

MEETING  
STATE OF CALIFORNIA  
LANDS COMMISSION

ELIHU M. HARRIS STATE BUILDING  
1ST FLOOR AUDITORIUM  
1515 CLAY STREET  
OAKLAND, CALIFORNIA

THURSDAY, SEPTEMBER 13, 2007

1:06 P.M.

KATHRYN S. SWANK, CSR  
CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 13061

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

COMMISSION MEMBERS

Mr. John Garamendi, Lieutenant Governor

Mr. John Chiang, State Controller, represented by Cindy Aronberg

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

STAFF

Mr. Mario DeBernardo, Legislative Liaison

Ms. Barbara Dugal, Chief, Land Management Division

Mr. Curtis Fossum, Assistant Chief Counsel

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

Ms. Kimberly Lunetta, Executive Assistant

Ms. Matt Rodriguez, Senior Assistant Attorney General

Mr. Jack Rump, Chief Counsel

Mr. Paul Thayer, Executive Officer

ALSO PRESENT

Mr. John Asuncion, The Blue Whale Sailing School

Ms. Judy Asuncion, The Blue Whale Sailing School

Ms. Rhovy Lynn Cansino, Council Member Kansen Chu

Ms. Susan Gearhard, North Tahoe Citizens Action Alliance

Mr. Mark Hannelly, California Outdoor Heritage Alliance

APPEARANCES CONTINUED

Mr. Robert Hulbert, self

Ms. Steven Kaufman, Woodfin Suites Hotels

Mr. Owen Li, Unite Here

Ms. Darlene Nicandro, San Diego Unified Port District

Ms. Colleen O'Brien, South Bay Yacht Club

Ms. Lordes Rivera, Alviso resident

Mr. Zachary Simmons, U.S. Army Corps of Engineers

Mr. Charles Taylor, South Bay Yacht Club

Ms. Sandy Threlfall, Waterfront Action

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1 PROCEEDINGS

2 CHAIRPERSON GARAMENDI: Good afternoon. I'm John  
3 Garamendi, lieutenant governor and the chair of the State  
4 Lands Commission. This meeting is called to order.

5 We're going to run through our agenda here,  
6 expeditiously. I understand there will be opportunity for  
7 public comment on basically an open mike for -- a limited  
8 period of time at the end of the --

9 (Thereupon the meeting was interrupted by a  
10 testing of the building's safety system.)

11 CHAIRPERSON GARAMENDI: Okay. Let's start over  
12 again. This is not a test.

13 (Laughter.)

14 CHAIRPERSON GARAMENDI: Anne and Cindy are joining  
15 me today, Anne representing the Department of Finance and  
16 Cindy with the Controller's Office.

17 For those of you in the audience that are not  
18 aware of what the State Lands commission does, we  
19 administer properties owned by the State as well as  
20 mineral interests owned by the State. Today, we're  
21 principally dealing with leases and the managed -- leases  
22 of land and the management of public properties.

23 First item of business is the adoption of the  
24 minutes from the Commission's last meeting. I know that  
25 all three of us have read them in great detail, and I

1 would have a motion from --

2 ACTING COMMISSIONER SHEEHAN: I'll make a motion.

3 CHAIRPERSON GARAMENDI: We have a motion.

4 ACTING COMMISSIONER ARONBERG: Second.

5 CHAIRPERSON GARAMENDI: And a second by Cindy.

6 That leaves us to a vote, which is unanimous.

7 The next order of business is the executive  
8 officer's report. Mr. Thayer?

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

11 I wanted to use this executive officer's report to  
12 give a report back on the Public Trust workshops that the  
13 Commission directed staff to hold at the Commission's  
14 first meeting this year, in February.

15 Several years ago, there were several people from  
16 this area, actually, who are in this room -- Sandy  
17 Threlfall and Ruth Gravanis, and several others came to  
18 the Commission and suggested that the work of the  
19 Commission would be enhanced if there were workshops to  
20 help communicate what we thought of the Public Trust  
21 Doctrine and to hear back from other people -- industry,  
22 the grantees, public interest groups on what they saw as  
23 the primary issues facing the Commission. So we held a  
24 very successful series of three workshops, again, two or  
25 three years ago.

1           Earlier this year, about the time we were thinking  
2 of holding these workshops, anyway, again, the Commission  
3 received a request for a rehearing of the Commission's  
4 decision from last December determining that the Woodfin  
5 Timeshare Project proposed in San Diego was inconsistent  
6 with the Public Trust Doctrine.

7           In response, at the February 5th Commission  
8 meeting, the staff was directed to conduct these workshops  
9 and to gather any information that might be available  
10 during these workshops on whether or not there was new  
11 data or things that the commission didn't have before  
12 it -- when it considered this matter in December.

13           So staff scheduled these workshops. They were  
14 held in San Francisco, San Pedro, and San Diego. They  
15 were each three hours long and conducted in the evening to  
16 facilitate public participation.

17           The program, as it was the first time around,  
18 consisted of three parts: The first part was staff giving  
19 background information on the Public Trust Doctrine; the  
20 second part consisted of the panel discussions with the  
21 panelists being from public interest groups, from  
22 industry, and representing grantees such as ports; and the  
23 third section allowed the public to ask questions of staff  
24 or to make comments about local Public Trust issues.

25           The -- I would like to really assure the public



1 that the concerns that they expressed at those workshops  
2 were meaningful to the Commission. I would like to take a  
3 few minutes to summarize the major concerns to close the  
4 loop here.

5 The San Francisco workshop, which was held over in  
6 the port board meeting -- yes, the port board meeting  
7 room, across the Bay. There were about five or six issues  
8 I wanted to highlight. There were several people who  
9 testified that the purpose of the Public Trust Doctrine is  
10 to protect tide and submerged lands, and navigable waters  
11 for future generations. And kind of on the flip side,  
12 there were several people who testified that there should  
13 be more flexibility in the interpretation of Public Trust  
14 Doctrine so additional uses could occur on those lands.  
15 There were some who testified that additional Public Trust  
16 education would be a good idea for local trustees. Others  
17 testified that they would like to see more transparency in  
18 land exchange negotiations. And in particular, they would  
19 like to be involved to participate and understand what was  
20 being worked out before it was brought to the Commission.

21 There was also testimony about the Chevron Long  
22 Wharf, an issue I know that commissioners are familiar  
23 with, with those testifying being in favor of assuring  
24 that a Bay trail was provided in the Long Wharf area.

25 And finally, there was discussion about SB 815, in

1 the Migden bill, dealing with several different things --  
2 Treasure Island but also seawall lot legislation. I  
3 should parenthetically say that was passed this week. It  
4 went on to the governor for signature.

5           At the San Pedro workshop, there was different  
6 kind of input because of different Public Trust issues  
7 there. There's a lot of concern down there about impacts  
8 from the port on the surrounding community, and a number  
9 of people from the community testified to that. They were  
10 concerned about off-port impacts and air quality impacts  
11 due to increase in traffic servicing the ports. There was  
12 a desire for increased flexibility and use of port  
13 revenues and lands so that the local community could be  
14 benefitted. And there was criticism of how the port was  
15 implementing the Coastal Act and CEQA requirements.

16           And finally, there was a lot of discussion about  
17 how the port or the State Lands Commission would choose  
18 between conflicting or competing Public Trust needs and  
19 uses. For example, whether there should be waterfront  
20 parks or cargo handling facilities.

21           In San Diego, there was a lot of testimony about  
22 the Navy Broadway Complex. This is a condo project that's  
23 been proposed on lands that used to be Public Trust, but  
24 were taken over by the Navy, in which the Commission,  
25 actually, the State, attempted to reestablish the Trust

1 there and lost in court. And a number of people hoped  
2 that the Public Trust Doctrine could be used to stop that  
3 project.

4 There is also discussion about proposed new  
5 development at the Del Mar Fairgrounds, both with respect  
6 to that development and whether or not that development  
7 was on tidelands.

8 A lot of discussion about the proposed Chula Vista  
9 Bayfront development. I think the commissioners heard  
10 about that, where, again, part of that development will  
11 rely upon an exchange of Trust lands for non-Trust lands  
12 to facilitate what's proposed there. And so we'll be  
13 seeing that next year or so.

14 There was also discussion about the sediment and  
15 water quality issues in San Diego Bay. And I think the  
16 commissioners have recently received some proposals for  
17 some additional work on that hearing, at our next meeting.  
18 And it's the same issue that led to the commission  
19 adopting a resolution in last December, urging the  
20 Regional Water Quality Control Board to expedite its  
21 enforcement of remediating those toxic problems.

22 And finally, there was more discussion about the  
23 South Bay Power Plant. This is on port lands, and there's  
24 been a lot of efforts to try and close that plant. I  
25 think the power company's heading in that direction but

1 would like to build a new one. And there's some  
2 resistance to that.

3 So those are the major issues. And I would be  
4 happy to go over any of those further.

5 The staff, in addition to hearing these particular  
6 concerns on particular issues, received about 30 oral  
7 comments or questions which warranted some sort of  
8 response, and we were able to respond to most of those  
9 during the workshop.

10 But several of them required follow-up, and we've  
11 gotten back to the people who testified, who had these  
12 questions. We couldn't be as responsive as we wanted to  
13 be at the workshop. And there's I think about three left  
14 that we're still doing work on. We received about ten  
15 written documents. Some of the them were handouts; others  
16 were e-mailed comments that were sent after the workshops.  
17 So there's a variety of ways that the public participated  
18 in this.

19 So that was the general -- that's the general  
20 report on the general things that were discussed there.  
21 But, of course, timeshares was a big part of why we held  
22 these workshops. We had participation in San Francisco on  
23 this issue, just from one representative of a union who  
24 opposed timeshares. There were no comments in the San  
25 Pedro workshop, but there was quite a bit of discussion at

1 the San Diego workshop.

2 We attempted to stimulate that discussion by  
3 inviting a representative of Woodfin to participate in the  
4 panel. So he was up there, discussing the benefits of the  
5 timeshare project that he was representing and about why  
6 that should be considered consistent with the Public Trust  
7 Doctrine. There was also a port representative on the  
8 panel who similarly testified in support of the project.  
9 And a Woodfin employee also spoke in favor.

10 There were four or five people in the audience  
11 from public interest groups, environmental groups, that  
12 sort of thing, who testified against the project,  
13 including one or two representatives from one of the  
14 unions down there.

15 Following this workshop, the San Diego workshop,  
16 staff carefully reviewed the notes that we had taken from  
17 that workshop and compared them with what came out of the  
18 December meeting where the Commission made its  
19 determination that this project was inconsistent with the  
20 Public Trust Doctrine. That meeting in December had  
21 input, obviously, from the project proponents, from the  
22 port of San Diego, timeshare owners, the affected unions,  
23 and other public interest groups. It was very  
24 comprehensive.

25 And following the careful analysis, staff does not

1 believe that there was any new information that was  
2 brought up at this Public Trust workshop that was not  
3 heard, that was not originally heard, at the December  
4 hearing before the commission on this.

5           Woodfin had written a letter in January requesting  
6 a rehearing on part of the Commission on this, and renewed  
7 that request in a letter in the last two or three weeks.  
8 Staff believes that in response to those letters, that a  
9 rehearing would serve no useful purpose, that the  
10 information that came out in December was very  
11 comprehensive, and that there isn't any material, new  
12 information, for the Commission to consider or that would  
13 justify a rehearing.

14           So staff is proposing to send a letter in response  
15 to the two letters that have been received from Woodfin  
16 that would indicate that a rehearing would not be held.  
17 Of course, if the Commission would like to direct  
18 otherwise, we can respond in a different manner.

19           CHAIRPERSON GARAMENDI: Mr. Thayer, there are a  
20 couple of people here that want to apparently testify or  
21 at least comment on this issue. We have an agenda. And  
22 what I would like to do is to -- to do nothing at this  
23 point. And when we come to the public comment period at  
24 the end of this agenda, as is our normal practice, we'll  
25 hear from anybody that wants to comment on any relevant

1 subject, this being one of them. And we'll hear from them  
2 at that point.

3 And if the Commission members want to take this  
4 issue up and modify or take further action on this matter,  
5 we'll have the discussion at that time.

6 EXECUTIVE OFFICER THAYER: Very good.

7 CHAIRPERSON GARAMENDI: One question -- and I  
8 don't want to make this a lengthy discussion. But on the  
9 exchange of lands, an issue that is often before this  
10 Commission, could you summarize the issue from the point  
11 of view of the staff?

12 EXECUTIVE OFFICER THAYER: I think -- exchanges  
13 often do come to the Commission. And most recently, they  
14 have come most frequently in the context of base closures,  
15 where land had originally been subject to the Public  
16 Trust, had been used as a military base, and now is being  
17 returned, along with non-Trust property on the base, to  
18 economic activity.

19 Frequently, the patterns of use, while it was  
20 being used as a base, ended up foreclosing the  
21 opportunities to use what were originally Public Trust  
22 lands for new Public Trust uses and some sort of  
23 rearrangement of the Public Trust ownership have  
24 benefitted both the Public Trust, in terms of making sure  
25 we had lands next to the water, and benefitted new

1 development by delivering stuff that was free from the  
2 Public Trust.

3           So we see advantages to these exchanges. These  
4 exchanges can be approved by the Commission without  
5 legislation. But particularly, in the Bay Area, often  
6 legislation sort of sets the framework for considering  
7 those exchanges.

8           I think -- and again, there are members of the  
9 public here who have concerns about this. I think from  
10 the perspective of some of the public interest groups,  
11 that they are concerned that the exchange is too well  
12 formulated by the time it gets to the Commission. And it  
13 becomes a simply yay or nay vote without a discussion of  
14 some of the factors that led to the staff developing the  
15 exchange proposal.

16           CHAIRPERSON GARAMENDI: Very brief summary of the  
17 criteria that would justify an exchange.

18           EXECUTIVE OFFICER THAYER: Jack might want to add  
19 to that. But in general -- or Matt from the AG's office.  
20 In general, the land from which the Trust is lifted cannot  
21 be susceptible to additional or new Public Trust uses. It  
22 has to be fairly small. The land that comes into the  
23 Trust has to be susceptible for Public Trust uses. It has  
24 to be equal to or greater in value to the land from which  
25 the Trust has been lifted.



1           CHAIRPERSON GARAMENDI: Okay. We'll be hearing  
2 these things from time to time. Just framing this issue  
3 is useful.

4           Any questions from my fellow commissioners about  
5 the executive officer's report.

6           Then let us go into the agenda.

7           We have the consent calendar, which are Items 1  
8 through --

9           EXECUTIVE OFFICER THAYER: -- 67.

10          CHAIRPERSON GARAMENDI: -- 67. 1 through 67.

11          In reviewing the consent calendar, with my  
12 colleagues here, there are several consent items that are  
13 routine -- normally routine, but I think at this moment,  
14 not routine.

15          The Tahoe Regional Planning Agency is nearing  
16 completion of a shore zone action, which I know that we've  
17 discussed here. That Shore Zone discussion will do  
18 several things: One, it will presumably limit the total  
19 number of piers; it will set up criteria for judging which  
20 piers should be built and perhaps where they should be  
21 built; and also dealing with the way in which adjacent  
22 property owners would be encouraged to come together to  
23 build one pier rather than several piers.

24          Also, access along the State Trust land, both in  
25 the water as well as on the -- on the land itself are all

1 issues that are nearing or in discussion, and, as I  
2 understand, nearing completion.

3           Since it's not complete, I don't have any idea,  
4 personally, how these particular piers, some of which  
5 are -- almost all -- of which are renewals, would be  
6 affected by the new plan, at the new Shore Zone Plan.

7           I'm of a mind that this can wait some 30, I guess,  
8 45 days until our next meeting, in October, at which time,  
9 we may have some indication of how the Tahoe Shore Zone  
10 Plan would impact or not impact, at all, these eight or  
11 nine leases that we have before us.

12           So my desire is that we put these off until next  
13 time, in October. Perhaps they will be perfectly suited  
14 for consent. Perhaps there would be need for some  
15 modification in the design, or specifically the design of  
16 these piers. Before we renew them, we may want to know  
17 exactly what the Shore Zone Plan might require of piers in  
18 the Tahoe area.

19           ACTING COMMISSIONER SHEEHAN: Yeah. I am fine  
20 with putting it off until the next meeting. I guess a  
21 couple questions that I would have one, have we  
22 communicated to these applicants that we -- okay.

