

MEETING  
STATE OF CALIFORNIA  
LANDS COMMISSION

STATE CAPITOL  
ROOM 444  
SACRAMENTO, CALIFORNIA

MONDAY, DECEMBER 3, 2007

1:19 P.M.

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

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

BOARD MEMBERS

Mr. John Garamendi, Lieutenant Governor, Chairperson

Mr. John Chiang, State Controller, represented by  
Mr. Jim Lombard

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

STAFF

Mr. David Brown, Chief Administrative Officer

Mr. Jack Rump, Chief Counsel

Mr. Curtis Fossum, Assistant Chief Counsel

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

Ms. Nicole Dobroski, Environmental Scientist, Marine  
Facilities Division

Ms. Barbara Dugal, Chief, Land Management Division

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

Ms. Kimberly Lunetta, Executive Assistant

Mr. David Mercier, Chief, Audit Section

ATTORNEY GENERAL

Mr. Matt Rodriguez, Deputy Attorney General

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APPEARANCES CONTINUED

ALSO PRESENT

Dr. Denny Anspach, California State Railroad Museum  
Foundation

Mr. Jim Burroughs, AT&T

Mr. Graham Forbes, Unite Here Local 30

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

Mr. Milton Jones

Mr. Ed Manning, Thomas Enterprises

Mr. Gerald Murphy, representing Robert Hulbert

Ms. Kris Otto, representing Shawn Berrigan

Mr. Robert Rawlings

Ms. Tamara Rawlings, Courtland Town Council

Mr. Pietr Reysner, representing Shawn Berrigan and Diane  
House

Mr. Michael Warburton, Public Trust Alliance

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1 PROCEEDINGS

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

5 Joining us today representing the Controller is  
6 Jim Lombardo?

7 ACTING COMMISSIONER LOMBARD: Lombard.

8 CHAIRPERSON GARAMENDI: Lombard. Excuse me.

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

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

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

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

20 Any questions about the minutes?

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

23 ACTING COMMISSIONER LOMBARD: Second.

24 CHAIRPERSON GARAMENDI: So approved.

25 Now, Jack.

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

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

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

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

21 CHAIRPERSON GARAMENDI: And a gazillion media.

22 CHIEF COUNSEL RUMP: Absolutely.

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



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

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

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

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

1 NRDA, action is being formulated.

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

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

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

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

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

24 CHIEF COUNSEL RUMP: That's correct.

25 CHAIRPERSON GARAMENDI: And, therefore, the State

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

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

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

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

4 Jack.

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

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

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

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

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

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

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

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

1 authority and responsibilities as trustees of this land.

2 Anne.

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

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

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

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

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

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

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

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

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

1 and recognized.

2 ACTING COMMISSIONER SHEEHAN: Right.

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

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

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

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

25 CHAIRPERSON GARAMENDI: Well, let me try to sum

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

7 CHIEF COUNSEL RUMP: Okay.

8 CHAIRPERSON GARAMENDI: Very good.

9 Without objection, that will be the action taken.

10 CHIEF COUNSEL RUMP: Very good. Thank you.

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

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

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

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

20 CHAIRPERSON GARAMENDI: Yes.

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

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



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

2           Then the remaining items.

3           Anne.

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

6           ACTING COMMISSIONER LOMBARD: Second.

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

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

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

15           CHAIRPERSON GARAMENDI: Regular Item 37.

16           CHIEF COUNSEL RUMP: Correct.

17           ASSISTANT CHIEF COUNSEL FOSSUM: Mr. Chairman.

18 I'm Curtis Fossum, Assistant Chief Counsel Commissioners,  
19 good morning -- good afternoon.

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

1 involved in the proposed exchange.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 exchanges in a narrow manner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



1 until all the parties have agreed to the terms.

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

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

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

14 I'll be happy to answer any questions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 ASSISTANT CHIEF COUNSEL FOSSUM: That's correct.

