

COMMISSION MEETING
STATE OF CALIFORNIA
LANDS COMMISSION

STATE CAPITOL BUILDING
ROOM 4203
SACRAMENTO, CA

THURSDAY, APRIL 9, 2009

9:37 A.M.

LINDA KAY RIGEL, CSR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 13196

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

COMMISSIONERS

Mr. John Garamendi, Lieutenant Governor, Chair

Mr. John Chiang, State Controller, represented by
Ms. Marcy Jo Mandel

Mr. Michael C. Genest, Director of Finance, represented
by Mr. Thomas L. Sheehy

STAFF

Mr. Paul D. Thayer, Executive Officer

Mr. Curtis Fossum, Chief Counsel

Mr. Joe Rusconi, Attorney General's Office

Mr. Mario T. De Bernardo, Legislative Liaison, Staff
Counsel

Ms. Kimberly Lunetta, Executive Assistant

Ms. Barbara Dugal, Chief, Land Management Division

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

Mr. Greg Scott, Chief, Mineral Resources Management
Division

ALSO PRESENT

Mr. Richard Sipos, Wendel Rosen Black & Dean LLP

Mr. John Asuncion, Blue Whale Sailing School

Ms. Adrienne Klein, San Francisco Bay Conservation
and Development Commission

Mr. Tom Martinez, Santa Clara Valley Water District

Mr. Steven Kirby

Mr. Steve Coombs, Pacific Operators

Mr. Charles Cappel, Carone Petroleum

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1 P R O C E E D I N G S

2 --o0o--

3 CHAIR GARAMENDI: Good morning. I'm
4 Lieutenant Governor John Garamendi, Chair of the State
5 Lands Commission. I'm calling this meeting of the
6 State Lands Commission to order.

7 Let's see. Tom Sheehy is here representing
8 the Department of Finance. And --

9 DEPUTY STATE CONTROLLER MANDEL: Marcy Jo
10 Mandel for State Controller John Chiang.

11 CHAIR GARAMENDI: Thank you, Marcy.

12 For the benefit of those of you in the
13 audience, the State Lands Commission administers
14 properties owned by the State as well its mineral
15 interests. Today we will hear proposals concerning
16 some leases and the management of these public
17 properties.

18 The first item of business will be the
19 adoption of the minutes from the Commission's last
20 meeting. Tom, thank you for the motion.

21 DEPUTY DIRECTOR OF FINANCE SHEEHY:
22 Mr. Chairman. Thank you, Mr. Chairman. Having seen
23 the minutes, they look like they're in order; and I
24 would move approval of the minutes.

25 CHAIR GARAMENDI: Do we have a --

1 DEPUTY STATE CONTROLLER MANDEL: Second.

2 CHAIR GARAMENDI: And without objection, the
3 minutes from the last meeting are approved.

4 The next order of business is the Executive
5 Officer's report, as is our standard procedure. Paul
6 Thayer, please.

7 EXECUTIVE OFFICER THAYER: Good morning, and
8 thank you, Mr. Chair. I just have two items.

9 The first is just to affirm that we are now
10 scheduled to meet for our next meeting on June 1st in
11 southern California. We're still working on a location
12 for that.

13 And probably the largest item we'll be hearing
14 is the proposal to extend the lease for the Ellwood
15 Marine Terminal which serves Platform Holly. We'll be
16 hearing that in June, which is why we are meeting in
17 southern California.

18 The other item I wanted to go over with you is
19 the usual recounting of where we're at on some of these
20 enforcement actions, and there are some successes to
21 report.

22 First off is the South Bay Yacht Club. The
23 Commission, about a year and a half ago, required that
24 the club bring its facilities up to snuff. There's
25 been some repair and maintenance problems.

1 The yacht club needed to get approval from
2 BCDC and Fish and Game in order to remedy some of that
3 situation, particularly the weed removal, and finally
4 it's been able to accomplish all of that.

5 Staff inspected the site this week and found
6 that they've basically complied with everything the
7 Commission has asked of them.

8 I expect that -- that particular yacht club is
9 in a location where the maintenance is an issue.
10 There's not much of a current through there, and the
11 weeds, the -- they're not all weeds; some of them are
12 native vegetation -- grow up quickly.

13 And so we're going to continue to monitor that
14 club to make sure that they maintain the standards that
15 the Commission expects of them.

16 The second one, Jeanne Bird Taylor. This was
17 the applicant who wanted to renew her lease but had a
18 houseboat, or really a floating house, at her dock and
19 an onshore cabin that extended out over state
20 tidelands.

21 Since we've worked with her, she has sold off
22 the floating home, she's cut back the structure that
23 extended out over Public Trust lands, she has shortened
24 up the dock which had been over a hundred feet long and
25 was much greater than we'd normally issue a

1 recreational pier lease for so that it again complies
2 with the standards on that, and she's removed several
3 pilings that were associated with the longer dock.

4 So at this point, we think she is in
5 compliance, and on the Consent Calendar today is
6 approval of her lease renewal.

7 We are still having to follow up, though, with
8 the person who bought her floating home. And that
9 work's going to continue until we figure out either
10 he's going to move it to someplace that's not under our
11 jurisdiction and do something else with it, convert it
12 into an office or a marina or something like that.

13 CHAIR GARAMENDI: Are we in touch with the
14 individual who owns the home?

15 EXECUTIVE OFFICER THAYER: Yes.

16 CHAIR GARAMENDI: I checked it out this
17 morning; it's still there.

18 EXECUTIVE OFFICER THAYER: It's still there.
19 Was there anybody on board?

20 CHAIR GARAMENDI: No sign of human life.

21 (Laughter)

22 EXECUTIVE OFFICER THAYER: Thank you for
23 checking.

24 CHAIR GARAMENDI: We've all got to do our
25 piece.

1 (Laughter)

2 EXECUTIVE OFFICER THAYER: The next one is
3 Shawn Berrigan and Diane House, the Courtland Docks.
4 Again, the problem there has been poor repair for the
5 facilities, the docks, and the house that projected out
6 over Public Trust lands, and the lack of a bond for the
7 marina. That's a very small marina in Courtland.

8 They have cut back the house, so they're now
9 off of Public Trust lands. They've replaced all the
10 docks.

11 They still haven't brought their bond into
12 compliance with the lease, in part because they don't
13 have a lot of money and they're being sued by next-door
14 neighbors and this sort of thing, and so the bonding
15 companies are reluctant to proceed.

16 But we're working with them on this. And they
17 have reported that some of the lawsuits may be
18 dismissed in June due to an expiration of the appeal
19 process. So there is a way forward on this, and we'll
20 keep working on that until it's done.

21 But the physical changes have all been
22 accomplished.

23 On Holbert, again this was a family that
24 overbuilt their dock along the Sacramento River so it
25 was much taller than the Commission had approved.

1 There's been no resolution of that yet.

2 The office of Attorney General's filed a
3 cross-complaint, and we're going through the
4 preliminary interrogatories and other pretrial process
5 to bring that to court.

6 The Spirit of Sacramento is the old, I think,
7 ferry boat that is tied up on the Yolo County side of
8 the Sacramento River near downtown Sacramento. And
9 we're continuing to work with the AG's office to bring
10 that to court. There's nothing new on that or --
11 Curtis, do you have something on that?

12 CHIEF COUNSEL FOSSUM: Yes. I believe -- this
13 is Curtis Fossum, Chief Counsel. That complaint has
14 been filed in that against the owner of the boat.

15 EXECUTIVE OFFICER THAYER: That was just this
16 week?

17 CHIEF COUNSEL FOSSUM: Yes.

18 EXECUTIVE OFFICER THAYER: Great.

19 CHIEF COUNSEL FOSSUM: We filed two
20 complaints. The Attorney General's office filed two
21 complaints on the Commission's behalf, one against the
22 Spirit of Sacramento and the other the Coronado, I
23 believe. Is that correct?

24 EXECUTIVE OFFICER THAYER: San Diego.

25 CHIEF COUNSEL FOSSUM: San Diego actually was

1 moved.

2 EXECUTIVE OFFICER THAYER: Yeah.

3 Anyway, that brings us to the next two, which
4 are the two large boats that were parked down the Delta
5 semi-permanently without a lease. The -- one of them
6 has been moved to an area near Rio Vista where the City
7 has issued the vessel a lease. It's outside the
8 Commission's jurisdiction, so in essence that's out of
9 our -- it's in the City's hair now, not in ours at this
10 point.

11 For the other one, the AG has filed a
12 complaint for trespass against the ferry boat San
13 Diego.

14 And those are all -- I think all of the
15 violations that we're working on right now.

16 CHAIR GARAMENDI: Great.

17 EXECUTIVE OFFICER THAYER: Unless there's any
18 questions, that concludes the --

19 CHAIR GARAMENDI: Mr. Thayer, just a couple of
20 things.

21 First of all, it's extremely important that we
22 pursue these vigorously, and I thank you and your staff
23 for doing so. If we sit back and wait, the message
24 goes out that people can basically do anything they
25 want to do on State property, and that's not the case.

1 So the enforcement efforts that you're making
2 is very, very important. I thank you for doing so.

3 A couple of the things that we covered. One
4 is the cleanup of the river. In some cases, the owners
5 of these derelict vessels are gone, and we've been
6 pursuing an effort to use funds that are in the Boating
7 and Waterways Department to provide the State Lands
8 Commission with some money to go out and do it.

9 Right now, as I understand it, the counties
10 have access to that money; we don't. The counties are
11 reluctant in many cases to take action. And I'm
12 wondering where we are with all of that, what the
13 situation might be.

14 EXECUTIVE OFFICER THAYER: The program that
15 the Chair is alluding to is one in which the Department
16 of Boating and Waterways makes grants to local
17 governments upon their application for specific
18 projects for hazard removal.

19 There's about a half million dollars available
20 for that program. Usually most of the money is
21 subscribed to by the counties, but then the counties
22 end up not going forward with the project and money's
23 in essence returned to the State; it's left on the
24 table that, as you know, our staff has been working on
25 trying to secure for the State Lands Commission.

1 Mario might be able to report on this further,
2 but my understanding is that we drafted legislation to
3 deal with that particular issue and we're not able to
4 find an author.

5 We were able to -- Senator Wolk consented to
6 what we call our administrative penalty, abandoned
7 vessel legislation, and that has been introduced -- it
8 hasn't been heard yet -- in which the Commission would
9 be given a more expedited process for removal of these
10 vessels.

11 But we're still working on the monetary side
12 of things, and I think there's some discussions about
13 whether or not the monetary side can be amended into
14 Senator Wolk's legislation.

15 Mario, do I have that correct?

16 LEGISLATIVE LIAISON, STAFF COUNSEL DE
17 BERNARDO: Right. We -- I mean, I spoke to most --
18 should I get up?

19 Mario De Bernardo, legislative liaison for the
20 State Lands Commission. Good morning, Commissioners.

21 I made an effort to get an author for
22 legislation to authorize us to access the Department of
23 Boating and Waterways money, and I approached nearly
24 all of the legislators that represent districts in the
25 Delta. And at least as of now, it hasn't been picked

1 up by any author.

2 CHAIR GARAMENDI: Did you indicate that
3 Senator Wolk might entertain the notion of amending her
4 bill and picking up this opportunity for the authority
5 for the Department -- excuse me -- for the State Lands
6 Commission to access that money if it were to be
7 available?

8 LEGISLATIVE LIAISON, STAFF COUNSEL DE
9 BERNARDO: They are not considering that. They have
10 been contacted by several boating -- recreational
11 boating interests, and most of them are very protective
12 of the fund and have tried to encourage her office --

13 CHAIR GARAMENDI: They are really interested
14 in having derelicts in their path?

15 LEGISLATIVE LIAISON, STAFF COUNSEL DE

16 BERNARDO: I think --

17 CHAIR GARAMENDI: Submerged objects that they
18 can run onto?

19 LEGISLATIVE LIAISON, STAFF COUNSEL DE

20 BERNARDO: I don't think that that's their interest.
21 There's -- there is -- they're protective because this
22 fund has been attacked in, I guess, many ways and
23 directions; and there are several proposals out there.

24 So despite explaining that this is going to
25 help that effort, they are --

1 CHAIR GARAMENDI: Tom has assured us that
2 Finance is not interested in ripping it off, but --

3 DEPUTY DIRECTOR OF FINANCE SHEEHY: No, we
4 have our eyes on larger pots of money.

5 (Laughter)

6 CHAIR GARAMENDI: We understand.

7 The point here is that -- and we will make
8 this point -- if you could work with my office and
9 we'll have -- and I think Tom is interested in this
10 also -- see if we can have a conversation with Wolk and
11 the parties that are opposed to it.

12 Because I understand that this money is
13 allocated for the specific purpose of cleaning up the
14 waterways, and this would simply allow an additional
15 agency to do it anyway. And the money is already there
16 for that purpose.

17 LEGISLATIVE LIAISON, STAFF COUNSEL DE
18 BERNARDO: I'll continue pursuing that.

19 CHAIR GARAMENDI: Thank you.

20 Have we covered all of these issues? Stay
21 with the enforcement. It's very important. And I know
22 it's not easy, and I know we often find ourselves in
23 lawsuits. But we have got to do it. Thank you.

24 EXECUTIVE OFFICER THAYER: I agree.

25 CHAIR GARAMENDI: Paul?

1 EXECUTIVE OFFICER THAYER: And actually, to
2 follow along with that, of course, three of the items
3 we have before the Commission in regular session are
4 all enforcement sorts of actions, and we will continue
5 to follow that direction from the Commission.

6 The next item then, we're moving to the
7 Consent Calendar.

8 CHAIR GARAMENDI: Is there anybody in the
9 audience that would like to comment on the Consent
10 Calendar?

11 Are any of the Commission members interested
12 in removing anything from the Consent Calendar?

13 DEPUTY DIRECTOR OF FINANCE SHEEHY: Hearing
14 know requests --

15 DEPUTY STATE CONTROLLER MANDEL: I just have
16 one question before we do the Consent Calendar. And
17 it's just -- is that appropriate to ask the question at
18 this point?

19 CHAIR GARAMENDI: Sure.

20 DEPUTY STATE CONTROLLER MANDEL: It's just a
21 question for, I guess, the AG's representative on Item
22 35 on the Consent Calendar. And it's just a question
23 of whether we're required to approve this item.

24 DEPUTY ATTORNEY GENERAL RUSCONI:
25 Commissioner, your discretion has been limited in this

1 case and it's basically a ministerial act to approve
2 these.

3 And so yes, your discretion is to -- you don't
4 have discretion here.

5 DEPUTY STATE CONTROLLER MANDEL: Okay. Thank
6 you.

7 CHAIR GARAMENDI: Very good. Then the Consent
8 Calendar is before the Commission.

9 DEPUTY DIRECTOR OF FINANCE SHEEHY:
10 Mr. Chairman, seeing no request to remove anything, I
11 would move approval of the Consent Calendar.

12 DEPUTY STATE CONTROLLER MANDEL: Second.

13 CHAIR GARAMENDI: Without objection, Consent
14 Calendar is adopted.

15 Moving on. The next item is 39. Deals with
16 an unpermitted facility in Lake Tahoe. Paul?

17 EXECUTIVE OFFICER THAYER: Thank you,
18 Mr. Chair.

19 Making the presentation for staff this morning
20 will be Barbara Dugal, who's chief of our Land
21 Management Division.

22 DIVISION CHIEF DUGAL: Good morning,
23 Mr. Chairman and Members of the Commission. As Paul
24 mentioned, my name is Barbara Dugal, and I'm the chief
25 of the Land Management Division for the State Lands

1 Commission. And I'm here today to present you with
2 information regarding calendar item number 39.

3 This item is asking the Commission to consider
4 denying a lease application that was made by Jeffrey
5 Richmond Naess in the name of the Evelyn Richmond
6 Trust, et al for an existing pier and boatlift, a
7 boathouse with two boatlifts, a sundeck with railing
8 and stairs, and four mooring buoys, all located on
9 sovereign lands in Lake Tahoe and to consider
10 authorization for litigation for trespass and
11 ejectment.

12 And I'd like to just briefly go into some of
13 the history here which I think is important to explain
14 to the Commission and why we're where we're at today.

15 Based on the information from our files, the
16 pier in question, which is depicted up here on the
17 screen and also in the packet that you were just
18 handed, was built in early 1960s. However, it appears
19 that the boathouse, the boatlift, the sundeck with the
20 railing and the stairs, and the mooring buoys were
21 added at a later date.

22 But the applicants have not submitted any
23 information identifying the dates these additional
24 improvements were placed on the pier, and staff has
25 been unable to confirm any of those dates.

1 These improvements are located partially on
2 State-owned sovereign lands. Again, there is the
3 demarcation of 6223, which is the -- anything below low
4 water at Tahoe we issue a lease for.

5 And they're adjacent to two upland properties
6 that are now owned by the applicant located at 4812 and
7 4826 North Lake Boulevard near Carnelian Bay.