23           CHAIRPERSON GARAMENDI: This is the first such  
24 communication that I'm aware of because we just took this  
25 up yesterday, and said maybe we should wait.

1           ACTING COMMISSIONER SHEEHAN: Because I think in  
2 fairness we need to let them know what the chair -- and I  
3 think also there are possibly others who would have  
4 applications in the queue currently who could also be  
5 affected by this. And I think as others know,  
6 Ms. Aronberg sits on a number of those. We're all for  
7 transparency and communicating with people, in fairness to  
8 the public out there. So I do think we need to  
9 communicate. I don't know if you guys can, through your  
10 database, you know, figure out who's coming up next or in  
11 the next few months.

12           I guess the issue is sitting on the -- knowing,  
13 the TRPA, they have a number of concerns. Sometimes they  
14 move at their own peace, and so I'm --

15           CHAIRPERSON GARAMENDI: In this case, four or five  
16 years.

17           Excuse me, 20 years.

18           ACTING COMMISSIONER SHEEHAN: Yeah. So I don't  
19 want to -- in fairness to the applicants, how long are we  
20 going to -- how long can we -- I mean, I guess we can do  
21 it indefinitely. But in fairness to them, we need to be  
22 able to communicate to them what is happening. And is  
23 TRPA really going to come to a -- you know, where are they  
24 in this process?

25           CHAIRPERSON GARAMENDI: Well, I'm not one to speak

1 for TRPA. I have met with the chair of TRPA, discussing  
2 the Shore Zone issue, which seems to be a controversial  
3 figure in that process.

4 And that discussion led me to believe that they  
5 are moving expeditiously to some resolution that would  
6 lead to a clarity and quite possibly a completion of its  
7 Shore Zone Plan ahead of the overall revamping of the TRPA  
8 plan.

9 As I heard that discussion, I said, "Well, if  
10 that's where you are headed, then perhaps you -- as far as  
11 I'm concerned, it would be okay to move ahead of plan if  
12 that's where you are going."

13 The indication was that they are moving quickly,  
14 that it could be done this fall, in the early part of the  
15 fall, in which case their plan may or may not affect these  
16 applicants.

17 The specific concern to me, as I said a moment  
18 ago, is the design of the pier and the ability of the  
19 public to maneuver through these piers. It may or not  
20 be -- I have no knowledge of the individual. Forty-five  
21 days, yes, it's a bother, and maybe they will get caught  
22 up in whatever that new plan is; maybe they won't. But I  
23 think we ought to, A, as we're doing now, say, at least  
24 for one, we should wait at least 45 days to see where TRPA  
25 is going with the Shore Zone Plan; and secondly, plan to

1 take these up in October, towards the end of October.

2 EXECUTIVE OFFICER THAYER: So at the next meeting  
3 then?

4 CHAIRPERSON GARAMENDI: October 30th.

5 EXECUTIVE OFFICER THAYER: Sure. That's the next  
6 meeting.

7 CHAIRPERSON GARAMENDI: That meeting is in San  
8 Diego.

9 EXECUTIVE OFFICER THAYER: Yes.

10 CHAIRPERSON GARAMENDI: And that may be a little  
11 bit of discomfort. But I think -- and your point is well  
12 taken is that well before that meeting, we should clearly  
13 communicate with these applicants and any others that are  
14 interested in this. And I expect also to know what's  
15 going on, as well as the Shore Zone.

16 Cindy?

17 ACTING COMMISSIONER ARONBERG: I agree with that.

18 EXECUTIVE OFFICER THAYER: So the direction on  
19 this from the chair and the Commission would be to  
20 reschedule these, re-agendize these, for the October 30th  
21 meeting as well as whichever ones are naturally coming on  
22 that date, anyway.

23 CHAIRPERSON GARAMENDI: Correct. In the  
24 intervening time, all of these and others, what and why.  
25 Okay?

1 EXECUTIVE OFFICER THAYER: My --

2 ACTING COMMISSIONER SHEEHAN: I guess could we  
3 also, you know, communicate formally with TRPA and to hear  
4 from them, you know, what their plans are?

5 The other question I would have for TRPA is how  
6 are they going to deal with -- whether it be some sort of  
7 grandfathering, how they are going to -- you know, what  
8 their thoughts are, if they have a proposal, on those who  
9 have all their permits and approvals versus moving  
10 forward? And what their thinking is on the policy, so at  
11 least I could understand what they are doing.

12 EXECUTIVE OFFICER THAYER: And actually, my  
13 understanding is that unlike our leases, which expire  
14 generally after ten years, if their permits go on  
15 indefinitely, so they don't have the opportunity except  
16 perhaps through our leases, to revisit some of the  
17 questions that the chair is raising, so we give them an  
18 opportunity to --

19 ACTING COMMISSIONER SHEEHAN: I think it's  
20 important for us to understand how our two processes  
21 interact with each other. And there again, in fairness to  
22 the applicants so they know what the rules are.

23 EXECUTIVE OFFICER THAYER: Yes.

24 ACTING COMMISSIONER SHEEHAN: So as I say, I am  
25 fine with postponing -- kind of hearing what is going on,

1 but also communicating with the folks up there, the people  
2 who come to us. Because we do get -- as those of us who  
3 sat on there for a while, we get these on a regular basis,  
4 the Tahoe piers.

5 CHAIRPERSON GARAMENDI: Anne, very well said.

6 Brian was in touch with TRPA. After I took a look  
7 at this agenda yesterday and said, "Maybe we ought to wait  
8 on this." I think the timing is going to work. We should  
9 know well ahead of the -- our October meeting which way  
10 TRPA is going, what they are generally looking at.

11 They may be nearing completion, but at least the  
12 general thrust of what they are looking at is what will be  
13 known by that time. And I would ask staff to take a look  
14 at these specific issues before us and to compare them to  
15 where TRPA appears to be going, and if they finalize their  
16 plans that we be very specific. If there's any particular  
17 conflict between where they are at final, we would have to  
18 seek modifications of these leases so it fits into  
19 whatever TRPA may have in their design or whatever  
20 elements.

21 And if they are not final, at least give some  
22 indication of where they are headed, so that we can say,  
23 "Okay. We're going to take three of these and move those  
24 and the other three because there's potential conflict."  
25 And we'll lose those. And I understand the burden that

1 that presents, but that's the way, at least, I would like  
2 to move.

3 EXECUTIVE OFFICER THAYER: Well, it's true also  
4 that all of these items on this agenda are renewals for  
5 existing piers. So we're not putting somebody off who  
6 wants to start construction on a new pier.

7 CHAIRPERSON GARAMENDI: Maybe that -- our lease  
8 will require modifications in an existing pier. That's a  
9 possibility.

10 EXECUTIVE OFFICER THAYER: If I may, I would read  
11 off the numbers of the items so that for the record we'll  
12 know which ones are coming off consent. In my review,  
13 it's Nos. 1, 2, and 3, 6, 7, 9, 11, 13, 15, and 16, and  
14 then 57 and 58. These are all rec pier or rec pier-like  
15 leases.

16 CHAIRPERSON GARAMENDI: Very good. Then that will  
17 be removed from the consent calendars.

18 And it's now appropriate for anybody that wishes  
19 to speak on the new revised consent calendar to do so.

20 ACTING COMMISSIONER ARONBERG: Mr. Chair, I have a  
21 question for staff.

22 Mr. Thayer, I mentioned this to you before. But,  
23 on C-62, the under-sea cable, I wonder if you would give a  
24 little bit of some background to the commission and  
25 audience. Back, a long time ago, when, I think, I was



1 first involved with the Commission, we were approving a  
2 number of cables. And at least one of them has since been  
3 abandoned because the company filed for bankruptcy or  
4 something like that.

5 And I'm just very concerned, if we start approving  
6 cables again, that companies are sure to take  
7 responsibility for the things that they bury under our  
8 ocean, which could cause harm.

9 So maybe you could give a little bit of background  
10 to at least the one that's been abandoned and what's going  
11 on with it.

12 EXECUTIVE OFFICER THAYER: My understanding of  
13 this is that -- well, the Commission is correct. We had a  
14 surge of oceanic cable applications. And the Commission,  
15 out of concern for the cumulative impact of those cables,  
16 switched from negative declarations, as our CEQA review,  
17 to EIRs, because we wanted to look at them more closely  
18 because we were seeing some of them increase.

19 The Commission ended up approving probably four or  
20 five of them, including some new cables for AT&T as the  
21 applicant. And I think there was a case of, kind of, a  
22 flood of capacity at some point. But the one cable that  
23 went bankrupt, with which I'm familiar, is what was called  
24 a festoon system, because it ran along the California  
25 coast and was meant to supply communications capabilities,

1 sort of, intra-California, rather than to Asia, which was  
2 the intent of all the other cables.

3 And so that company did go bankrupt. And the  
4 cable was left in place, and, as far as I know, is not  
5 being used for anything at this point. So it's always a  
6 concern.

7 Our EIRs, though, indicated the impacts from these  
8 cables were relatively minor, that there weren't impacts  
9 to whales. Most of these cables were buried, and the  
10 fishermen were -- worked very carefully to make sure that  
11 the trawlers wouldn't tangle in these cables or there  
12 would be systems set up so they would be paid for loss of  
13 nets, should that ever happen, so that none of the  
14 fishermen are opposed to this project as they had been in  
15 some of the earlier projects.

16 Is that responsive to --

17 ACTING COMMISSIONER ARONBERG: Yeah. I want to  
18 see if there's some recommendation that we can in the  
19 future projects, about how we can prevent abandonment in  
20 the future, so even though they are initially buried. And  
21 some of the these cases, we have surveys conducted --  
22 periodic surveys conducted every three or five years. And  
23 if it's abandoned and there's no one to financially  
24 conduct the survey, then they could become unburied and no  
25 one would know if sea life could be harmed, or it seems

1 like there could be a lot of harm.

2 EXECUTIVE OFFICER THAYER: Sure.

3 ACTING COMMISSIONER ARONBERG: So is there some  
4 sort of a bonding situation that we could require?

5 EXECUTIVE OFFICER THAYER: There is bonding. I'm  
6 not sure if it's sufficient for removing the cables.  
7 Generally, the Commission has a choice on when the lease  
8 is abandoned. Either, it can require the improvements to  
9 be removed or allow them to be left in place. And in  
10 most -- in many circumstances, particularly where the  
11 cable's already buried, as we wanted to see happen, to  
12 minimize impacts, that removal of the cable causes more  
13 environmental impacts than leaving it in place. But for  
14 this particular one, I don't know if staff can tell --

15 CHAIRPERSON GARAMENDI: Excuse me, Mr. Thayer,  
16 Cindy.

17 This particular item is to authorize the  
18 contracting for EIR. I think that's what we have before  
19 us. I think what Cindy would like to have that EIR  
20 address is what happens if there's an abandonment or a  
21 bankruptcy. And that would be a specific issue taken up  
22 in the EIR. If it's not there, I suspect the local EIR is  
23 insufficient.

24 ACTING COMMISSIONER ARONBERG: Thank you.

25 CHAIRPERSON GARAMENDI: Other questions?

1           ACTING COMMISSIONER SHEEHAN: The only -- I want  
2 to make sure that the leases that the chair referred to  
3 are the only ones that are pulled off consent.

4           EXECUTIVE OFFICER THAYER: There are two other  
5 items --

6           ACTING COMMISSIONER SHEEHAN: Okay.

7           EXECUTIVE OFFICER THAYER: -- for which we've  
8 received communications. I think it's 46 and 47. Yes.

9           CHAIRPERSON GARAMENDI: I'm told 68 is to be  
10 pulled?

11          EXECUTIVE OFFICER THAYER: Yes, and that's on the  
12 regular calendar.

13          ACTING COMMISSIONER SHEEHAN: Okay. So 46 -- I  
14 just want to make sure.

15          EXECUTIVE OFFICER THAYER: Sure.

16          Those are two items that involve offers to  
17 dedicate. And the owner of the property did not want to  
18 see the commission accept those. He asked that it be  
19 postponed, but -- the Commission hearing would be  
20 postponed. However, these offers to dedicate expire  
21 before the next Commission meeting, and have been  
22 postponed once at the owners' request, Mr. and Mrs.  
23 Linder, and we've been communicating with him in the last  
24 couple of days.

25          From a technical perspective, it might make sense

1 to go ahead of and take these off, because we haven't  
2 received the comments. We have a very brief staff  
3 explanation.

4 CHAIRPERSON GARAMENDI: This is item?

5 EXECUTIVE OFFICER THAYER: 46 and 47.

6 CHAIRPERSON GARAMENDI: Okay. Then the request is  
7 to remove those from the consent calendar and take them up  
8 as a regular item?

9 EXECUTIVE OFFICER THAYER: Yes.

10 CHAIRPERSON GARAMENDI: Very good. They will be  
11 removed.

12 Any other issues to be removed from consent?

13 EXECUTIVE OFFICER THAYER: No.

14 CHAIRPERSON GARAMENDI: Okay. The consent  
15 calendar is before us as amended.

16 Do I have a motion?

17 ACTING COMMISSIONER ARONBERG: So moved.

18 CHAIRPERSON GARAMENDI: And a second?

19 ACTING COMMISSIONER SHEEHAN: I will second.

20 But on Item -- I show abstaining on the STRS --

21 THE REPORTER: I'm sorry. I can't hear you.

22 ACTING COMMISSIONER SHEEHAN: On Item 64 --

23 CHAIRPERSON GARAMENDI: Let's do this. Let's  
24 remove Item 64. What we're going to do here is, the  
25 motion is not accepted and withdrawn.

1           ACTING COMMISSIONER ARONBERG: Can we ask counsel  
2 whether we have a conflict? Because otherwise, there will  
3 be no vote on it.

4           EXECUTIVE OFFICER THAYER: We've chatted with Matt  
5 on this.

6           CHAIRPERSON GARAMENDI: Matt, there's a question  
7 of whether there's a conflict here, because two of the  
8 members of this Commission also are on the State Teacher's  
9 Retirement.

10          SENIOR ASSISTANT ATTORNEY GENERAL RODRIGUEZ: It's  
11 not unusual, as you all know, for members of the executive  
12 branch of government to sit on a whole number of agencies.  
13 And in those situations, the way the law looks at that is,  
14 the law assumes you will make the best decision that is in  
15 the interest of the seat that you are sitting in at the  
16 time when the issue comes up. So it's not a conflict that  
17 prevents you from voting on something.

18          ACTING COMMISSIONER SHEEHAN: All right. That's  
19 fine. As long as we are okay, because I just -- I don't  
20 want any questions to arise at the other Board meeting.

21          ACTING COMMISSIONER ARONBERG: So we have 100  
22 percent assurance that we're okay?

23                   (Laughter.)

24          SENIOR ASSISTANT ATTORNEY GENERAL RODRIGUEZ: I'm  
25 an attorney.

1 (Laughter.)

2 SENIOR ASSISTANT ATTORNEY GENERAL RODRIGUEZ: And  
3 with that notation, you have any assurance that you are  
4 fine.

5 ACTING COMMISSIONER SHEEHAN: Okay. With that, I  
6 will second.

7 CHAIRPERSON GARAMENDI: Very good. And the vote  
8 on the consent calendar is unanimous.

9 Okay. Let's take up the regular items that are  
10 before us. If we prefer to go by numbers, it would be 46  
11 and 47.

12 EXECUTIVE OFFICER THAYER: I think that would be  
13 fine.

14 If the Chair could ask if the Linders are present.

15 CHAIRPERSON GARAMENDI: Are the applicants present  
16 today?

17 EXECUTIVE OFFICER THAYER: At which case we'll  
18 have a very brief staff presentation.

19 Curtis?

20 ASSISTANT CHIEF COUNSEL FOSSUM: Chairman  
21 Garamendi, and Commissioner Sheehan, Commissioner  
22 Aronberg, Curtis Fossum, assistant chief counsel.

23 Back in June, we had these same two items  
24 agendized for the Commission calendar. And at the request  
25 of Mr. Linder, we postponed them till this month.

1           He's said we had wanted to speak with counsel  
2 about the items and check into some legal issues.  
3 Yesterday, we heard from him again. And he asked, once  
4 again, to have the Commission meeting postponed, or he  
5 wanted to file his objection. And you have before you, I  
6 believe, in your packet, his objection.

