be at least seven years.
4 This will leave many leases that will never be audited,
5 including all commercial leases.

6 Additionally, the seven-year cycle does not
7 consider any redirection of the auditors to conduct audits
8 in instances where there is a change of ownership of a
9 major leasehold, financial review of new ownership
10 interests, or any audits involving legislative grantees
11 such as the recent Redondo Beach audit.

12 Notwithstanding the required statutory audits
13 Long Beach operations, the current audit staff has
14 recently not even been able to conduct audits in -- excuse
15 me -- has only been able to conduct audits in reaction to
16 a discovered problem or a transfer of lessee. County
17 records were frequently lost after four years.

18 Some lessees are entitled under the terms of
19 their leases to deduct certain processing of
20 transportation costs from the royalties that they pay to
21 the state. Because of minimal state oversight, propriety
22 of these deductions frequently cannot be ascertained. The
23 large amounts of revenue involved, the complexity of the
24 deductions, and the limited language addressing these
25 deductions in the leases increase the potential for

1 excessive deductions.

2 Record prices --

3 CHAIRPERSON GARAMENDI: Is that a nice way of
4 saying cheating?

5 CHIEF ADMINISTRATIVE OFFICER BROWN: Yeah.

6 (Laughter.)

7 CHIEF ADMINISTRATIVE OFFICER BROWN: Record
8 prices are making oil and gas financial auditing more
9 critical. Oil prices have more than tripled in the last
10 four years, from 20 \$25 a barrel, to the current level of
11 \$85 plus, increasing the overall revenue to the state but
12 also increasing those revenues at risk.

13 With more revenues at stake, the importance of
14 monitoring royalty accounting and payments under the state
15 leases is all the more critical. During this time of
16 record oil and gas prices, the likelihood of large
17 recoveries increases but only with timely audits. A
18 four-year statute of limitations requires an appropriately
19 staffed audit program now to ensure that the state does
20 not lose the opportunity to capture all royalty revenues
21 due to the General Fund.

22 The results of the most recent audits can be
23 found in Exhibit 1. And I believe you were given a
24 handout. The impact of the limited-term position
25 mentioned earlier is highlighted on Exhibit 1, and the

1 recovery of that individual was \$5.6 million in the review
2 of the -- blank construction in Long Beach. The recovery
3 average for the unit over the past four years has been
4 1,861,000 per personnel year. Total recoveries have been
5 21,965,000. These recoveries represent prior periods and
6 are indicative of ongoing revenue enhancements.

7 Many of the errors and omissions found during an
8 audit are procedural in nature or have to deal with
9 misinterpretation of lease terms and conditions. Once
10 corrected, not only does the state recover the lost
11 revenues for the audit period in question, but future
12 revenues are enhanced as well.

13 Given the current level of staffing as shown in
14 Exhibit 2, only the Long Beach and the 14 largest --
15 they're highlighted in blue in your exhibit -- will ever
16 be scheduled for audit, and even then over an optimistic
17 seven-year period. All other leases would be audited only
18 upon assignment or public complaint. And any such
19 redirection would increase the cycle beyond the seven
20 years.

21 Alternatively the proposed audit staffing -- the
22 lower half of that exhibit -- and given the augmentation
23 of three auditors, would allow a schedule that could
24 result in most, if not all, leases being reviewed within a
25 four-year statute of limitations.

1 Total revenues at risk are on Exhibit 3.
2 Currently we have approximately 63 oil and gas and
3 dredging leases and we also have about 50 percentage of
4 gross commercial leases that should receive some sort of
5 audit oversight.

6 To perform the appropriate number of leases that
7 will ensure that most leases are reviewed within the
8 four-year statute of limitations will require additional
9 staffing.

10 Upon approval of the Commission, we will be
11 submitting this report to the Legislature on January 10th.

12 CHAIRPERSON GARAMENDI: How many staff is
13 appropriate? You haven't stated that, or at least I
14 didn't hear you.

15 CHIEF ADMINISTRATIVE OFFICER BROWN: Six.

16 CHAIRPERSON GARAMENDI: Six.

17 CHIEF ADMINISTRATIVE OFFICER BROWN: Three
18 additional. We have three and we're asking -- we feel
19 that three more would be appropriate.

20 CHAIRPERSON GARAMENDI: One of the three is
21 limited term?

22 CHIEF ADMINISTRATIVE OFFICER BROWN: And is
23 expiring in June.

24 ACTING COMMISSIONER SHEEHAN: I thought two of
25 the three were expiring. Just the one and then the

1 next --

2 CHIEF ADMINISTRATIVE OFFICER BROWN: One of the
3 three is expiring. We got one additional position in 2006
4 on a two-year limited term. And it will expire June 30th
5 of 2008.

6 ACTING COMMISSIONER SHEEHAN: Okay.

7 CHAIRPERSON GARAMENDI: And so to meet the
8 four-year statute of limitations requirement, we would
9 need six?

10 CHIEF ADMINISTRATIVE OFFICER BROWN: Total, yes.

11 CHAIRPERSON GARAMENDI: Total of six. Clerical?

12 CHIEF ADMINISTRATIVE OFFICER BROWN: No. These
13 are professional auditors.

14 CHAIRPERSON GARAMENDI: And the return for the
15 one person that was limited term was a million plus?

16 CHIEF ADMINISTRATIVE OFFICER BROWN: Well, we
17 were -- over a four-year period we averaged 1.8 million
18 PY. The individual that we did hire on in 2006, the
19 project that we put them on was a \$5.6 million recovery.

20 CHAIRPERSON GARAMENDI: Finance is doing the math
21 here.

22 (Laughter.)

23 ACTING COMMISSIONER SHEEHAN: I've had this
24 discussion with Paul before, you know. And all I was
25 saying is as long as they're not general funded your

1 chances are better if you can get, you know, a couple of
2 limited term. But, you know, I think you can go back and
3 justify it. But -- you know, to the other side my shop
4 downstairs.

5 CHIEF ADMINISTRATIVE OFFICER BROWN:

6 Unfortunately this part of our program is General
7 Fund and it always has been.

8 CHAIRPERSON GARAMENDI: But is the return
9 immediate?

10 CHIEF ADMINISTRATIVE OFFICER BROWN: Not
11 necessarily. It may take one or two year -- a year or two
12 to do some of the audits. But on average we do get a
13 return, as you saw, over that period of time of about 1.8
14 million per.