8 And while I'm talking, there's going to be
9 some photos which you also have copies of showing that,
10 the pier.

11 Commission staff first became aware of the
12 pier in 1969. A letter was sent in July of that year
13 to Burnell Richmond, the upland owner at that time,
14 advising him that the pier adjacent to his upland
15 property was located on State-Owned sovereign land and
16 that a lease from the Commission would be required.

17 A response was subsequently received from
18 Mr. Richmond, but an application was not submitted at
19 that time.

20 Commission staff sent another letter to
21 Mr. Richmond in August of 1969 advising him that the
22 pier was constructed without authorization from the
23 Commission and that the pier had been in trespass since
24 construction.

25 Subsequently, in January of 1970, Mr. Richmond

1 finally submitted a lease application for the pier.
2 The lease documents were prepared by the staff, and
3 they were sent to Mr. Richmond for execution.

4 However, he never executed the lease because
5 he disagreed with the proposed rent, which was before
6 the enactment of Public Resources Code 6503.5 which was
7 enacted in 1978, and to the claim by Placer County to
8 the ownership of the land intervening his upland
9 property.

10 Over the next several years, letters were sent
11 back and forth between the Commission staff and between
12 Mr. Richmond regarding the proposed lease terms.

13 Ultimately, the rent and the county issues
14 were resolved in July of 1978, and a new lease was sent
15 to Mr. Richmond, but the lease was never signed and
16 returned.

17 In 2002, the ownership in the upland
18 properties passed to Mr. Richmond's heirs on whose
19 behalf Jeffery Richmond-Naess is now acting.

20 In August of 2002, Commission staff contacted
21 Mr. Naess regarding the unauthorized pier and again
22 advised of the need for lease.

23 In June of 2003, a lease application was
24 submitted by Mr. Naess and other family members, and
25 the 2003 application was for the pier, a boatlift, a

1 boathouse with two additional boatlifts, and the four
2 mooring buoys.

3 In August of 2003, staff prepared a
4 recreational pier lease for the existing improvements,
5 and it was sent to the applicants for execution.

6 The lease documents were returned back to the
7 Commission in November of 2003 unsigned and with
8 significant modifications to the proposed lease, and
9 those changes were proposed by the applicants'
10 attorney.

11 The requested modifications to the
12 Commission's standard lease covenants included
13 objections to the following. And I'm going to briefly
14 go over these; but in your handout, you have letters of
15 the attorney and of the marked-up lease.

16 So those areas of the lease that are in
17 contention are:

18 Insurance.

19 The repair and maintenance clause.

20 The restoration of the lease permits clause.

21 Assignments.

22 And default and remedies.

23 Staff and the applicants' attorney were unable
24 to resolve the differences, and the negotiations
25 basically stalled.

1 In May of 2007, staff reinstated discussions
2 and -- but was informed by the applicants' attorney
3 that the applicants' position had not changed from that
4 stated back in 2003.

5 During that time, staff conducted another
6 review of the application, and we learned that there
7 was a sundeck with stairs and railing that had been
8 construction on top of the boathouse.

9 At that time, staff advised the applicants and
10 their attorney that the sundeck, railing, and staircase
11 would not be recommended by staff for approval.

12 The applicants were also advised that staff
13 would not be recommending approval of the four mooring
14 buoys because the lease application lacked verification
15 as to when the buoys were placed in Lake Tahoe and also
16 lacked any permits from the Corps of Engineers or the
17 Tahoe Regional Planning Agency.

18 Based on these facts I just outlined, staff
19 then prepared a new recreational pier lease which was
20 again sent to the applicants' attorneys. This new
21 lease included our standard language for our
22 recreational pier leases, and it also required removal
23 of the sundeck, the railing, and the staircase from the
24 boathouse.

25 More discussions were held between the

1 applicants' attorney and staff; and while some of the
2 minor issues were resolved, there was no agreement
3 reached on the core issues.

4 Based on the above and given the length of
5 time, over 40 years, that Commission staff has
6 attempted to get the pier under lease, staff recommends
7 that the Commission deny the application submitted on
8 June 13, 2003 by Jeffrey Richmond-Naess and other
9 family members; and ratify staff's determination that
10 the structures that have been placed on State land by
11 the Richmond Trust are in trespass on the State-owned
12 sovereign land; and then to also authorize Commission
13 staff and the Attorney General's office to take all
14 steps necessary which would include litigation to eject
15 the Richmond Trust from State property and to remove
16 all improvements from State sovereign land in Lake
17 Tahoe; and also to require the restoration of the
18 sovereign lands at that location to their condition
19 prior to placement into the Commission's satisfaction;
20 and then also to recover the Commission's damages and
21 costs.

22 We have got other staff here available for
23 questions. I don't know if there is a representative
24 here for the applicant or not.

25 CHAIR GARAMENDI: Thank you for that

1 presentation.

2 I would like to hear from -- I understand the
3 attorney representing the family is here? Richard
4 Sipos. You have requested to testify, and I'd
5 appreciate hearing from you.

6 MR. SIPOS: Good morning, Members of the
7 Commission. My name is Richard Sipos with the law firm
8 of Wendell Rosen, and I represent --

9 CHAIR GARAMENDI: Pull your microphone up.

10 MR. SIPOS: Thank you. My Name is Richard
11 Sipos, Wendell Rosen, and I represent the various
12 family members of the Richmond and Naess families that
13 own the property.

14 And I just wanted to start with a little bit
15 of background on this property and the pier lease.

16 The original property was purchased by Edmund
17 Richmond back in 1928, and the pier was constructed
18 shortly thereafter. Excuse me. The property was
19 acquired in 1928.

20 The actual pier that is the subject of this
21 hearing was constructed in 1958, and it was constructed
22 with a building permit from the county.

23 In approximately 1968 or '69, correspondence
24 began between the State Lands Commission and Vernal
25 Richmond, the then owner of the property. During the

1 course of that dialogue, which essentially went from
2 1969 through 1978, a series of different jurisdictional
3 approvals were necessary.

4 That was not mentioned by staff, but the first
5 impediment was that the State Lands Commission required
6 county approval, and the county would not give its
7 approval, Placer County, because there was an issue of
8 whether the county had a right of way in the shorefront
9 land.

10 So that stalled any approval of the pier lease
11 for a number of years.

12 Then approval was necessary from the Army
13 Corps of Engineers, and the Army Corps of Engineers
14 said that it was not going to issue any permits
15 until -- or in light of the fact that TRPA was being
16 formed in the 1970s.

17 By the mid 1970s, the negotiations continued
18 between the landowner and the State Lands Commission,
19 and a dispute arose over the imposition of rent.

20 And at a certain point, there was a Senate
21 Bill at issue raised by Vernal Richmond that indicated
22 that rent was not going to be charged for pier leases,
23 and Mr. Richmond at that time was not agreeing to pay
24 the rent.

25 Ultimately, the Public Resource Code was

1 enacted, and rents were not required.

2 All communication ceased between the parties
3 in 1978 and were not resumed until 2002 when Evelyn
4 Richmond, daughter-in-law of Vernal Richmond, made an
5 inquiry to the State Lands Commission regarding
6 construction of an adjacent pier and movement of some
7 buoys.

8 That then started the dialogue that
9 essentially brings us here today.

10 And staff is correct that a form lease was
11 submitted to the family. I made revisions to it and
12 submitted it back. The response from staff was that no
13 modifications would be made to the State Lands
14 Commission lease.

15 At that point, all communication ceased, and
16 from 2003 through 2007 there were no communications.

17 In 2007, I was recontacted by a State Lands
18 Commission representative and directed that individual
19 to our prior response.

20 Another year went by with no response from the
21 State Lands Commission.

22 However, in 2008, I was recontacted by another
23 representative of the State Lands Commission with a new
24 lease. Interestingly enough, the new lease
25 incorporated language I had suggested back in 2003 when

1 I had been told that no changes would be made to the
2 lease.

3 In late 2008, a series of negotiations
4 occurred between myself and representatives of the
5 State Lands Commission. We greatly narrowed the areas
6 in dispute down to essentially six core issues
7 involving the pier lease, and I would like to just
8 briefly address those issues.

9 And I had a question for the Commission, and
10 the question is whether the Commission has -- and if
11 they don't, I have a copy here for the members of my
12 June 6, 2009 letter which has the latest version of the
13 lease and has in red lines showing what the disputed
14 areas are.

15 CHAIR GARAMENDI: I think --

16 DEPUTY DIRECTOR OF FINANCE SHEEHY:
17 Mr. Chairman, before we get into the witness asking us
18 questions, I'd like us to have an opportunity to ask
19 the witness questions. I think you are sort of
20 procedurally out of order at this point.

21 CHAIR GARAMENDI: Do you want to ask a
22 question? Well, go ahead. Go ahead and finish, and
23 you can ask your questions after we ask questions.

24 MR. SIPOS: I really didn't have so much as a
25 question. I just wanted to make sure -- I was going to

1 walk through the lease just so the Commission
2 understands what the precise areas of dispute are. And
3 I have a copy of the latest version of the lease that
4 is at issue if that would help. But if not --

5 DEPUTY DIRECTOR OF FINANCE SHEEHY:
6 Mr. Chairman, Kim Lunetta on the State Lands Commission
7 staff described what I believe is the document this
8 gentleman is talking about.

9 Is that right, Paul.

10 EXECUTIVE OFFICER THAYER: That's it.

11 DEPUTY DIRECTOR OF FINANCE SHEEHY: So we do
12 have that.

13 MR. SIPOS: Okay. So --

14 CHAIR GARAMENDI: Make your points.

15 MR. SIPOS: The first issue has to do with
16 insurance, as noted, and that appears on page 4 of the
17 lease. And that precise section is D2E. And
18 essentially, the landowners have agreed to all of the
19 Commission's requested insurance coverages.

20 The only provision that I added was a
21 qualifier that the family would only have to get those
22 coverages providing they can get them.

23 My point was, if insurance is not available,
24 it would be improper to hold a party in breach of a
25 lease for coverage they can't obtain. So that --

1 CHAIR GARAMENDI: Excuse me, I have a question
2 of the State.

3 Do we routinely require insurance?

4 CHIEF COUNSEL FOSSUM: Yes, Mr. Chairman. In
5 addition, we have a list of over a dozen insurance
6 companies that are issuing lease --

7 CHAIR GARAMENDI: That's fine. That's not --
8 the point is --

9 CHIEF COUNSEL FOSSUM: Insurance at Lake
10 Tahoe, and it is a standard covenant.

11 CHAIR GARAMENDI: The point is it's standard
12 procedure. All right.

13 Next point that you'd like to make, sir.

14 MR. SIPOS: The next one had to do with
15 Section D4, which has to do with repair and
16 maintenance.

17 DEPUTY DIRECTOR OF FINANCE SHEEHY: I just
18 want to make sure I'm following. Is that still on the
19 same page?

20 MR. SIPOS: Same page, page 4.

21 DEPUTY DIRECTOR OF FINANCE SHEEHY: Thank you.

22 MR. SIPOS: And it is in the middle -- the
23 highlight or red lining at the top are not in dispute.
24 It's the center of that paragraph.

25 I added two provisions, one that the lessee be

1 afforded the opportunity to make the repairs, weather
2 permitting, and second providing they can obtain a
3 permit.

4 And I illustrated this in my cover letter.
5 This is a very real issue. There was a time period
6 where TRPA ceased all permits for piers at Lake Tahoe.

7 So if this, the Commission's form, stayed in
8 place, pier owners would be held in breach of a lease
9 over which they had no control based on a governmental
10 agency's refusal to issue permits.

11 And so those were the only qualifiers I added
12 to that section.

13 CHAIR GARAMENDI: A question once again of the
14 staff: Are these requirements standard in our lease at
15 Tahoe?

16 DIVISION CHIEF DUGAL: Yes.

17 CHAIR GARAMENDI: So these are standard
18 requirements for Tahoe leases?

19 DIVISION CHIEF DUGAL: Yes.

20 DEPUTY DIRECTOR OF FINANCE SHEEHY: I have a
21 follow-up question, Mr. Chairman.

22 Have we ever had a situation with our leases
23 around Lake Tahoe where the owner of such a structure
24 has applied for a permit to do necessary maintenance or
25 modifications necessary to the lease and been denied

1 and had action taken against them because they were
2 denied? Has that ever happened?

3 DIVISION CHIEF DUGAL: Not that I'm aware of,
4 no.

5 DEPUTY DIRECTOR OF FINANCE SHEEHY: Paul, are
6 you aware of that ever happening?

7 CHIEF COUNSEL FOSSUM: I think there has been
8 circumstances where other agencies have had either a
9 moratorium or other type of -- but the Commission, to
10 my knowledge, has never taken any action because of
11 that.

12 EXECUTIVE OFFICER THAYER: And Curtis, those
13 moratoriums were on construction of new piers,
14 generally?

15 CHIEF COUNSEL FOSSUM: Typically.

16 EXECUTIVE OFFICER THAYER: Not repair.

17 CHAIR GARAMENDI: Thank you.

18 Please continue, sir.

19 MR. SIPOS: The next provision is issues on
20 the same page, page 4. That's the restoration of lease
21 of premises.

22 I requested deletion of that provision, and
23 the reason was that the lessees do not believe that's
24 appropriate to require removal if the Commission
25 doesn't issue a new lease as contrasted with -- and I

1 offered to have a provision that if the lessee fails to
2 sign a lease, then that would be appropriate. But if
3 the Commission refuses to sign a lease, it would not be
4 appropriate to force the landowner to remove their pier
5 without compensation.

6 CHAIR GARAMENDI: Once again, Curtis?

7 CHIEF COUNSEL FOSSUM: Mr. Chairman, the pier
8 as -- we don't see it on this, but the diagram that you
9 had for the exhibit that shows the pier shows a pier
10 existing from the shoreline out to low water and
11 beyond.

12 If the Commission found that the entire pier
13 between high and low water, including the area between
14 high and low water, needed to be removed, then the
15 property owner would in fact need compensation for the
16 area between high and low water.

17 However, below low water, that is State
18 property, and the owner of the pier is there at the
19 will of the Commission and so there is no right for
20 them to maintain it and there is no obligation for the
21 Commission to extend or to even issue a lease for that
22 area; but if the Commission so desires, it certainly
23 can, upon application.

24 CHAIR GARAMENDI: Is this standard
25 procedure --

1 CHIEF COUNSEL FOSSUM: Absolutely.

2 CHAIR GARAMENDI: -- across the entire state?

3 CHIEF COUNSEL FOSSUM: Everywhere.

4 CHAIR GARAMENDI: Is this also procedure on
5 any leased property, public or private?

6 CHIEF COUNSEL FOSSUM: All property.

7 CHAIR GARAMENDI: Public and private?

8 CHIEF COUNSEL FOSSUM: I would expect all
9 private property we would similarly not give somebody
10 an automatic extension to always stay on the property.

11 A leasehold is a term -- for a term of years.
12 And at the end of that term, typically the owner of the
13 property has the authority to either take possession of
14 the improvements or have them removed.

15 CHAIR GARAMENDI: Thank you. Next point, sir.
16 Bev? Can I see you for a moment? Please continue.

17 MR. SIPOS: The next area is the
18 assignment/subletting provision on page 5, subsection D
19 9. And there I added two provisions: That, one, the
20 lessor's consent would not be necessary for an
21 assignment in the event the sale of the littoral land
22 occurred, which would include the pier as well; and,
23 second, that transfers between family members would not
24 require the consent of the Commission. And those
25 requested changes were not acceptable.

1 DEPUTY DIRECTOR OF FINANCE SHEEHY:

2 Mr. Thayer, could you please comment on that objection?

3 EXECUTIVE OFFICER THAYER: I'll ask Curtis to
4 do that.

5 CHIEF COUNSEL FOSSUM: The Commission, for as
6 long as I've been with the Commission, which is over 30
7 years, has always provided that any kind of an assign
8 would come before them before it would be transferred
9 to another owner.

10 The Commission typically has an opportunity at
11 that time to make sure that the new owner has the
12 proper type of property interest in the property, as
13 well as insurance, sometimes bonds and other things.

14 So it's very typical. In fact, I know of no
15 exceptions.

16 The law does provide that an assignment in
17 California could not be unreasonably withheld. And so
18 if the subsequent property owner has the wherewithal to
19 maintain the leased premises, then the Commission has
20 an obligation to assign that lease.

21 DEPUTY DIRECTOR OF FINANCE SHEEHY: Mr.
22 Fossum, isn't it -- my understanding is with these
23 matters, and really unrelated matters but that involve
24 leases with the State Lands Commission, isn't it
25 standard practice in any assignment of any lease,

1 whether it's for oil drilling or structures being built
2 on State tideland property, that we have the ability to
3 approve that assignment?