7           Basically, his objection was, he believed the  
8 21-year period and the coastal development permit that was  
9 issued to him in 1985 has expired. However, he did not --  
10 he and his wife did not sign the coastal permit offer of  
11 dedication until September of 1986. Therefore, the  
12 commission -- this Commission or the Coastal Commission  
13 couldn't record that offer of dedication until after he  
14 had signed it. The 21 years has not run, and so the  
15 Commission is perfectly authorized to accept this offer of  
16 dedication.

17           CHAIRPERSON GARAMENDI: Is he requesting a further  
18 delay?

19           ASSISTANT CHIEF COUNSEL FOSSUM: He did offer --  
20 ask for a further delay. However, we informed him that we  
21 were not proposing to do that, giving that it would expire  
22 before the next Commission meeting. Now, we had already  
23 postponed it once at his request.

24           CHAIRPERSON GARAMENDI: And the -- therefore, the  
25 potential legal question arises as to when the 21 years



1 has run. The opinion of our staff is, it has not yet  
2 expired; it will shortly expire?

3 ASSISTANT CHIEF COUNSEL FOSSUM: That's correct.

4 CHAIRPERSON GARAMENDI: I suppose if he has a  
5 different opinion, we'll see him in court.

6 ASSISTANT CHIEF COUNSEL FOSSUM: That's correct.

7 ACTING COMMISSIONER ARONBERG: I would love to  
8 move approval of both 46 and 47. I think they are very  
9 important items. And access is extraordinarily important  
10 to the controller. So I would move approval right away.

11 ACTING COMMISSIONER SHEEHAN: I will second.

12 CHAIRPERSON GARAMENDI: We have a motion and a  
13 second.

14 The Linders are apparently not here and are not --  
15 nobody to speak on their behalf other than the letter  
16 before us.

17 The vote is before us, and it is a unanimous vote.

18 All right. The next item, I believe, are the  
19 regular agenda items.

20 Mr. Thayer, what is the first item, 68?

21 EXECUTIVE OFFICER THAYER: 68 is going to be  
22 pulled. But let me just, for the record, explain that  
23 there were several defaults or several faults in the  
24 compliance with the lease for Bruno's Island Yacht Club.  
25 But the bank has stepped in. The bank had lent money on

1 this project and was afraid of the lease being terminated  
2 and losing its interest and cured all the defaults. The  
3 rent is completely up to date, paid all the penalties and  
4 interests. They have assured that insurance is present  
5 and the bond is paid up.

6 So at this point, there are no faults in the  
7 lease. And we therefore recommend that the Commission  
8 take no further action on this.

9 CHAIRPERSON GARAMENDI: So our action here would  
10 have been to issue a notification of default, or authorize  
11 such a notification? And the staff believes that is no  
12 longer necessary?

13 EXECUTIVE OFFICER THAYER: Correct.

14 CHAIRPERSON GARAMENDI: So we have no action  
15 recommended by staff. And I suspect the commissioners are  
16 not of mind to take action. And therefore, this item is  
17 pulled and is moot absent further default.

18 EXECUTIVE OFFICER THAYER: Correct. If the  
19 Commission agrees.

20 CHAIRPERSON GARAMENDI: Very good. The item is  
21 off. And we're not taking action on it.

22 Next item is No. 69, dealing with a dock on the  
23 Sacramento River.

24 EXECUTIVE OFFICER THAYER: That's correct.

25 CHAIRPERSON GARAMENDI: I believe that staff, if

1 you could explain what this is about. And then I  
2 understand Mr. Hulbert is here to speak for himself.

3 EXECUTIVE OFFICER THAYER: Yes. The chief of our  
4 Land Management Division, Barbara Dugal, will give the  
5 staff presentation on this item.

6 MS. DUGAL: Good afternoon, Mr. Chairman,  
7 Commissioners. I am Barbara Dugal, the chief of Land  
8 Management Division. And I'm going to be providing you  
9 with information today regarding calendar Item No. 69.

10 --o0o--

11 MS. DUGAL: I would first like to start, to give a  
12 little bit of background regarding this item, what brought  
13 us here today. On April 5th, 2004, the Commission  
14 approved the issuance of a ten-year general lease,  
15 recreational use, to Robert Hulbert. That was for the  
16 construction, use, and maintenance of a covered floating  
17 boat dock, pilings, and gangway on a parcel of sovereign  
18 land, located in the Sacramento River, near the city of  
19 Sacramento.

20 The authorized construction including following  
21 elements: Five pilings, a 40 -- 34' by 13' high covered  
22 floating boat dock with a 34 by 14' boat slip, and a 4' by  
23 52' foot metal gangway.

24 Next slide, please.

25 --o0o--

1 MS. DUGAL: This slide, up here, behind you,  
2 represents what was approved by the Commission and  
3 actually a part of the Mr. Hulbert's lease. In October of  
4 2004, pile driving began, and construction of the dock was  
5 completed in June of this year. Once the dock was  
6 constructed, we received a complaint from a member of the  
7 public. They expressed concern about the size of the boat  
8 dock.

9 Next slide, please.

10 --o0o--

11 MS. DUGAL: Subsequently, on June 18 of this year,  
12 Commission boundary staff completed preliminary fieldwork  
13 to determine whether or not the structure was built as was  
14 authorized. Based on staff's preliminary fieldwork, it  
15 was determined that the structure appeared to have been  
16 built larger than was authorized.

17 Next slide, please.

18 --o0o--

19 MS. DUGAL: And as shown in there, it shows that  
20 the dock is approximately 500 square feet larger and seven  
21 feet taller than what was authorized.

22 On June 26 of this year, staff conducted on  
23 inspection of the dock with Mr. Hulbert. During the site  
24 inspection, staff took measurements of the structure. And  
25 at that time, we learned that there was an outdoor cabana

1 constructed on top of the dock.

2 Next slide.

3 --o0o--

4 MS. DUGAL: Next one.

5 --o0o--

6 MS. DUGAL: So that's the cabana with the kitchen.

7 Inside the cabana, there was an electric grill, a cooktop,

8 a sink with a garbage disposal.

9 It's kind of -- go through these, please.

10 --o0o--

11 MS. DUGAL: And two refrigerators have been placed

12 on top of the dock.

13 Next slide, please.

14 --o0o--

15 MS. DUGAL: Keep going.

16 --o0o--

17 MS. DUGAL: Additionally, a toilet, sink, and a

18 sewer line have been placed on the lower level boat slip

19 area. And an outdoor hot and cold shower was constructed

20 on the lower, outside, level.

21 --o0o--

22 MS. DUGAL: On July 5th, staff sent a letter to

23 Mr. Hulbert, advising him that based on the site

24 inspection and staff's preliminary analysis, that the

25 covered boat dock was not constructed as approved and that

1 additional unauthorized improvements had been placed on  
2 the dock structure itself.

3 At that time, Mr. Hulbert was advised to stop all  
4 the work on the dock until a definitive determination  
5 could be made by staff regarding the actual size of the  
6 structure.

7 Next slide, please.

8 --o0o--

9 MS. DUGAL: Next.

10 --o0o--

11 MS. DUGAL: Thank you.

12 In early August, staff completed its analysis.  
13 And on August 7th, a certified letter was sent to  
14 Mr. Hulbert advising that he was in default of the terms  
15 of the lease based on the following: First was the  
16 improvements placed on the dock that were that were not  
17 authorized; and second, the authorized improvements were  
18 altered without having the prior written consent of the  
19 commission.

20 Additionally, on August 10th, the Army Corps of  
21 Engineers sent Mr. Hulbert a letter advising him that he  
22 had not complied with the terms and conditions of the  
23 Corps permit and that he was directed by the Corps to  
24 remove the unauthorized structures and to construct the  
25 dock as was approved by the Corps.

1           On August 13th, Commission staff met with  
2 Mr. Hulbert to discuss the defaults of the lease. And he  
3 was advised at that time to remove the unauthorized  
4 accessories that were placed on the dock and to  
5 reconfigure the boat dock to the dimensions that were  
6 authorized.

7           Mr. Hulbert indicated that he would be submitting  
8 an application to amend the lease to include the  
9 unapproved accessories and to keep the dock as  
10 constructed.

11           On August 15th, another letter was mailed to  
12 Mr. Hulbert advising him of the need to address the  
13 defaults of the lease in the form of a letter or an  
14 amendment stating what remedies he would be taking to cure  
15 each of those defaults.

16           On the 22nd of August, Mr. Hulbert's  
17 representative, DCC Engineering, submitted an application  
18 to the Commission, to amend the lease to add all of the  
19 unauthorized accessories and to keep the dock as was  
20 constructed.

21           Mr. Hulbert's request -- excuse me. At  
22 Mr. Hulbert's request, a meeting was held with staff on  
23 September the 10th to discuss staff's recommendation at  
24 today's Commission meeting.

25           Next slide, please.

1                                   --o0o--

2           MS. DUGAL:  On September the 11th, Mr. Hulbert  
3 sent a letter requesting that his application to amend the  
4 lease be revised.  In that letter, he had stated, he would  
5 remove all of the unauthorized accessories that had been  
6 placed on the dock, within 30 to 60 days.  But he had  
7 requested that the Commission consider authorizing a lease  
8 amendment to allow him to retain the following:  He would  
9 like to retain the dock as it's built; he would like to  
10 retain the spiral staircase; the larger gangway; and the  
11 discharge pump.

12           Next.

13                                   --o0o--

14           MS. DUGAL:  As outlined in the staff report, staff  
15 is recommending the Commission take the following actions:  
16 One is to deny the application for the amendment of the  
17 lease to retain the dock as built with the spiral  
18 staircase, the larger gangway, and the discharge pump; two  
19 is to ratify staff's finding that Mr. Hulbert is in  
20 default of his lease, and authorize staff to issue notice  
21 of termination requiring removal of the improvements and  
22 restoration of the lease premises; three, terminate the  
23 lease issued to Mr. Hulbert, provided that he has not  
24 cured the lease defaults; and four would be to authorize  
25 staff of the Commission and attorney general to take all



1 steps necessary, including litigation, to terminate the  
2 lease, and to remove the improvements from the lease  
3 premises.

4 This concludes includes my presentation, and a  
5 member of the staff of the Corps of Engineers is here to  
6 answer any questions. And Mr. Hulbert is also here. He  
7 would like to make a presentation to the commission.

8 CHAIRPERSON GARAMENDI: Let me be quite clear  
9 about what you are proposing as a solution. What is the  
10 proposed action that the staff wants us to take?

11 MS. DUGAL: To terminate the lease.

12 CHAIRPERSON GARAMENDI: Terminate the lease,  
13 remove the structure.

14 MS. DUGAL: That's staff's recommendation.

15 CHAIRPERSON GARAMENDI: Okay. Let's hear from --  
16 I understand Mr. Hulbert is here. And I would like to  
17 hear from him. Thank you.

18 MR. HULBERT: Unfortunately, I am in violation of  
19 Section 4 of the general provision, 4(d)(1), which states,  
20 "No improvement, other than expressly authorized in this  
21 lease shall be constructed by the lessee on the lessor  
22 premises without the prior written consent of the lessor."

23 In building the initial shade structure on top of  
24 the boathouse, it grew for two reasons: We wanted to have  
25 an enclosed storage area on the sun deck for chairs,

1 towels, life vests, etc. We had a utility permit, and we  
2 took full advantage of that. I thought it would be nice  
3 to catch a fish and be able to clean it and grill it out  
4 there.

5 The remedy for that would be to remove all items  
6 on the top.

7 The toilet and pump house septic system was added  
8 to prevent any pollution going into the river. The  
9 remedy? Remove those items and disconnect and cap the  
10 sewer line.

11 The showerhead was added to allow washing river  
12 water off, prior to coming back in.

13 The remedy? Remove and cap the line.

14 The footprint of the boat house grew 7'4" from the  
15 "general exhibits" dimensions for three reasons: 2' was  
16 added for -- on the back of the boat house for safety;  
17 3'6" grew to accommodate the specific boat, the True World  
18 Marine Boat which is a length of 36'8"; 1'8" was allowed  
19 for a 3'4" walkway in front of the upstream riverside pile  
20 for safety.

21 The remedy? Allow as built.

22 The gangway size was determined after the  
23 structure was set, at 62'6" length overall; 64' overall --  
24 an overall length of 64', which includes the handrails.

25 The remedy? Allow it as built.

1           The spiral staircase was in place of a standard  
2 staircase due to the amount of steps necessary to get to  
3 the bottom deck. The overall footprint is now smaller due  
4 to a spiral versus a standard -- the standard one.

5           The remedy? Allow it as built.

6           Now, regarding the sundeck, it's always been my  
7 understanding that we had a permit for the sun deck, as in  
8 the exhibits in the general drawing.

9           However, it's now my understanding that the  
10 Commission does not want any parties or sunbathers up on  
11 top.

12           And the remedy would be to build a pitched roof  
13 over the existing roof steep enough so that no one would  
14 be able to be high up, and low enough to not allow anybody  
15 to live in.

16           I propose a small perimeter be allowed around the  
17 pitched roof for maintenance access.

18           My wife and I are very sorry that we did not fully  
19 understand the provisions set forth by the Commission. We  
20 did not mean any harm to the Public Trust in any way. As  
21 a matter of fact, I never knew what Public Trust was until  
22 a couple of weeks ago. We built a very strong structure  
23 for a specific boat and relied on others for the permit  
24 process for building the entire building project.

25           We ask the Commission for you understand and allow

1 the permit for the boat house and a pitched roof structure  
2 as requested.

3 Again, thank you for your understanding.

4 CHAIRPERSON GARAMENDI: Thank you for your  
5 presentation.

6 Staff is recommending, because of the  
7 modifications that you made that are not consistent with  
8 the lease, that the lease be terminated, and you remove  
9 the dock in total. The question that I have is, would  
10 you -- is to present an alternate. And that is, build --  
11 rebuild this thing according to what you told us you were  
12 going to build.

13 MR. HULBERT: Say that again? In other words,  
14 would I rebuild?

15 CHAIRPERSON GARAMENDI: Rebuild this thing or  
16 modify it to the precise proposal that you brought to the  
17 Lands Commission.

18 MR. HULBERT: Well --

19 CHAIRPERSON GARAMENDI: Seems to me you have an  
20 option. Do what you said you would do or remove the  
21 lease -- or remove the dock.

22 MR. HULBERT: Well, the dock would unfortunately  
23 have to be completely removed. I got a letter from my  
24 builder, Louis Uhl, California Custom Dock, and it said it  
25 would be very impractical if there's very -- we have two

1 large H beams that are connected. So to shrink it would  
2 be very hard.

3 CHAIRPERSON GARAMENDI: You're asking the  
4 Commission to -- people come in here with an option. They  
5 could ask for permission or they could ask for  
6 forgiveness. You came in and you're basically asking for  
7 forgiveness. You came -- you were given permission to  
8 build a specific structure and you went way beyond that,  
9 that you were permitted to build, not just a little bit,  
10 but way beyond it, both in terms of the footprint as well  
11 as the height of the structure, and then adding what  
12 amounts to a very significant outdoor kitchen and other  
13 facilities. There is no way that I can allow such a thing  
14 to happen, as a member of this Commission.

15 People who apply for -- whether it's you or  
16 whether it happens to be AT&T that apply for a permit and  
17 tell us they are going to do something, they are expected  
18 to do it. And if they don't do it, they are in violation  
19 of the lease.

20 Yes, sir?

21 MR. HULBERT: Yes, sir.

22 And hiring Gil Labrie at DCC Engineering, he -- it  
23 was always his understanding, that he relayed to me, that  
24 these are general footprints. And when he wrote to the  
25 staff regarding all items on August 21st, he again said,

1 it's always been common to proceed or at least  
2 consideration to represent a conceptual footprint.

3           The first time I heard that there was a height  
4 restriction was when Ms. Dugal told me that Mr. Frey had  
5 estimated a 13-foot opening for the garage door, so to  
6 speak. And so when -- on the general permits as listed on  
7 these ones right here, we built our dock from --  
8 California Custom Docks built from these -- this little  
9 diagram here. And then so Louis was saying, well, it is  
10 impractical to put -- to not have built a safety feature.  
11 So that's why the overall footprint is 7 feet longer.

12           And then of course the boat itself, it was a  
13 conceptual design at the time. And we didn't get the  
14 exact common dimensions until May -- March of 2004, so it  
15 could have been May. And so me not knowing to, you know,  
16 give the exact blueprints -- and we were ready. As a  
17 matter of fact, we have in our proposal that -- the lower  
18 footprint was ready as early as November of '03.