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

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

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

25 ASSISTANT CHIEF COUNSEL FOSSUM: That's certainly

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

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

4 ASSISTANT CHIEF COUNSEL FOSSUM: Hopefully.

5 CHAIRPERSON GARAMENDI: Anne, you had a question?

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

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

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

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

20 ACTING COMMISSIONER SHEEHAN: Okay.

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

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

25 CHAIRPERSON GARAMENDI: I suspect they're here.

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

3 ACTING COMMISSIONER SHEEHAN: Well, what --

4 CHAIRPERSON GARAMENDI: Do we want to --

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

7 CHAIRPERSON GARAMENDI: Do you have question too?

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

9 Let's start with Thomas.

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

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

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

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

25 This site has been attempted and failed for

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

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

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

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

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

4 Thank you.

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

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

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

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

14 MR. MANNING: Correct.

15 CHAIRPERSON GARAMENDI: How does that work?

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

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

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



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

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

7 MR. MANNING: Yes.

8 CHAIRPERSON GARAMENDI: Thomas's money?

9 MR. MANNING: Yes.

10 CHAIRPERSON GARAMENDI: All of it?

11 (Laughter.)

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

14 CHAIRPERSON GARAMENDI: Very good.

15 Questions?

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

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

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

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

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

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

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

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

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

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

11 CHAIRPERSON GARAMENDI: We will.

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

14 MR. MANNING: Be happy to do.

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

17 Okay. There are two people.

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

21 Let's hear from Denny first.

22 Denny Anspach.

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

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

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

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

15 CHAIRPERSON GARAMENDI: Thank you.

16 Questions?

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

20 DR. ANSPACH: I remember you well.

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

23 State Parks. Paul Hammond.

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

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

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

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

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

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

4           Do you want to comment on that again?

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

12           Thank you.

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

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

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

1 us in other words.

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

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

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

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

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

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

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

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

11           Anne.

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

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



1 and approve a different agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (Laughter.)

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

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

14 Jim, comment?

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

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

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

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

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

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

13           CHAIRPERSON GARAMENDI: I will second that.

14           We have a vote.

15           Anne.

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

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

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

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

1 CHAIRPERSON GARAMENDI: Twenty-one and 26?

2 CHIEF COUNSEL RUMP: And 29.

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

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

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

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

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

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

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

25 Staff is recommending approval of the ten-year

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

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

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

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

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

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

17 (Laughter.)

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

21 MR. RAWLINGS: I am in opposition.

22 MS. RAWLINGS: I am in opposition.

23 MR. JONES: I'm in opposition.

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

1 support.