15 CHAIRPERSON GARAMENDI: So for the '08-'09 budget
16 year, if these people were to be available now or January
17 1st, the return could begin in the middle of the '08-'09
18 and amount to what, three or four million --

19 CHIEF ADMINISTRATIVE OFFICER BROWN: It could.

20 CHAIRPERSON GARAMENDI: -- if it maintains the
21 average.

22 ACTING COMMISSIONER SHEEHAN: Well, I guess --

23 CHAIRPERSON GARAMENDI: So it would be half of
24 that. It'd be just half a year.

25 ACTING COMMISSIONER SHEEHAN: Because I guess the

1 other --

2 CHAIRPERSON GARAMENDI: Get back money too.

3 ACTING COMMISSIONER SHEEHAN: -- the
4 other issue -- and I don't know the discussions, you know,
5 that you've had with Finance on this -- was certainly --
6 you know, revenue-generating activities are viewed
7 very -- are differently than, you know, just personal
8 funds, you know, in terms of just that General Fund
9 expenditure. And so I don't know -- and as I -- you know,
10 I don't mean to sound flippant in terms of the budget side
11 of the shop. But, as you know, I do more of the Board
12 activities on the budget side. But the revenue-generating
13 activities are viewed differently. I mean they look at
14 FTB or BOE, those people who -- those positions actually
15 create revenue for the General Fund. You know, you look
16 at the return on some of those. So I don't know what the
17 BCPs had talked about, you know, or when this section's
18 going to come.

19 CHIEF ADMINISTRATIVE OFFICER BROWN: In the case
20 of audit -- in the case of audit discovery you cannot go
21 into an audit guarantying your return. The only thing we
22 can do is speak of our experience. And our experience has
23 been --

24 ACTING COMMISSIONER SHEEHAN: Well, at least
25 we've got a couple years, you know, of experience in terms

1 of that.

2 CHIEF ADMINISTRATIVE OFFICER BROWN: Right. But
3 there is no guaranty that it will happen.

4 ACTING COMMISSIONER SHEEHAN: Well, I guess the
5 answer is that there is a guaranty there won't be anything
6 if you don't --

7 CHIEF ADMINISTRATIVE OFFICER BROWN: Absolutely.
8 That's our point.

9 And the other point is --

10 ACTING COMMISSIONER SHEEHAN: Whereas the other
11 may not be a guaranty.

12 CHIEF ADMINISTRATIVE OFFICER BROWN: The other
13 point along with the audit, and what gets discounted, is
14 that once we have resolved something with the company,
15 that continues to pay. We'll get a recovery of \$3 million
16 for the last four years or so. But then that will
17 continue on, you know, ad infinitum.

18 ACTING COMMISSIONER SHEEHAN: No, I certainly
19 understand, you know, in terms of the proper way to
20 structure funding auditors to get -- you know, you can't
21 do it -- it's like a bounty hunter. You know, you're
22 going to get your -- you get the first cut on that. You
23 know, I think that's inappropriate for government agencies
24 to do that. I think real audits are legitimate. And
25 we've had this discussion -- I mean we've had this

1 discussion. Jack -- Redondo Beach in terms of what went
2 on in that, it was more of a performance. You know, it
3 came out that way.

4 But we have so many leases, so many agreements
5 out there, that we have not probably spent as much time as
6 we could. And I understand in terms of three, four --
7 everybody took a whack.

8 So I don't know what the desire of the Chair is.
9 But certainly, you know, if you want to sit down with
10 staff downstairs, I can set that up if you want to
11 consider a spring letter.

12 I cannot like anything bad at budget time, if you
13 all have been reading the newspapers. So I -- but in
14 terms of just pointing out the return in terms of the
15 General Fund. I did make a good argument in terms of what
16 the price of oil has been, you know. That's easy when you
17 base there's a calculation of royalty on that.

18 CHAIRPERSON GARAMENDI: Well, the Chair has
19 achieved his goal. And I was looking for an emissary.

20 (Laughter.)

21 ACTING COMMISSIONER SHEEHAN: I think Jim
22 volunteered over there.

23 (Laughter.)

24 ACTING COMMISSIONER SHEEHAN: I thought I heard
25 that.

1 CHAIRPERSON GARAMENDI: I would just -- I'd like
2 a sense of the Commission that we would request the
3 additional auditors and put forth the argument as you have
4 made it, which is a sound argument; hand it to Anne and
5 tell her to don't come back until she the additional --

6 (Laughter.)

7 ACTING COMMISSIONER SHEEHAN: And I'll probably
8 be taking this up for some of the other items.

9 (Laughter.)

10 CHIEF ADMINISTRATIVE OFFICER BROWN: We will
11 continue to do so, Mr. Chairman.

12 CHIEF COUNSEL RUMP: This was just a report item
13 actually.

14 (Laughter.)

15 CHAIRPERSON GARAMENDI: Well, I think we need to
16 be very clear here about what's important. And Anne has
17 made the case very well and you have too. And, that is,
18 that we should request as a commission the additional
19 auditors, that they be available sooner than later. I
20 don't know if we can do anything before the end of --
21 before this fiscal year's over. I suspect we could. And
22 get those people on board and start auditing and start
23 these audits, because there's -- there is income for the
24 State of California that will inevitably result from this.

25 So, perhaps a letter from me to the Finance. And

1 that will leave you --

2 (Laughter.)

3 ACTING COMMISSIONER SHEEHAN: Have we ever, you
4 know, talked to, you know, oh, say -- or the auditor, you
5 know, cost it out if you contracted with those offices to
6 do it? You know, or even the Controller's Office. Have
7 you figured out it's actually cheaper for us? I mean I
8 just would suggest sort of running the traps on various
9 ways to retain auditors. The ideal I think, aside from --
10 you know, if there's some way we could demonstrate it
11 maybe, you know, a little bit more and they can go out and
12 do some of those specific ones. I would at least throw
13 that out as something to think about or an option to put
14 forth and see what would come forward.

15 CHAIRPERSON GARAMENDI: Anne, you're on to
16 something interesting. Does any of these leases allow us
17 to backcharge the lessee for audits?

18 CHIEF ADMINISTRATIVE OFFICER BROWN: I'm not
19 familiar with that part of it.

20 We do have our chief of our audit section here,
21 and he would be better equipped --

22 CHAIRPERSON GARAMENDI: Well, if you have an
23 answer to it, come up. If you don't have the answer --

24 The answer is, no, you don't have an answer or
25 the answer's, no, we can't backcharge them.

1 AUDIT CHIEF MERCIER: No, we don't have the
2 backcharge facility on any of the leases.

3 CHAIRPERSON GARAMENDI: Maybe our future leases
4 ought to.

5 AUDIT CHIEF MERCIER: Yeah, absolutely.

6 CHAIRPERSON GARAMENDI: And then we don't have
7 this General Fund problem.

8 ACTING COMMISSIONER SHEEHAN: No, I agree. As I
9 said before, I just -- we need to structure that carefully
10 in terms of that, because I -- not this agency. But I
11 know others assess penalties and -- you know, as I say, it
12 becomes that's how they fund their budget. And we have --
13 we have a legitimate purpose sort of in terms of these
14 audits and the agreement under those and we do have to go
15 after them. But I just want to make sure that we are
16 cognizant that we are not trying to build our budget, you
17 know, on these.

18 CHAIRPERSON GARAMENDI: They'll love you
19 downstairs for that comment.

20 (Laughter.)

21 CHAIRPERSON GARAMENDI: Okay. If it's okay with
22 the members here, the Commission members, I'll send a
23 letter to Finance and make the argument. And staff will
24 prepare it and we'll get it off.