4 CHIEF COUNSEL FOSSUM: That's correct.

5 DEPUTY DIRECTOR OF FINANCE SHEEHY: And have
6 there been any exceptions to that so far that you are
7 aware of?

8 CHIEF COUNSEL FOSSUM: Not to my knowledge.

9 DEPUTY DIRECTOR OF FINANCE SHEEHY: Okay.

10 Thank you, Mr. Chairman.

11 CHAIR GARAMENDI: Please continue, sir.

12 MR. SIPOS: The next change appears on page 6,
13 and that is in subpart D11 which is the default remedy
14 section.

15 In that section, I added the requirement that
16 before a default occurs which would require removal of
17 the pier, the boathouse, or the defaulting material,
18 that is a reflection of the existing law in California;
19 and therefore, to the extent the Commission's form
20 lease would require essentially a death penalty remedy
21 based on a trivial default, the lease does not -- is
22 not in accordance with existing California law. The
23 default would need to be material.

24 I also changed the cure period from 30 to 60
25 days, again based on the realities up in Lake Tahoe

1 where there are stretches of periods where repair work
2 cannot be completed due to weather conditions.

3 And then lastly, in subpart B1, I included a
4 provision that a final judgment would be necessary to
5 require -- essentially a judgment of ejectment before
6 requiring removal of the pier.

7 This is essentially a restatement of the
8 earlier issue that we do not believe it's appropriate
9 to require lessees to agree in a lease that they have
10 to remove the pier and boathouse-type property without
11 just compensation.

12 Staff has already indicated to the Commission
13 different parts of the pier are within the zone that
14 would require compensation based on the Fogarty
15 decision, and there is no such language in this lease
16 that states that.

17 So that's the rationale behind those requested
18 changes.

19 CHAIR GARAMENDI: Curtis?

20 CHIEF COUNSEL FOSSUM: Yes.

21 On the last point, this lease does not cover
22 anything above the low water mark, and therefore that
23 portion of the property that belongs to the private
24 party, even though there's a public easement on it, is
25 not included within the leased premises.

1 And therefore, again, this does not affect
2 that part of the pier. They would be able to maintain
3 that pier regardless, unless the Commission found that
4 it was inconsistent with the easement; and if they did
5 that, then the Commission wouldn't be required to
6 compensate under the code sections and case law.

7 CHAIR GARAMENDI: Thank you. Next issue, sir.

8 MR. SIPOS: Terms of the pier and boathouse,
9 the last issue, is on page 7. It has to do with a new
10 provision that came out in this lease that was not in
11 prior leases that I'd been provided with.

12 And that would require the family to tear out
13 an existing stairwell that accesses the roof of the
14 boathouse along with railings around the perimeter of
15 the roof.

16 The governing code section, Section 6505.5,
17 specifically states what a recreational pier includes.
18 And the language in that code section states includes.
19 It does not state that -- language such as, quote, it
20 is limited to.

21 And if the Legislature had intended to
22 prohibit ancillary minor facilities such as a stairwell
23 or a safety rail or a flagpole to be prohibited under
24 the code section, it would have so stated.

25 I would further add that there are piers all

1 over Lake Tahoe which the Commission permits these
2 types of facilities, and therefore enforcement of this
3 provision would be arbitrary and capricious.

4 In some instances, the Commission charges
5 rent; in some instances, it does not. In our instance,
6 the Commission is attempting to force the family to
7 remove existing structures that have been around since
8 the inception of the pier.

9 CHAIR GARAMENDI: Was the staircase and
10 railing there since the inception of the pier?

11 MR. SIPOS: Not the exact one, because in 1987
12 the pier and boathouse were renovated with a permit
13 from the Army Corps of Engineers. There was previously
14 a stairwell, and there previously was a railing on the
15 roof. This is just a newer --

16 CHAIR GARAMENDI: Did you obtain a permit from
17 the State at that time of the renovation?

18 MR. SIPOS: The owners did not. They were not
19 aware of that.

20 DEPUTY DIRECTOR OF FINANCE SHEEHY: I have a
21 question.

22 CHAIR GARAMENDI: Were the owners aware that
23 there was a question as to whether there was a lease or
24 not?

25 MR. SIPOS: They were not. The -- all prior

1 negotiations were handled by Vernal Richmond, who
2 passed away in 1980. There was no communication
3 between the State Lands Commission from 1978 until
4 2002.

5 CHAIR GARAMENDI: So the family had no
6 knowledge that they did not have a lease?

7 MR. SIPOS: They had no knowledge that there
8 was a requirement of a lease or that there was or
9 wasn't a lease.

10 This came about in 2002 when the family
11 inquired about a neighboring -- actually a property on
12 a complaint about buoys being removed, and that then
13 triggered --

14 CHAIR GARAMENDI: On this subject?

15 EXECUTIVE OFFICER THAYER: Well, with respect
16 to the sundeck, that was something of course that the
17 Commission considered at length at several hearings
18 several years ago and decided that decks were not
19 consistent with Public Trust Doctrine because they in
20 essence were a residential use rather than something
21 associated with the water.

22 And so the Commission, at this point, is
23 willing to grandfather in prior approvals before it had
24 this policy discussion, but that it would not approve
25 new ones. And that's the policy the staff has carried

1 out since then.

2 Since this project was never approved by the
3 Commission previously, it's not considered to be
4 grandfathered; the Commission never had a chance to
5 review it. And so it's staff's position that for the
6 Commission to approve this now for the first time and
7 approve a deck would be inconsistent with the
8 Commission's deliberations on this a couple years ago.

9 DEPUTY DIRECTOR OF FINANCE SHEEHY: I just
10 have a follow-up question.

11 CHIEF COUNSEL FOSSUM: Yeah, couple --

12 DEPUTY DIRECTOR OF FINANCE SHEEHY: So this
13 body formally adopted a policy several years ago that
14 said it wasn't -- it was no longer going to approve
15 any, I guess, sundeck facilities as part of a lease?

16 EXECUTIVE OFFICER THAYER: We did not bring a
17 formal policy for approval, but instead indicated that
18 staff had concerns over approval, discussed this with
19 the Commission, and the Commission directed staff or
20 indicated to staff that it did not believe that these
21 decks were consistent with the Public Trust policy.
22 And so in essence, we have been applying that policy
23 since.

24 DEPUTY DIRECTOR OF FINANCE SHEEHY: I guess
25 this is the one issue that this -- our -- I'm sorry,

1 sir, what was your name again?

2 MR. SIPOS: Richard Sipos.

3 DEPUTY DIRECTOR OF FINANCE SHEEHY: This is
4 the one issue that Mr. Sipos has raised that I'm
5 particularly, I guess, empathetic to in that if we
6 don't have a formal policy, and there are other
7 structures on the lake, I can well understand how the
8 owners of this structure would feel that this was an
9 arbitrary decision.

10 It's one thing to have, I guess, a discussion
11 in committee, and I guess there's a record of it, a
12 transcript; but if it's not a formal policy, you know,
13 it seems like he's got a legitimate point with that
14 particular issue, although I'm extremely concerned
15 about other aspects of this that I'd like to follow up
16 on. Curtis?

17 CHIEF COUNSEL FOSSUM: It is within the
18 Commission's discretion to make those kinds of
19 decisions; this is basically the staff's recommendation
20 based upon prior direction.

21 But on a couple of other points, Mr. Sipos
22 indicated that they had a permit from the Corps of
23 Engineers. We had contacted both the Corps of
24 Engineers and Tahoe Regional Planning Authority, and
25 neither one of them have any permits on file for this

1 project for either the dock or the deck or the four
2 buoys that they have out there.

3 CHAIR GARAMENDI: Does the -- sir, do you have
4 evidence of a permit issued by any agency for the
5 sundeck?

6 MR. SIPOS: I've got a quote to your letter as
7 soon as I can find -- and I just have the summary of
8 it.

9 On December 1, 1986, the Army Corps of
10 Engineers wrote to the contractor for the Richmond and
11 Naess families doing the renovation and stated, quote:

12 An individual Department of Army permit
13 is not required for Mr. Richmond's
14 proposed pier repair. The Department of
15 the Army has issued a nationwide permit
16 for the repair, rehabilitation, or
17 replacement of any previously
18 authorized, currently serviceable
19 structure, provided the work does not
20 deviate from the plans of the original
21 structure. The proposed repair may be
22 performed under the authority of this
23 nationwide permit provided the work
24 meets the conditions on the attached
25 information sheet.

1 So the work was done pursuant to a national
2 permit issued by the Army Corps.

3 CHAIR GARAMENDI: And there were three caveats
4 in that letter, sir. Do you have evidence that those
5 caveats were met?

6 MR. SIPOS: I don't have the county building
7 permits, but it's my understanding that that was
8 obtained back when the pier was done.

9 CHAIR GARAMENDI: Let's move along here.

10 DEPUTY DIRECTOR OF FINANCE SHEEHY: I have a
11 question. I just want to clarify something.

12 Mr. Sipos, you had mentioned early in the
13 beginning of your presentation that -- I guess the
14 State first found out in 1969 that this structure was
15 there, there was no lease.

16 There were discussions, negotiations that went
17 back and forth between the State and the trustee of
18 this property.

19 And then you said something about legislation
20 was enacted. You said something about it was a state
21 senator introduced legislation dealing with this issue?

22 MR. SIPOS: There was the issue about whether
23 piers would be rent-free. And Mr. Richmond wrote a
24 letter referencing that in support of his objection to
25 the request to pay rent.

1 And I'll get the exact quote.

2 DEPUTY DIRECTOR OF FINANCE SHEEHY: That's
3 okay. My question is: Was there actual -- was there
4 an actual law enacted then that terminated the
5 necessity for either you, Mr. Sipos, or Commission
6 staff? Was there a law enacted that --

7 CHIEF COUNSEL FOSSUM: Commissioner Sheehy,
8 yes, there was.

9 In fact, there was an Attorney General's
10 opinion that came out, and the author of that Attorney
11 General's opinion just happens to be here today, Alan
12 Hagar.

13 That opinion says that under the existing law
14 it would be a violation of the Constitution as a gift
15 of public property to allow property owners to not be
16 charged rent for one of these piers.

17 The response was the Legislature came up with
18 a vehicle where they found that there was a public
19 benefit by having these piers out there, in that if
20 somebody in time of a crisis needed to land their boat
21 somewhere they would be able to then bring their vessel
22 up to one of these piers and get off at the property.

23 So that legislation did in fact pass; and
24 since that time, the Commission has not been charging
25 rent pursuant to that statement.

1 EXECUTIVE OFFICER THAYER: But the timing on
2 that was that that passed in the middle of these
3 negotiations. As a consequence, we revised a proposed
4 lease to delete the rent. But this happened
5 concurrently with these negotiations.

6 DEPUTY DIRECTOR OF FINANCE SHEEHY: Okay, I'm
7 trying to understand. So this legislation passed that
8 sunsetted the State's ability to collect rent?

9 EXECUTIVE OFFICER THAYER: On recreational
10 piers.

11 DEPUTY DIRECTOR OF FINANCE SHEEHY: On
12 recreational piers. And then that law changed again
13 later?

14 EXECUTIVE OFFICER THAYER: No, no. It has --
15 it's still in effect. And so for all rec piers even
16 today we are prohibited from charging rent.

17 DEPUTY DIRECTOR OF FINANCE SHEEHY: There's no
18 rent.

19 MR. SIPOS: There's no rent.

20 CHIEF COUNSEL FOSSUM: And the rent is for
21 properties that are single-family residences that --
22 and the facilities are for the docking of vessels,
23 basically.

24 And so the dock -- that's why a -- any other
25 kind of facility that's out there that's not associated

1 with the docking of vessels, we still charge rent. For
2 example, if there was a deck.

3 DEPUTY DIRECTOR OF FINANCE SHEEHY: All right.

4 So the dispute here with this particular
5 trust, because I see there's a number of trustees here,
6 wasn't about the rent, and it's all these other issues.

7 EXECUTIVE OFFICER THAYER: At the time in the
8 late 70s, there was a dispute back in -- but that was
9 all resolved.

10 DEPUTY DIRECTOR OF FINANCE SHEEHY: That was
11 resolved. Okay. I guess I just wanted to make a
12 couple comments and ask a couple of clarifying
13 questions.

14 I'm really troubled that this has been
15 bubbling around for -- well, that the State's known
16 about it for 40 years. It just seems that -- you know,
17 that's a really long time.

18 And I think, you know, from the perspective of
19 the landowners, they feel like, you know, hey, they
20 built this thing sometime between 1958 and 1961.
21 They've had 50 years of its use without having the
22 State meddling with it.

23 And I think -- you know, they've obviously
24 hired a law firm to represent them here, and anything
25 they can do to sort of prolong this, it's, you know,

1 it's really to their benefit. I'm just really troubled
2 that it's taken 40 years to get to this point.

3 And I find it really difficult to believe that
4 there was only one individual associated with this
5 property that knew about this. That just -- that, to
6 me, just seems to be very -- a lot to swallow.

7 Is there anything that we can do going forward
8 to prevent things like this being dragged out over
9 years and decades? Because it just seems like public
10 policy delayed is public policy not served. And this
11 has just gone on so long; it's very troubling.

12 EXECUTIVE OFFICER THAYER: We couldn't agree
13 more. And I think the Commission has seen over the
14 last couple of years more and more enforcement items
15 brought, and we're basically going back and looking in
16 the closets and trying to remedy these situations.

17 There are -- we don't have enough staff to
18 routinely go out there and patrol and determine whether
19 there are improvements out there that we don't know
20 about or don't have leases.

21 But we rely on other agencies like TRPA. In
22 fact, we're in discussions with TRPA about their new
23 shore zone ordinance to make sure that notification of
24 the State Lands Commission is part of the process.

25 But no matter, we obviously knew about this

1 from clear back in '68, '69. And it should have been
2 done more quickly, and it's kind of in the vein of
3 cleaning stuff up that we're here today.

4 DEPUTY DIRECTOR OF FINANCE SHEEHY: Okay.
5 Thank you, Mr. Thayer.

6 Thank you, Mr. Chairman.

7 CHAIR GARAMENDI: Do you have further
8 comments, sir?

9 MR. SIPOS: The only -- just two points.

10 One is, and I don't know if it was mentioned
11 in the initial record by staff, but the family
12 submitted a signed lease signed by every family member.
13 It just contained the changes that we had. This is not
14 an issue of the family being unwilling to sign a
15 reasonable lease.

16 The changes we requested are simply to make
17 the lease reasonable for lessees such as this family
18 which have been stewards of this property since 1928,
19 and this is not an issue of a family trying to prolong
20 or delay or refusing to sign. We have signed a lease
21 and submitted it.

22 It's in a dispute over certain narrow issues
23 where there is a legal disagreement. And the family
24 through me has also offered to meet with Commission
25 staff and use an independent neutral or to agree on a

1 stipulated set of facts to have an adjudication over
2 these legal issues of the reasonableness of some of
3 these terms. And the State Commission would have the
4 benefit of having essentially an approved lease and
5 would avoid these types of disputes in the future.

6 DEPUTY DIRECTOR OF FINANCE SHEEHY: Mr.
7 Chairman, it seems to me that the family's offer to get
8 a third party mediator involved would set a very
9 concerning precedent.

10 There is not a single provision in here that
11 we've discussed this morning that in fact is
12 precedent-setting. We've heard testimony from staff
13 that all of the -- in fact, all of the different
14 provisions that were either deleted or added to the
15 lease that was signed off on by the family are all
16 items that are standard practice with all State Lands
17 Commission leases, whether they're dealing with
18 structures on tidelands or whether they're dealing with
19 leases on issues of oil drilling off the state of
20 California or elsewhere.

21 So I would really be reluctant to see us enter
22 into any sort of process where we would entertain a
23 third party in this situation because we'd then be
24 setting a precedent for other landowners across the
25 state who have state tidelands issues.

1 If they don't like what our staff says in
2 interpreting and following the law, they could simply
3 say let's get a mediator and try to cut a different
4 deal.

5 So I would be very concerned about that,
6 Mr. Chairman.

7 CHAIR GARAMENDI: So would I.

8 Let me make a couple of points. First of all,
9 there has been no dispute that this is State land and
10 that this structure's on State land and a lease is
11 required. That's been known for, as near as I could
12 tell, forever.

13 Whether the State actually is enforcing that
14 requirement, we can probably find plenty of instances
15 where it did not, perhaps out of lack of knowledge that
16 there was a structure on State lands that didn't have
17 this.

18 Bottom line, a lease is required.

19 And if there is no lease here by this -- right
20 away, then this is going to come down. This has gone
21 on too long. The property owners have known for more
22 than 40 years that a lease was required.

23 What I see here is a lot of lawyering going on
24 to delay the imposition of a standard lease. Now that
25 lease has changed over time, as one might expect. But

1 there is a lease requirement today, and it's been there
2 for some while.

3 And if this family isn't willing to sign that
4 lease, then that structure is history. It's coming
5 out. I want to make that very clear.

6 We do not allow trespass on State lands, and
7 at the moment this is a trespass.

8 Now if you want to go to court on that, fine.
9 You can go to court. Or you can sign the lease as
10 presented and as is standard procedure.

11 There is an open question as to the sundeck,
12 and I think that needs to be resolved. Whether it
13 existed before or not is an open question, at least
14 from what I've heard here today.