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

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

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

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

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

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

25 Please complete your testimony.



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

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

9 CHAIRPERSON GARAMENDI: Short it is.

10 Questions?

11 Next witness on the support side.

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

17 CHAIRPERSON GARAMENDI: Thank you.

18 Okay. Let's hear from the opposition.

19 If you'll introduce yourself.

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

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

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

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

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

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

25 "This letter is to advise you we do

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

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

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

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

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

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

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

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

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

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

24 CHAIRPERSON GARAMENDI: Time.

25 Thank you.

1           Please.

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

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

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

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

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

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

2 And lawyers, lots of lawyers.

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

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

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

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

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

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

25 Next witness.

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

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

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

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

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

24 Thank you.

25 Any questions?



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

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

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

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

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

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

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

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

10 CHAIRPERSON GARAMENDI: And what are the  
11 remedies?

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

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

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

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

23 LAND MANAGEMENT DIVISION CHIEF DUGAL: Correct.

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

1 Courtland citizens?

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

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

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

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

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

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

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

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

25 MR. REYSNER: Thank you.

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

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

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

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

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

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

23           MS. RAWLINGS: They are too.

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

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

4           LAND MANAGEMENT DIVISION CHIEF DUGAL: Yes.

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

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

9           MR. REYSNER: Mr. Chairman --

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

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

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

25          And one of the reasons for the dilapidation is

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

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

9 CHAIRPERSON GARAMENDI: And the schedule is  
10 clear?

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

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

17 LAND MANAGEMENT DIVISION CHIEF DUGAL: No.

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

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

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

25 LAND MANAGEMENT DIVISION CHIEF DUGAL: Well,

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

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

4 LAND MANAGEMENT DIVISION CHIEF DUGAL: Yes.

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

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

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

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

1           ACTING COMMISSIONER SHEEHAN: Perfect.

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

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

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

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

12           Very good. Then a motion --

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

15           CHAIRPERSON GARAMENDI: -- as amended?

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

19           ACTING COMMISSIONER LOMBARD: Second the motion.

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

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

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

25           CHAIRPERSON GARAMENDI: It is approved. And



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

6 Thank you very much.

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

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

12 Thank you very much.

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

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

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

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

1 California, a distance of approximately 190 miles.

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

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

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

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

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

25           Due to the physical disturbance that will be

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 ENVIRONMENTAL PLANNING MANAGEMENT ASSISTANT CHIEF

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

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

20 ENVIRONMENTAL PLANNING MANAGEMENT ASSISTANT CHIEF

21 BRAND: Exactly.

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

24 ENVIRONMENTAL PLANNING MANAGEMENT ASSISTANT CHIEF

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

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

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

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

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

15 ENVIRONMENTAL PLANNING MANAGEMENT ASSISTANT CHIEF

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

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

19 ACTING COMMISSIONER SHEEHAN: No, end of March.

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

22 ACTING COMMISSIONER SHEEHAN: Yeah, end of March.

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

25 Questions?

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

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

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

7           CHAIRPERSON GARAMENDI: We've got 1800 feet.

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

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

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

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

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

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

19          CHAIRPERSON GARAMENDI: Mitigated negative dec.

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

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

1 big --

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

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

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

11 ENVIRONMENTAL PLANNING MANAGEMENT ASSISTANT CHIEF  
12 BRAND: Correct.

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

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



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

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

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

13          ACTING COMMISSIONER SHEEHAN: A question.

14          The two endangered --

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

17          ENVIRONMENTAL PLANNING MANAGEMENT ASSISTANT CHIEF

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

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

22          ENVIRONMENTAL PLANNING MANAGEMENT ASSISTANT CHIEF

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

25          ACTING COMMISSIONER SHEEHAN: And that was

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

2 ENVIRONMENTAL PLANNING MANAGEMENT ASSISTANT CHIEF

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

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

8 ACTING COMMISSIONER SHEEHAN: Or on the road.

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

12 (Laughter.)

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

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

18 MR. BURROUGHS: Yes, please.

19 CHAIRPERSON GARAMENDI: Somebody's here.

20 There we go.

21 Yeah, Jim Burroughs.

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

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

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

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

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

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

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

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

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

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

1 CHAIRPERSON GARAMENDI: Care to place your bet?

2 That's off the record.

3 (Laughter.)

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

5 CHAIRPERSON GARAMENDI: No, that's sufficient.

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

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

17 Am I not helping here?

18 (Laughter.)

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

21 MR. BURROUGHS: Thank you.

22 CHAIRPERSON GARAMENDI: Questions?

23 ACTING COMMISSIONER SHEEHAN: I'll move approval.

24 ACTING COMMISSIONER LOMBARD: Second.

25 CHAIRPERSON GARAMENDI: We have a motion, we have

1 a second, and a unanimous vote.

2 All right. Thank you very much.

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

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

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

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

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

1 barrel of oil that is removed.

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

1 excessive deductions.

2 Record prices --

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

5 CHIEF ADMINISTRATIVE OFFICER BROWN: Yeah.

6 (Laughter.)

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

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

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

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

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

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

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

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

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

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

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

15          CHIEF ADMINISTRATIVE OFFICER BROWN:  Six.

16          CHAIRPERSON GARAMENDI:  Six.

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

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

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

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

1 next --

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

6 ACTING COMMISSIONER SHEEHAN: Okay.

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

10 CHIEF ADMINISTRATIVE OFFICER BROWN: Total, yes.

11 CHAIRPERSON GARAMENDI: Total of six. Clerical?

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

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

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

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

22 (Laughter.)

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

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

5 CHIEF ADMINISTRATIVE OFFICER BROWN:

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

8 CHAIRPERSON GARAMENDI: But is the return  
9 immediate?

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

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

19 CHIEF ADMINISTRATIVE OFFICER BROWN: It could.

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

22 ACTING COMMISSIONER SHEEHAN: Well, I guess --

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

25 ACTING COMMISSIONER SHEEHAN: Because I guess the

1 other --

2 CHAIRPERSON GARAMENDI: Get back money too.

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

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

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

1 of that.

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

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

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

9 And the other point is --

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

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

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



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

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

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

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

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

20 (Laughter.)

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

23 (Laughter.)

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

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

6           (Laughter.)

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

9           (Laughter.)

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

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

14          (Laughter.)