25 CHIEF ADMINISTRATIVE OFFICER BROWN: Thank you.

1 CHAIRPERSON GARAMENDI: And I would like a
2 consideration of this backcharging for the audits. And it
3 may save us a lot of problems here along the way. Anne
4 correctly points out we're not interested in bounty
5 hunting.

6 CHIEF COUNSEL RUMP: Okay, certainly. We'll look
7 into that.

8 And the item also requests the consent or
9 approval of the report. If you could act on it --

10 ACTING COMMISSIONER SHEEHAN: I move approval of
11 the report.

12 ACTING COMMISSIONER LOMBARD: Second.

13 CHAIRPERSON GARAMENDI: So moved.

14 Okay. And that will be the action. We'll
15 approve the report and forward it on, and then I'll
16 prepare a letter and send it to Finance.

17 CHIEF COUNSEL RUMP: Thank you.

18 CHAIRPERSON GARAMENDI: Next item is --

19 CHIEF COUNSEL RUMP: I'm happy to announce that
20 we've finished the consent calendar.

21 (Laughter.)

22 ACTING COMMISSIONER SHEEHAN: Thank heavens.

23 CHIEF COUNSEL RUMP: With that, we'll be going
24 into our regular calendar, Item 34, which is a another
25 legislative report prepared by Marine Facilities Division

1 on the treatment of ballast water.

2 Presenting it today will be Nicole Dobroski.

3 CHAIRPERSON GARAMENDI: Okay. Let's go.

4 (Thereupon an overhead presentation was
5 Presented as follows.)

6 ENVIRONMENTAL SCIENTIST DOBROSKI: Good
7 afternoon, Mr. Chairman and Commissioners. My name is
8 Nicole Dobroski. I'm an environmental scientist with the
9 Commission's Marine Facilities Division. And we have a
10 presentation.

11 Today I'll be summarizing the Marina Invasive
12 Species Program's legislatively mandated report assessing
13 the status of ballast water treatment technologies.

14 --o0o--

15 ENVIRONMENTAL SCIENTIST DOBROSKI: As a bit of
16 background, non-indigenous species, or NIS, are organisms
17 transported by humans to a region where they do not occur
18 historically. NIS may have serious negative economic,
19 environmental, and human health impacts in receiving
20 environment. NIS arrived in U.S. waters by way of a
21 variety of mechanisms or vectors, such as recreational
22 boating, intentional release, and aquaculture.

23 However, the ballast water in ships is one of the
24 most important vectors of species release in marine
25 aquatic habitats. Ballast water is used to maintain the

1 trimming stability of vessels at sea and is estimated at
2 more than 7,000 species are transported around the world
3 each day in the ballast water of ships.

4 --o0o--

5 ENVIRONMENTAL SCIENTIST DOBROSKI: Acknowledging
6 the significant threat of species introduction from
7 ballast water release and the need to more effectively
8 manage ballast water discharges, the California
9 Legislature passed the Coastal Ecosystems Protection Act
10 in 2006, which directed the Commission to implement
11 performance standards for the discharge of ballast water.
12 The performance standards regulation was approved in
13 October of this year.

14 --o0o--

15 ENVIRONMENTAL PROGRAM MANAGER I FALKNER: Just
16 keep going.

17 --o0o--

18 ENVIRONMENTAL SCIENTIST DOBROSKI: As you can see
19 here --

20 (Laughter.)

21 ACTING COMMISSIONER SHEEHAN: Very nice.

22 ENVIRONMENTAL SCIENTIST DOBROSKI: -- performance
23 standards.

24 The interim standards set limits for organism
25 abundance as a function of organism size. The current

1 management practice of ballast water exchange would not be
2 sufficient to meet the performance standards. Most
3 vessels will need to use ballast water treatment systems
4 in order to be in compliance with the regulation.

5 The standards will be implemented based on a
6 schedule with an initial implementation date of 2009 for
7 newly-built vessels with a ballast water capacity of less
8 than 5,000 metric tons. A final standard of zero
9 detectable living organisms in the ballast water discharge
10 will be implemented in January of 2020.

11 --o0o--

12 CHAIRPERSON GARAMENDI: By that time with 7,000
13 species per day, we don't have a problem.

14 (Laughter.)

15 ENVIRONMENTAL SCIENTIST DOBROSKI: The Coastal
16 Ecosystems Protection Act also required a report assessing
17 the efficacy and availability of environmental impacts,
18 including water quality, of currently available ballast
19 water treatment technologies that may be used to meet the
20 performance standards. This report and presentation are
21 in response to that mandate. The remainder of this talk
22 will focus on those three main components of the report -
23 system efficacy, availability, and environmental impacts.

24 --o0o--

25 ENVIRONMENTAL SCIENTIST DOBROSKI: To assess the

1 status of ballast water treatment technologies, Commission
2 staff gathered information from multiple sources,
3 including scientific reports, white and gray papers, and
4 promotional materials from technology developers.
5 Additionally, staff hosted a technical workshop in May of
6 2007 in Boston that brought together experts in the fields
7 of ballast water treatment, microbiology, efficacy
8 testing, and marine engineering.

9 Based on input from workshop participants and
10 information of the literature, staff produced a draft
11 report that was presented in October of this year to our
12 advisory panel of industry representatives, environmental
13 organizations, scientists, and government agency staff,
14 including the State Water Resources Control Board and the
15 U.S. Coast Guard. Comments from the advisory panel were
16 incorporated into this final draft.

17 In total, this report examines 28 different
18 treatment systems from nine countries worldwide. This
19 report is of course not the end of our assessment of
20 technologies nor the total of all potential ballast water
21 treatment systems. Many treatment ideas are being
22 formulated as we speak, and they will be evaluated as
23 information is made public.

24 Additionally, law mandates that we conduct
25 similar technology assessments 18 months prior to each of

1 the remaining implementation dates. Thus, staff will
2 continue to collect information not only on new systems as
3 they come into production, but on existing systems as they
4 are installed on vessels and as the results of real-world
5 system usage are made available.

6 --o0o--

7 ENVIRONMENTAL SCIENTIST DOBROSKI: For the
8 systems evaluated in this report, results of efficacy
9 testing were only available for 20 of 28 treatment
10 systems. Many of these systems are currently undergoing
11 additional testing, and those results have not yet been
12 made public.

13 One challenge to the evaluation of treatment
14 systems is the lack of standardized system testing and
15 evaluation methods. Additionally, comparison between
16 systems is complicated by the fact that systems are in
17 different stages of development, in the laboratory, at
18 dockside, or on operational vessels.

19 Of the 28 systems reviewed here, only 11 have
20 been tested onboard vessels thus far.

21 After examining all available data, no single
22 technology has yet demonstrated the capability to meet
23 California's performance standards.

24 --o0o--

25 ENVIRONMENTAL SCIENTIST DOBROSKI: The

1 Staff are working with the State Water Resources
2 Control Board and regional boards to identify applicable
3 water quality regulations and criteria and will make
4 technology developers aware of such requirements.

5 --o0o--

6 ENVIRONMENTAL SCIENTIST DOBROSKI: In conclusion,
7 the current lack of standardized efficacy testing methods
8 and procedures for environmental assessments makes it
9 unlikely that systems will be available nor adequately
10 reviewed prior to the initial 2009 deadline for
11 implementation of standards.