15 And I would expect the owners of this
16 currently trespassing dock, boathouse, and sundeck to
17 present satisfactory information that the sundeck and
18 related staircases and railings are in fact permitted
19 and existed and that they could therefore come under
20 the grandfathering clause which is standard procedure
21 in the basin.

22 So if you want to do more lawyering, we'll see
23 you in court, and we expect to win.

24 If you want this thing permitted, then the
25 lease as presented and as standard procedure in the

1 Tahoe basin is what's before you. And I would advise
2 the family that they better be careful here because
3 this Commission is quite clear that we're going to
4 protect State interests, State property, and we're not
5 going to have leases -- we're not going to have
6 trespass.

7 Now, we have an action before us. And the
8 proposal before us is to authorize the Attorney General
9 and the staff of the Commission to proceed to remove
10 the trespass.

11 DEPUTY DIRECTOR OF FINANCE SHEEHY:

12 Mr. Chairman, I would move approval of the staff
13 recommendation on item number 39.

14 DEPUTY STATE CONTROLLER MANDEL: Second.

15 CHAIR GARAMENDI: Second.

16 DEPUTY STATE CONTROLLER MANDEL: I'll second.

17 CHAIR GARAMENDI: We have a motion before us.

18 And without objection, it's unanimous.

19 EXECUTIVE OFFICER THAYER: Thank you. Thank
20 you, Mr. Chair.

21 CHAIR GARAMENDI: Now we're going to take a
22 break from the normal processes. I notice that Anne
23 has arrived and is patiently waiting in the back of the
24 room.

25 Anne, could you come up for a moment? Have a

1 seat there if you like, Anne.

2 For those of you in the audience who are not
3 familiar with Anne, you would -- well, you just haven't
4 been around. Anybody that's been around the State
5 Lands Commission for a number of years -- and we're not
6 going to go into exactly how many years, unless Anne
7 wants to pick that up -- would know that Anne sat next
8 to the Chair, either on the right or the left depending
9 on the mood, for many, many years representing the
10 Department of Finance.

11 Tom now has that pleasure of filling in, and
12 you're doing a good job, though you're not quite there
13 yet.

14 (Laughter)

15 DEPUTY DIRECTOR OF FINANCE SHEEHY: Difficult
16 shoes to fill, Mr. Chairman.

17 CHAIR GARAMENDI: Indeed. Indeed they are,
18 and I know that I benefited from her wisdom as I
19 learned my -- you mentored me, and I appreciate that,
20 Anne.

21 We really -- we miss you, although Tom's doing
22 okay, he's coming along.

23 (Laughter)

24 CHAIR GARAMENDI: Nonetheless, we miss you.

25 And I know that CalSTRS is very, very well-represented

1 by you and that you're doing good work there,
2 protecting all the teachers, retired and soon-to-be
3 retired teachers in the state.

4 But we do miss you here, and we want you to
5 know how much we value the years that you've spent
6 here. Any of my Commissioners would like to comment
7 here; and then Paul, I think you have some comments.

8 DEPUTY DIRECTOR OF FINANCE SHEEHY: I really
9 can't add anything more to what the Lieutenant Governor
10 has said, and I hold you in the highest esteem.

11 I'm honored to have been appointed by the
12 Governor to replace you. And everybody that I meet,
13 they talk about you, and I say yes, I know, I'm not
14 Anne, I'm so sorry for you.

15 But I'm thrilled for you, and really value and
16 admire all of your service and especially on this body.

17 DEPUTY STATE CONTROLLER MANDEL: And Anne, I
18 personally have seen you on a few of my tax things, and
19 I'm here today for State Controller John Chiang and
20 actually also in replacement today for Cindy Aronberg
21 who I know you've worked with for years.

22 And they both have been consistent, tremendous
23 professionalism on this Board and the other places.
24 You're a great person. Cindy was sad that we were here
25 in Sacramento instead of Los Angeles; she's not

1 travelling right now.

2 But you're just a great, committed public
3 servant, and the Controller will see you on STRS, and I
4 hope to see you there.

5 EXECUTIVE OFFICER THAYER: And I want to just,
6 with the Chair's permission, add my own comment that
7 it's like most things that are worthwhile with both
8 pleasure and pain today.

9 The pleasure is to have you back at a
10 Commission meeting, and the pleasure is that you've
11 gotten such a wonderful job that caused you to move
12 away from us.

13 And the pain is that we miss you and wish you
14 were still with us.

15 And again, no criticism intended of Tom at
16 all. We appreciate his help as well.

17 And I want to talk about two things. The
18 first is the subject matter for which there was a lot
19 of controversy, but I recall vividly that you and I
20 shared a certain aspect of it, and that was the LNG
21 review where we went down and went to one of the
22 workshops that was held on this in Malibu.

23 And people were coming out of the doors. The
24 police were there. There were people getting up and
25 screaming, including the mayor of Malibu. You couldn't

1 quite understand an elected official could kind of
2 carry on the way he did.

3 But it was an amazing experience, Anne. And I
4 kind of pretended that we weren't from the State Lands
5 Commission, hid in the back while this was going on.
6 While Dwight and the rest of the Commission staff did a
7 great job up there managing all that.

8 But Anne was personally interested enough that
9 she not only went to that workshop, but on a trip back
10 to DC visited one of the LNG terminals that's in
11 operation back there or has been in operation back
12 there.

13 She obviously took her job very seriously, and
14 I think the role that she played on the Commission
15 showed that.

16 I would call her the great expediter because
17 the Commission would be in some debate about something
18 or other or there would be some angst with a project
19 applicant or opponent. And she was just very good at
20 crystallizing a particular issue through a particular
21 question or observation that really was fundamental in
22 moving the Commission forward.

23 She didn't necessarily -- she wasn't out there
24 pounding the table, we should do this or that. She had
25 her own views. But she wanted to make sure the

1 Commission did a good job.

2 And so these kinds of approaches that she took
3 to her work of trying to move the Commission forward so
4 that what it decided made sense and properly considered
5 all the information before it.

6 So I really appreciate that, and I wanted to
7 thank you for that.

8 We do have a plaque, and before we go up there
9 to present it -- I think we should do it up there on
10 the podium -- I did want to read it while I have a
11 microphone. And it says that:

12 Anne Sheehan, Chief Deputy Director of
13 the Department of Finance, California
14 State Lands Commission, 2005 to 2008 --
15 there are the years -- in recognition of
16 your service on the Commission to the
17 people of California and your
18 stewardship of the state's Public Trust
19 resources, presented by the Commission
20 and staff.

21 CHAIR GARAMENDI: Anne, do you want to make a
22 comment before you --

23 MS. SHEEHAN: Sure.

24 CHAIR GARAMENDI: Would you like to sit back
25 in your old seat?

1 (Laughter)

2 MS. SHEEHAN: I'll come up there.

3 CHAIR GARAMENDI: Come on up here, Anne.

4 Let's get a photograph first.

5 MS. SHEEHAN: I want to thank the staff and my
6 fellow former commissioners, my colleagues up here.

7 It was a wonderful experience on the State
8 Lands Commission, and the whole concept of the Public
9 Trust and what we, the Commissioners, are entrusted to
10 protect on behalf of the people of California was --
11 and Paul, you're right -- a responsibility we took very
12 seriously.

13 I so enjoyed my years on the Lands Commission.
14 As Tom knows, in that job, many times you spend a lot
15 of time on the financial issues, the Authority, the
16 treasurer's office, the controller.

17 And the issues that we struggled with here,
18 not only were they a change from those issues, but they
19 really, in terms of sort of the tangible evidence of
20 what the work that we were doing on the Commission, you
21 could really see.

22 And while we didn't always agree, I think the
23 spirit that we all took our jobs so seriously and the
24 responsibility of the work of this Commission really
25 was so important.

1 So I enjoyed it very much. I accept this
2 plaque, and I will say I miss you all. People ask
3 about, you know, how the new job is and I do love it
4 out there. But I do miss the issues and the people for
5 the about four years I spent in the job that Tom now
6 has.

7 And this, I have to say, was one of my most
8 favorite of all the 82 boards that we all serve on.

9 (Laughter)

10 MS. SHEEHAN: I do remember fondly the LNG
11 project, how many hours we spent in -- I think we
12 started at nine in the morning and finished almost
13 midnight in terms of that. I think that was the
14 record.

15 But we sat and listened to all of the input in
16 terms of that. So that was one my fondest memories of
17 sitting on this Commission.

18 But I thank you all for the work that you do
19 and the Commissioners for the work that they do, and I
20 thank you for this.

21 CHAIR GARAMENDI: And Anne, we thank you.

22 (Applause)

23 CHAIR GARAMENDI: Anne, thank you so very
24 much. And thank you for your four years of work and
25 your leadership and for mentoring me, and I guess Tom,

1 along the way.

2 We're going to go back to the schedule now.

3 The next item on the schedule is Item 40.

4 This is consideration of an action by the
5 Commission involving unpermitted docking facility at
6 Alviso Slough. Staff presentation, please.

7 EXECUTIVE OFFICER THAYER: Thank you,
8 Mr. Chair. Presenting the staff recommendation on this
9 is Mary Hays from the Land Management Division.

10 PUBLIC LAND MANAGER HAYS: Good morning,
11 Mr. Chairman and members of the Commission. My name is
12 Mary Hays and I'm a Public Land Manager in the Land
13 Management Division of the Commission. I'll be
14 presenting information on the calendar item number 40.

15 The action before you involves Blue Whale
16 Sailing School, Incorporated and its various docking
17 facilities and boats that have been placed and
18 currently occupy State-owned land in the Simonds Canal
19 and Alviso Slough without a lease.

20 It's the staff's understanding that the Blue
21 Whale Sailing School purchased two upland parcels
22 adjacent to Simonds Canal and Alviso Slough in June of
23 2000.

24 An additional upland parcel is situated
25 between those owned by the Blue Whale Sailing School

1 and is also adjacent to the canal and Alviso Slough.

2 The county assessor's records indicate that
3 parcel is owned by the Santa Clara Valley Water
4 District. A significant portion of the Blue Whale
5 operations is also located waterward of this parcel.

6 The Commissioners have an aerial photograph in
7 your packet showing the location of the parcel to the
8 waterway, and it's also shown on the screen.

9 As you can see, the yellow-shaded parcels are
10 those owned by Blue Whale Sailing School, and the one
11 in between is the water district parcel.

12 This exhibit was prepared by the boundary
13 staff of the Commission, and the red line indicates the
14 approximate boundary of the townsite of Alviso based on
15 the 1862 survey and map which were conducted pursuant
16 to the legislation conveying the townsite from the
17 State to the town of Alviso.

18 The Blue Whale Sailing School docking
19 facilities and boats are shown waterward of the red
20 line.

21 I'll briefly explain the events that brought
22 this action before the Commission.

23 Staff first became aware that the Blue Whale
24 Sailing School was docking sailboats in Simonds Canal
25 and Alviso Slough while on a site inspection in Alviso

1 in 2003.

2 Between 2003 and 2007, staff sent letters and
3 had numerous conversations with Blue Whale
4 representatives advising them that the Blue Whale
5 Sailing School was occupying State-owned lands without
6 authorization and that a lease was required to continue
7 their operations.

8 In October of 2007, Blue Whale Sailing School
9 submitted an incomplete application for a lease. That
10 application was deemed incomplete because it lacked
11 adequate information to process the application and did
12 not include the statutory processing fees and minimum
13 expense deposit.

14 Between November of 2007 and March of 2008,
15 staff sent several letters requesting the information
16 and fees necessary to continue processing the
17 application.

18 Blue Whale did not respond.

19 Between March and July of 2008, staff sent
20 Blue Whale Sailing School three more letters informing
21 them that the application had been effectively
22 withdrawn due to the lack of response and giving the
23 Blue Whale Sailing School several additional
24 opportunities to work with Commission staff to bring
25 the facilities under lease in order to avoid staff

1 making a recommendation to the Commission to institute
2 a trespass and ejectment action.

3 To date, staff has had no direct response to
4 these letters.

5 In December of 2008, the Blue Whale Sailing
6 School sent an e-mail to staff requesting a lease for
7 several areas of land lying within Simonds Canal,
8 Alviso Slough, and the Guadalupe River, which included
9 areas occupied by the Blue Whale Sailing School and
10 areas to the south which are under lease by the
11 Commission to the South Bay Yacht Club.

12 However, no application was received from Blue
13 Whale.

14 Staff responded to the December e-mail via a
15 letter in February of 2009 with a final request to Blue
16 Whale Sailing School to submit an application for the
17 lands directly adjacent to the Blue Whale Sailing
18 School occupied by the docking facilities and boats
19 with a deadline of March 1st, 2009 to comply.

20 The Blue Whale Sailing School has not
21 responded to date.

22 On April 6th of this week, staff performed a
23 site visit in the area, and the Blue Whale Sailing
24 School docking facilities have been expanded further
25 into Simonds Canal and Alviso Slough from staff's

1 previous site visit in March of 2008.

2 I will now show you several photographs taken
3 on April 6th of the present docking facilities on
4 State-owned lands. These photos are also in your
5 packet.

6 This is showing -- we'll just go through these
7 pretty quickly. This is some floating docks that are
8 within Simonds Canal and Alviso Slough.

9 This is looking south. You see most of the --
10 some of the upland and adjacent levee.

11 Similar picture showing the levee.

12 This is looking down from the top of the
13 levee.

14 There is a gangway and series of -- I believe
15 there is four, four floats.

16 CHAIR GARAMENDI: Excuse me. Just a question.
17 Could you back up to that previous one? Is that fill
18 material on the State land?

19 PUBLIC LAND MANAGER HAYS: A portion of that
20 we believe is on State lands, and it is fill, yeah.

21 CHAIR GARAMENDI: If it's on State lands, it's
22 also on wetlands. I'll just ask a question of the
23 applicants when the time comes.

24 PUBLIC LAND MANAGER HAYS: This is in Alviso.
25 It's the Catherine Street Dock area that was placed

1 many years ago. But there has been additional fill
2 placed on it.

3 CHIEF COUNSEL FOSSUM: Some of the fill
4 predates Mr. Asuncion's acquisition of the adjacent
5 properties, but he's occupying it at present.

6 PUBLIC LAND MANAGER HAYS: Next slide.

7 And this shows down at the toe of the levee,
8 the area where there's been weed removal.

9 Next slide.

10 This is looking north from the top of the
11 levee.

12 Next slide.

13 Just a larger photo there.

14 Next slide.

15 In conclusion, because no response has been
16 received from the Blue Whale Sailing School to our
17 latest request, and after many years and attempts to
18 bring the Blue Whale Sailing School under lease, staff
19 is recommending that the Commission:

20 One, ratify staff's determination that
21 the structures placed on State-owned
22 sovereign lands by the Blue Whale
23 Sailing School, Incorporated are in
24 trespass on State lands located in
25 Simonds Canal and Alviso Slough;

1 And two, authorize Commission staff and
2 the Office of the Attorney General to
3 take all steps necessary, including
4 litigation, to eject the Blue Whale
5 Sailing School, Incorporated from the
6 state's property;
7 to remove all docking facilities and
8 other improvements from State-owned
9 lands in Simonds Canal and Alviso
10 Slough;
11 to require restoration of State-owned
12 lands at these locations to their
13 condition prior to placement of the
14 structures to the Commission's
15 satisfaction;
16 and finally, to recover the Commission's
17 damages and costs.

18 Staff is available to answer any of your
19 questions.

20 In addition, we have a representative from the
21 San Francisco Bay Conservation and Development
22 Commission.

23 If you have any permitting questions, we have
24 a representative here to answer those.

25 This concludes my presentation. Thank you.

1 CHAIR GARAMENDI: Tom, you had a question of
2 staff?

3 DEPUTY DIRECTOR OF FINANCE SHEEHY: Thank you,
4 Mr. Chairman.

5 Now, this is not a residential structure;
6 there would be rent collected here, correct?

7 EXECUTIVE OFFICER THAYER: Yes, there would.

8 DEPUTY DIRECTOR OF FINANCE SHEEHY: And so
9 therefore, we're -- it looks like we're compelled to
10 take legal action. Are we going to be able to go after
11 all the back rent back to 2003?

12 EXECUTIVE OFFICER THAYER: I think so.

13 DEPUTY DIRECTOR OF FINANCE SHEEHY: Five years
14 plus interest, and recover our costs and so on and so
15 forth.

16 And is the Blue Whale Sailing School still in
17 business?

18 EXECUTIVE OFFICER THAYER: Yes.

19 DEPUTY DIRECTOR OF FINANCE SHEEHY: Okay.
20 Thank you.

21 CHAIR GARAMENDI: Very good.

22 There are a couple of people that would like
23 to speak on this issue. I believe there is -- well, I
24 cannot make out the writing, but apparently there is
25 somebody out there that would like to represent the

1 Blue Whale Sailing School.

2 Would you please come forward?

3 EXECUTIVE OFFICER THAYER: This is Mr. John
4 Asuncion, who has appeared before the Commission
5 before.

6 MR. ASUNCION: Yes, good morning, Commission.
7 And I'm John Asuncion, Blue Whale Sailing School.

8 CHAIR GARAMENDI: And you're the owner?

9 MR. ASUNCION: I'm the president and founder
10 of the foundation.

11 We purchased this piece of property from Kay
12 Bell, Bell Marine. And when we went through our title
13 search and documents they represented that we had tidal
14 land.