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

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

1 that will leave you --

2 (Laughter.)

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

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

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

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

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

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

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

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

5           AUDIT CHIEF MERCIER: Yeah, absolutely.

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

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

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

20           (Laughter.)

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

25           CHIEF ADMINISTRATIVE OFFICER BROWN: Thank you.

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

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

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

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

12 ACTING COMMISSIONER LOMBARD: Second.

13 CHAIRPERSON GARAMENDI: So moved.

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

17 CHIEF COUNSEL RUMP: Thank you.

18 CHAIRPERSON GARAMENDI: Next item is --

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

21 (Laughter.)

22 ACTING COMMISSIONER SHEEHAN: Thank heavens.

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

1 on the treatment of ballast water.

2 Presenting it today will be Nicole Dobroski.

3 CHAIRPERSON GARAMENDI: Okay. Let's go.

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

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

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

14 --o0o--

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

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

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

4 --o0o--

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

14 --o0o--

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

17 --o0o--

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

20 (Laughter.)

21 ACTING COMMISSIONER SHEEHAN: Very nice.

22 ENVIRONMENTAL SCIENTIST DOBROSKI: -- performance  
23 standards.

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

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

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

11                                   --o0o--

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

14           (Laughter.)

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

24                                   --o0o--

25           ENVIRONMENTAL SCIENTIST DOBROSKI: To assess the



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

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

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

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

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

6 --o0o--

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

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

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

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

24 --o0o--

25 ENVIRONMENTAL SCIENTIST DOBROSKI: The

1 availability of treatment systems is a function of  
2 production, demand, government approval, and efficacy.  
3 Many systems will be commercially available by 2009 and  
4 the Commission is funding some research to help advance  
5 technology development. However, market demand may be  
6 tempered by the lack of federal performance standards and  
7 system approval mechanisms.

8           Shipping is an international industry. Vessels  
9 may be hesitant to install costly treatment systems  
10 onboard in compliance with the California requirements  
11 without some assurance that it will be acceptable at the  
12 federal or international level.

13           Ultimately, however, at this time no systems meet  
14 California's standards and, thus, none could be deemed  
15 available for use in the state.

16                                 --oOo--

17           ENVIRONMENTAL SCIENTIST DOBROSKI: Twenty-one of  
18 the 28 systems examined here use some form of active  
19 substance or biocide or chemical to treat ballast water.  
20 These systems will require an environmental or  
21 toxicological assessment in compliance with California's  
22 water quality criteria and regulations.

23           As of now, however, there is no formalized  
24 process for the review and assessment of these  
25 environmental impacts from these treatment systems.

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

5                                 --oOo--

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

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

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

21                                 --oOo--

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

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

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

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

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

21 --o0o--

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

1 action:

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

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

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

17 --o0o--

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

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

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

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

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

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

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

23 ACTING COMMISSIONER SHEEHAN: You answered my  
24 questions.

25 CHAIRPERSON GARAMENDI: Thank you very much for

1 the report.

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

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

6           Thank you very much.

7           I believe we have --

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

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

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

14          CHIEF COUNSEL RUMP: Correct.

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

17          ACTING COMMISSIONER LOMBARD: Second.

18          CHAIRPERSON GARAMENDI: So moved and approved  
19 unanimously.

20          CHIEF COUNSEL RUMP: Very good. Thank you.

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25           CHAIRPERSON GARAMENDI: Well, our normal policy

1 is to hear.

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

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

7 So let's hear from Mr. Murphy.

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

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

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

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

25 It also eliminates the criteria that one could



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

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

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

17           CHAIRPERSON GARAMENDI: Was there a lease?

18           MR. MURPHY: There was.

19           CHAIRPERSON GARAMENDI: Was there an application?

20           MR. MURPHY: There was.

21           CHAIRPERSON GARAMENDI: Was it carried out --

22           MR. MURPHY: According to the --

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

25           MR. MURPHY: According to your interpretation,

1 no.

2 CHAIRPERSON GARAMENDI: To your interpretation?

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

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

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

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

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

25 CHAIRPERSON GARAMENDI: You can have more time.

1 MR. MURPHY: Thank you.

2 I'm sorry to interrupt you.

3 CHAIRPERSON GARAMENDI: I made my point.

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

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

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

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

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

19 CHAIRPERSON GARAMENDI: Well, okay.

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

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

25 CHAIRPERSON GARAMENDI: Where did you come across

1 that?