12 Commission staff will continue to gather
13 information on and assess the development of the ballast
14 water treatment systems and we'll reevaluate system
15 availability prior to the next implementation deadline,
16 which is in 2012.

17 Despite the challenges to system availability in
18 2009, we believe that progress is being made in the field
19 of ballast water treatment and systems will be ready to
20 meet California's standards in the not-too-distant future.

21 --o0o--

22 ENVIRONMENTAL SCIENTIST DOBROSKI: As we look
23 forward, the implementation of performance standards
24 involves more than just setting a number. Many additional
25 activities will need to be undertaken by the Marina

1 Invasive Species Program in the next year to fully
2 implement a comprehensive program.

3 In order to assist for the standardized
4 assessment of technologies in relation to California
5 standards, staff will produce a set of testing and
6 evaluation guidelines for use by treatment technology
7 developers and third-party testing laboratories, so that
8 they may self-certify their systems as compliant with
9 California standards. Staff will also develop protocols
10 to verify vessel compliance with the standards.

11 Additionally, Commission staff will work with the
12 State Water Resources Control Board and regional water
13 quality control boards to identify applicable water
14 quality control plans and regulations and make this
15 information available to technology developers.

16 Finally, in the absence of a federal performance
17 standard or technology evaluation process, we will be
18 working with other West Coast states to develop a
19 standardized set of technology evaluation guidelines. We
20 expect to complete most of these activities in 2008.

21 --oOo--

22 ENVIRONMENTAL SCIENTIST DOBROSKI: In addition to
23 the activities the Marina Invasive Species Program will be
24 undertaking in the next year, we make the following
25 recommendations to the Legislature for their further

1 action:

2 First, to change the initial implementation date
3 for new vessels with a ballast water capacity of less than
4 5,000 metric tons from 2009 to 2010. No current
5 technologies have been proven to meet the standards and
6 additional time is necessary to develop testing guidelines
7 and procedures for compliance verification.

8 Second, to authorize the Commission to amend the
9 reporting requirements via regulation. Existing reporting
10 requirements are inadequate to effectively monitor system
11 usage and verify compliance with the standards.

12 And, three, support continued research promoting
13 technology development. Ballast water treatment is an
14 emerging industry, and we need to continue to provide
15 opportunities for the development and testing of new
16 technologies.

17 --o0o--

18 ENVIRONMENTAL SCIENTIST DOBROSKI: And with that,
19 I'd be happy answer any questions.

20 ACTING COMMISSIONER SHEEHAN: Yeah, I do have
21 sort of a general question in terms of the whole ballast
22 water and, as you say, the national standards.

23 Is there an issue with being able to do a
24 standard, you know, in California, in the Gulf Coast -- I
25 mean are there issues related to the water and either the

1 salinity of the water or the temperature of the water that
2 would in any way, you know, prevent a national standard?
3 Or are the standards of the regulations such that they
4 could adapt to the various changes geographically?

5 ENVIRONMENTAL SCIENTIST DOBROSKI: They can adapt
6 to the various geographic regions. Temperatures really --
7 you know, they won't have any impact. It's setting a
8 standard and then producing a set of testing mechanisms to
9 meet that standard. But that could be done throughout the
10 United States, throughout the world.

11 ACTING COMMISSIONER SHEEHAN: All right. And
12 it's the regional water boards and the State Water Board
13 that really is the regulatory agency from the state that
14 will be -- you're working with them reviewing of some of
15 the technologies and the standards that will have to be
16 promulgated, is that what I heard you say?

17 ENVIRONMENTAL SCIENTIST DOBROSKI: Yes. The
18 State Water Board and regional boards are responsible for
19 water quality issues in the state. So kind of -- we'll be
20 addressing issues of efficacy and availability. But we
21 need to work with the state water boards in order to kind
22 of push the Board on the environmental impact assessments.

23 ACTING COMMISSIONER SHEEHAN: You answered my
24 questions.

25 CHAIRPERSON GARAMENDI: Thank you very much for

1 the report.

2 ACTING COMMISSIONER SHEEHAN: Do we need an
3 action --

4 CHAIRPERSON GARAMENDI: It's not an easy issue to
5 solve. But we do the best we can with this one.

6 Thank you very much.

7 I believe we have --

8 ACTING COMMISSIONER SHEEHAN: Do we need an
9 action?

10 CHIEF COUNSEL RUMP: Yes, we would like an action
11 on that to move forward the report onto Legislature.

12 ACTING COMMISSIONER SHEEHAN: With the
13 recommendations on the legislative changes?

14 CHIEF COUNSEL RUMP: Correct.

15 ACTING COMMISSIONER SHEEHAN: All right. I'll
16 move that.

17 ACTING COMMISSIONER LOMBARD: Second.

18 CHAIRPERSON GARAMENDI: So moved and approved
19 unanimously.

20 CHIEF COUNSEL RUMP: Very good. Thank you.

21 All right. We're now at item 35. This is --
22 you've heard this matter previously. It's Robert Hulbert,
23 and with a dock on the Sacramento River.

24 Making the presentation is Barbara Dugal of the
25 Land Management Program.

1 LAND MANAGEMENT DIVISION CHIEF DUGAL: Good
2 afternoon, Mr. Chairman and Commissioners. Again, my name
3 is Barbara Dugal. And I'm going to make a presentation to
4 you today regarding Calendar Item 35.

5 You'll recall at the September 13th Commission
6 meeting, the Commission considered and took an action
7 regarding Mr. Hulbert's default, the failure to comply
8 with the provisions of his general lease recreational use.
9 That lease was issued for the construction of a covered
10 floating boat slip with a metal gangway in the Sacramento
11 River.

12 Today staff is requesting the Commission adopt a
13 finding consistent with the Commission's actions from
14 September the 13th, at which time the Commission provided
15 Mr. Hulbert with two options.

16 The first option was that we could either remove
17 the structure in its entirety from the leased premises.

18 Or he could choose to retain the floating boat
19 dock, including the previously unauthorized expanded
20 length, width, spiral case and gangway, but the height of
21 the structure would have to be reduced to conform to what
22 was applied for, which is 13 feet, and was authorized
23 under the lease.

24 And at that time the Commission gave Mr. Hulbert
25 30 days to decide which option he would choose.

1 The agenda item, which is similar to the one that
2 you're considering today, was prepared for the October
3 30th Commission meeting. However, on October 12th staff
4 had received a letter from Mr. Hulbert's counsel
5 requesting a continuance of that item. And he also
6 indicated that Mr. Hulbert would not be making any
7 modifications to this structure, nor would he be
8 terminating the lease until the matter was adjudicated
9 before the Court.

10 The item then was removed from that agenda. And
11 on November the 19th, staff met with Mr. Hulbert's agent
12 and his counsel, who indicated that Mr. Hulbert was again
13 declining the Commission's offer. But he offered further
14 a compromise, to allow the structure to remain as built,
15 except that Mr. Hulbert would agree to remove the cabana
16 and kitchen. But he had requested to leave in place a
17 portion of the cabana structure in order to provide
18 storage for life jackets, et cetera. And they also would
19 remove the toilet, cap the shower. But he wanted to keep
20 in place the pump-out.