19           And my mistake here is that when -- and Mr. Barham  
20 may recollect this, but I'm telling the Commission the  
21 truth, but I told him the footprint was bigger. And as a  
22 matter of fact, he calculated and he said that it was the  
23 same feet. And so I was ready.

24           My own mistake is that I did not submit the exact  
25 blueprints. I did -- I have to say, I did drop the ball

1 on the upper storage structure. We -- it was originally  
2 designed as was a straight -- safe structure. But then we  
3 had riffraff, people that were coming, and some of the  
4 workers lost some tools. And I thought that, well, we can  
5 close that down to protect our belongings.

6 And you know, and then I had the utility permit.  
7 And I thought a utility permit for me was city sewer and  
8 water. You know? And so, nowhere did I read that we  
9 couldn't have a sewer or we had certain restrictions. And  
10 so that's why we have -- that's why we have the lines.  
11 And I went and I researched many, many dock and boat  
12 structures around the Delta, my wife and I did. And we  
13 found a lot of rickety and dilapidated structures  
14 polluting into the river, and we did not want that. We  
15 wanted to have a structure that was sound.

16 Louis told me that our structure that  
17 engineered -- I hired a structural engineer for it. It  
18 cost me 4,300 for his stamp of approval. And so our  
19 structure is designed to withstand a category one  
20 hurricane. And so -- which is a very strong structure.

21 And so it grew 7 feet. The -- I had no idea that  
22 there were -- nowhere in the general permits was saying  
23 there was a height for the garage door. And so when I  
24 told Mr. Barham that we had a bigger engineered structure  
25 and he -- I have no reason to lie. I'm not lying. He

1 won't -- he doesn't recollect it. But I told him we had a  
2 bigger structure, and so when he passed it, I thought we  
3 were good to go. And so Gil had always conveyed to me  
4 that these were general footprints. And so now, this is  
5 my first boathouse and now I'm caught in a web.

6 I hired the very best agencies that I could find.  
7 Gil Labrie, DCC Engineering, has been around for over 20  
8 years; Louis Uhl, California Custom Docks has built many,  
9 many structures -- you might have heard of him -- as well  
10 as floating gas stations and stores and whatnot.

11 And so me going through and looking at Sacramento  
12 Yacht Harbor and understanding the connections and  
13 whatnot, that's how it grew. It wasn't that we did -- my  
14 wife and I, we didn't want to do anything illegal or  
15 wrong. As a matter of fact, we looked at the structure as  
16 being -- we wanted it to be here for years and years and  
17 not just in our life time. We didn't want to have our  
18 structure fall apart like these other people.

19 And like I said, we built this specific boathouse  
20 for a specific boat, the True World Marine. And  
21 unfortunately, they have documented -- given it to  
22 Ms. Dugal that shows that we have, you know, a timeline of  
23 asking questions and being diligent.

24 And so, yes, we did some things that were maybe  
25 wrong but they can be easily remedied.



1           CHAIRPERSON GARAMENDI: Well, here's the -- I  
2 appreciate your expression of good will and good effort.  
3 Along -- throughout the state, we have many piers, docks,  
4 that are not in compliance with the lease, some because  
5 they have been allowed to deteriorate, as you have  
6 suggested; others because people, owners, have gone way  
7 beyond what was allowed and permitted.

8           And I for one say, hey, you are going to get a  
9 permit, you are going to honor that permit. You expect  
10 the State to honor it. We expect the lessee to honor it.  
11 And I have instructed staff that I want a full review of  
12 the Sacramento River, all of it, up and down the river, so  
13 that every dock that is on the river is in compliance with  
14 the lease that they have and issued.

15           And if they are not, then there are going to be  
16 other folks that are going to be in the exact same  
17 situation as you are. Either correct it or eliminate it.

18           And I know of more than a few leases in which we  
19 now have everything but the bedroom on the dock. That's  
20 not allowed by law, nor is it allowed by the lease itself.

21           So, hey, let the word go out, that those days of  
22 not bothering to look are over, at least as long as I'm on  
23 the Commission.

24           The question for you is, the modifications that  
25 you have offered, you know, because you decided to get a

1 bigger boat, you have decided to enlarge the boat house.  
2 Maybe you ought to get a smaller boat that fits the  
3 original design.

4 Is that a possibility?

5 MR. HULBERT: If I can have a little time, I could  
6 get back with Louis and I know we could probably even cut  
7 2 feet off the back, because there's -- now, I don't know  
8 how we're going to do it. I'm a chiropractor. I know a  
9 lot about the marriage of muscles and bones. But this  
10 engineering stuff, I have to go back to the experts. And  
11 if there's a way that we can do it, I certainly would love  
12 to.

13 We spent six years on this. It's been grueling,  
14 the biggest process in my life. And we definitely -- we  
15 can try. I don't know I'm saying yes, we can do it.  
16 Anything can be done.

17 CHAIRPERSON GARAMENDI: Well, the rest of the  
18 request is that we're not the only agency that finds fault  
19 in what was built. We have the Corps of Engineers who  
20 apparently are in a similar situation as this state  
21 agency, in that they find you are in violation of their  
22 permit as well as in violation of our lease.

23 Do we have any knowledge of what the Corps of  
24 Engineers is asking here?

25 EXECUTIVE OFFICER THAYER: I think there's a

1 representative here that can speak to that.

2 CHAIRPERSON GARAMENDI: Is there somebody from the  
3 Corps of Engineers here? I would like to know what the  
4 Corps of Engineers is going to do about this.

5 You are going to have to come up. On the record.

6 EXECUTIVE OFFICER THAYER: While the Corps is  
7 coming up, I wanted to draw the Commissioners' attention  
8 to the provision in the lease which is copied in the  
9 second page of the staff report, which indicates that one  
10 of the provisions of the lease says that, "No  
11 improvements" -- this is at the bottom of page 2. "No  
12 improvements other than those expressly authorized in the  
13 lease shall be constructed by the lessee on the lease  
14 premises without prior written consent of the lessor."

15 That's part of the lease.

16 CHAIRPERSON GARAMENDI: That's standard on all  
17 leases?

18 EXECUTIVE OFFICER THAYER: Yes.

19 CHAIRPERSON GARAMENDI: So if you are modifying  
20 beyond what is in this original permit --

21 EXECUTIVE OFFICER THAYER: Correct.

22 CHAIRPERSON GARAMENDI: -- you need written  
23 authorization?

24 EXECUTIVE OFFICER THAYER: Yes.

25 CHAIRPERSON GARAMENDI: Corps of Engineers?

1 MR. SIMMONS: I'm Zachary Simmons from the Corps,  
2 Sacramento Regulatory. And we've issued two letters, as  
3 mentioned before: The first one on August 10th that  
4 showed that it was out of compliance and gave a 30-day  
5 window to come back into compliance with the original  
6 permit, which -- we then received, on the 23rd of August,  
7 the copy of the State Lands application to modify their  
8 lease along with as-builts for our records, but did not  
9 actually request an application to modify our permit.

10 So then on September 7th, there was a letter sent  
11 out, stating that we cannot accept any application until  
12 all hearings are done with the State Lands because we're  
13 not -- according to our regulations, we cannot accept any  
14 regulations that are in default with other agencies and  
15 are still in litigation, going through that. So we are  
16 not actually able to process an application until it's  
17 found -- finished with the State Lands.

18 And then we also have from October 2003 -- we have  
19 a policy on floating homes in the Delta. And under most  
20 circumstances, it states they will not be -- I can  
21 actually read from it: It explains what a floating home  
22 is. And it says, "Therefore, in most circumstances,  
23 applications to locate or retain floating homes in  
24 navigable waters of United States will not be approved."

25 CHAIRPERSON GARAMENDI: Is this structure as built

1 considered to be a floating home?

2 MR. SIMMONS: Yes, it is.

3 CHAIRPERSON GARAMENDI: Because of the kitchen,  
4 the toilet, the shower?

5 MR. SIMMONS: Yes.

6 CHAIRPERSON GARAMENDI: Now, with regard to  
7 whether or not the structure, as proposed to be modified  
8 by the applicant, by the lessee, complies with the Corps  
9 Regulations, have you a chance to take a look at that?

10 MR. SIMMONS: It would no longer fall under the  
11 definition of a floating home. So then we would be able  
12 to accept an application, and we would process it  
13 accordingly and go through the due process and all notices  
14 would have to take place before making a decision on that.

15 CHAIRPERSON GARAMENDI: Do you have any criteria  
16 that you would judge by which you would judge a structure  
17 that is not a floating home, such as height, size?

18 MR. SIMMONS: As far as I understand, as suggested  
19 by Dr. Hulbert, it would actually -- there's no other  
20 criteria we could that would --

21 CHAIRPERSON GARAMENDI: That would cause it to be  
22 out of conformance?

23 MR. SIMMONS: Yes. If a permit were, in fact,  
24 issued for that, it could be done.

25 CHAIRPERSON GARAMENDI: Okay.

1           Now, Mr. Hulbert, you apparently are willing to  
2 modify this structure to some extent?

3           MR. HULBERT: Yes.

4           CHAIRPERSON GARAMENDI: Go ahead.

5           MR. HULBERT: Yes. Can I just add one more thing?

6           CHAIRPERSON GARAMENDI: Please.

7           MR. HULBERT: Regarding the sundeck, if we were  
8 using the general permits that the OE gave, it does say  
9 this is a sundeck, right here. And it does clearly show  
10 that this is a rail around it. So I think where we have a  
11 height of 6 feet, too high, according to -- there's no  
12 numbers on this. They estimated them through -- I don't  
13 know how they estimated them, but they estimated it to be  
14 13 feet. I don't know where that number came from other  
15 than Mr. Frey said that they estimated it.

16           And so we're apparently 6 feet higher than their  
17 estimation. And 7 feet, 7'4" too long. And as I said,  
18 there would be a groove because of the exact dimension of  
19 the boat and two safety features in front and in back.

20           CHAIRPERSON GARAMENDI: Cindy, you have a  
21 question?

22           ACTING COMMISSIONER ARONBERG: I do. I actually  
23 just wanted a couple of things. I wanted to -- I know the  
24 discussion, I assume, will continue. But I'm very  
25 inclined to go with staff's recommendation. I want to

1 make that motion and throw it out there. And I'm sure the  
2 discussion will continue.

3 And I would also like to hear staff's response to  
4 Dr. Hulbert's testimony.

5 CHAIRPERSON GARAMENDI: Well, then let's have the  
6 staff response.

7 MS. DUGAL: First of all, regarding the sundeck,  
8 the original -- Dr. Hulbert is correct. The original  
9 application that was submitted by his representative did  
10 include the sundeck. And at that time, staff had  
11 contacted DCC Engineering, advised them that we had a  
12 problem with the sundeck itself, and staff subsequently  
13 received from DCC Engineering a revised drawing that  
14 excluded the sundeck. So they were put on notice. We  
15 advised them that there was a problem. And that was  
16 removed from the plans.

17 And then as far as the -- there was no estimation.  
18 We took the height of the proposed structure based on the  
19 drawings that were submitted by his representative. So  
20 there were no estimations. It was based on what was  
21 submitted to staff.

22 And as far as -- and we did actually go out and we  
23 actually measured the structure. So....

24 CHAIRPERSON GARAMENDI: After it was built?

25 MS. DUGAL: After it was built.

1           And we used the drawings that were -- again, were  
2 submitted by his representative to determine the height of  
3 the overall structure itself.

4           CHAIRPERSON GARAMENDI: Was the drawing to scale?

5           MS. DUGAL: There is not -- there is a scale on  
6 here, so yes, it is to scale.

7           CHAIRPERSON GARAMENDI: And so you scaled it and  
8 came to a conclusion that it was X number of feet?

9           MS. DUGAL: Yes.

10          CHAIRPERSON GARAMENDI: Cindy, further questions?

11          ACTING COMMISSIONER ARONBERG: Jack or Paul?

12          So just move to adopt staff's recommendation.

13          CHAIRPERSON GARAMENDI: We have a motion to adopt  
14 staff's recommendation, which is the structure as built is  
15 in violation of the lease, and the lease is to be  
16 terminated and the structure removed; is that correct?

17          EXECUTIVE OFFICER THAYER: Correct. Yes, sir.

18          ACTING COMMISSIONER SHEEHAN: I have a couple of  
19 questions. If he were to file an application for the  
20 revised, how would we handle that? Would you approve --  
21 would recommend it be approved?

22          EXECUTIVE OFFICER THAYER: We've had internal  
23 discussions on this. And the conclusion is, we would  
24 probably recommend denial because of the size. Staff has  
25 informally gone back and looked at, you know, other



1 existing -- the scale of other boathouses, particularly  
2 where there was the siding. The siding is here, which  
3 presents the larger building.

4 And we believe that this proposal, or as it is  
5 built, and therefore as proposed to be retained, it's out  
6 of scale with the other boathouses and development along  
7 the Sacramento River as recreational piers. So we would  
8 probably recommend denial.

9 ACTING COMMISSIONER SHEEHAN: Okay. And is it  
10 clear in our application process as to what the size limit  
11 is that we have?

12 EXECUTIVE OFFICER THAYER: There are no -- like  
13 the Corps, we do not have specific criteria to say, Tahoe  
14 or Delta, whatever their certain size limitations are, we  
15 do not have that.

16 ACTING COMMISSIONER SHEEHAN: I wanted to ask --

17 THE REPORTER: I can't hear you, ma'am. Speak up,  
18 please.

19 ACTING COMMISSIONER SHEEHAN: I was asking about  
20 what our criteria is, someone comes in, you know, to ask  
21 us -- so the way for them to find out the size is what?  
22 Just through question and answer and discussion with  
23 staff?

24 EXECUTIVE OFFICER THAYER: And we often have  
25 potential applicants come in and say, "Hey, I would like

1 to do something on the river. What sort of thing would  
2 need approval?"

3 ACTING COMMISSIONER SHEEHAN: Because I guess that  
4 would be the question that I would have. So if  
5 hypothetically, you were an applicant to come in, we would  
6 not approve his revised application?

7 EXECUTIVE OFFICER THAYER: That's correct. That's  
8 the staff recommendation for the Commission.

9 ACTING COMMISSIONER SHEEHAN: You would not  
10 recommend approving the revised application?

11 EXECUTIVE OFFICER THAYER: Correct.

12 ACTING COMMISSIONER SHEEHAN: I guess my question  
13 is, are we confident that other boathouses have not  
14 exceeded the size that seem to not have an --

15 EXECUTIVE OFFICER THAYER: Right.

16 MS. DUGAL: I am unaware of anything. Nothing  
17 definitely as tall as this. I have not seen a structure  
18 like that. I think one of the slides I think is really  
19 important -- I don't know if we can get back to it -- is  
20 just downstream from Dr. Hulbert is a large vessel, you  
21 know, a large boat, and a very modest boat slip. If we  
22 can go back to that, maybe. I don't know if it's too  
23 late.

24 ACTING COMMISSIONER SHEEHAN: I think the pictures  
25 are in -- I think we have them in our thing.

1           So the issue would be that we have seen other  
2 structures that accommodate boats this size --

3           MS. DUGAL: Right.

4           ACTING COMMISSIONER SHEEHAN: -- in the design of  
5 the structures, and that that would be the suggestion that  
6 we would make on that, like what the chair suggested. I  
7 would have to defer to the chair in terms of what -- if  
8 Mr. Hulbert wants to speak again.

9           CHAIRPERSON GARAMENDI: You're deferring to the  
10 chair, and I'm trying to get some sense of exactly what  
11 was proposed in the original document. Generally  
12 speaking, we are required by law to allow landowners to  
13 put up a dock for the purposes of accessing the boat.

14           And we are faced with this issue of just what does  
15 that mean? Does that mean that you can put in a kitchen?  
16 And I think the answer from at least the majority of us or  
17 all us of is no. Does that mean you can put in a toilet?  
18 The answer is no. Does that mean that you can have a  
19 dance party on the dock? Well, only insofar as the dock  
20 is sized to give you access to the boat. It's not a dance  
21 floor nor is it a party floor. It's to have access to the  
22 boat.

23           I'm looking at your plans here. And I don't know  
24 if this is the -- this document is what they proposed?  
25 Can I have a copy of the -- of what is permitted? Of the

1 permit?