15 And what we found out -- we've not had a
16 chance to find Mr. Bell for some years now. And we
17 have a law firm that represents us on that matter. And
18 that's Rocky Ortega.

19 And Rocky couldn't be here today, Mr. Ortega,
20 because he has a court case. But what the Commission
21 has stated on this map, and it says on our deed -- if I
22 could walk over to that map.

23 CHAIR GARAMENDI: Sure.

24 MR. ASUNCION: You can see there is an
25 imaginary line here.

1 DEPUTY DIRECTOR OF FINANCE SHEEHY: I'm sorry,
2 Mr. Chair -- may I? I want to see what Mr. Asuncion is
3 showing us, but it's blocked by the desk so I'm going
4 to come around here.

5 CHIEF COUNSEL FOSSUM: Very faint. The line
6 that he's referring to is very faint on the depiction
7 on the photograph. It's basically what the assessor
8 shows as the parcel out there.

9 CHAIR GARAMENDI: Very good.

10 MR. ASUNCION: Okay. And this is number 19
11 and 20. There is two lots. The foundation -- we
12 purchased the property. That's what we purchased. And
13 we purchased this piece of property. And we have an
14 easement up our driveway.

15 The Catherine Street Dock was purchased --
16 actually, was built by Mr. Bean. Mr. Bean told -- sold
17 it to Mr. Bell and then Mr. Bell represented himself
18 and sold it to us, and we have the commerce rights for
19 the Catherine Street Landing.

20 All of this landing was built by Mr. Bean.

21 And then there was a lawsuit with the City,
22 and the City in turn lost in that lawsuit, and Mr. Bean
23 had the title rights of that.

24 So when we purchased this property, we were
25 again told that we had the rights to the commerce and

1 everything else.

2 We did not put in the concrete. That was
3 there. We have photographs and documentation. All
4 these pilings were put in before we got there.

5 The particular docks that we have -- this
6 particular boat here, it's a 42-foot sports trawler,
7 was abandoned by the South Bay Yacht Club. It sat on
8 our property. And then this last year we removed it at
9 no cost to the State because it was a public nuisance.

10 The property that is under -- you know, the
11 State is complaining on now is we're using this
12 property. We're using the property to use our floating
13 docks, number one, is to go out into the Bay -- I have
14 photographs and documents -- that we move these docks
15 around and pick up the garbage that we have been
16 picking up since the year 2000.

17 We're up to 71 tons of garbage that we removed
18 from the Bay at no cost to the taxpayers of California.

19 The State Lands Commission, this office, is
20 correct that we didn't respond to this letter -- the
21 last letter. And there's a reason because of that.

22 I was attacked and beaten on July 29 of 2008,
23 by my neighbors, the South Bay Yacht Club, because I
24 blew the whistle on them. I was left for dead right
25 here on the school's property, and the man that

1 attacked me was Michael O'Keefe.

2 We have a lawsuit pending with him. I'm still
3 under doctor's care. I can remember things at times,
4 and my speech goes away and it comes back. That's no
5 excuse for not responding to the State.

6 Our attorney, Rocky Ortega, that's
7 representing us at this time is in a large court case,
8 and he couldn't come today. But I reassure the
9 Commission that we will apply for a lease to come into
10 compliance.

11 I set the precedence of going after the South
12 Bay Yacht Club, and I knew that I would put my neck out
13 to get it chopped off because nobody was doing their
14 job to look at my neighbors. You know, they are the
15 ones that threw the first stone, and this has just been
16 a knock-down, drag-out with this lawsuit we have
17 pending.

18 And I'm glad I'm here in front of the
19 Commission. And it took the Commission, Mr. Paul
20 Thayer's office, almost five years to finally get a
21 survey -- their survey office out there to do the
22 survey. We asked for that.

23 I was working with Mr. Plummer, I haven't seen
24 David Plummer for some years since he retired. And
25 he's here in the audience. He worked for State Lands.

1 He visited our site and worked with us.

2 I've worked with Allen Brooks of BCDC, telling
3 him the cleanups we're going to do. The fill that
4 everybody might accuse me of filling is not my fill.
5 That's the Santa Clara Valley Water District's when
6 they did the restoration on the levee.

7 So, you know, there's some really big strong
8 allegations here, and I feel it's unjust.

9 But bottom line is, now the State has come
10 forward and had it surveyed, and we can apply for a
11 lease.

12 CHAIR GARAMENDI: Thank you for that.

13 Does BCDC want to comment here?

14 MS. KLEIN: Good morning, Commissioners. My
15 name is Adrienne Klein; I'm the chief of enforcement
16 for the San Francisco Bay Conservation and Development
17 Commission.

18 If you have questions of us, I'm happy to
19 answer them; otherwise, I can give you a general
20 comment on the status of our investigation.

21 CHAIR GARAMENDI: Why don't you tell us about
22 your investigation.

23 MS. KLEIN: I will go ahead and do that.

24 The -- a BCDC permit is required under the
25 McAteer-Petris Act to place fill or extract materials

1 with a value of \$20 or more and to undertake a
2 substantial change in use of any land or water within
3 our jurisdiction.

4 The Commission's jurisdiction comprises the
5 tidal portion of the San Francisco Bay, including
6 Alviso Slough, and -- excuse me, up to the limit of
7 marsh vegetation, below five feet above mean sea level,
8 and the shore and land which is a section of land
9 adjacent to and upland of the Bay for a width of a
10 hundred feet.

11 The staff believes that Mr. Asuncion has
12 placed gravel, compost, five boat docks, a gangway, a
13 gate, and other materials in our jurisdiction; that
14 this work requires a permit; and that no permit has
15 been obtained.

16 And we are conducting investigations, and we
17 will bring the matter to our commission for remedial
18 action.

19 DEPUTY DIRECTOR OF FINANCE SHEEHY: Thank you.

20 So this question would be addressed to you, or
21 I can ask the Commission staff. I mean, so there is a
22 dispute here as to whether or not the Blue Whale
23 Sailing School has engaged in adding fill?

24 I mean, isn't there some sort of definitive
25 way that that could be determined? I mean, we have

1 satellite photography of these parcels prior to 2003,
2 and we've got -- Can't we -- I mean, isn't this a
3 rather straightforward matter to determine whether or
4 not fill has been added since Mr. Asuncion was there?

5 CHIEF COUNSEL FOSSUM: Yes, Mr. Sheehy. I
6 think that what I indicated earlier was that there has
7 been fill in the past, prior to Mr. Asuncion's
8 acquisition in the area.

9 But that there has been -- we have testimony
10 or evidence from a number of witnesses and photographic
11 evidence to indicate that he has added additional
12 material since his acquisition.

13 EXECUTIVE OFFICER THAYER: And while that's a
14 significant issue and one that we'll follow up on,
15 there is little dispute about the docks that have been
16 located there. And that's really at the heart of our
17 concern, that these docks are there with no lease and
18 have been there for several years.

19 DEPUTY DIRECTOR OF FINANCE SHEEHY: I'm going
20 to just repeat what I said before. I mean, this has
21 been an ongoing issue for over five years.

22 And it's great to hear Mr. Asuncion say he now
23 agrees that we need to get this taken care of. But I
24 would just say again, this is one of those issues that
25 can't drag on and on and on.

1 And this facility is there without a lease, on
2 State property, and we either need to get it leased or
3 we need to get rid of it.

4 EXECUTIVE OFFICER THAYER: I agree.

5 CHAIR GARAMENDI: Thank you very much for your
6 testimony which I didn't hear.

7 (Laughter)

8 CHAIR GARAMENDI: Thank you.

9 Mr. Asuncion, any further comment?

10 MR. ASUNCION: Yes. The material that was
11 brought in -- I'm going to have to backtrack here.

12 When Mr. Bean built the facility, the
13 Catherine Street Dock, and then it was signed over to
14 Mr. Bell, Bell Marine, and when we purchased it, the
15 sublessors that Mr. Bell leased his property to did
16 some dredging, did some alterations of the size of the
17 levee. Okay.

18 That wasn't us. Okay.

19 And Mr. Bell paid a fine. He reassured us
20 when we purchased it, showed us documents that he paid
21 over a \$6,000 fine to BCDC.

22 And I said now, when we take over this
23 facility -- it was a dump site, okay? Derelict boats,
24 over 30 boats, safes, cars, everything else. I worked
25 with the office of Fish and Game, Lieutenant Fox out of

1 the Carmel office, and I had Allen Brooks of BCDC.

2 He says, you can remove this concrete that's
3 been dumped there years past before I ever came along.
4 He says you only can do it by hand.

5 So brought my crew in, we cleaned it out,
6 hauled it away. Took us about five years to clean the
7 site up. And you can see how clean and pristine the
8 site is now.

9 This picture, a dump site. That everybody
10 dumped their boats, dumped their cars. There was no
11 gate down at the private driveway and everybody drove
12 up to the landing and just dumped it.

13 So I stepped up to the plate -- I'm not trying
14 to, you know, make any excuses here, anything like
15 this. I am here to take any punishment I need to take.
16 You know, I've taken a lot of punishment in the last
17 couple of years, but that's here or there.

18 The most important thing is we are the
19 stewards of the South Bay of cleaning up 71 tons of
20 garbage out of the Bay at no cost to the State. And
21 we're the caretakers.

22 And I feel -- and I shared with the Office of
23 State Lands and sent them an e-mail just before the
24 first of the year. I want to sign a lease. And we
25 want to come into compliance, but on the properties

1 that we want to lease.

2 I'm not going to take a piece of property that
3 is in blight condition and a public nuisance. And
4 these properties that we want to lease, and now out in
5 front of the Catherine Street Landing, it's beautiful.
6 It's clean, it's neat, it's pristine. And we serve the
7 general public.

8 Because there was no public access next door
9 at the South Bay Yacht Club, so we provided public
10 access.

11 And I have stated that to this office before.
12 The State -- you know, to all the major universities in
13 the South Bay, the general public, at no cost.

14 This last December and January, we had two of
15 the largest construction companies use our site and
16 that was PG&E and Underground Construction to refit all
17 the pilings out in the Bay that carries the electrical
18 lines and towers. Okay.

19 We supplied the expertise to mark the channel
20 for them, and they were kind enough to make a small
21 donation of \$1,800 and paid for the garbage that we
22 hauled away. And then they stepped up to the plate
23 again and provided Dumpsters for us and cranes.

24 So, you know, I feel the most important thing
25 is, you know, we will come in compliance.

1 But again, it's taken the Office of State
2 Lands to get their survey company -- took them five
3 years to get down there. Because I want to know
4 exactly what I'm getting. I don't ever want to get in
5 a position like I've gotten myself into now when we
6 purchased the property from Bell Marine and we have
7 legal action against him because he didn't disclose all
8 the problems.

9 Adrienne Klein, the first week that I ever met
10 this young lady, she stated to me: Mr. Asuncion, you
11 should not buy this piece of property. And she was
12 correct.

13 But as, same token, we bought it. I thought
14 that I was doing something good for the community and
15 for the general public as a whole.

16 Thank you for your time.

17 CHAIR GARAMENDI: Let's see if we can move
18 this one along. You certainly have cleaned it up,
19 there's no doubt.

20 We also know of your work to the -- in the
21 neighborhood and the efforts that you've made there.
22 You've been before this Commission to talk about the
23 problems that existed with your neighbor. And we
24 appreciate that.

25 I'm of a mind to say, let's get -- you want

1 this lease?

2 MR. ASUNCION: Yes.

3 CHAIR GARAMENDI: We want this lease. I don't
4 know that there are issues that would prevent us from
5 completing a lease with you. If there are, we should
6 hear of those issues.

7 If there -- it seems to me what I'm hearing
8 here is, we want you to get your lease, you want to
9 have a lease. If there is some problem in that, then
10 we need to know about it.

11 With regard to the ownership, you may have an
12 issue with the title company, and you may want to
13 pursue that.

14 MR. ASUNCION: We're doing that.

15 CHAIR GARAMENDI: I suspect so.

16 DEPUTY DIRECTOR OF FINANCE SHEEHY: Question
17 of staff. Pursuant to your -- I agree with the
18 Lieutenant Governor, and I'd just like to know from Mr.
19 Thayer or Mr. Fossum: What is a reasonable amount of
20 time going forward from today in order for Mr. Asuncion
21 and Blue Whale Sailing School and the State Lands
22 Commission to execute a lease and put this matter
23 behind us? What's a reasonable period of time?

24 EXECUTIVE OFFICER THAYER: I would --

25 DEPUTY DIRECTOR OF FINANCE SHEEHY: 30 days,

1 60 days, 90 days? I mean, what is it, Paul?

2 EXECUTIVE OFFICER THAYER: Mr. Asuncion needs
3 to apply for a lease and provide us with the funds. We
4 would process it as quickly as possible.

5 I'm not sure if we could get it back before
6 the Commission on June 1st; but if he would get it to us
7 next week, we'd make every effort to do that. And if
8 not, we'd have it at the following meeting.

9 DEPUTY DIRECTOR OF FINANCE SHEEHY:
10 Mr. Chairman, I would respectfully request that we
11 notice this item for the June 1st meeting.

12 And Mr. Asuncion, if you haven't applied then,
13 you know, and we haven't gotten this taken care of by
14 then, that gives you seven weeks. Seems like a
15 reasonable amount of time. Then I would like to take
16 further action on this item at that time, Mr. Chairman.

17 CHAIR GARAMENDI: Thank you. Before we take
18 that proposal up, I notice we do have one additional
19 witness. Tom Martinez, State Government Affairs, Santa
20 Clara Valley Water District. Tom, do you want to make
21 a presentation?

22 MR. MARTINEZ: Presentation, maybe not.

23 Lieutenant Governor, members of the State
24 Lands Commission, thank you for your time.

25 I didn't have a presentation. I just thought

1 a few comments, and I wasn't going to speak until I
2 heard that the Santa Clara Valley Water District has
3 filled in the Bay. And I thought, I should come and
4 clarify that.

5 I don't know of any instances where we have
6 done that. As a matter of fact, we have, as the water
7 district representing Silicon Valley, its residents,
8 we've put a lot of our time and effort and money into
9 cleaning up this area as well as providing clean water
10 to -- and I should say flooding protection to the
11 residents.

12 I appreciate you hearing this item. I was
13 encouraged. I thought you would act on this item in
14 another way, but I can understand how you might want to
15 put this off and give Mr. Asuncion and Blue Whale
16 Sailing School an opportunity to correct matters that
17 have been unresolved for a number of, I guess, months,
18 years in time.

19 So I guess I will await to see how these
20 matters are resolved. And if you have any questions of
21 me or the water district --

22 CHAIR GARAMENDI: Does the water district have
23 problems with this site? Looks like you're going to
24 the adjacent land owner.

25 MR. MARTINEZ: We are. We are attempting

1 to -- we provide flood protection to this location. My
2 concerns weren't necessarily with Mr. Asuncion or Blue
3 Whale Sailing School. I mean, you can see there is a
4 boat dock there. I won't speak to some of those items;
5 I think it's probably out of my peripheral
6 responsibilities.

7 I think that your staff has provided enough
8 information as to the Blue Whale Sailing School and its
9 activities. I will try to refrain from involving
10 myself in that.

11 CHAIR GARAMENDI: Fair enough. Tom's proposal
12 is before us, and that is that this matter be put over
13 to the next meeting. We'll take it up at that time if
14 it's okay with the Commission.

15 We would expect in the intervening nearly two
16 months that an application for a permit -- lease
17 permit -- be applied and that that be an application
18 worthy of acceptance. Okay.

19 CHIEF COUNSEL FOSSUM: Mr. Chairman, for
20 clarification, we get lots of applications that are
21 incomplete.

22 Mr. Asuncion in fact, I believe, did submit an
23 application at one time without any filing fee or
24 processing fee, and so I think it should be clear on
25 the record that the application should contain all the

1 necessary items and be able to be deemed complete
2 within that period of time.

3 DEPUTY DIRECTOR OF FINANCE SHEEHY: And I'd
4 just like to say if, it's okay with you, Mr. Chairman,
5 that I -- Mr. Asuncion, I think you'll find our State
6 Lands Commission staff is very helpful, and if you have
7 any questions about how to get all the proper
8 information on that application and what the various
9 fees are, if there's any question about that, I'm sure
10 you can get that from them, and we'd certainly like to
11 see a completed application with the appropriate fees
12 filed by June 1st.

13 MR. ASUNCION: Thank you.

14 CHAIR GARAMENDI: Thank you very much. And
15 that will be --

16 MR. ASUNCION: Could I say one more thing.

17 CHAIR GARAMENDI: Just a second. We have a
18 question?

19 DEPUTY STATE CONTROLLER MANDEL: And that's --
20 I take it, then, that would be consistent with the
21 Staff effort to get this land in compliance?