21 On November 20th, staff -- on November 20th their
22 offer was provided in writing to staff. Staff response
23 back was that the boathouse was -- it's inappropriately
24 sized and that it places an excessive burden on the
25 public's enjoyment of the Sacramento River; and,

1 furthermore, that the proposal was inconsistent with the
2 direction that was given by the Commission at the
3 September 13th meeting.

4 This past Friday late in the afternoon we
5 received another letter from Mr. Hulbert's counsel, again
6 reiterating Mr. Hulbert's offer to the Commission, which
7 was to remove the cabana, including the cook top, the sink
8 the disposal, the dishwasher, as well as the shower and
9 the toilet.

10 The letter also states there are two other
11 structures that exceed the height of Mr. Hulbert's
12 structure in the area. Staff are aware of these
13 structures, but they're commercial marinas. I went out
14 there yesterday afternoon. And I don't know if it's up on
15 the -- you've got them in front of you.

16 These are commercial marinas. They're open to
17 the public. And what staff was talking about the height
18 of the structures, we were comparing general lease
19 recreational uses, not commercial leases. So just to
20 clarify that. These commercial marinas have docks and
21 boat slips that are in fact covered but they're not
22 enclosed. And they are open to be used by the general
23 public.

24 And there's a couple of -- I need to clarify a
25 few inaccuracies for the Commissioners that are contained

1 in Mr. Hulbert's counsel's letter.

2 First, the lease that was approved by the
3 Commission on October 5th of 2004 was for the construction
4 again of a covered boating -- excuse me -- a covered
5 floating boat dock, pilings and gangway, and did not
6 include the sun deck, the railing. And I have a slide of
7 that somewhere. I'm not sure where we're at. Keep going.

8 Well, it's somewhere in there. I'm sorry. Kind
9 of got my own schedule here.

10 And then, second, the Commission's standard
11 application requires the submittal, amongst many other
12 things, a detailed plan of plot of the proposed lease area
13 and the existing proposed structures showing their
14 dimensions with respect to property lines, high and low
15 water lines, their dimensions, and a scale drawing of the
16 proposed improvements are to be included with the
17 application.

18 In fact, staff had wrote to Mr. Hulbert -- once
19 we became aware that the dock was being proposed, we wrote
20 to him back on April 18th of 2003 to let him know he
21 needed to submit an application, and that we also advised
22 him that he needed to provide, you know, again, amongst
23 other things, a scale drawing or a set of building plans
24 for the proposed facilities, including the dimensions of
25 the dock and its relationship to the adjacent properties.

1 Staff does not accept the information submitted
2 with an application that's conceptual. But we use that
3 information -- we rely on that information supplied by
4 applicant in order to make a determination as to whether
5 or not proposed project is consistent with the public
6 trust needs of the location. We also use that information
7 for insuring compliance with the California Environmental
8 Quality Act. And we also use that information, more
9 importantly, for its basis in making all recommendations
10 to the Commission as to whether or not a lease should be
11 issued. And if so, under what terms and conditions should
12 be contained in those leases.

13 At the September 13th meeting, the Commissioners
14 heard arguments from Mr. Hulbert as to why the boat dock
15 structure should remain as built. Mr. Hulbert's counsel's
16 letters do not respond to the Commission's action. And
17 staff is not requesting you to reconsider its prior action
18 today.

19 Therefore, staff is recommending that the
20 Commission adopt the findings that are outlined in the
21 staff report and authorize the following actions:

22 First, is to issue a notice of default to Mr.
23 Hulbert because of the continuance of his breach of the
24 lease covenants as described in the September 13th staff
25 report.

1 Two, if Mr. Hulbert fails to comply with the
2 findings which are contained in your staff report today,
3 the findings B, C, and E of the agenda item, to terminate
4 the lease and to authorize Commission staff and staff of
5 the Attorney General's Office to take all appropriate
6 steps including litigation, if necessary, to terminate Mr.
7 Hulbert's occupation of state property, and then to remove
8 all of the improvements from the lease premises.

9 And then, lastly, we're requesting authorization
10 to deny the application submitted by Mr. Hulbert on August
11 the 22nd, 2007, to amend his lease because the boathouse
12 is again inappropriately sized and it places an excessive
13 burden on public's enjoyment of the Sacramento River.

14 And what you can see in front of you on the
15 screen now is what was actually contained, you know, as
16 the staff report when the Commission approved the lease
17 and is contained also as a part of the lease that was
18 signed by Mr. Hulbert.

19 And we went through the photographs, maybe or
20 maybe not. If you have any questions on any of those,
21 I'll be more than happy to discuss any of those or to
22 answer any other questions that you may have.

23 CHAIRPERSON GARAMENDI: We had a very lengthy
24 hearing on this, including testimony from the applicant or
25 the lessee, and various explanations on why it was or was

1 not possible to do one or the other of the options.

2 When someone comes to this Commission with a
3 proposal to build a dock or any other facility, it must be
4 our expectation that that proposal will be carried out as
5 presented. We cannot act other than that. And it is
6 necessary for this applicant/lessee and any other past or
7 future applicant and lessee to comply with their proposed
8 plan as approved by the Commission. If they fail to do
9 so, then they are at risk of having to remove or to abate
10 or to modify so that the structure, the operation, is in
11 accordance with the lease. It can be no other way,
12 period. No other way, period.

13 This Commission acted, accordingly acted in good
14 faith that the applicant would carry out their project
15 according to their application. They did not. We left
16 them with two options: Modify so as to be in compliance
17 with the application; or, two, remove the dock.

18 I see no reason for us to reconsider. So there's
19 my opinion.

20 With regard to the pretty pictures that were
21 delivered to us, get relevant.

22 CHIEF COUNSEL RUMP: Mr. Chair, we have a speaker
23 slip from Mr. Hulbert's attorney, Gerald Murphy, if you'd
24 like to hear him at this time.

25 CHAIRPERSON GARAMENDI: Well, our normal policy

1 is to hear.

2 CHIEF COUNSEL RUMP: Well, I think you've stated
3 that it's already been discussed. But he has asked --

4 CHAIRPERSON GARAMENDI: I know where I'm coming
5 from. But our policy is that when an item is up, we hear
6 from the public.

7 So let's hear from Mr. Murphy.

8 MR. MURPHY: Good afternoon, Mr. Chairman,
9 members of the Commission.

10 Pardon me. Good afternoon, Mr. Chairman, members
11 of the Commission. My name is Gerald Murphy of the Law
12 Firm of Luce, Forward, Hamilton and Scripps in San Diego.
13 I'm in the San Francisco office.

14 My client's proposed a compromise which you've
15 rejected. The compromise removes ten feet of the
16 excessive height, a considerable amount of height.