2           Okay. The original proposal appears to have a  
3 ramp around the -- just above the water level, a ramp  
4 above the outside of boathouse, and a ramp around the  
5 inside of the boathouse. One point -- 1'4". Just trying  
6 to read this thing for the first time. And what you have  
7 built is a little longer, a little wider, and a whole lot  
8 taller; is that correct? I think it's correct.

9           MS. DUGAL: That's correct.

10          CHAIRPERSON GARAMENDI: 7 feet longer.

11          MS. DUGAL: 7 feet taller.

12          CHAIRPERSON GARAMENDI: 7 feet taller, 7 feet  
13 longer, and how much wider? A couple of feet wider?

14          MS. DUGAL: I think it's 5 feet. I'm trying to  
15 find my --

16          MR. HULBERT: I think it's 32. It's 32 feet wide.  
17 okay?

18          CHAIRPERSON GARAMENDI: So it's 7 feet longer.

19          MR. HULBERT: It's 7 feet longer. And if I would  
20 have known that there was some restriction for some  
21 measurement of the height, you know, I didn't know, you  
22 know. And I asked Dale about it, and he said these are  
23 all conceptual. And I asked Louis Uhl, and I said -- and  
24 he said, "Well, you signed off on them, so I'm off the  
25 hook."

1           So now I'm all tangled up.

2           MS. DUGAL: Can I respond to that, regarding the  
3 conceptual idea? I mean, it's always staff's  
4 understanding that when something is submitted to us that  
5 that is what is going to be designed; that's what's going  
6 to be constructed. That's what we look at CEQA for.  
7 We're looking at, you know, a project and we understand  
8 all those potential impacts, and we expect that what is  
9 submitted is going to be constructed. And that's what's  
10 included in the lease.

11           MR. HULBERT: Right. And then just to add on  
12 that, when I hired DCC Engineering, I hired an agency that  
13 were very skilled in doing this. And so, you know, I  
14 depended a lot on the people that I hired. And if I would  
15 have known there were exact steps, I would have certainly  
16 followed them to the letter. There was no intention of me  
17 trying to turn my nose up at the state.

18           ACTING COMMISSIONER ARONBERG: Did you have -- did  
19 you make an application for the permit for the stove top?

20           MR. HULBERT: For the what?

21           ACTING COMMISSIONER ARONBERG: For the kitchen,  
22 for the stove top.

23           MR. HULBERT: No. But I didn't --

24           ACTING COMMISSIONER ARONBERG: Just yes or no is  
25 fine.

1           And what about the shower?

2           MR. HULBERT: Again, I thought that I could have  
3 city sewer and water. We have water bibs out there. It's  
4 outdoors. It's just something that you can turn on, like  
5 a sunglass, instead of putting a hose on your head. I  
6 really didn't think it was a problem. If it was, I  
7 certainly wouldn't have put it out there. The only reason  
8 why I put the --

9           ACTING COMMISSIONER ARONBERG: Was it in the  
10 application though? Was it in the application for your  
11 permit?

12          MR. HULBERT: There wasn't very much in the  
13 application. It was just a utility -- a two-utility line,  
14 and just a simple drawing that I took to California Custom  
15 Docks to make the thing come to life.

16          So if --

17          ACTING COMMISSIONER ARONBERG: Who made the  
18 decision to add these amenities -- the toilet, the shower,  
19 the range top --

20          MR. HULBERT: It's me. You know, all of this is  
21 my decision.

22          So I can't say -- I can't -- you know, to tell the  
23 truth, I put the toilet in for my mom. She said, "Where  
24 are the ladies going to go?" And I had to have a little  
25 sanitary sink right there. And so I didn't think -- I

1 didn't think anything of it. And at that time, I didn't  
2 even know what Public Trust meant, you know?

3 ACTING COMMISSIONER ARONBERG: Thank you.

4 CHAIRPERSON GARAMENDI: We've certainly put this  
5 Commission in a quandary. I expect that when somebody  
6 comes and requests a permit to build and we give a lease  
7 that they provide a specific set of plans and we accept,  
8 deny, modify, request a modification of the plans, and  
9 that's what's going to be built.

10 It is in my view inappropriate for the Commission  
11 to allow somebody to send in plans, go through a couple of  
12 iterations of those plans, and then go build whatever they  
13 want to build.

14 No, we cannot allow that. Just can't do that, for  
15 a couple of reasons: One, our legitimacy is totally  
16 destroyed; secondly the Corps of Engineers and others are  
17 depending upon us to review and to authorize a specific  
18 plan. And if it's not carried out, then their role is  
19 similarly jeopardized.

20 So what do we do? My view is, you got an option.  
21 And the option is, take it out or rebuild it according to  
22 the plan.

23 Now, I was just looking at the plan here, and it's  
24 pretty clear how high this thing is going to be. It's all  
25 done to scale. And it looks to me, I don't know, 16 feet.

1 That's to the top of the railing that was subsequently  
2 disallowed.

3 MS. DUGAL: Yes.

4 CHAIRPERSON GARAMENDI: So it's 16 feet. If you  
5 want to get a bigger boat, then you got a problem. How  
6 are you going to get the boat into the boathouse? And no  
7 decks, no kitchens, no toilets. Good question about the  
8 fish cleaning. I don't have a problem with your gangway.  
9 But okay. The river goes up and down. And that's not an  
10 issue for me, but the rest of it is.

11 So my view is, if you come to this Commission and  
12 you are asking for a permit, and we give you a permit,  
13 then we expect you to carry out the permit. If you don't,  
14 then you are in violation of the lease. And you leave us  
15 with the option of curing the violation -- that is,  
16 rebuild it according to the plans that were approved -- or  
17 remove it.

18 MR. HULBERT: And if we do remove it, can I  
19 re-permit for that -- for this structure here, without the  
20 amenities?

21 CHAIRPERSON GARAMENDI: The -- I think the answer  
22 is with regard to the length, yes. With regard to the  
23 width, probably, yes, until you begin to get into the  
24 navigable area of the river. And with regard to the  
25 height, big question. We're not interested in having --



1 I'm not interested in having the visual beauty of the  
2 Sacramento River destroyed by big boathouses on the river.  
3 That's -- and I think that's one of the things we have to  
4 look out for is the public's enjoyment of the river, which  
5 I believe is significantly lessened by big structures  
6 sitting on the river.

7 MR. HULBERT: Well, like a sport fisher -- some of  
8 the sport fishers are over 21 feet tall.

9 CHAIRPERSON GARAMENDI: This is the sport fisher  
10 being the boat?

11 MR. HULBERT: Well, then don't build a roof.

12 ACTING COMMISSIONER ARONBERG: Do you have a boat?

13 MR. HULBERT: Well, you see, my boat, the True  
14 World Marine Boat -- we had designed this for a boat lift.  
15 That's why we had it a little bit higher. I didn't know  
16 that they were going to challenge the boat lift before.  
17 That's the only reason it went in.

18 ACTING COMMISSIONER ARONBERG: Do you have a boat  
19 currently? Do you currently have a boat?

20 MR. HULBERT: It's on order. And as soon as I get  
21 this, I go to get through it, and the boat just came out  
22 on January 7th. The boat is down on the drawing board.  
23 We started with -- way back when, so we were building the  
24 boathouse to bring the boat home. And so as soon as this  
25 matter is cleared up, we can move on. So it's a

1 step-by-step. And plus, the enormous cost of building  
2 this, it took a lot of effort, a lot of effort.

3 And then, like I said, I was dearly dependent on  
4 Gil Labrie. And he was -- on his amendment, it was still  
5 news to him, the things that it says in there. And then  
6 now I'm all tangled up with things that I depended heavily  
7 on others to help me with. And I thought I did completely  
8 right with it all.

9 And so....

10 ACTING COMMISSIONER SHEEHAN: I don't know who  
11 this is to: Short of taking the whole thing out, can you  
12 modify it to meet the requirements of the lease that was  
13 approved?

14 MR. HULBERT: Well, again, that would be a  
15 question for Louis. He did put in a letter, saying it  
16 would be impractical or would be very nearly impossible.  
17 And as a matter of fact, it would cost more than the  
18 structure itself.

19 And so now, because of the H beams and how  
20 everything was configured and the rooftop is set, I think  
21 that we could probably cut 2 feet off the end of it. But  
22 I don't know how else to shorten it.

23 And as far as narrowing the structure, because of  
24 a ridgity [sic] -- rigidity of it, Louis was saying that  
25 it probably would be nearly impossible.

1           ACTING COMMISSIONER SHEEHAN:  So in essence, you  
2 were saying you would have to start off over again?

3           MR. HULBERT:  I'm sorry?

4           ACTING COMMISSIONER SHEEHAN:  You would have to  
5 start over again, is what -- in order to meet the  
6 requirements of the original?

7           Okay.  That was the question I had.

8           CHAIRPERSON GARAMENDI:  We have a motion to accept  
9 the staff recommendation, which is to remove the  
10 structure.

11           Do we have a second to that motion?

12           Okay.  That motion is not accepted.

13           I don't know if Cindy is coming back.  I assume  
14 she is.

15           I would propose an alternative.  I'm not in a  
16 position to make a motion, but I propose an alternative,  
17 and that is to give the lessee -- excuse me -- yeah, the  
18 lessee, an option:  Remove the structure or rebuild it as  
19 per the permit, as specified in the permit, with the  
20 exception of the additional length being allowed.

21           I'm not concerned about the additional length.  I  
22 am very concerned about the additional height and all of  
23 the things that were added.

24           I think that's an alternative that I would -- and  
25 the choice is, it's up to the lessee.  You can do it

1 either way. You can take that structure and rebuild it as  
2 permitted with an additional 7 feet allowed, or remove it.  
3 That would be the proposal that I would make. And if  
4 there's a motion, then at least there's one vote for that.

5 ACTING COMMISSIONER SHEEHAN: I can move that  
6 motion. I guess the question that I would have is to the  
7 staff. The length is consistent with our -- with our  
8 guidelines?

9 EXECUTIVE OFFICER THAYER: Barbara, there have  
10 been other docks constructed at that length; correct? But  
11 not as high. Okay.

12 ACTING COMMISSIONER SHEEHAN: And separate and  
13 aside, I do think it would be helpful for at least us to  
14 give some guidance to people in the future about -- you  
15 know....

16 EXECUTIVE OFFICER THAYER: Certainly.

17 ACTING COMMISSIONER SHEEHAN: And especially when  
18 they come in -- I mean, it seems obvious, but it didn't  
19 quite happen in this case, as to what we expect from them.

20 CHAIRPERSON GARAMENDI: In this case, it was not  
21 an issue as to the permit. The height became an issue  
22 because of the modifications.

23 So....

24 ACTING COMMISSIONER SHEEHAN: Anyway, so yes, I  
25 make that motion.

1           CHAIRPERSON GARAMENDI: Cindy, you were out of the  
2 room when I made the proposal. I will offer it to you for  
3 your consideration. And that is that the lessee be given  
4 an option: Remove the structure because it is in  
5 violation of the permit, or modify the structure to be  
6 consistent with the permit, with the exception that  
7 additional 7 feet of length be allowed.

8           ACTING COMMISSIONER ARONBERG: Not the height?

9           MR. HULBERT: I'm sorry. With the exception of  
10 what?

11          CHAIRPERSON GARAMENDI: The additional 7 feet of  
12 length be allowed, not the height. That the structure be  
13 built according to the permit with one exception. That  
14 is, the length, the additional 7 feet. The reason is, the  
15 7 feet doesn't bother me, because we often do leases that  
16 are longer than the one that is in place here.

17          Now that's my proposal. I think that Anne is --

18          ACTING COMMISSIONER SHEEHAN: I will move that.

19          CHAIRPERSON GARAMENDI: -- is satisfied with that.

20          Cindy, do you want to be chair for a moment? You  
21 are the chair. I pass my gavel to you. Can I do that?

22          EXECUTIVE OFFICER THAYER: I was just going to --  
23 the attorney general made a good suggestion which is, we  
24 may want to impose a some sort of time limit by which  
25 either of these actions would have to be carried out. So

1 if he was going to remove the improvements, perhaps 30 or  
2 60 days. If it was going to be modified, it might take  
3 him longer to do that, maybe 90 days.

4 ACTING COMMISSIONER SHEEHAN: That's fine.

5 CHAIRPERSON GARAMENDI: 180 days.

6 ACTING COMMISSIONER SHEEHAN: 180 days to do the  
7 modifications or both?

8 CHAIRPERSON GARAMENDI: For both. 180 days for  
9 both.

10 EXECUTIVE OFFICER THAYER: Fine.

11 ACTING COMMISSIONER SHEEHAN: What I would like to  
12 add, I think we should hear back within six -- you know,  
13 30 to 60 days of what they are proposing so that we know  
14 what is happening.

15 CHAIRPERSON GARAMENDI: Then the motion would  
16 read, it is at the option of the lessee to either remove  
17 the structure or to modify the present structure so as to  
18 conform with the permit, allowing the additional 7 feet of  
19 length, and all other parts of the permit would be --  
20 would have to be complied with. And within 30 days, tell  
21 the Commission which of the two options they choose.

22 EXECUTIVE OFFICER THAYER: I'm sorry? 30 days.

23 CHAIRPERSON GARAMENDI: Within 30 days, tell the  
24 Commission which of the two options they would choose, and  
25 then 180 days to effectuate the change.

1 EXECUTIVE OFFICER THAYER: And as to the width,  
2 they would as well go back to the originally approved  
3 width?

4 CHAIRPERSON GARAMENDI: I think the width is close  
5 to where they said they would do. I don't think the width  
6 is an issue.

7 EXECUTIVE OFFICER THAYER: It's an extra two and a  
8 half --

9 MS. DUGAL: No, it is not an issue.

10 CHAIRPERSON GARAMENDI: The width is not an issue.

11 ACTING COMMISSIONER ARONBERG: I have a question  
12 of Ms. Dugal, maybe, or I don't know if it is to you or  
13 Paul. But would that have been approved if that were the  
14 initial application?

15 EXECUTIVE OFFICER THAYER: The width?

16 ACTING COMMISSIONER ARONBERG: The new dimension  
17 with the additional --

18 EXECUTIVE OFFICER THAYER: I think Barbara  
19 indicates that there are other docks that are at that  
20 length or long or longer. So that's consistent with the  
21 pattern along the river and wouldn't be seen as something  
22 extra large.

23 ACTING COMMISSIONER ARONBERG: So I will support  
24 this motion. I was very concerned that no one benefit  
25 from a violation. And so if it would have been approved

1 anyway, that's fine.

2 CHAIRPERSON GARAMENDI: We have a motion.

3 The Corps has a question?

4 MR. SIMMONS: Yes. I had a question about the  
5 time frame. Because any work within the waters would have  
6 to fall within a specific work window. It closes at the  
7 end of October.

8 CHAIRPERSON GARAMENDI: And opens?

9 MR. SIMMONS: At the end of August 1st to  
10 October 31st. And that's set by Fish and Wildlife Service  
11 and National Marine Fishery Service due to any water work  
12 with endangered listed species.

13 CHAIRPERSON GARAMENDI: Thank you very, very good  
14 point. But I didn't quite understand the time frame that  
15 you've suggested.

16 MR. SIMMONS: Well, I was just stating, if they  
17 needed to remove or modify within 180 days, if they don't  
18 get it done by October 31st, they can't meet that 180  
19 days.

20 CHAIRPERSON GARAMENDI: The window closes  
21 October 31st and opens?

22 MR. SIMMONS: It's August 1st to October 31st.

23 CHAIRPERSON GARAMENDI: That's the construction  
24 window?

25 MR. SIMMONS: Yes, on the Sacramento river.



1           ACTING COMMISSIONER ARONBERG: A three-month  
2 window?

3           MR. HULBERT: October 31st is the deadline. And  
4 then it opens up April 1st.

5           MR. SIMMONS: That's not what I'm understanding.

6           CHAIRPERSON GARAMENDI: Okay. The way this motion  
7 can be modified is that consistent with the  
8 construction -- the window for construction on the  
9 Sacramento River. And so it would be 30 days to notify us  
10 as to which option they choose. And then the construction  
11 has to be -- it would have to be the close of the next  
12 window.