22 EXECUTIVE OFFICER THAYER: Right. We would --

23 DEPUTY STATE CONTROLLER MANDEL: That's to
24 address the situation that's consistent with where you
25 guys are.

1 EXECUTIVE OFFICER THAYER: Exactly. On all
2 these enforcement issues there's two choices. Either
3 the applicant or the person with the improvements comes
4 into compliance, or they should be ejected. And so if
5 there's something --

6 DEPUTY STATE CONTROLLER MANDEL: And I'm just
7 saying it looked like it was going to be ejecting
8 because he was --

9 EXECUTIVE OFFICER THAYER: Right.

10 DEPUTY STATE CONTROLLER MANDEL: -- refusing
11 or it wasn't moving forward toward the other --

12 EXECUTIVE OFFICER THAYER: Right.

13 DEPUTY STATE CONTROLLER MANDEL: -- option.

14 EXECUTIVE OFFICER THAYER: There's nothing
15 inconsistent with the Public Trust Doctrine and nothing
16 that we see that would make these docks something that
17 we'd recommend denial to the Commission on.

18 CHAIR GARAMENDI: So we need a lease. Very
19 good. Final comments, sir?

20 MR. ASUNCION: Yes, thank you.

21 The gentleman from the Santa Clara Valley
22 Water District made a few statements about flood
23 control. I have to make one statement that's the
24 rebuttal of what he's done and what the water district
25 has done over the years has allowed the South Bay Yacht

1 Club to squat on their property, pollute it, and
2 pollute my property, and discharge all that material
3 into the Bay and all our volunteers -- I'm not trying
4 to get into hearsay or that say, but that needs to be
5 brought across because the Santa Clara Valley Water
6 District has failed me personally and the taxpayers of
7 the South Bay, and we have hundreds and hundreds of
8 volunteers that do their job. They do a certain part,
9 but they have nothing on the Alviso Slough.

10 CHAIR GARAMENDI: I appreciate that. That's
11 in the record, so you guys can take it up in Santa
12 Clara County. You know what we need from this
13 Commission.

14 We thank you very much, and we'll expect to
15 have this back before us the next meeting. Very good.
16 Item 41. Paul?

17 EXECUTIVE OFFICER THAYER: Item 41 has to do
18 with finding -- proposing that the Commission find the
19 Carone Petroleum Company in default of its two oil and
20 gas leases.

21 The presentation will be made by Greg Scott,
22 who is Chief of our Mineral Resources Management
23 Division.

24 MINERAL RESOURCES CHIEF SCOTT: Good morning,
25 Mr. Chair and Commissioners. My name is Greg Scott,

1 and I'm the Division Chief of the Commission's Mineral
2 Resources Management Division.

3 I'm presenting calendar item 41 this morning,
4 which is to consider finding Carone Petroleum
5 Corporation in default of its two state oil and gas
6 leases, PRC 7911 and PRC 4000, located offshore
7 Carpinteria in Santa Barbara County.

8 As an overview, I'm reporting to the
9 Commission this morning that State lessee Carone
10 Petroleum Corporation has not complied with the lease
11 terms in pursuing the redevelopment of the two State
12 oil and gas leases because of their continual delays
13 and lack of reasonable diligence, and staff therefore
14 recommends that the Commission make the determination
15 that Carone be found in default of the lease, and which
16 can only be cured by complying with the specific
17 requirements within 90 days.

18 This slide is a site map showing the location
19 of the subject leases, shown here in yellow.

20 The leases consist of a combined area of about
21 1745 acres, and they lie off the coast near the city of
22 Carpinteria offshore approximately two miles out to the
23 three-mile State jurisdiction.

24 The area was originally developed between 1966
25 and 1992 by Chevron, using two offshore platforms that

1 were located on lease 7911.

2 These platforms have since been removed, and
3 Carone took the assignment after the removal of the
4 platforms. The State leases were intended to be
5 redeveloped by Carone using extended reach drilling
6 from nearby federal Platform Hogan.

7 Jeff, could I have that slide back, the map?

8 Platform Hogan lies just outside the State
9 boundary in federal waters. And Pacific Operators is
10 the operator of that particular platform, and they are
11 also the operator for Carone.

12 The leases were originally issued to Chevron
13 and Arco in 1964. As I already mentioned, the leases
14 were developed from two offshore platforms named Hope
15 and Heidi.

16 Production ceased in 1992, and the wells were
17 abandoned and the platforms removed.

18 On October 28, 1996, the State Lands
19 Commission approved the assignments of lease PRC 4000
20 and a portion of the lease PRC 3150, renamed to lease
21 7911, to Carone Petroleum, and those lease assignments
22 consisted of the subsurface only. There was no surface
23 use allowed.

24 The assignment approval was executed by Carone
25 and the State. And as a condition of the assignment,

1 Carone was required to submit a lease development plan
2 within two years and then begin drilling within three
3 years.

4 As required by all State oil and gas leases,
5 the lessee is to use all reasonable diligence in the
6 development of the lease.

7 There were delays initially during the
8 development plan process. The lease development plan
9 was required to be submitted by Carone by November 1st,
10 1998. A number of time extensions were requested by
11 Carone and were granted by staff, and the development
12 plan was finally submitted in October of 1999.

13 The plan was then deemed complete in
14 February 2001 after submittal of the necessary
15 supplemental information.

16 During that period, however, staff had to warn
17 Carone that we may need to rescind the application if
18 it did not submit the necessary information needed to
19 deem the application complete.

20 Following staff's acceptance of the complete
21 application, a delay was experienced in receiving
22 funding from Carone which caused the start of the EIR
23 to be stalled until March of 1992.

24 And after a succession of EIR suspensions, the
25 administrative draft was completed in June of 2005.

1 Further work to complete the EIR was not done
2 primarily due to the lack of funding -- lack of
3 necessary funding by Carone. And that funding was
4 needed to complete some structure evaluation of
5 Platform Hogan.

6 Since that time, Carone has also incurred
7 delays in pursuing their application with the federal
8 Minerals Management Service agency to use the offshore
9 platform to develop state leases.

10 To restart the CEQA process, and because of
11 the amount of time that has elapsed, a new Notice of
12 Preparation and Statement of Interest will be required
13 which will result in a rewrite of the EIR.

14 Staff estimates the cost to complete the EIR
15 to be approximately \$330,000 for the EIR and a similar
16 amount to cover staff costs. Carone has been informed
17 of that amount.

18 As part of the State's review, a structural
19 evaluation of the federal platform was necessary to
20 verify that it is capable to withstand the loads of the
21 development as well as any seismic or storm forces.

22 This process was very time-consuming and
23 incurred delays having to do with -- some of which
24 having to do with paying for staff time and for paying
25 the engineering consultants during the review process.

1 The results of the evaluation are necessary
2 for the EIR process to determine whether additional
3 structural work will be required on the platform.

4 These delays have also added to the time of
5 the EIR process.

6 In addition to the structural analysis
7 required by the State, the MMS has also required its
8 own structural analysis to include an engineering
9 requalification of the platform.

10 While the MMS has requested this work to be
11 done for the past several years, Carone has just
12 recently begun the process.

13 The MMS had informed Carone early on of their
14 requirements and the need of a development plan in
15 order to receive MMS approval.

16 In March 2005, Carone finally submitted the
17 original State development plan to the MMS.

18 In subsequent correspondence, the MMS had
19 requested supplemental information to be able to
20 formally process the application.

21 Carone has not responded to the MMS with this
22 additional information.

23 Carone also applied for a right of use and
24 easement permit in January of 2008. That, too, was not
25 submitted in conformance with the MMS's requirements,

1 and the MMS informed Carone of additional information
2 that was required to complete the application.

3 As of yet, Carone has not responded to that
4 request.

5 In September of 2008, Commission staff
6 notified Carone by letter that if Carone did not comply
7 with three essential conditions by December 15, 2008
8 the staff would recommend finding in default.

9 And the three conditions were that Carone
10 would execute and fund the reimbursable agreement in
11 the amount of \$650,000 to complete the EIR and for the
12 additional -- and for the associated staff time.

13 In addition, Carone would initiate a
14 structural requalification of platform Hogan with that
15 work to begin by April of 2009.

16 And thirdly, Carone would reinitiate the
17 processing for obtaining a right of use and easement
18 from the MMS by responding to their -- to the MMS's
19 March 2008 request for additional information.

20 Carone responded back to our September letter
21 on January 20th, 2009, over a month after our deadline
22 for the three conditions had lapsed.

23 In their letter to staff, Carone stated that
24 it would not -- it could not make a definite funding
25 commitment because of its lack of financial backing at

1 the present time.

2 Carone requested more time to make the funding
3 commitment but would only do so when oil prices
4 stabilized.

5 In our view, this further demonstrates the
6 lack of reasonable diligence on Carone's part in
7 pursuing this project.

8 Carone did offer a deposit of \$50,000 to
9 restart the EIR, but that would be delivered only when
10 oil prices reached and held \$60 per barrel for three
11 consecutive months, and that has not happened.

12 They also offered to complete the structural
13 requalification. They did not offer any completion
14 dates.

15 And they did offer to reinitiate the right of
16 use and easement process with the MMS, but we are not
17 aware that any of that has been resumed.

18 On February 5th, 2009, because of the inaction
19 by Carone to the staff September 2008 letter,
20 Commission staff notified Carone that it would
21 recommend to the Commission that it find Carone in
22 default of its lease obligations.

23 In addition to Carone's inability to satisfy
24 the September letter conditions, the default is based
25 on noncompliance with lease terms, specifically

1 paragraph 1 of the lease, which requires reasonable
2 diligence to commence and carry out operations to
3 restore production.

4 In addition, Carone has shown lack of
5 diligence in completing the EIR, a lack of diligence in
6 completing the structural evaluation, and a lack of
7 diligence in obtaining a federal approval for drilling
8 on Platform Hogan.

9 The recommendation by staff, therefore, is to
10 find Carone in default of the terms and conditions of
11 the lease because of their failure to comply with the
12 lease terms previously stated.

13 The lease does provide for a 90-day period to
14 allow the lessee to cure the default. Failing that,
15 however, the lease will be forfeit, and Carone will
16 have to file a quitclaim.

17 If the Commission does find Carone in default,
18 staff recommends that the Commission require, at a
19 minimum, for Carone to cure the default by fully
20 complying with the three demands stated in the
21 December 30, 2008 letter which again are:

22 To execute and fully fund the reimbursable
23 agreement in the amount of \$650,000;

24 To provide documentation demonstrating that it
25 is pursuing the requalification of Platform Hogan;

1 And finally, reinitiate and pursue approval
2 from the MMS to develop the State lease for Platform
3 Hogan.

4 And staff recommends that these conditions be
5 completed within the 90-day period.

6 That concludes my presentation.

7 CHAIR GARAMENDI: Thank you very much.

8 I think it's now appropriate to hear from
9 Carone and hear what they have to say, and then we'll
10 proceed as the Commission may desire. I believe that
11 there are at least two of you -- three of you from
12 Carone.

13 MR. KIRBY: Three of us. Yes, three.

14 CHAIR GARAMENDI: So if the others would like
15 to come forward, we'll just take you in the order.
16 Please introduce yourself, Mr. Cappel, and we can go.

17 MR. KIRBY: Good morning, Lieutenant Governor
18 Garamendi, Members of the Commission. My name is Steve
19 Kirby; I'm outside counsel for the lessee, Carone
20 Petroleum. My offices are in Santa Barbara County.

21 As I understand staff's position, this matter
22 concerns the lessee's obligation to proceed with
23 reasonable diligence to restore production to these
24 leases.

25 We also understand that it is Carone's failure

1 to comply with the requirements in staff's September 30
2 letter that constitutes the default that has been
3 alleged.

4 There is a demand -- a proposed demand for
5 performance of three items that may be accomplished
6 within the next 90 days. Without conceding that this
7 is a proper demand for performance under the lease, we
8 wish to provide you with additional information on
9 Carone's efforts to comply.

10 California law defines reasonable diligence in
11 relative terms. Conclusions about compliance with this
12 standard are to be drawn from the relevant facts and
13 circumstances of each case.

14 And in this case, relevant facts include the
15 nature and complexity of the permit process, the
16 structural infrastructure that's required for the
17 operation, the availability of financing, the price of
18 crude oil and natural gas.

19 The offshore nature of this project
20 necessarily adds a tremendous amount of complexity to
21 the equation.

22 And I think you may agree with me that by its
23 very nature the process of trying to secure production
24 of oil and gas from State tide and submerged lands
25 tends to move with glacial speed.

1 And two examples that come readily to mind are
2 the efforts to increase production from the South
3 Ellwood field off Goleta, where the effort has been
4 ongoing for about 20 years.

5 A little further up the coast, some of us have
6 been working on the Tranquillion Ridge project for more
7 than ten years.

8 It's true that each of those projects involves
9 a different statutory exception to the California
10 Sanctuary Act. However, Carone's situation is
11 relatively unique as well in that it involves the
12 drilling in State lands under an existing lease from a
13 federal platform in OCS waters.

14 It's -- in summation, it's Carone's position
15 that the company has proceeded with reasonable
16 diligence when all of the relevant facts and
17 circumstances are considered.

18 The two speakers that will follow me will
19 briefly explain what has been accomplished to date and
20 what they believe can be accomplished within the next
21 three months. Thank you.

22 CHAIR GARAMENDI: I appreciate that. And for
23 you and the remaining two speakers from Carone, focus
24 on the past, appropriate. And if the Commission
25 decides to move that there's a default, what potential

1 do you have to cure the default in the next 90 days?

2 So if you could speak to that issue, along
3 with whatever you'd like to talk about as to why you've
4 not succeeded thus far.

5 MR. KIRBY: The two gentlemen behind me will
6 do just that.

7 CHAIR GARAMENDI: Very good. Thank you.

8 MR. COOMBS: I have some handouts. Hello. My
9 name is Steve Coombs. And I'm a consultant to Carone
10 Petroleum, and I'm an officer of the operating company,
11 Pacific Operators, who operates the adjacent Platform
12 Hogan in federal waters.

13 What I want to do today is provide a little
14 bit of additional background information that provides
15 some details and about the timeline and the process in
16 which we've gone through to move forward on the
17 permitting for redevelopment of the State leases in
18 State waters.

19 The -- this process starts back in, really, in
20 the early 1990s; and at that point, we had a discussion
21 with the State Lands staff, wherein they described a
22 situation that seemed reserves from State waters would
23 be stranded by the removal of platforms Hope and Heidi,
24 the Chevron platforms. And in fact, that did happen as
25 Mr. Scott described in his presentation.

1 From 1993 to 1997, working in conjunction with
2 the State Lands staff and the three oil companies,
3 Carone did obtain an assignment of those State leases.

4 One of the things that we also accomplished
5 during that time period was a technical study to look
6 at the viability of redeveloping those reserves from
7 the adjacent federal platforms.

8 And we had a joint study that both the MMS,
9 Carone Petroleum, and State Lands and the Department of
10 Energy were involved in where we did a fairly massive
11 technical study during the period of 1993 to 1997.

12 All of that provided the underpinnings in
13 which to -- for us to be able to move forward on a
14 project. In other words, we were determining the
15 viability of the project.

16 During 1997, we were working with both MMS and
17 State Lands staff to really provide or develop a
18 framework for how we move forward on permitting this
19 project.

20 It was rather unique at that time because
21 there had never been a situation where State reserves
22 were developed from an adjacent federal platform. And
23 so it isn't just a clear-cut path, and there has
24 been -- as you'll see going through this, there has
25 been a lot of evolving or evolution to the process as

1 we've moved forward.

2 During 1998 to 2000, the operator was focused
3 on a federal lease redrill program from platform Hogan.
4 That program was executed in the fourth quarter of '98.

5 The price of oil had dropped in December of
6 1998 to \$8 a barrel for those offshore reserves and
7 it -- and the bank, or the company lost its financial
8 backing during that time, and it was admittedly a
9 devastating period from 1998 to 2000 recovering from
10 that.

11 In 2001, Carone did submit an application for
12 the development of -- a plan of development to the
13 State Lands. Actually submitted in 2000; it was deemed
14 complete in 2001.

15 And from that point, the EIR process or the
16 CEQA process was initiated.

17 At that time -- it's important to note, at
18 that time both Carone and CSLC believed that the
19 structural analysis that had been priorly -- been
20 accomplished prior to that point was sufficient.

21 CHAIR GARAMENDI: Excuse me.

22 MR. COOMBS: Sorry.

23 CHAIR GARAMENDI: While you were going on, I
24 flipped to the back page.

25 MR. COOMBS: Okay.

1 CHAIR GARAMENDI: In flipping to the back
2 page, we may get to the solution. But I think what I'd
3 like to do here is to have put in this record the
4 comments which basically are in this document, if
5 that's okay with you, without the oral comment and go
6 to the back page and then if necessary go back and pick
7 up pieces along the way in the intervening years.

8 The back page -- the last page, unnumbered,
9 says 2009 go forward plan.

10 Why don't we talk about that for a little
11 while; and then if we need to, we can go back and pick
12 up the information that you are submitting in written
13 form of why there are these delays and the hurdles that
14 you've undertaken.