17 The criteria that you're acting under, 14
18 California Code of Regulations 15061B sub C, addresses
19 three elements. And your conclusions were that total
20 removal would result in long-term improvements to fish
21 habitats, public use, and riverine aesthetics. The only
22 one of those three that's relevant in my view is the
23 riverine aesthetics. Removing ten feet of the structure
24 significantly addresses the concerns about the aesthetics.

25 It also eliminates the criteria that one could

1 conclude were installed for living purposes or purposes
2 other than the docking of the boat. It eliminates the
3 kitchen. It eliminates the barbecue. It eliminates all
4 of the other amenities that were installed.

5 It takes the structure back down to the only
6 height that it can remain existing at. That structure
7 cannot be reduced in accordance with the alternative
8 proposal which the Commission has offered. And that's
9 because the roof is an integral part of the construction,
10 of the engineering of this structure. And in order to
11 comply with the 13-foot removal would require removal of
12 the entire structure so effectively, there is only one
13 alternative and that's to remove it.

14 There are no published guidelines, there are no
15 regulations, there are no codes upon which you relied to
16 reach the conclusion that you've reached.

17 CHAIRPERSON GARAMENDI: Was there a lease?

18 MR. MURPHY: There was.

19 CHAIRPERSON GARAMENDI: Was there an application?

20 MR. MURPHY: There was.

21 CHAIRPERSON GARAMENDI: Was it carried out --

22 MR. MURPHY: According to the --

23 CHAIRPERSON GARAMENDI: -- according to the
24 lease?

25 MR. MURPHY: According to your interpretation,

1 no.

2 CHAIRPERSON GARAMENDI: To your interpretation?

3 MR. MURPHY: I'm not sure that the lease
4 application was meant to include all of these amenities.

5 CHAIRPERSON GARAMENDI: Of course it was. You've
6 just heard from our staff. That is the application, that
7 is the design, that is the structure. We rely on it for
8 every purpose including CEQA.

9 MR. MURPHY: Let's take the discharge pump, for
10 example. That wasn't in the application. Yet the Army
11 Corps of Engineers, the Department of Boats and Waterways
12 recommend that all such structures have a discharge pump
13 to comply with the Clean Water Act. We installed that
14 pump, yet it wasn't in a lease proposal. Would you
15 suggest the pump be removed?

16 CHAIRPERSON GARAMENDI: I'd suggest that any
17 person that comes to this Commission seeking a lease,
18 present an application, then -- and if we choose to
19 approve that application, they perform according to the
20 application, and not make modifications, significant or
21 otherwise, without coming back to this Commission. That
22 did not happen in this case.

23 MR. MURPHY: My time is up. I'd like to point
24 out that the two other structures --

25 CHAIRPERSON GARAMENDI: You can have more time.

1 MR. MURPHY: Thank you.

2 I'm sorry to interrupt you.

3 CHAIRPERSON GARAMENDI: I made my point.

4 MR. MURPHY: The two other structures, while
5 commercial in nature, is a distinction without a mean.
6 We're talking about height, the height of the structure as
7 being perceived from someone using the river. That is the
8 criteria, after all. It's river and bank aesthetics.

9 CHAIRPERSON GARAMENDI: Don't play lawyer with
10 me. There is a significant distinction. One's a
11 commercial operation that was built according to the
12 application. The other's a private operation that was not
13 built to application.

14 MR. MURPHY: And at the same height and affect
15 the --

16 CHAIRPERSON GARAMENDI: That's not the point.
17 It's --

18 MR. MURPHY: -- aesthetics in the same way.

19 CHAIRPERSON GARAMENDI: Well, okay.

20 MR. MURPHY: Finally, the as-built structure was
21 approved by the Commission by Mr. Burnam after it was
22 built.

23 Mr. Burnam -- Robert Burnam, the field
24 representative of the Commission.

25 CHAIRPERSON GARAMENDI: Where did you come across

1 that?

2 MR. MURPHY: I have a note in my file that's in
3 Mr. Burnam's handwriting that I conclude indicates that he
4 saw the structure after it was constructed, made no
5 objection to its height or to any of the other amenities
6 that he saw. If you'd like, and we can then table this,
7 I'll send you --

8 CHAIRPERSON GARAMENDI: No, we're not tabling
9 this matter.

10 MR. MURPHY: Well, I've answered your question
11 then.

12 CHAIRPERSON GARAMENDI: Have anything further?

13 MR. MURPHY: No, I don't.

14 Thank you.

15 CHAIRPERSON GARAMENDI: So the action before
16 us -- what's the action before us?

17 ACTING COMMISSIONER SHEEHAN: Staff
18 recommendation on --

19 LAND MANAGEMENT DIVISION CHIEF DUGAL: Yeah,
20 staff's recommend --

21 ACTING COMMISSIONER SHEEHAN: I'll move staff's
22 recommendation.

23 ACTING COMMISSIONER LOMBARD: Second.

24 CHAIRPERSON GARAMENDI: So we have a motion on
25 the staff recommendation and a second.

1 Approved unanimously.

2 CHIEF COUNSEL RUMP: Okay. Thank you.

3 That one was Item 35.

4 The next one is Item 36, also a lease violation.

5 This is located in the Sacramento River again in the town

6 of Courtland.

7 Making the presentation will be Mary Hays of our

8 Land Management staff.

9 PUBLIC LAND MANAGER HAYS: Good afternoon, Mr.

10 Chairman and members of the Commission. My name is Mary

11 Hays, and I'm a public land manager with the Land

12 Management Division of the Commission.

13 I will be presenting information on Calendar Item

14 36. But before I begin, I'd like to bring to the

15 attention of the Commissioners and for the official record

16 that in the authorization section of this calendar item

17 the date in the authorization, 1C and 1G, is incorrect and

18 is changed from June 30th, 2008, to May 31st, 2008.

19 Thank you.

20 I'll briefly explain the events that brought this

21 action before the Commission.

22 In 1982 the Commission authorized a 15-year lease

23 for a commercial marina that included a floating dock, a

24 section of a storage cabin partially built over state

25 lands, and a floating harbor master office on the

1 Sacramento River near Courtland.

2 The commercial marina operation ended in 1997.
3 And in 1999, the Commission authorized a new ten-year
4 lease for a floating dock, gangway, and a section of the
5 storage cabin to be used for recreational purposes.

6 In February of this year, 2007, staff contacted
7 Ms. Taylor, the lessee, and advised her that her lease
8 would expire on November 30th, 2007. Ms. Taylor
9 subsequently submitted an application for a new lease for
10 recreational purposes and reported that the facilities had
11 not changed.

12 At this time I'd like to show some photographs of
13 the present improvements on the lease premises.

14 On September 12th, 2007, staff met with Ms.
15 Taylor and performed an inspection of the lease area.
16 Staff determined that there was a renovated floating home
17 moored to the dock with no propulsion or navigational
18 capabilities. And the storage cabin had been renovated to
19 a residence.

20 This is the residence on the top here on the
21 pilings, which was the storage cabin.

22 Now, the conversion of the improvements on a
23 lease premises to residential use is in violation of the
24 terms of the lease which prohibits facilities on state
25 lands to be used for residences.

1 Staff also became aware that Ms. Taylor had
2 placed the facilities along with her upland property on
3 the market for sale as a residence.