13          EXECUTIVE OFFICER THAYER: So next  
14 October 31st then?

15          CHAIRPERSON GARAMENDI: '08.

16          EXECUTIVE OFFICER THAYER: '08.

17          CHAIRPERSON GARAMENDI: Okay. Excuse me. I'm not  
18 sure that's the case. Let me be very clear about this.  
19 The modifications -- if the lessee chooses to modify the  
20 structure, there is no need to be in the water other than  
21 perhaps a barge or a boat that would be providing access.  
22 In other words, you are not driving piles, you are not  
23 removing piles, etc.

24          MR. SIMMONS: That's something I would have to  
25 verify, because that would go back to Fish and Wildlife

1 Service.

2 CHAIRPERSON GARAMENDI: Well, then let's just go  
3 with the opening and the closing.

4 MS. DUGAL: If there's no limitations, as long as  
5 there's not any in-water work. Yeah. So, you know, to  
6 remove all of those -- the kitchen, the cabana, all that  
7 stuff can come out ASAP or as directed by the Commission.  
8 So as long as there's not any in-water, there's not  
9 restrictions.

10 CHAIRPERSON GARAMENDI: So as far as we know, the  
11 180-day period would be sufficient because you are not in  
12 the water?

13 MR. SIMMONS: If that's the case --

14 CHAIRPERSON GARAMENDI: Here's the deal, folks.  
15 We got a meeting coming up in 40 days or so. If this  
16 doesn't work, staff will notify the Commission and we can  
17 seek a modification. All right?

18 But at the moment, you got 180 days to complete  
19 the work, take it out, which means you got to do it by  
20 October 31st. Remove the pilings and float the thing down  
21 the river, whatever it takes. Or if you choose to modify  
22 it, you have 180 days to get it done. Okay? That's the  
23 motion.

24 ACTING COMMISSIONER SHEEHAN: I moved it.

25 EXECUTIVE OFFICER THAYER: Before taking a vote,

1 again, if I could interrupt. This has, in essence, become  
2 a lease amendment. The change -- the project has changed  
3 as approved by the Commission previously. So in effect,  
4 we're taking his application for a lease amendment and  
5 approving it subject to the conditions, the modifications,  
6 that you have just described in your motion.

7 I would like to make sure we're square -- I think  
8 there's some CEQA findings that we need to -- the  
9 Commission needs to adopt for that. So which ones are  
10 they?

11 So if I may read into the record the CEQA  
12 findings: So the removal of the 144 square foot enclosed  
13 storage barbeque area, including all items within --  
14 electric grill, cooktop, sink, garbage disposal,  
15 dishwasher, etc, find that the activity is exempt from the  
16 requirements of CEQA pursuant to Title 14, California Code  
17 of Regulations, Section 15061 as categorically exempt  
18 project class one existing facilities; Title 14, category  
19 code -- California Code of Regulations, Section 15301(A);  
20 and in addition, alter current improvements to previously  
21 approved dimensions with the change that you are talking  
22 about; find that the activity is exempt from the  
23 requirements of CEQA, pursuant to Title 14, California  
24 Code of Regulations, Section 15061 because there is no  
25 possibility that the activity may have a significant

1 effect on the environment.

2 So that would be part of the Commission's findings  
3 in certifying these amendments.

4 CHAIRPERSON GARAMENDI: And the issue is before  
5 us. And we note that Cindy did second the motion.

6 ACTING COMMISSIONER ARONBERG: I'm going to  
7 support it. But I think as chair, I think you can second  
8 the motion.

9 CHAIRPERSON GARAMENDI: As a courtesy to the  
10 chair, she seconded the motion. Note that in the record.  
11 And we have a two to one vote.

12 ACTING COMMISSIONER ARONBERG: Two to one? No.  
13 3-0.

14 CHAIRPERSON GARAMENDI: 3-0. Very good. Okay.

15 Thank you very much. We'll take a  
16 seven-and-a-half minute break.

17 (Thereupon a break was taken in  
18 proceedings.)

19 CHAIRPERSON GARAMENDI: Item No. 70 is up. This  
20 issue has been before this Commission many, many times,  
21 over a long period of time.

22 We have a proposal from the staff that we issue a  
23 notification of default and terminate the general lease.

24 Mr. Thayer?

25 EXECUTIVE OFFICER THAYER: Thank you, sir.

1           Mary Hays from the Land Management Division will  
2 give the staff presentation on this matter.

3           CHAIRPERSON GARAMENDI: Very short. We've heard  
4 this many times.

5           MS. HAYS: Good afternoon, Mr. Chair and members  
6 of the Commission. My name is Mary Hayes, and I'm a  
7 public land manager with the Commission's Land Management  
8 Division. I'm here to present the calendar Item No. 70.

9           The -- this item asked the Commission to consider  
10 ratification of staff's findings that the South Bay Yacht  
11 Club is in default of their lease. The lease authorizes  
12 the use and operation and maintenance of docking and  
13 mooring difficulties on the Guadalupe River in the town of  
14 Alviso, Santa Clara County. The lease was originally  
15 issued in 1968, was subsequently renewed in 1983, and  
16 again in '93, and will expire June 18 of 2013.

17           The default issues associated with the lease are:  
18 One, failure to maintain the lease premises in good repair  
19 and safe condition; two, failure to maintain the  
20 electrical lines and overgrown vegetation, which have  
21 created a fire hazard; three, the failure to obtain the  
22 necessary permits to maintain the facilities in a safe  
23 condition; four, failure to provide public access; and  
24 five, allowing residential use of the lease premises.

25           In September and October of 2005, staff performed

1 site visits of the lease premises and had discussions and  
2 correspondence with the yacht club regarding the condition  
3 of the facility, the abandoned vessels, and utility  
4 hookups that suggested that residential use may have  
5 occurred -- or may have been occurring, excuse me.

6 Staff subsequently requested a plan and timetable  
7 to repair the facility and address the other issues. The  
8 yacht club responded in November 2005 with explanation  
9 that they had plans to undertake major -- major repairs,  
10 found that removal of the overgrown vegetation by  
11 handcutting was not working and needed to take further  
12 measures to remove the vegetation, and made no commitment  
13 to remove the abandoned vessels due to legal constraints.

14 In January 2006, the San Francisco Bay  
15 Conservation and Development Commission, BCDC, notified  
16 Commission staff of the abandoned boats. In October 2006,  
17 the City of San Jose Fire Department notified the yacht  
18 club, staff of the Commission, and the Santa Clara Valley  
19 Water District that the overgrown vegetation adjacent to  
20 the docks was a dangerous hazard.

21 For clarification purposes, the Santa Clara Valley  
22 Water District is the adjacent property owner to the lease  
23 premises. And a portion of the docked facilities are  
24 located on the district's property.

25 In April of 2007, staff conducted another site

1 visit of the lease premises which noted no visible  
2 progress towards remedying the overall disrepair nor the  
3 unsafe fire hazard conditions nor provided adequate public  
4 access.

5 Staff subsequently sent a written notice informing  
6 the yacht club that it was in breach of the terms of the  
7 lease on June 11, 2007.

8 On June 14th, 2007, the yacht club responded that  
9 they were working towards accomplishing the requirements  
10 but were having problems obtaining permits.

11 On October 13, staff conducted another site visit  
12 and found the facility remained nearly unchanged from the  
13 April site visit. And as a result, staff sent a letter on  
14 August 16th stating that the yacht club had not adequately  
15 addressed the steps it was going to take to come into  
16 compliance with the terms of the lease.

17 You have before you a packet that includes letters  
18 from staff to the yacht club, and their written responses  
19 as well as correspondence from the fire department and  
20 BCDC.

21 I would like to take this opportunity to present  
22 photographs taken by staff of the yacht club facility  
23 which showed the condition of the lease premises.

24 The first photos were taken in 2004.

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MS. HAYS: I don't know if you can see those very well.

The next set of photos were taken in 2005 --  
--o0o--

MS. HAYS: -- showing the vegetation along the docks.

--o0o--

MS. HAYS: And the next set of photos were August of 2007. Those are still '05.

--o0o--

MS. HAYS: Here we go with '07, last month. These were taken from the levee itself, showing the vegetation.

--o0o--

--o0o--

MS. HAYS: The final photos are -- which will be shown are photos that were submitted by the yacht club showing recent minor temporary dock repairs undertaken in early September. These are also in your packet.

We're still on the -- here we go.

--o0o--

MS. HAYS: These are the photos taken -- supplied to us by the yacht club of the -- some of the deck repairs, temporary repairs, that they have undertaken.



1 Thank you.

2 On August 31st, the yacht club submitted a work  
3 plan to remedy the defaults. As of this week, the yacht  
4 club has an open application with BCDC to complete the  
5 electrical repairs -- that the application is incomplete.

6 In early September, the yacht club performed minor  
7 temporary repairs, as you can see, as shown in the  
8 photographs. These repairs were permitted under an  
9 existing 2003 BCDC permit, which allowed repairs to a  
10 limited area of the lease premises. This represents the  
11 extent of the progress towards compliance since the  
12 June 2007 letter from staff, notifying the yacht club of  
13 their breach in terms of the lease.

14 The following are the areas that staff have  
15 identified as defaults and a summary of the current status  
16 of each:

17 Repairs. General condition of the facility:  
18 Recent temporary dock repairs have been done. The overall  
19 condition of the facility is still regarded in a state of  
20 disrepair and a fire hazard. The breach of this lease --  
21 the breach of this lease is not considered to be cured;

22 Second, electrical repairs and overgrown  
23 vegetation. No electrical repair work or weed abatement  
24 has been done on the lease premises. This breach of the  
25 lease has not been cured;

1           Number three, permits. First, the yacht club has  
2 not obtained a BCDC permit for the electrical repairs or a  
3 BCDC permit for the repairs needed to the remaining dock  
4 facilities on the lease premises; two, has not obtained a  
5 permit from BCDC for two unauthorized finger dock  
6 extensions, five pilings, and a dock extension located on  
7 the north end of the lease premises; three, has not  
8 obtained possible -- possible permits needed from the San  
9 Francisco Bay Regional Water Quality Control Board, U.S.  
10 Corps of Engineers, U.S. Wildlife, Fish and Wildlife  
11 Service, and the Department of Fish and Game for  
12 vegetation and/or root removal; and five [sic], has not  
13 obtained authorization from the Commission -- has not  
14 obtained authorization from the Commission and may need  
15 permits from the BCDC and possible other agency [sic] for  
16 a fuel line observed on the dock facilities. This breach  
17 of the lease has not been cured;

18           Number four, public access. Public access has not  
19 been provided, and no plans have been submitted to  
20 understand how the yacht club intends to provide access.  
21 The breach of the lease has not been occurred;

22           Five, residential use of the boats in the yacht  
23 club. This issue is not being pursued at this time  
24 because yacht club representatives assured staff that  
25 there are no live-aboards on the lease premises;

1           Six, derelict and abandoned vessels. The yacht  
2 club representatives assert that this issue is being  
3 addressed and there that are no derelict or abandoned  
4 vessels on the State-owned portion of the facility.

5           Based on the above mentioned defaults and the  
6 length of time the yacht club has been given to remedy  
7 these deficiencies, staff is recommending that the  
8 Commission authorize staff to issue a notice of  
9 termination to the South Bay Yacht Club and terminate the  
10 lease.

11           The yacht club will be required to remove all  
12 improvements and restore the lease premises within 90 days  
13 after the termination.

14           That's the end of my presentation. Staff and  
15 representatives of the South Bay Yacht Club, the BCDC, and  
16 the Santa Clara Valley Water District are present to  
17 answer any questions the commissioners may have.

18           CHAIRPERSON GARAMENDI: I would like to hear from  
19 the yacht club.

20           MS. O'BRIEN: Good afternoon, Mr. Lieutenant  
21 Governor and Members of the Commission. My name is  
22 Colleen O'Brien, and I'm an attorney with an office in  
23 Walnut Creek. And I'm here representing the South Bay  
24 Yacht Club.

25           Behind me, this is Mr. Tom Laine. He's the

1 present staff commodore of the South Bay Yacht Club. And  
2 the reason we're up here together is there are some  
3 questions that the Commission would probably get better  
4 answers by asking Mr. Laine than from me.

5 I would like to start my comments to the  
6 Commission by noting that the South Bay Yacht Club is here  
7 to ask for both permission and forgiveness. The staff  
8 sent a certified letter to the yacht club on August 16th,  
9 but that letter was not served or faxed or sent to me, as  
10 the yacht club's attorney. And, in fact, no one at the  
11 yacht club actually received that letter. It was finally  
12 faxed to a member on August 23rd, which was the same day  
13 that our response was due.

14 We actually managed that day to provide an interim  
15 response followed by a pretty comprehensive work plan on  
16 August 31st.

17 I have with me three copies of -- excuse me, that  
18 work plan, that I'm happy to put into the record and  
19 provide to the Commission.

20 Does the Commission have the work plan submitted  
21 on the 31st? Because it's not mentioned in the staff's  
22 agenda.

23 EXECUTIVE OFFICER THAYER: It's in the blue folder  
24 that you have up front.

25 CHAIRPERSON GARAMENDI: We do have the work plan

1 here.

2 MS. O'BRIEN: Because I see that photos from the  
3 work plan have been submitted but not for the work plan  
4 itself.

5 CHAIRPERSON GARAMENDI: Well, tell me about the  
6 work plan. When will you get it done?

7 MS. O'BRIEN: The bottom line in that we're here  
8 to ask the Commission for 120 days in order to -- some of  
9 the items that have been mentioned, as you can see from  
10 the photographs, there's been cure here. There's no  
11 residential use occurring.

12 CHAIRPERSON GARAMENDI: Bottom line: It's not a  
13 new issue to the yacht club. Whether or not you received  
14 the certified letter and whether you are the attorney of  
15 record or not is of interest and, you know, if there's a  
16 lawsuit, I'm sure that will be of interest too. But when  
17 do you -- when will you have completed the work that has  
18 been required?

19 MS. O'BRIEN: We think 120 days.

20 CHAIRPERSON GARAMENDI: To get it all done?

21 MS. O'BRIEN: We have a permit, an encroachment  
22 permit, from the Water District. And we have an  
23 application in, with BCDC, for the electrical work and the  
24 dock repair. There are apparently some technical problems  
25 with the permit as submitted to BCDC, which we're working

1 with BCDC to resolve. We have a contractor. We have  
2 arrangements made with the salvor for removal of the three  
3 vessels that have been identified by BCDC as our  
4 responsibility.

5 Is there another item you want me to address?

6 CHAIRPERSON GARAMENDI: Well, I guess there's the  
7 electrical systems and the fire protection and the  
8 vegetation. All of it. I mean, there were seven items, I  
9 think.

10 EXECUTIVE OFFICER THAYER: Public access.

11 CHAIRPERSON GARAMENDI: Public access, etc.

12 MS. O'BRIEN: We submitted a -- in our work plan,  
13 we addressed, well, all of these items, in addition to  
14 public access. What we were asked to do was not cure  
15 by -- in our response. We were asked to submit a work  
16 plan, and that's what we did.

17 CHAIRPERSON GARAMENDI: And I asked you, when  
18 would you have it done?

19 MS. O'BRIEN: We think 120 days.

20 CHAIRPERSON GARAMENDI: For everything?

21 MS. O'BRIEN: For everything.

22 CHAIRPERSON GARAMENDI: Cindy?

23 ACTING COMMISSIONER ARONBERG: Can you do it in  
24 90? If we were to give 90 days, you know, suspend the  
25 staff's proposed action here for 90 days, can they get it

1 done?

2 MS. O'BRIEN: Possibly. We're asking for 120.

3 CHAIRPERSON GARAMENDI: Well, we can negotiate  
4 somewhere in between those numbers.

5 (Laughter.)

6 CHAIRPERSON GARAMENDI: 24 months -- three months.

7 ACTING COMMISSIONER ARONBERG: I'm happy to make a  
8 motion for some time. What I had in mind was 90 days, as  
9 a courtesy, in particular, to the club and also to the  
10 honorable Kansen Chu and Sally Lieber who are also  
11 concerned about the matter.

12 CHAIRPERSON GARAMENDI: So the motion that you are  
13 proposing is that we suspend -- that we approve the staff  
14 recommendation but suspend action on it for 90 days giving  
15 the lessee the opportunity to cure the defects.

16 ACTING COMMISSIONER ARONBERG: Correct.

17 CHAIRPERSON GARAMENDI: And if not cured within 90  
18 days, then the default -- staff would have discretion of  
19 the staff, which may be an issue that the attorney general  
20 wants to address. Then the default would move -- would be  
21 in place. It's staff's discretion to make that decision,  
22 that the action is completed -- the cure is completed.