15 So let's talk about going forward for a while,
16 if that's okay with you.

17 MR. COOMBS: The last two slides were actually
18 going to be presented by Mr. Cappel, if I could let him
19 step in for that then?

20 CHAIR GARAMENDI: As you like. Please.

21 MR. CAPPEL: Thank you. Lieutenant Governor,
22 Members of the Commission, my name is Charles Cappel.
23 I am not here in capacity as an attorney representing
24 these folks. Or a consultant.

25 I am the Chief Executive Officer of Carone

1 Petroleum. I'm the guy with the bull's eye, and I feel
2 it.

3 CHAIR GARAMENDI: You're standing in the right
4 place.

5 MR. CAPPEL: Indeed, I am, sir. Indeed I am.
6 So. Delighted to follow your suggestion, Lieutenant
7 Governor, and go directly to the back page, because we
8 mean what we say there.

9 Very simply, this is a short list of what we
10 are confident we can achieve within the next 90 days.

11 Number one, to initiate the MMS platform
12 verification for Platform Hogan. That's this seismic
13 requalification, this very complex seismic
14 requalification, certification.

15 In fact, that work has already begun in that
16 the official platform verification application was --
17 which nominates the CVA, the certified verification
18 agent, the outside agent who looks at the work that in
19 fact has already been done, and who follows on with his
20 inquisition of all the engineers involved, and in the
21 end blesses it or not or has it revised or more work
22 done or not.

23 And we expect, because of our experience with
24 precisely this same CVA with respect to our other
25 federal platform, Platform Houchin, that was recently

1 and successfully concluded between Thanksgiving and
2 Christmas this last year, that we have every reason to
3 believe, now that he's been through that process, this
4 one is a slam-dunk.

5 We all know where we're going. We all know
6 what the criteria are. And we are fully confident in
7 our ability within the next 90 days that this shall be
8 done.

9 Number two --

10 CHAIR GARAMENDI: Excuse me. I want to be
11 quite clear here.

12 MR. CAPPEL: Yes.

13 CHAIR GARAMENDI: There are apparently two
14 things that are to be done. One is the initiation, and
15 the second is the completion thereof.

16 MR. CAPPEL: The initiation has already been
17 done.

18 CHAIR GARAMENDI: All right. And you believe
19 in the next 90 days the verification process will be
20 complete?

21 MR. CAPPEL: I have every hope that it will.
22 You understand, please, that we're dealing -- if this
23 were simply a straightforward matter of us working with
24 the California State Lands Commission, we've worked
25 with these people enough in the past we'd have

1 confidence that I could make that representation to
2 you.

3 But we've got the wild card here; we've got
4 the MMS. And I don't know what additional questions
5 they may interject out of left field over the next 90
6 days. And that's the only caveat I would put.

7 CHAIR GARAMENDI: Okay. Let's move on to your
8 next.

9 MR. CAPPEL: Number two requires a resubmittal
10 of the MMS Right of Use and Easement application.

11 We have submitted, I think yesterday, to your
12 staff a letter from our consultant Simon Poulter of
13 Padre Associates. The thrust of that letter -- I only
14 had a chance to look at it briefly -- was that he
15 expects to have this work completed by July the 1st.

16 And then finally, of course, is the big one.

17 CHAIR GARAMENDI: Money.

18 MR. CAPPEL: Yeah. We are finalizing -- yeah.

19 Mr. Scott made reference to a comment in a
20 letter that I had submitted to the office begging
21 indulgence, asking for more time, pleading, as close as
22 I could get to my hands and knees, saying the oil price
23 as well as the rest of the world's economy has just
24 fallen apart for all of us.

25 We need more time. Our bankers have just

1 fled, because they don't know how they're going to keep
2 their doors open tomorrow. Can you work with us?

3 And I understand he could not. I made, in the
4 course of that letter, reference to a sort of a
5 criteria, a number of criteria, \$60 a barrel sort of
6 number for a period of time.

7 Well, I wrote it that way sort of for the
8 layman. Most of us will hear \$60 a barrel for a period
9 of weeks or months, and we understand what that means.

10 But really, what I meant to say, which is much
11 more complex, and I thought too tedious to put before
12 you, was what do the guys who buy and sell in the
13 futures contracts use as their rule of thumb?

14 And right now, I'm telling you, and
15 oversimplifying it again, that threshold in futures
16 terms has been met.

17 So now our bank's back at the table, and we
18 are finalizing the negotiation of the document that we
19 began before the most recent train wreck, and we have
20 every belief that that deal will be done and concluded
21 well this side of 90 days, and we will be able to write
22 you a check for the money.

23 CHAIR GARAMENDI: Show us the money? Is that
24 it?

25 MR. CAPPEL: Yes, sir.

1 CHAIR GARAMENDI: I think there was a movie
2 about that.

3 MR. CAPPEL: There was a movie about it.

4 CHAIR GARAMENDI: Just a question.

5 MR. CAPPEL: Yes.

6 CHAIR GARAMENDI: Do you want this lease?

7 MR. CAPPEL: You bet we do. Oh, you bet we
8 do. And our lenders do too.

9 CHAIR GARAMENDI: All right. The issue before
10 the Commission is to issue a default now and give you
11 time to cure.

12 MR. CAPPEL: Yes, sir.

13 CHAIR GARAMENDI: Or give you some time and
14 then default and time to cure. I sense a certain
15 impatience among the staff.

16 MR. CAPPEL: As do I, sir.

17 CHAIR GARAMENDI: Your sensitivity is
18 accurate. They are impatient. This has gone on far
19 too long. And whatever the reasons may be, financial,
20 oil prices, et cetera, nonetheless, we expect our
21 lessees to be diligent and timely.

22 MR. CAPPEL: You're entitled to that.

23 CHAIR GARAMENDI: And you have not. My
24 assessment -- you don't need to admit to that at this
25 point -- but my assessment is that you've not been

1 diligent and that you've allowed things to slide for
2 reasons that are perhaps in your interest appropriate,
3 but not in ours.

4 So the question for us, it seems to me, is to
5 give you some time and then if appropriate issue a
6 default, or to issue a default today and give you 90
7 days together or else we get a quitclaim.

8 I'd like to -- my sense of where this is, is
9 our next meeting is June?

10 EXECUTIVE OFFICER THAYER: June 1st.

11 CHAIR GARAMENDI: And my sense is that it's
12 two months. That we could give you two months. If you
13 don't show us the money, then you've got 90 days and a
14 quitclaim at the end of it for us. That's how I see
15 this thing.

16 DEPUTY DIRECTOR OF FINANCE SHEEHY: Mr.
17 Chairman, I would propose to move that we put this
18 action on this item over to the June 1st meeting in
19 order to accomplish the timeline that you just laid
20 out.

21 CHAIR GARAMENDI: I'd like to have staff
22 comment before we move on this.

23 EXECUTIVE OFFICER THAYER: All of these
24 options are obviously at the Commission's discretion in
25 terms of which way it wants to go forward, and I think

1 the Commission wants to resolve this quickly this
2 morning.

3 I think we should be clear about what what's
4 going to be done here.

5 The letter from Padre that they referred to in
6 number two here doesn't really do anything at all. It
7 just means they've hired some consultant to help them
8 to do what they should have done already. That's all
9 they've accomplished so far on this.

10 I think that the recommittal to the MMS should
11 be complete. They applied to the MMS four years ago
12 for an RUE, were told within a month or two by MMS what
13 additional information was necessary to make it
14 complete, and have not submitted anything in four
15 years.

16 Now, this requires discretion on the part of
17 MMS, but if we're not giving them a drop-dead date in
18 terms of a default that by June 1st we'll have an
19 opportunity to review whether or not they've complied
20 with MMS, whether they've provided, using a good-faith
21 effort --

22 CHAIR GARAMENDI: You used a word here: That
23 is a complete application --

24 EXECUTIVE OFFICER THAYER: Yes.

25 CHAIR GARAMENDI: -- with MMS.

1 Let's talk about a complete application to
2 MMS. Your point, Mr. Thayer, is I think right on.
3 Let's not be vague. If we intend to pull the trigger,
4 that is the default trigger, then we need to be very
5 specific as to what would initiate that.

6 EXECUTIVE OFFICER THAYER: Correct.

7 CHAIR GARAMENDI: So let's talk about the
8 application.

9 MR. COOMBS: I just want to add one point of
10 clarity. That the right of use and easement
11 application was initially submitted to the MMS in 2008;
12 it wasn't four years ago.

13 There is -- has been a question for some time
14 with the MMS of whether we needed to create a modified
15 development plan with the federal government or whether
16 that was even necessary or not.

17 And in 2008, they determined we just needed to
18 submit a right of use and easement application, which
19 we did.

20 And it is in fact correct, they did respond
21 back and say here's the deficiencies, and we have not
22 responded back to that deficiency list.

23 We do -- we have retained a consultant to help
24 us do that, and that is what the Padre letter is that's
25 being referred to.

1 CHAIR GARAMENDI: And we have a specific set
2 of actions. That is, that you will by next June, two
3 months out, respond to each specific action or each
4 specific deficiency that MMS has cited. If you don't,
5 then you're going to get a default. All right? Is
6 that specific enough?

7 MR. CAPPEL: I think I understand. I guess
8 the only question I have that I need your help on: We
9 can respond to each of those three. We're absolutely
10 confident we can do that and have begun doing so.

11 But are you saying that we are required to
12 have each of them completed by June -- the June
13 meeting?

14 And here's the reason I ask that, and this is
15 emblematic of what's going on in this whole thing. We
16 walked in here this morning and met one of the staff
17 members, had a cordial conversation, and she indicated,
18 oh, by the way, I just got a letter yesterday -- she
19 just got a letter yesterday from the regional head of
20 the MMS just putting us, State Lands, on notice that
21 the MMS still hasn't decided how to exercise its
22 discretion as to whether or not we shall be required to
23 file a -- prepare and file a revised federal
24 development plan.

25 Now, this is what's been happening all along.

1 And, you know, I know it's frustrated your staff. It's
2 frustrated us too.

3 And I don't have a big enough gun to shoot my
4 way out of this one. So I guess --

5 CHAIR GARAMENDI: I can understand how you get
6 caught in the middle here. There are -- there's going
7 to be a value -- a judgment made by us as to the
8 fullness of your application, all right?

9 MR. CAPPEL: Understood.

10 CHAIR GARAMENDI: And let me just tell you:
11 We have very, very tough correctors around here. You
12 think your third-grade teacher was tough on a math
13 exam; we are even tougher.

14 MR. CAPPEL: I went to Catholic school.

15 CHAIR GARAMENDI: I want a full fullness --

16 MR. CAPPEL: Yes, sir.

17 CHAIR GARAMENDI: -- to the application. And
18 no games. Completed.

19 If MMS is unsure what it's going to do, and I
20 suspect they'll have a representative or at least a way
21 of hearing what we have to say, they ought to get their
22 work done too.

23 Mr. Salazar is going to be in San Francisco
24 next Thursday. I will be speaking to him. And if
25 there's any questions, I'll bring this issue up with

1 his and his deputy who is a very close friend.

2 Okay. Thank you.

3 DEPUTY STATE CONTROLLER MANDEL: What's the
4 effect of putting it -- I guess they want to put it to
5 June as opposed to declaring a default now.

6 CHIEF COUNSEL FOSSUM: In effect, it will give
7 them an additional two months, presumably, to comply.

8 One of the options the Commission has, I
9 think, is to actually find a default now and have an
10 update in June as to what kind of progress is being
11 made on curing the default.

12 Another option, one of the things the
13 Lieutenant Governor mentioned, was he wanted to see the
14 money. Are we giving them five months for that, or are
15 we going to give them till the next June meeting for
16 that?

17 So I think there is a number of issues for the
18 purposes of the minutes of this meeting that we should
19 make absolutely clear.

20 MR. COOMBS: Could I just clarify one point?
21 The key is, between now and June, we've accomplished
22 already -- or will easily accomplish -- two of the
23 three items.

24 The one item that you don't have right now is
25 the money, okay. But the other two items, we have

1 initiated the platform verification process on Hogan.

2 We have done that with an official submittal.

3 We've also -- we also have a high degree of
4 confidence that we can respond to the RUE deficiencies
5 and make a final application to the MMS within that
6 same time frame. So from the company's point of view,
7 we have confidence we can respond to the deficiencies
8 even prior to the June meeting.

9 CHAIR GARAMENDI: Well, that would be to your
10 benefit to do so, and to do so fully and completely,
11 meeting the requirements of MMS as well as our own
12 department.

13 If MMS is unsure of whether it's night or day,
14 then we'll have to deal with that in our discretion as
15 to your fullness of application, as well as MMS's
16 uncertainty about whether it's night or day. So we'll
17 deal with that.

18 But what I'm telling you right now is: You're
19 going to get a default unless you are really on top of
20 this game and can show us that you've done everything
21 you possibly can to meet all of the requirements to get
22 this lease underway.

23 MR. CAPPEL: We understand, sir.

24 CHAIR GARAMENDI: And show us the money.

25 MR. CAPPEL: Yes. We understand that as well,

1 sir.

2 CHAIR GARAMENDI: Very good.

3 Paul? Be providing us with the clarity,
4 provide the Commission and the applicant with the
5 clarity that you would like to see.

6 EXECUTIVE OFFICER THAYER: I think the
7 Lieutenant Governor has done a lot to bring that about.

8 I would say in terms of the verification
9 process, number one, we haven't talked about much.
10 It's interesting in their letter of January 20th, they
11 committed to having the complete results from that
12 being done within the first quarter of 2009. So that
13 was a commitment they made January of this year.

14 It's still not done. And I would presume we
15 want to see something like more than just initiating
16 the platform verification.

17 What were you alluding to in this paragraph in
18 your own letter?

19 MR. COOMBS: My slides actually addressed this
20 point rather specifically. But the point with the
21 Platform Hogan analysis is we made a submittal in 2006
22 and then a further submittal in 2007.

23 We actually have completed the analysis, the
24 structural and seismic analysis, for Platform Hogan.
25 In -- there was a rather circular process that was

1 going on between the MMS, the State Lands, and the oil
2 company wherein none of the consultants, meaning the
3 third-party folks, could agree as to what were the
4 deficiencies? Did they agree with the results of our
5 analysis? So on and so forth.

6 What finally occurred in 2008 is a recognition
7 by both the MMS and the State Lands staff that we
8 would -- that all parties would agree with the outcome
9 of a certified verification agent.

10 And that is in fact what we employed on our
11 adjacent Platform Houchin and was successful.

12 What we're talking about here is the actual
13 number crunching has been done. What now has to happen
14 with the CVA process is that Certified Verification
15 Agent has to step in and agree or disagree with our
16 analysis.

17 If he disagrees, he will ask for clarification
18 and additional work to be done. We specifically, on --
19 two days ago made the official application and
20 nominated the CVA for that process.

21 So the point I'm making to you is, the work's
22 done. Now we just need to get the CVA to verify that
23 that work is done. It --

24 EXECUTIVE OFFICER THAYER: But isn't that what
25 you committed in this letter to have done within the

1 first quarter of this year?

2 MR. COOMBS: Yes. And we've been working
3 toward it.

4 EXECUTIVE OFFICER THAYER: It's not done yet.
5 And so I would add that to the list of what needs to be
6 done by June 1st, is that would be completed.

7 MR. COOMBS: Okay, that -- that's fine.

8 The point is, I am not or this company is not
9 in control of a process in which we are seeking federal
10 approval.

11 The State Lands has agreed, the staff has
12 agreed, to abide by the process wherein the CVA
13 recommends approval or disapproval or asks for
14 additional work. I can't control the outcome of that.

15 EXECUTIVE OFFICER THAYER: In this letter, you
16 seemed to indicate you could do it.

17 Anyway, I would advocate that the Commission,
18 in the strong language you've been using, recommend
19 that you reach that result.

20 And obviously, we'll grade the results come
21 June 1st and see whether, if there is a delay, whether
22 it's MMS's fault or whether it's the company's.

23 And when you look at these commitments that
24 were made just this past January, all of which were
25 supposed to be done by April 1st -- almost none of them

1 have been done.

2 So their own proposal they haven't complied
3 with, let alone the staff. So --

4 CHAIR GARAMENDI: We understand that.

5 And I would ask that at the June meeting, if
6 the CVA is not completed, that the CVA contractor
7 appear and be prepared to explain to us why it's not
8 completed, what the issues might be.

9 And I will pursue a question as to why, why.
10 And if it's your fault, you get the default.

11 MR. CAPPEL: Understood.

12 CHAIR GARAMENDI: Okay. Next question, Paul.

13 EXECUTIVE OFFICER THAYER: I think that's most
14 of them.

15 So we want to see the money.

16 We want the RUE to be complete -- RUE
17 application to be complete. And if they've responded
18 comprehensively to the other requests that MMS had
19 made, to make that RUE complete when they first
20 applied.

21 And with respect to the platform verification,
22 that they've obtained the results from the independent
23 agency or entity.