4 Staff informed Ms. Taylor that she was in default
5 of the terms of her lease and that she must remove the
6 floating home and the section of the cabin that encroaches
7 on state lands and cease marketing the property.

8 Additionally, the U.S. Army Corps of Engineers
9 also informed Ms. Taylor that she was in violation of her
10 Corps permit and Ms. Taylor must remove the floating home.

11 Staff met with Ms. Taylor and her counsel on
12 November 19th, 2007, where Ms. Taylor requested a time
13 extension on her lease so that she could develop a plan to
14 convert the facilities to a nonresidential use.

15 Staff is recommending that the Commission:

- 16 1) Deny the current application for a new lease;
17 2) Authorize execution of a holdover tenancy
18 agreement with the following conditions:

19 Six-month holdover tenancy beginning December
20 1st, 2007.

21 Remove the floating home by January 3rd, 2008, as
22 required by the U.S. Army Corps of Engineers.

23 The floating home and cabin cannot be occupied
24 during this time even for overnight stays.

25 Ms. Taylor must continue to pay rent according to

1 the terms of her lease.

2 Ms. Taylor must submit a new application and a
3 final plan for nonresidential use of the leased area no
4 later than May 31st, 2008.

5 Ms. Taylor shall not sell, attempt to sell,
6 sublease, assign, mortgage, or encumber any portion of
7 leased premises during the holdover tenancy period, and
8 shall immediately terminate any and all listings and
9 listing agreements.

10 The final condition of the tenancy agreement --
11 holdover agreement, if Ms. Taylor fails to comply with the
12 terms of the holdover agreement, the tenancy shall
13 immediately terminate and Ms. Taylor will be in trespass
14 and must restore the lease premises within 90 days of the
15 termination.

16 All improvements must be removed within 90 days
17 of the expiration of the holdover period unless other
18 agencies have in-water work restrictions. Then Ms. Taylor
19 would have until October 31st of 2008.

20 And, lastly, No. 3. Authorize the staff and the
21 Office of the Attorney General to take all steps necessary
22 to eject Ms. Taylor and to remove the improvements on the
23 lease premises if Ms. Taylor fails to comply with the
24 conditions of the holdover tenancy agreement or if she
25 fails to remove all improvements upon expiration of the

1 holdover period.

2 Staff is available to answer any questions you
3 may have.

4 That's the end of our presentation. Thank you.

5 CHAIRPERSON GARAMENDI: Is this another example
6 of a lessee that has failed to abide by the terms of the
7 lease?

8 PUBLIC LAND MANAGER HAYS: Yes.

9 CHAIRPERSON GARAMENDI: Apparently an
10 all-too-common practice.

11 Does Ms. Taylor or her representative want to
12 speak?

13 PUBLIC LAND MANAGER HAYS: I don't believe that
14 they are here, sir.

15 CHAIRPERSON GARAMENDI: Are they in agreement
16 with these provisions?

17 PUBLIC LAND MANAGER HAYS: Yes.

18 CHAIRPERSON GARAMENDI: So Ms. Taylor agrees to
19 these provisions?

20 PUBLIC LAND MANAGER HAYS: Yes.

21 CHAIRPERSON GARAMENDI: Okay.

22 PUBLIC LAND MANAGER HAYS: That's what we've been
23 told, yes.

24 CHAIRPERSON GARAMENDI: So we just heard from
25 Courtland residents that they understand that houseboats,

1 non-navigable houseboats are not allowed.

2 Okay. Questions?

3 ACTING COMMISSIONER SHEEHAN: She does understand
4 and agrees? Or are we going to be back in a couple
5 months?

6 PUBLIC LAND MANAGER HAYS: She has agreed through
7 her attorney.

8 CHAIRPERSON GARAMENDI: Through her attorney.

9 She can -- after removing these two noncompliant
10 structures -- what is that? A floating home. It's a
11 floating home. It's not a vessel.

12 PUBLIC LAND MANAGER HAYS: No, it's not a vessel.
13 It's a floating home.

14 And then the cabin in the -- that is on the
15 pilings.

16 PUBLIC LAND MANAGER HAYS: And only a portion of
17 the cabin is on the state property.

18 CHAIRPERSON GARAMENDI: Okay. So that portion on
19 the state property including the pilings?

20 PUBLIC LAND MANAGER HAYS: Yes.

21 CHAIRPERSON GARAMENDI: I assume the pilings must
22 be on state property? You're looking at the photo.

23 PUBLIC LAND MANAGER HAYS: Yes.

24 ACTING COMMISSIONER SHEEHAN: I'll move staff
25 recommendation.

1 CHAIRPERSON GARAMENDI: Okay. So we have a
2 motion on the staff recommendation.

3 ACTING COMMISSIONER LOMBARD: Second.

4 CHAIRPERSON GARAMENDI: We have a second.

5 We have a unanimous decision.

6 Thank you.

7 PUBLIC LAND MANAGER HAYS: Thank you.

8 CHAIRPERSON GARAMENDI: I think we have public

9 comment period as --

10 CHIEF COUNSEL RUMP: No, we have one more item on
11 the regular calendar. That's item 37.

12 CHAIRPERSON GARAMENDI: Do you have a resolution?

13 CHIEF COUNSEL RUMP: Pardon me. We've done 37,
14 so we're up to 38. And that's a resolution offered by the
15 Controller on supporting the United Nations Convention on
16 the Law of the Sea.

17 Basically this is a large movement afoot for
18 environmental protection for the marine life, prevention
19 of pollution, encouraging research and enforcement. So I
20 think you have a resolution in front of you. So if you
21 have any questions, we can answer that.

22 CHAIRPERSON GARAMENDI: Jim, do you have a
23 question or statement?

24 ACTING COMMISSIONER LOMBARD: (Shakes head.)

25 CHAIRPERSON GARAMENDI: Okay. We have the

1 resolution before us.

2 We should have done this 15 years ago.

3 (Laughter.)

4 ACTING COMMISSIONER SHEEHAN: No, more.

5 CHIEF COUNSEL RUMP: It's taken some time.

6 CHAIRPERSON GARAMENDI: It goes back to the
7 eighties?

8 ACTING COMMISSIONER SHEEHAN: Oh, yeah.

9 CHAIRPERSON GARAMENDI: I understand the Navy now
10 thinks it's a good idea.

11 CHIEF COUNSEL RUMP: That's what we understand as
12 well.

13 CHAIRPERSON GARAMENDI: Well, I'm for the Navy.

14 ACTING COMMISSIONER SHEEHAN: I'll move approval
15 of the resolution.

16 ACTING COMMISSIONER LOMBARD: Second.

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

19 We have a unanimous on the vote.

20 And now we can move to public comment.

21 Is there anyone here from the public?

22 I have two requests. One from Graham Forbes.

23 MR. FORBES: Yes.

24 CHAIRPERSON GARAMENDI: It's your turn.

25 MR. FORBES: Oh, boy. It's been a long one.

1 CHAIRPERSON GARAMENDI: Long but necessary.

2 MR. FORBES: Long but necessary.

3 Good afternoon, Chairman, members of the
4 Commission. My name's Graham Forbes. I'm with Unite Here
5 Local 30. And I'm here today from San Diego to address a
6 situation that is happening -- Port of San Diego's
7 jurisdiction on state tidelands.