23 EXECUTIVE OFFICER THAYER: May I just suggest we  
24 give them a 90-day cure period.

25 CHAIRPERSON GARAMENDI: Comfortable with that?

1           ACTING COMMISSIONER SHEEHAN: We meet the 30th of  
2 October. And when again?

3           EXECUTIVE OFFICER THAYER: December 3rd.

4           ACTING COMMISSIONER SHEEHAN: So we would know by  
5 then if they are going to make it in 90 days.

6           EXECUTIVE OFFICER THAYER: Probably, yes. We  
7 would be about two weeks shorter or a week and a half  
8 shorter.

9           ACTING COMMISSIONER SHEEHAN: But we would know  
10 whether they are going to make it?

11          EXECUTIVE OFFICER THAYER: Probably.

12          ACTING COMMISSIONER ARONBERG: That's the motion,  
13 then. The suggestion would be to adopt staff's  
14 recommendation except to provide a 90-day cure period.

15          MS. O'BRIEN: Excuse me. Before you vote, may I  
16 ask for a clarification on that? Is there an opportunity  
17 within that period for -- or a directive from the  
18 Commission for staff to consult with us, or for us to  
19 consult with staff, if there is some snag involved as far  
20 as getting a permit or -- so that we don't reach the end  
21 of the period and think we're in compliance, and then find  
22 out at the last minute that we're not?

23          EXECUTIVE OFFICER THAYER: Of course, if there's  
24 some issue, we have the October 30th meeting. You could  
25 come back and address the Commission. In fact, we



1 probably should in terms of the progress that's been made  
2 to deal with this as far as the previous --

3 CHAIRPERSON GARAMENDI: We have a motion which, I  
4 think, is clear. We have a meeting of this commission  
5 prior to the 90-day period of time running. And staff can  
6 inform -- and we can modify, if we choose to do so, by  
7 providing additional time or whatever modification would  
8 be appropriate at that time. Bottom line is, we've had  
9 enough. Get on with it, get it done, or get out.

10 Understood?

11 MS. O'BRIEN: Understood.

12 CHAIRPERSON GARAMENDI: There are a bunch -- there  
13 are several people who wanted to testify on this matter.  
14 Do they still want to testify?

15 (Yeses.)

16 CHAIRPERSON GARAMENDI: Do you think you can add  
17 to this discussion in any way that would be useful, to  
18 cause us to change our mind of what we are about to decide  
19 to do?

20 (Yeses.)

21 CHAIRPERSON GARAMENDI: No? Then don't testify.  
22 Yes, then testify.

23 You see those little lights up there? One is  
24 green, one is yellow, one is red. Prepare to finish when  
25 it's yellow and when it's red, to step back, and you're

1 done. We're moving on here.

2 MS. ASUNCION: Hello. My name is Judy Asuncion.  
3 My husband is John Asuncion. He is president and founder  
4 of the Blue Whale Sailing School, a charitable and  
5 educational corporation that he created 13 years ago.

6 When we purchased our property, which is right  
7 next door to the South Bay Yacht Club, in Alviso, seven  
8 years ago, we donated the property to the Blue Whale  
9 Sailing School for our charitable, educational  
10 corporation. We were so excited to create an area in the  
11 South Bay for public access to the waterways and the South  
12 Bay, to have inner-city children and handicapped adults  
13 enjoy the waterways to see all the wildlife that Alviso  
14 area and the South Bay has to offer. There are many  
15 people that run, walk, on the levees. And thanks to my  
16 husband for keeping our property so clean for the public  
17 to be able to view the waterways.

18 We felt so good about this area to be not only for  
19 us but for the public, of positive surroundings. It is a  
20 wonderful feeling to see smiles on people's faces when you  
21 have view of the waterways. Or if you are on the water,  
22 it is a piece of serenity. People are getting in touch  
23 with themselves. This is healthy.

24 We have received so many letters from the general  
25 public and thanks to John Asuncion and the Blue Whale

1 Sailing School for giving public access for the past seven  
2 years. They also state in these letters that for over the  
3 years, that they have been denied public access through  
4 the South Bay Yacht Club and in the Alviso area, even  
5 though it states in the lease that the state of California  
6 has the South Bay Yacht Club --

7 CHAIRPERSON GARAMENDI: Excuse me. We're aware  
8 and we've heard before your concerns.

9 Do you agree or disagree with the action that's  
10 been proposed?

11 MS. ASUNCION: I disagree.

12 CHAIRPERSON GARAMENDI: And you want it shut down  
13 now?

14 MS. ASUNCION: I want it shut down now. They've  
15 had a long enough time -- they've had -- they've had a  
16 lease with the state for many years. Why wouldn't they  
17 take care of it? Why wouldn't they allow public access?  
18 I basically wanted to give you a scenario of what I've  
19 been experiencing.

20 CHAIRPERSON GARAMENDI: I appreciate that. The  
21 problem we're faced with is that we're going to lose a  
22 quorum of this Commission. And I think you want us to  
23 take some action.

24 MS. ASUNCION: Well, a lot of the agencies  
25 throughout California have known about this problem, but

1 it has been gone on deaf ears.

2 CHAIRPERSON GARAMENDI: No, it's not been on deaf  
3 ears.

4 This Commission has given them 90 days to cure the  
5 defects. If that's not cured in 90 days -- we're about to  
6 give them 90 days to cure the defects. If they are not  
7 cured in 90 days, they are in default, and they are  
8 required, under their lease, to remove all of the  
9 structures.

10 MS. ASUNCION: I understand that. But why do you  
11 feel that they are allowed to get another 90 days?

12 CHAIRPERSON GARAMENDI: The commission is about to  
13 make a decision. I thank you for your testimony.

14 Next person, please.

15 MS. ASUNCION: Thank you.

16 CHAIRPERSON GARAMENDI: And please keep it very,  
17 very quick.

18 MR. TAYLOR: I will try to keep it quick. Thank  
19 you for letting me speak, Chairman Garamendi and  
20 distinguished Commissioners.

21 THE REPORTER: State your name, please.

22 MR. TAYLOR: Charles Taylor. I am actually  
23 secretary of South Bay Yacht Club.

24 And I will be the first to tell you that no one  
25 feels worse about the condition itself than the members.

1 And you can hear the old timers lament about the history  
2 of the slough and the yacht club and it will bring a tear  
3 to your eye. I'm very serious. It sounds ridiculous, but  
4 that's the case.

5 It's very hard to maintain docks when you're on  
6 dry land. It's very hard to generate income from boats  
7 when you don't have any docks. And so that is why  
8 basically those in the yacht club that have not given up  
9 have spent, you know, seven years of their life of trying  
10 to address the root of the problem.

11 I personally -- I'm a newcomer, actually. I moved  
12 there seven years ago. I was taken in by just the history  
13 of the place, the people, and such a wonderful area. Then  
14 I got involved. And at least for me, just me alone for  
15 the past seven years, I have been going to weekly  
16 meetings. And those don't include meetings with the Santa  
17 Clara Valley Water District, South Bay Salt Ponds  
18 Restoration Project, the City Council of San Jose, BCDC,  
19 to get the slough restored.

20 I mean, nothing can be done unless there's water  
21 in the slough. And so what we've been trying to do I've  
22 been trying to do, personally, for the past seven years --  
23 Tom Laine has been doing it, and other members of the  
24 yacht club have been doing it for 15 years, trying to get  
25 water back in the slough. And we've been working with the

1 Santa Clara Valley Water District, South Bay Salt Pond  
2 Restoration Project, to make this happen.

3 Historically, the folks from Alviso who parallel  
4 the slough know, when we get that slough cleared out,  
5 getting the yacht club fixed will fall into place. There  
6 will be a new brand of people coming to the Bay. All  
7 these things can be accomplished. So that is what we've  
8 been working on.

9 And we have been instrumental, working with the  
10 Santa Clara Valley Water District to try to get our  
11 project to clear the slough. We've also been instrumental  
12 with the South Bay Salt Pond Restoration Project to have  
13 restoration of the slough -- introduction of salt water --  
14 one of the initial projects in this 50-year effort. So we  
15 have been working very diligently at the root cause of  
16 this problem, because, you know, that is what we feel  
17 needs to be done first. So we were surprised when we were  
18 hit with these violations from State Lands. It was just  
19 in bad shape. We were the ones who really want to fix it  
20 up. By my understanding is, we gave you guys a work plan.  
21 We're trying to address that.

22 And what the problem has been, it's just so  
23 difficult. There are four government agencies -- I heard  
24 a couple more mentioned. Now there's the Corps of Army of  
25 Engineers and others that we have been trying to navigate

1 this maze of permits -- permission, some of the which have  
2 been getting conflicting information. So we finally had  
3 to get counsel and address these issues. It has been very  
4 difficult, as you know, dealing with these issues.

5 And if you want to actually --

6 CHAIRPERSON GARAMENDI: Before you run out of  
7 time, a question. We are about to allow you 90 days to  
8 clear the defects. Can you do it? We're not asking you  
9 to clear the slough.

10 Fix the docks, fix the electrical work, provide  
11 the public access, clear the weeds -- those are the basic  
12 ones that are out there. And there's a handful of other  
13 lesser ones. Can you do it in 90 days?

14 MR. TAYLOR: Let me try to address all of those.  
15 I would say, yes. And here's what's going to happen.  
16 We're getting new docks in. That's fine. We can cut  
17 weeds, but it's dry land. They are going to grow back in  
18 a month. That's the problem.

19 CHAIRPERSON GARAMENDI: So does my lawn. Fine.

20 You have 90 days to do it. And you say you can do  
21 it? You will have a chance to prove it.

22 MR. TAYLOR: Okay.

23 CHAIRPERSON GARAMENDI: Okay? You got 90 days.

24 Thank you.

25 MR. ASUNCION: Hi. It's nice to see you,

1 Lieutenant Governor and staff. I'm John Asuncion.

2 CHAIRPERSON GARAMENDI: And Commissioners.

3 MR. ASUNCION: And Commissioners. Excuse me.

4 I'm John Asuncion, and I'm the President and  
5 founder of the Blue Whale Sailing School. Myself and my  
6 wife created this educational corporation. Come January,  
7 it will be 14 years. We stepped up to the plate. We  
8 didn't make any excuses. And we got the money out of our  
9 own pockets and did the cleanup on our property. Okay?

10 The yacht club polluted our property. We have  
11 them in court at this time for polluting all the  
12 properties along the slough. But the most important  
13 thing, they deny public access. And I want the commission  
14 and yourself to know that I offered three times to pay for  
15 that cleanup at the South Bay Yacht Club, to pay for it  
16 all, remove the docks, give them new docks, on one  
17 condition. And that one condition was to provide public  
18 access to the taxpayers of California. They have used  
19 every opportunity to use taxpayers' money to try to bail  
20 out a private yacht club. A precedence [sic] was set by  
21 Boats and Waterways, denying their grant, because they  
22 wanted to use taxpayers' money to remove and clean their  
23 boat out.

24 The gentleman that just spoke, I applaud him for  
25 trying to get anything cleaned up. But in the same token,



1 you don't use taxpayers' money to clean up a yacht club.  
2 And the Water District should be scolded for allowing them  
3 to squat on their property and pollute it. They pollute  
4 your property that you have a lease with. They pollute  
5 the property that the Water District owns. And then they  
6 pollute the property where the state owns again.

7           And then I and my wife, that purchased our  
8 property and donated to our foundation -- they have  
9 polluted our property and everything along the slough. So  
10 the bottom line is, I feel -- and I can't tell you what to  
11 do. You make your own decision. Staff makes their own  
12 decision. I applaud your staff for trying to do the right  
13 thing. And I hope you listen to the taxpayers. And I  
14 hope you close this place down. Okay?

15           There's no more wiggle room to give them another  
16 day like this. As a retired contractor, there's no way  
17 that they are going to clean that place up. And it's like  
18 having a piece of turf. I'm a retired golf course  
19 architect and landscape architect. I know what it takes  
20 to cut a piece of grass. And I know how to maintain it.

21           You can go to the Olympic Club and see what I did  
22 there. You can go to the California Club and see what you  
23 do with a piece of turf. And a piece of turf, you have to  
24 maintain it. If you don't maintain it, it doesn't happen.

25           Thank you very much for you time.

1           CHAIRPERSON GARAMENDI: Thank you.

2           Next?

3           MS. RIVERA: God, I'm excited to be here. My name  
4 is Lordes Rivera, and I'm a resident of Alviso for 40  
5 years. I love my community. I was raised here, to the  
6 present.

7           The reason why I'm here is because I am behind the  
8 South Bay Yacht Club. When you see those pictures and you  
9 imagine me living there, when I was young, all I saw was  
10 all open water, from channel to channel. Okay?

11           Former Director Bob Rose, for 30 years, has been  
12 trying to get directors from the Santa Clara Valley Water  
13 District to clean the bottom of the river. Well, his term  
14 has finished.

15           For seven years now, I have -- for seven years  
16 now, the director, Santos, has been director for the Santa  
17 Clara Valley Water District, for District 3. He has been  
18 pushing to have Guadalupe River dredged, vegetation  
19 removed. And I have been attending so many meetings for  
20 seven years where I had to leave school and work to speak  
21 up.

22           What I have observed is environmental and social  
23 injustice, discrimination, sabotage, certain directors  
24 dictating to district staff project managers to make it  
25 impossible for all these community projects to be

1 completed.

2           We are trying to -- what we are trying to do is  
3 receive fair and equal justice, make it look like it did  
4 before the 1983 -- yes, I was in the 1983 flood, and I was  
5 devastated and I have blocked it out of my mind. I don't  
6 want to remember nor I want my new neighbors, my old  
7 neighbors, to go through what I went through at that time.  
8 Katrina has played -- Katrina plays in this but not  
9 really. It's the '83 flood that does. When you live  
10 through it, it's very painful. My main point is, I don't  
11 want to go through it nor for my neighbors, like I said.

12           What John Asuncion from Blue Whale Sailing School  
13 is not telling you is that he has removed the vegetation,  
14 putting docks, putting boats out there without a permit.  
15 How is that possible?

16           I've been trying to work collaboratively with the  
17 other agencies. And I don't see them doing -- taking any  
18 action against them. I don't understand that. He can  
19 tell you, he is a charitable organization. It's easy for  
20 him to take pictures with handicapped children and expose  
21 them without asking the parents if it's okay. The then as  
22 soon as he gets his pants down, he takes them up.

23           So I'm here to ask 120 days. Thank you.

24           CHAIRPERSON GARAMENDI: Thank you.

25           Next.

1 MS. CANSINO: Good afternoon, Chair and  
2 Commissioners.

3 My name is Rhovy Lynn Cansino. I'm a policy  
4 analyst for Counsel Member Kansen Chu representing the  
5 City of San Jose, Council District 4, and most  
6 importantly, representing the citizens of Alviso.

7 I would like to express my thank you to each and  
8 every one of you for considering granting the South Bay  
9 Yacht Club 90 days to cure the defects outlined by staff.  
10 We believe that the yacht club will make significant  
11 progress within the time given and by granting the club  
12 this extension, please do recognize that you are listening  
13 to the community, to the concerned voices and the requests  
14 of the community saying that they want they want to keep  
15 the yacht club in Alviso.

16 So on behalf of the council member, thank you very  
17 much. And have a wonderful day.

18 CHAIRPERSON GARAMENDI: Thank you.

19 MR. HANNELLY: Hello, Mr. Chairman and members of  
20 the Commission. Mark Hannelly with the California Outdoor  
21 Heritage Alliance.

22 We appreciate the offer of allowing an extra 90  
23 days to solve this issue. And in talking with the club  
24 members, we're convinced that they will perform their due  
25 diligence and get that work done.

1           So thank you very much.

2           CHAIRPERSON GARAMENDI: Okay. Apparently we  
3 finished the public testimony on this. We have a motion  
4 before us. The motion is clear.

5           Without objection, it will be unanimous 3-0 vote.

6           Thank you. Our next issue is public comment. I'm  
7 sorry. Resolution. My apologies. We have a resolution  
8 before us. In support -- Cindy, do you want to speak to  
9 this resolution?