24 CHAIR GARAMENDI: All right, thank you.

25 There was a question of the Environmental

1 Impact Report; how does that figure into this?

2 EXECUTIVE OFFICER THAYER: Well, that's the
3 money, that's number 3, that they would provide the
4 money to go forward.

5 A lot of the delays along the way have been
6 because they said, stop work; we don't want to pay for
7 any more work right now.

8 CHAIR GARAMENDI: I -- yes?

9 DEPUTY ATTORNEY GENERAL RUSCONI: Before you
10 proceed, I would advise that should you take the course
11 of giving them more time that you make sure you put on
12 the record that you are not waiving or otherwise
13 forgiving any defaults that could have happened in the
14 past. That they are not starting over.

15 This is -- you're not waiving any of your
16 rights that you have that's happened for failures that
17 happened in the past.

18 CHAIR GARAMENDI: If it's clear from the
19 record, both written and oral, presented here today
20 that there are a series of lapses in the application
21 and the necessity of the applicant, lessee, to get this
22 completed.

23 We accept and understand those, and we do not
24 waive those in any way.

25 And by putting this over in no way is meant to

1 jeopardize the position of the State should we decide
2 that there is a -- should we take action on the default
3 at our next meeting.

4 Does that cover it, sir?

5 MR. CAPPEL: So stipulated.

6 DEPUTY ATTORNEY GENERAL RUSCONI: Yes.

7 CHAIR GARAMENDI: Thank you. That's noted.

8 Very good.

9 MR. CAPPEL: Thank you.

10 CHAIR GARAMENDI: That will be the action.

11 We'll see you in June.

12 EXECUTIVE OFFICER THAYER: Thank you.

13 CHAIR GARAMENDI: Next?

14 EXECUTIVE OFFICER THAYER: The next item, I
15 believe, is a resolution. Yes.

16 This is a resolution proposed by the
17 Controller's Office for adoption by the Commission to
18 oppose the new oil leasing proposed in Department of
19 Interior's new five-year OCS leasing program.

20 Mario De Bernardo will make that presentation.

21 LEGISLATIVE LIAISON, STAFF COUNSEL DE
22 BERNARDO: Good morning, Commissioners. I can go into
23 an explanation if you'd like me to.

24 The MMS has posted on the Federal Registry for
25 comment a draft five-year OCS leasing program for 2010

1 and 2015. The plan proposes 31 OCS lease sales, three
2 which are off the California coast.

3 This resolution opposes this plan, as well as
4 encouraging the federal government to move forward on
5 its renewable energy developments, which may include
6 offshore wave and wind energy.

7 And this resolution will be submitted as a
8 comment as soon as you guys approve it.

9 CHAIR GARAMENDI: Tom has a question.

10 DEPUTY DIRECTOR OF FINANCE SHEEHY: I'm not
11 sure -- I'm just looking at this. I apologize; Mr.
12 Thayer knows I was travelling out of state all of this
13 week and was out of commission the last half of last
14 week, so I didn't get a chance to read this resolution.

15 Tell me again, Mr. De Bernardo, the policy
16 statement that we're making here?

17 LEGISLATIVE LIAISON, STAFF COUNSEL DE
18 BERNARDO: This policy statement, or this resolution,
19 opposes the MMS draft five-year plan, which includes
20 three lease sales off the coast of California.

21 DEPUTY DIRECTOR OF FINANCE SHEEHY: And we're
22 opposing it why?

23 LEGISLATIVE LIAISON, STAFF COUNSEL DE
24 BERNARDO: Well --

25 EXECUTIVE OFFICER THAYER: Because --

1 DEPUTY STATE CONTROLLER MANDEL: It's my
2 understanding that this is consistent with prior --

3 EXECUTIVE OFFICER THAYER: Yes.

4 DEPUTY STATE CONTROLLER MANDEL: Is that
5 correct --

6 EXECUTIVE OFFICER THAYER: Yes.

7 DEPUTY STATE CONTROLLER MANDEL: Of the State
8 Lands.

9 EXECUTIVE OFFICER THAYER: That's correct.

10 And it's the same offshore oil proposal, I
11 believe, that Mike Chrisman went to represent the
12 administration in DC and testified against.

13 It's a proposal for three new lease areas, one
14 off of southern California, I believe the Huntington
15 Beach area, one off the Santa Barbara area, and one off
16 northern California.

17 It would -- this lease sale would in essence
18 ask oil companies to bid on new leases for offshore oil
19 development. We haven't had one of these in like -- I
20 can't remember the last time, 10 or 15 years, because
21 they've all been subject to the two federal
22 moratoriums, the Congressional one and the Presidential
23 one.

24 CHAIR GARAMENDI: This resolution is
25 consistent with past resolutions with, I think, one

1 addition, and that is the promotion of renewables,
2 which I think was not in the previous resolutions.

3 EXECUTIVE OFFICER THAYER: It wasn't in most
4 of them. There were one or two where we made
5 reference --

6 LEGISLATIVE LIAISON, STAFF COUNSEL DE
7 BERNARDO: And the resolution actually cites that there
8 have been eight similar resolutions since 2001.

9 CHAIR GARAMENDI: And with regard to
10 renewables, it does not speak, as I read it, I guess is
11 the question -- doesn't speak to the issue of wave,
12 wind, offshore?

13 LEGISLATIVE LIAISON, STAFF COUNSEL DE
14 BERNARDO: It mentions that it may be part of a future
15 plan by the federal government. It encourages the
16 development which may -- of renewable energy in the
17 future -- which may include these.

18 DEPUTY STATE CONTROLLER MANDEL: Offshore wind
19 and wave?

20 LEGISLATIVE LIAISON, STAFF COUNSEL DE
21 BERNARDO: Correct.

22 DEPUTY DIRECTOR OF FINANCE SHEEHY: I have
23 question, Mr. Chairman.

24 CHAIR GARAMENDI: Please, go ahead.

25 DEPUTY DIRECTOR OF FINANCE SHEEHY: Mr. De

1 Bernardo, is this draft proposed five-year plan --
2 first of all, it's a draft, right? We don't have a
3 final plan, do we?

4 LEGISLATIVE LIAISON, STAFF COUNSEL DE
5 BERNARDO: Right. The public comment period is now
6 open for that.

7 DEPUTY DIRECTOR OF FINANCE SHEEHY: For the
8 draft. This would be part of the public comments.

9 LEGISLATIVE LIAISON, STAFF COUNSEL DE
10 BERNARDO: Exactly.

11 DEPUTY DIRECTOR OF FINANCE SHEEHY: Okay.
12 Now, is this a proposal that's been put together by the
13 new Obama Administration, or is it a holdover from the
14 Bush Administration?

15 LEGISLATIVE LIAISON, STAFF COUNSEL DE
16 BERNARDO: It's a little bit, I think, of a hybrid, but
17 mostly influenced by the Obama Administration.

18 DEPUTY DIRECTOR OF FINANCE SHEEHY: I guess I
19 would be reluctant, not having more information, so
20 early on in the Obama Administration to take such a
21 strong stand against a new proposal that they're
22 making.

23 So while I won't vote against this resolution
24 today, I want to give the Obama Administration a chance
25 to make their case, and I just think it might be

1 premature for us to second-guess the new
2 administration.

3 So if there's a vote on this matter today, Mr.
4 Chairman, I want to give my benefit of the doubt to the
5 Obama Administration. I'm going to withhold a vote on
6 this one way or the other because I think the new
7 administration deserves every consideration for the new
8 energy policy.

9 CHAIR GARAMENDI: As always, Tom, you're most
10 gracious, and I'm sure that it's appreciated in
11 Washington and will be appreciated by the Secretary.

12 Just looking at that specific "whereas" --
13 well, I think, whatever they are actually proposing, we
14 are in a position, and we should be in a position to
15 state our view from the State.

16 And my view is that these three areas, the
17 Santa Maria, Santa Barbara/Ventura, and
18 Oceanside/Capistrano basins, should not be subject to
19 new drilling.

20 And therefore, insofar as this resolution
21 accomplishes that with the resolved -- two of the
22 resolveds here, one of which says:

23 Resolved by the State Lands Commission
24 that it opposes the US Department of
25 Interior MMS draft proposed five-year

1 Outer Continental Shelf oil and gas
2 leasing program 2010-2015.
3 And further resolved, it requests the
4 federal government to prohibit new
5 offshore oil and gas leasing off the
6 coast of California, continue to move
7 forward with renewable energy
8 development.

9 Those are the two actions -- two of the three.
10 The third is to distribute this to every conceivable
11 place we could make it land -- that I am in strong
12 support of these two action resolved -- the two action
13 items here, the two resolveds. And therefore, I would
14 like to see us adopt this resolution and have it
15 presented to Mr. Salazar, Secretary Salazar, at the
16 hearing next Thursday in San Francisco.

17 I intend to appear at that hearing. I would
18 like to have this resolution in hand at that point when
19 I appear and make a statement with regard to my
20 position and make the State Lands Commission position,
21 and I'll present this resolution.

22 DEPUTY DIRECTOR OF FINANCE SHEEHY: And then
23 when you talk with Mr. Salazar, be sure to let him know
24 that one of your colleagues wanted to give them more
25 time before we acted on this, Lieutenant Governor. But

1 I'm sure you'll be very gracious in your comments to
2 the Secretary.

3 CHAIR GARAMENDI: I'll do everything I can to
4 see the Secretary does not step into an oil pool in
5 California.

6 (Laughter)

7 DEPUTY DIRECTOR OF FINANCE SHEEHY: Very good.

8 DEPUTY STATE CONTROLLER MANDEL: I move
9 adoption on the resolution.

10 CHAIR GARAMENDI: I will second it and I count
11 two votes in support of the resolution.

12 DEPUTY DIRECTOR OF FINANCE SHEEHY: And one in
13 abstention.

14 CHAIR GARAMENDI: So moved.

15 Mr. Thayer?

16 EXECUTIVE OFFICER THAYER: We have one more
17 regular calendar item before we go into closed session,
18 and Mario will also make this presentation.

19 LEGISLATIVE LIAISON, STAFF COUNSEL DE
20 BERNARDO: Calendar item number 43 is an attempt for
21 staff to get a piece of the stimulus pie, federal
22 stimulus pie.

23 CHAIR GARAMENDI: Get in line.

24 (Laughter)

25 LEGISLATIVE LIAISON, STAFF COUNSEL DE

1 BERNARDO: The federal government, through the stimulus
2 bill that was passed a few months ago, or last month,
3 authorized NOAA to distribute money through a coastal
4 and marine habitat restoration project grant program.

5 We have -- and this grant program is focusing
6 on shovel-ready projects.

7 We have a shovel-ready project that involves
8 beach hazards in Santa Barbara and Ventura County, so
9 we are applying for over a million dollars of stimulus
10 money to remove these beach hazards in Santa Barbara
11 and Ventura County.

12 The application was due on April 6th, so staff
13 went ahead and submitted the application. One of
14 the -- what is encouraged in the application is support
15 letters from government entities, and we got -- we
16 collected different support letters from city, county,
17 state and federal entities.

18 We would like to be able to state that the
19 State Lands Commission itself supports this application
20 and submit a letter stating as such.

21 DEPUTY DIRECTOR OF FINANCE SHEEHY: Question
22 of the staff, Mr. Chairman. Is it possible to use any
23 of these funds in any way where we can connect the dots
24 to some of our other state tidelands cleanup activities
25 that we've discussed here?

1 EXECUTIVE OFFICER THAYER: Commissioner Sheehy
2 is alluding to a conversation he and I had a couple
3 weeks ago when we talked about this, as to whether or
4 not we could work on some of the same abandoned vessels
5 or other hazards that I know other Members of the
6 Commission are also concerned about.

7 The trouble that we found was that we had to
8 be able to nominate projects with the shovel-ready
9 requirement, and that we had to demonstrate that we
10 could proceed within 90 days. And we couldn't do that
11 for these other projects.

12 On these beach hazards, we've actually gone to
13 the Coastal Commission, the Corps of Engineers, that
14 kind of thing and gotten our permits.

15 I think we've got a contractor who either has
16 been on board and is being renewed or we're getting a
17 new one recycled.

18 So when we -- I mean, from our perspective,
19 we'd be glad to use it for the purposes you're talking
20 about, but we don't think we qualify.

21 DEPUTY DIRECTOR OF FINANCE SHEEHY: The reason
22 why the other projects can't be shovel-ready in 90 days
23 is because they've got to go through specified legal
24 procedures before the work can be done?

25 EXECUTIVE OFFICER THAYER: We have to go to

1 the Corps, the Regional Water Quality Control Board,
2 that kind of thing.

3 LEGISLATIVE LIAISON, STAFF COUNSEL DE
4 BERNARDO: The application also expressly prohibits
5 funding to projects that need court orders. And with
6 abandoned vessels, we would need to go to court to
7 obtain title, and et cetera.

8 CHAIR GARAMENDI: I'm not satisfied with this.
9 I understand where you -- what you have done,
10 and it's certainly appropriate.

11 I would be very, very surprised if there is
12 not a round two and a round three. And I would like to
13 see -- I would want to see the staff identify -- we've
14 had two abandoned vessel issues come before us in the
15 last three hours, and I think we can probably quickly
16 find out through a court that they are abandoned, there
17 is no owner, or there is an owner, or whatever.

18 There are also projects in the Sacramento/San
19 Joaquin Delta and the Bay for the removal of other
20 kinds of hazards, not abandoned vessels. Snags.

21 There is one out here on the American River,
22 an old ancient weir that is clearly a hazard.

23 So I would like to see staff proceed in an
24 expeditious manner to identify additional projects,
25 some along the coast, similar to what is before us

1 today, and others that may be in lakes or rivers that
2 we may know of that we could prepare and have prepared
3 for the round two or three of the money flowing from
4 these state -- federal agencies, NOAA or others.

5 EXECUTIVE OFFICER THAYER: Certainly, we'll do
6 that.

7 CHAIR GARAMENDI: I suspect there be an
8 opportunity, and we should take advantage of it.

9 DEPUTY DIRECTOR OF FINANCE SHEEHY: With those
10 comments, Mr. Chairman, are you asking -- would you
11 like a motion on this item today?

12 CHAIR GARAMENDI: Yes.

13 DEPUTY DIRECTOR OF FINANCE SHEEHY: I would
14 move approval of the staff recommendation on item
15 number 43, and would also encourage the staff to look
16 at the other project opportunities that the Chair of
17 the Commission has requested you do.

18 DEPUTY STATE CONTROLLER MANDEL: Second.

19 CHAIR GARAMENDI: Without objection, that will
20 be the motion and the approval.

21 Next item?

22 EXECUTIVE OFFICER THAYER: That concludes the
23 regular session. We do have the closed session.

24 CHAIR GARAMENDI: Yes. We do have one more
25 item before we go to closed session.

1 This will be the last day that Brian Bugsch
2 will be able to assist me. He's done so with
3 exceptional skill and talent over the last -- almost a
4 little more than two years now.

5 Because of the need for higher priorities, we
6 are significantly diminishing the staff at the
7 Lieutenant Governor's Office, and Brian is now moving
8 back to the Department of Insurance where I'm sure he
9 will perform yeoman's service as he has in working with
10 me.

11 So Brian, is -- we thank you, Brian, thank you
12 for your work. You've been exceptional.

13 EXECUTIVE OFFICER THAYER: If the chair would
14 allow me to, I would like to add my own comments,
15 because I don't imagine I talk to him more than you do,
16 but I sometimes feel like it's close to that. Because
17 we do -- there might be a week or two here or there
18 that go by without any comments between or discussion
19 between he and I, but generally we're talking
20 frequently and trying to figure out the best thing to
21 do, and what does the Lieutenant Governor want next and
22 that kind of thing.

23 (Laughter)

24 EXECUTIVE OFFICER THAYER: It's all out of an
25 attempt to make the process go more smoothly before the

1 State Lands Commission's conversations, of course, I
2 have with all the offices.

3 And Brian has just been wonderful in terms of
4 trying to figure out answers, ways to get things done.
5 And I've appreciated his help, and I hope I have been
6 helpful to him.

7 CHAIR GARAMENDI: I will try to find one among
8 the four remaining staff to talk to you.

9 EXECUTIVE OFFICER THAYER: Great.

10 CHAIR GARAMENDI: Okay. I think we've
11 concluded that.

12 We're now going to move to the executive
13 session.

14 * * *

15 (Thereupon the CALIFORNIA STATE LANDS
16 COMMISSION meeting adjourned to closed
session at 12:16 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, LINDA KAY RIGEL, a Certified Shorthand
3 Reporter of the State of California, do hereby certify:

4 That I am a disinterested person herein; that
5 the foregoing CALIFORNIA STATE LANDS COMMISSION meeting
6 was reported in shorthand by me, Linda Kay Rigel, a
7 Certified Shorthand Reporter of the State of
8 California, and thereafter transcribed into
9 typewriting.

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

13 IN WITNESS WHEREOF, I have hereunto set my
14 hand this May 18, 2009.

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LINDA KAY RIGEL, CSR
Certified Shorthand Reporter
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