8 And we are concerned that a project that they are
9 about to finally violate the public trust due to
10 approximately 80,000 square feet of residential serving
11 commercial space in the project, which is called Lane
12 Field.

13 And I spoke on Friday to Mr. Fossum about this
14 issue. And also our president had brought it up at the
15 previous State Lands meeting. And I just wanted to follow
16 up. And here we're actually just asking for a couple of
17 things more specifically.

18 First, we were hoping that you would hold in a
19 meeting in San Diego to address this project like you did
20 in Long Beach when there were questions about the
21 Queensway Bay Project.

22 And, second, we are asking that the State Lands
23 Commission direct the Executive Officer to write a letter
24 to the port asking them to delay hearing this project
25 until there is time to address these issues.

1 So those were a couple times --

2 CHAIRPERSON GARAMENDI: I assume you proposed the
3 project as presented.

4 MR. FORBES: Yes, as presented. And we feel this
5 is a -- this project is sort of the foregoing project to
6 the redevelopment of our coastline and our downtown
7 waterfront. So we are -- we want to make sure that it
8 meets public trust. And also just getting ahead of the
9 project before it actually moves forward we think is
10 appropriate.

11 CHAIRPERSON GARAMENDI: We will just -- Anne.

12 ACTING COMMISSIONER SHEEHAN: This is not what --
13 this is a different new project.

14 ASSISTANT CHIEF COUNSEL FOSSUM: It's a major --
15 and we haven't been following it all that closely,
16 frankly. Although we are -- we have questioned the port
17 about some aspects of it. It's called the Lane Field
18 Development. It's between the Broadway complex, Navy
19 properties and the existing Holiday Inn I believe down
20 there.

21 ACTING COMMISSIONER SHEEHAN: Right. Right there
22 on the coast.

23 MR. FORBES: Right next to the Holiday Inn.

24 ASSISTANT CHIEF COUNSEL FOSSUM: And the port has
25 been trying to -- has been putting out to bid and trying

1 to get developers to come in for a hotel complex in there.
2 And what Graham has informed me is that there's
3 substantial retail described in some aspects of the papers
4 that are being developed for that project. We haven't had
5 a chance to look at the project or whether or not they've
6 been to the Coastal Commission on a master plan amendment
7 for the port to see whether or not the Coastal Commission
8 has approved that yet. We just found out about this on
9 Friday as far as the retail element of it.

10 We have talked to the port before, because the
11 Woodfin people apparently are some of the partners now
12 going into the development. There's several hotels, I
13 believe two or three, and Woodfin are one of people that
14 are hoping to build in this block.

15 CHAIRPERSON GARAMENDI: It seemed appropriate for
16 our staff to continue to monitor, to come back to us at
17 the next meeting with an update on what the situation is,
18 and whether you are indeed engaged or will be -- would be
19 engaged. Okay?

20 Thank you very much.

21 MR. FORBES: Thank you.

22 Thank you very much.

23 Michael Warburton.

24 Did I get that even close to correct?

25 MR. WARBURTON: Warburton, yeah.

1 Before I introduce myself, I want to as a member
2 of the public commend the State Lands Commission --

3 CHAIRPERSON GARAMENDI: Turn your microphone on.
4 The white button, right to your right hand.

5 MR. WARBURTON: Oh. Wow. This is counting down
6 fast.

7 I was going to commend you on the response to the
8 oil spill.

9 I'm Executive Director of the Public Trust
10 Alliance. Our nonprofit organization works with
11 communities affected by development of public trust
12 assets. And we also try to work with trustees to help
13 them be better stewards of California's resources.

14 Most Californians are totally unaware that
15 resources you manage are legally held at trust for their
16 benefit and for the benefit of the future generations of
17 Californians. We help communities include public trust
18 arguments in their advocacy when it appears that public
19 resources are being unreasonably abused or inappropriately
20 privatized.

21 In all too many cases valuable public heritage is
22 treated like private property the businesses that directly
23 benefit from its use. These uses often make that heritage
24 unusable by other members of the public.

25 This Commission was established as a public

1 reaction to corrupt development of oil resources.

2 We have another public trust crisis right now
3 with both the development of California water and rampant
4 exploitation of tidelands and former tidelands within
5 urban boundaries.

6 Future Californians are going to need enough
7 water to drink and grow their food. And cities will need
8 public spaces for people to gather and recreate. And a
9 responsible division of resources should take place.

10 Unfortunately, the federal government has been an
11 active participant in some of the most irresponsible
12 conduct in recent times instead of being a meaningful
13 regulatory partner. Economic signals are usually very
14 useful for efficient allocation of resources. But they
15 have to be perceived within actual markets and not just
16 rigged giveaways.

17 A great deal was made of the deregulation of
18 energy in California. But funnily enough people in
19 organizations behaved just exactly as could be expected
20 and tremendous damage was done to public interests and
21 will be recovering from this for generations to come.

22 Our natural resource systems can't afford huge
23 experiments like this. The public trust, which you're
24 charged with implementing, can be a truly valuable
25 framework for adapting to changing circumstances and

1 provides guideposts for conduct inherent in the doctrine.

2 I mean I'm seeing that this is way too long.

3 I want to say that San Diego is totally out of
4 control. And the city has gotten to a point where the
5 city is establishing making it itself as an outlaw enclave
6 for developers. And the city attorney has written several
7 memos saying the adverse -- that statute of limitations on
8 ongoing frauds is tolled while the council is adversely
9 dominated by individuals with direct financial interests.

10 And in any case, the public trust is actually a
11 viable part of the laws of California and it's not just
12 cosmetic thing.

13 CHAIRPERSON GARAMENDI: We certainly agree with
14 that.

15 If you have an extensive statement, you're more
16 than welcome to write it, type it, or handwrite it and
17 send it on to us.

18 MR. WARBURTON: Okay. I'll do that because --

19 CHAIRPERSON GARAMENDI: It would be a value to us
20 and --

21 MR. WARBURTON: I was doing this while all this
22 other talk was going on.

23 But, you know, instead of just like a little boat
24 dock, we're talking about an entire city and huge
25 corruption.

1 CHAIRPERSON GARAMENDI: This Commission is well
2 aware of the many issues in San Diego.

3 We thank you very much. And we do urge you to
4 put it in writing. And next time we'll have the public
5 hearing right at the outset and maybe you won't have time
6 to write all that.

7 (Laughter.)

8 CHAIRPERSON GARAMENDI: But do send it to us.

9 I think that completes our work.

10 CHIEF COUNSEL RUMP: Yes, it does.

11 CHAIRPERSON GARAMENDI: Thank you all very much.

12 Meeting's adjourned.

13 (Thereupon the State Lands Commission
14 meeting adjourned at 3:48 p.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 10th day of December, 2007.

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JAMES F. PETERS, CSR, RPR

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