10          ACTING COMMISSIONER ARONBERG: I --

11          CHAIRPERSON GARAMENDI: Or shall we have staff?

12          ACTING COMMISSIONER ARONBERG: Maybe Paul can  
13 quickly speak to the resolution.

14          MR. DeBERNARDO: I can quickly address this. My  
15 name is Mario DeBernardo. I am the new legislative  
16 liaison for State Lands. And I'm honored to be here to  
17 talk to you quickly about this resolution.

18          This is the Marine Vessel Emissions Reduction Act  
19 of 2007, introduced in the senate by Senators Boxer and  
20 Feinstein and introduced in the House by Rep Solis.

21          And what this does is two things: The first thing  
22 is that it regulates the sulfur in the fuel that marine  
23 vessels, entering and leaving U.S. ports, can use; and  
24 then the second thing it does is that it requires the EPA  
25 to establish, adopt, regulations for the emissions of

1 marine vessel engines.

2 I don't know if you need me to go on. The  
3 resolution is basically pretty specific on the facts and  
4 what it does and what's going on.

5 So thank you very much.

6 CHAIRPERSON GARAMENDI: Thank you. Discussion?

7 ACTING COMMISSIONER SHEEHAN: I will move  
8 approval.

9 CHAIRPERSON GARAMENDI: We have a motion.

10 ACTING COMMISSIONER ARONBERG: Second.

11 CHAIRPERSON GARAMENDI: And a second.

12 And we have a unanimous vote in support of the  
13 resolution.

14 I think we're now at the public comment period.

15 We have -- looks like we have some Tahoe folks  
16 here. Susan Gearhard, Tahoe Citizens Action Alliance?

17 MS. GEARHARD: Good afternoon. North Tahoe  
18 Citizens Action Alliance has been formed for about four  
19 months, and we have over 130 members at this time. It's  
20 an attempt to work with TRPA, which sometimes can be quite  
21 difficult, as I'm sure you can appreciate.

22 One of the problems that has arised lately, since  
23 August 1st, we did hear from the UC Davis Tahoe Research  
24 saying that the clarity of the lake was diminishing, and  
25 the algae were foreign algae and that the water was

1 contaminated and that the type of fish, the sturgeon and  
2 catfish that were out on the lake were not usually able to  
3 survive there. And so what it is, is a complete warming  
4 of the lake.

5           One of the things that TRPA has passed on  
6 August 1st was this community enhancement program that  
7 allows builders to conform with the demonstration of the  
8 project. And the members of the community cannot remark  
9 on it. We will be -- when they decide from August to  
10 November we will be able to remark on it in November. But  
11 what this does is that when the community projects that  
12 have been accepted by TRPA is a big huge development of  
13 real estate.

14           And there's three things that Tahoe people just  
15 have had it with. And that's fires, as you can imagine,  
16 and a lack of water in our fire hydrants that have now  
17 gone dry because of the fires. Our wells have gone dry.  
18 The building is causing a maximum problem as far as the  
19 condition of our clarity of our lake. And then the  
20 traffic congestion the just awful. And when we look at  
21 this community enhancement, this is the only tool we've  
22 been given.

23           The environment improvement program, that allows  
24 the developers to not only be approved as a demonstration  
25 project but allows them also to get other commodities in

1 the form of increased commercial space, increased TAUs, or  
2 tourist accommodation units, and mixed use, they can  
3 increase their program by becoming a project.

4 One of the nonprofit government organizations that  
5 were put together to help them, guide them, towards  
6 improving the thresholds of 2001 for the EIP is to be  
7 hired by Sierra Business Council, and the board as an  
8 executive director of TRPA. I think that's an unfair  
9 advantage when the public has no idea of what this  
10 contains.

11 Thank you.

12 CHAIRPERSON GARAMENDI: Thank you.

13 I think that's the only issue on Tahoe that I'm  
14 aware of. There's several people that want to talk to the  
15 issue of the Public Trust lands. Sandy Threlfall and Ruth  
16 Gravanis.

17 MS. THRELFALL: Good afternoon, Commissioners.

18 Thank you for this opportunity. My name is Sandra  
19 Threlfall. Regrettably, Ruth was called away. I am here  
20 to represent the Public Trust group in the Bay Area. I'm  
21 the executive director of Water Front Action. The group  
22 is formed by a number of organizations coming together to  
23 advocate for the Trust.

24 Our concern is that too many Trust decisions are  
25 being made behind closed doors. If, in fact, the Public



1 Trust belongs to the people of California, then I believe  
2 the decisions affecting the Trust must be made in a public  
3 forum, and not by the final vote of a closed session.  
4 That is not a public forum.

5 I cite in particular -- I live in Oakland. Jack  
6 London Square used to be our waterfront. And there was a  
7 stipulated settlement.

8 Now, I'm not an attorney so I'm not quite sure how  
9 this is different from other legal settlements. But  
10 basically, it gives this developer 15-year leases to put  
11 in offices on Public Trust lands. This, to me, is the  
12 kind of violation that hurts everyone. If their office is  
13 on our waterfront, then that means there aren't people  
14 activities on our waterfront. That means there isn't the  
15 access. That means that the parking won't be available  
16 for public access. In any case, office buildings do not  
17 belong on Public Trust lands. The fact that this was a  
18 stipulated decision, behind closed doors, with no  
19 opportunity for public input is the kind of thing we  
20 cannot permit to continue.

21 My guess was, my time was up. May I add one more  
22 item?

23 CHAIRPERSON GARAMENDI: Quickly.

24 MS. THRELFALL: The Oak to 9th, which is, again,  
25 an open development, has a trade as part of it. So that

1 housing can be put on what was originally, in our general  
2 plan, a park. 3100 housing units are going in. And the  
3 trade substitution at this point, the Trade lands, will be  
4 industrial. Yes, that is a Public Trust use. But that is  
5 not, to me, the validation of what Public Trust lands are,  
6 especially when they take away our parks for housing.

7 Thank you for this opportunity to speak.

8 CHAIRPERSON GARAMENDI: Thank you. I would  
9 suggest you put that in writing and in whatever way you  
10 like would be useful to you.

11 Owen Li.

12 MR. LI: Good afternoon. And thank you for this  
13 opportunity to speak. My name is Owen Li. And I am here  
14 today on behalf of Unite Here, representing 50,000 hotel  
15 workers throughout the state of California.

16 I'm here today to ask you not to re-agendize the  
17 Woodfin Suites Timeshare proposal. Timeshares do not help  
18 working people. Earlier this week, the San Diego Union  
19 Tribune reported on the findings of the assessor, which  
20 found that, and I quote, "One-third of the tax delinquency  
21 foreclosure sales recorded in San Diego come from units in  
22 the timeshare industry."

23 Now, the commissioners discussed defaults and high  
24 interest rates associated with this product, last  
25 December, when they concluded this test case failed both

1 the pre- and post-1996 promise. Unite Here and the San  
2 Diego Imperial County Central Labor Council agree with  
3 this decision along with every environmental group which  
4 was at the meeting.

5 Now, Woodfin proponents have claimed timeshares  
6 are good for working families. But, at best, Woodfin is  
7 an unlikely spokesperson for working people. Here in East  
8 Bay, it has sued the City of Emeryville, California, after  
9 citizens voted for an ordinance requiring hotels to pay a  
10 \$9 an hour minimum wage. And though it lost in federal  
11 court, Woodfin continues to defy the ordinance, and its  
12 own workers have had to sue their employer. After the  
13 workers complained of these violations, they were fired,  
14 allegedly due to Social Security "no match" letters.

15 Now, in America, it is illegal to harass any  
16 workers who claim their due, regardless of immigration  
17 status. Emeryville has ordered Woodfin to pay  
18 approximately \$300,000 in back pay fees and fines,  
19 including 31,500 for its failure to provide documents to  
20 the city.

21 While workers' rights are beyond the scope of this  
22 Commission, disregard for any law a project applicant does  
23 not like should raise a red flag. Woodfin's behavior with  
24 the City of Emeryville hardly makes it an ideal candidate  
25 for a test case. State Lands staff noted timeshares

1 inherently present, quote, "The potential for an unduly  
2 burdensome complexity of business dealings for the State  
3 or its trustee of land," end quote.

4 California faces so many important issues today,  
5 and we appreciate the hard work of this Commission. We  
6 urge you to spend your time next month on other pressing  
7 issues, such as water cleanup plan -- such as the water  
8 cleanup plan, so residents, along with visitors, can one  
9 day swim and fish safely in the San Diego Bay. Achieving  
10 that would create truly affordable family recreation for  
11 working Californians.

12 Thank for your time.

13 CHAIRPERSON GARAMENDI: Thank you.

14 Darleen Nicandro, San Diego Unified Port District.

15 MS. NICANDRO: Good afternoon, Chairman Garamendi  
16 and Commissioners.

17 My name is Darlene Nicandro here on behalf of San  
18 Diego Unified Port District. As you may be aware, Chair  
19 Sylvia Rios of our Board of Port Commissioners submitted a  
20 letter to you dated September 7, 2007, regarding a request  
21 for an agenda item and reconsideration of the Woodfin  
22 Suites Timeshare Component of the Port Master Plan  
23 Amendment approved by the port district.

24 I would like to read Chair Rios's letter to the  
25 Commission for the record, if I may.

1           "Dear Chairman Garamendi and honorable  
2 commissioners. As the local tidelands grantee, the Board  
3 of Port Commissioners supports the request by Woodfin, a  
4 port tenant, for the California State Lands Commission  
5 agendaize an item of statewide interest at its upcoming  
6 October 30th, 2007, meeting in San Diego --  
7 reconsideration of the Port Master Plan Amendment, which  
8 included a timeshare component.

9           "The subject of timeshares on State tidelands is a  
10 topic of continued statewide interest to the public,  
11 interested stakeholders, hotel and finance experts, and  
12 tidelands grantees, as evidenced by the three Public Trust  
13 Doctrine workshops, successfully conducted by Commission  
14 staff in July of 2007.

15           "In 1996, the California Attorney General issued a  
16 formal opinion that concluded timeshare developments on  
17 Public Trust lands may be consistent with the Public  
18 Trust, provided such a project meets the tasks contained  
19 in that opinion.

20           "Additionally, in connection with the workshops,  
21 the Port of Oakland, through its port attorney, has  
22 provided us a copy of his opinion, indicating that the  
23 1996 Attorney General's opinion is sound.

24           "The nature and financing of hotel development is  
25 necessarily changing as the hospitality industry is

1 currently responding to changes in the economy.  
2 Accordingly, a tenant on Public Trust lands receives  
3 financing advantages from timeshare components within  
4 visitor-serving uses" --

5 CHAIRPERSON GARAMENDI: Excuse me. I think the  
6 commission members are capable of reading.

7 Bottom line?

8 MS. NICANDRO: The bottom line is that we  
9 respectfully request reconsideration of the Woodfin  
10 Timeshare project at the upcoming October meeting.

11 CHAIRPERSON GARAMENDI: Thank you very much.

12 MS. NICANDRO: Thank you.

13 CHAIRPERSON GARAMENDI: We're going to move along  
14 here.

15 The next is Steven Kaufman, and Sheldon Sloan and  
16 Donna Andrews, all representing Woodfin.

17 I would appreciate it if you don't repeat what the  
18 previous person has to say. I assume you are all in  
19 support of reopening the issue?

20 MR. KAUFMAN: Yes, and thank you Chairman  
21 Garamendi and Commissioners. And I think Sheldon Sloan  
22 will cede his time to me and I will take less than the  
23 total time, if that's okay with you. We'll try to do it  
24 as quickly as we can.

25 CHAIRPERSON GARAMENDI: You had better.

1 MR. KAUFMAN: Thank you.

2 My name is Steven Kaufman. I represent Woodfin  
3 Suite Hotels. We propose a 140-unit hotel including a  
4 40-unit timeshare component in the port of San Diego.  
5 We're joining in the port's request that you agendize this  
6 matter for reconsideration at your October 30 meeting in  
7 San Diego.

8 1996, the State Attorney General issued a  
9 carefully written formal opinion and concluded that time  
10 shares on Public Trust lands may be consistent with the  
11 Public Trust. The Port concluded that the Woodfin project  
12 is consistent with the AG's opinion. And now you have a  
13 letter from the Port of Oakland, recently sent to your  
14 staff, that also urges the Commission to adhere to that  
15 opinion.

16 At the December 2006 meeting, the Commission voted  
17 2-0 with Commissioner Sheehan abstaining that the  
18 timeshare component is not consistent with the Public  
19 Trust. But that wasn't the end of the debate; it was the  
20 beginning.

21 Commissioner Bustamante stated, "The issue needs  
22 to be aired out fully, and the debate has to be  
23 continued."

24 Commissioner Aronberg, who chaired at the end of  
25 the meeting, stated, "Perhaps the hearing or workshops of

1 some kind is in order."

2 And Commissioner Sheehan stated, "Questions could  
3 be for more fully answered, either by more discussion or a  
4 workshop."

5 And in July, your staff conducted three workshops.  
6 At each session, because of the statewide importance of  
7 the issue, your staff raised Woodfin as a case study.

8 At the San Diego session, your staff graciously  
9 invited the Port -- and I served as panelist. And we  
10 explained at great length why the timeshare component is  
11 consistent with the Public Trust. And this included  
12 additional legal reasons not discussed in December,  
13 demonstrating Trust consistency.

14 I ask the Commission, bear in mind that neither  
15 Woodfin or the port have applied to your commission for  
16 anything. There's no statute or regulation that governs  
17 this. Staff brought it to the commission as a matter of  
18 your oversight. And that same oversight permits a further  
19 hearing so that this commission is comfortable as making  
20 the right decision.

21 And lastly, what's new since December?

22 Well, you have two new commissioners. And the  
23 comments of commissioners in December, that there be a  
24 further dialogue, I assume that's so you could consider  
25 it.



1           Secondly, at the workshop I raised a new legal  
2 reason. Based on your decisions and case law, this should  
3 be addressed.

4           You need to have the Port Master Plan Amendment  
5 that you were reviewing before you. It was not included  
6 with your staff report.

7           And we will bring clarifying changes to you in  
8 that Port Master Plan Amendment at the October meeting.  
9 And we're working with the port to complete that quickly.

10          We need to correct mistaken assumptions, facts,  
11 and errors in the December staff report. They are  
12 significant, and they bear directly on the Public Trust  
13 discussion. We need to address Commissioner Sheehan's  
14 numerous questions raised at the end of the December  
15 hearing. You now have that letter from another port,  
16 Oakland, urging the Commission follow the AG's opinion.

17          Timeshares are good for working families. We will  
18 demonstrate that to you. And the representations  
19 concerning this union issue are just not accurate, to  
20 date. And we will have to address that, head-on, for you  
21 as well.

22          And lastly, this commission would benefit by  
23 hearing from the tidelands grantee itself regarding the  
24 big picture. It's a very different story. Why did they  
25 make this decision? And why is it important to the

1 overall administration of its granted lands? And Woodfin  
2 illustrates perfectly the choices that the tidelands  
3 grantee have to make. And it is appropriate that you have  
4 that dialogue in San Diego in October. And I thank you  
5 very much for the time.

6 CHAIRPERSON GARAMENDI: Thank you. I believe we  
7 have completed the public testimony? There was a Charles  
8 Taylor that wanted to testify?

9 MR. TAYLOR: I wanted to speak on the Blue Whale  
10 School. But if you want to adjourn, I understand.

11 CHAIRPERSON GARAMENDI: Your request came in after  
12 you testified. So anyway, thank you very much.

13 I think we completed the public testimony portion  
14 of this. We completed our agenda.

15 Further comments from the staff here?

16 One comment that I do want to make, and I think I  
17 covered this when we dealt with the dock on the Sacramento  
18 River, and that had to do with the deck on top of the  
19 dock.

20 I for one, and perhaps my colleagues are in  
21 agreement with this, do not believe that dock decks are  
22 appropriate. And I want to make it clear where I'm coming  
23 from if it wasn't clear in the previous discussion.

24 So that's in the record insofar as I'm concerned.

25 I thank you all very much. Without further adieu,

1 this meeting is adjourned.

2 (Thereupon the Commission entered into  
3 closed session.)

4 (Thereupon the State Lands Commission  
5 meeting adjourned at 3:43 p.m.)

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CERTIFICATE OF REPORTER

I, KATHRYN S. SWANK, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing California State Lands Commission meeting was reported in shorthand by me, Kathryn S. Swank, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of October, 2007.

KATHRYN S. SWANK, CSR  
Certified Shorthand Reporter  
License No. 13061