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

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

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

12 CHAIRPERSON GARAMENDI: Have anything further?

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

14 Thank you.

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

17 ACTING COMMISSIONER SHEEHAN: Staff  
18 recommendation on --

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

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

23 ACTING COMMISSIONER LOMBARD: Second.

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

1 Approved unanimously.

2 CHIEF COUNSEL RUMP: Okay. Thank you.

3 That one was Item 35.

4 The next one is Item 36, also a lease violation.  
5 This is located in the Sacramento River again in the town  
6 of Courtland.

7 Making the presentation will be Mary Hays of our  
8 Land Management staff.

9 PUBLIC LAND MANAGER HAYS: Good afternoon, Mr.  
10 Chairman and members of the Commission. My name is Mary  
11 Hays, and I'm a public land manager with the Land  
12 Management Division of the Commission.

13 I will be presenting information on Calendar Item  
14 36. But before I begin, I'd like to bring to the  
15 attention of the Commissioners and for the official record  
16 that in the authorization section of this calendar item  
17 the date in the authorization, 1C and 1G, is incorrect and  
18 is changed from June 30th, 2008, to May 31st, 2008.

19 Thank you.

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

22 In 1982 the Commission authorized a 15-year lease  
23 for a commercial marina that included a floating dock, a  
24 section of a storage cabin partially built over state  
25 lands, and a floating harbor master office on the

1 Sacramento River near Courtland.

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

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

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

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

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

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

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

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

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

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

15 Staff is recommending that the Commission:

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

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

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

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

25 Ms. Taylor must continue to pay rent according to

1 the terms of her lease.

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

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

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

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

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



1 holdover period.

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

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

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

8 PUBLIC LAND MANAGER HAYS: Yes.

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

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

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

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

17 PUBLIC LAND MANAGER HAYS: Yes.

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

20 PUBLIC LAND MANAGER HAYS: Yes.

21 CHAIRPERSON GARAMENDI: Okay.

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

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

1 non-navigable houseboats are not allowed.

2           Okay. Questions?

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

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

8           CHAIRPERSON GARAMENDI: Through her attorney.

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

12           PUBLIC LAND MANAGER HAYS: No, it's not a vessel.

13           It's a floating home.

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

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

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

20           PUBLIC LAND MANAGER HAYS: Yes.

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

23           PUBLIC LAND MANAGER HAYS: Yes.

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

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

3 ACTING COMMISSIONER LOMBARD: Second.

4 CHAIRPERSON GARAMENDI: We have a second.

5 We have a unanimous decision.

6 Thank you.

7 PUBLIC LAND MANAGER HAYS: Thank you.

8 CHAIRPERSON GARAMENDI: I think we have public

9 comment period as --

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

12 CHAIRPERSON GARAMENDI: Do you have a resolution?

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

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

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

24 ACTING COMMISSIONER LOMBARD: (Shakes head.)

25 CHAIRPERSON GARAMENDI: Okay. We have the

1 resolution before us.

2 We should have done this 15 years ago.

3 (Laughter.)

4 ACTING COMMISSIONER SHEEHAN: No, more.

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

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

8 ACTING COMMISSIONER SHEEHAN: Oh, yeah.

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

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

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

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

16 ACTING COMMISSIONER LOMBARD: Second.

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

19 We have a unanimous on the vote.

20 And now we can move to public comment.

21 Is there anyone here from the public?

22 I have two requests. One from Graham Forbes.

23 MR. FORBES: Yes.

24 CHAIRPERSON GARAMENDI: It's your turn.

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

1 CHAIRPERSON GARAMENDI: Long but necessary.

2 MR. FORBES: Long but necessary.

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

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

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

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

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

1           So those were a couple times --

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

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

11           CHAIRPERSON GARAMENDI: We will just -- Anne.

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

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

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

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

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

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

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

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

20 Thank you very much.

21 MR. FORBES: Thank you.

22 Thank you very much.

23 Michael Warburton.

24 Did I get that even close to correct?

25 MR. WARBURTON: Warburton, yeah.

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

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

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

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

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

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

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

25           This Commission was established as a public



1 reaction to corrupt development of oil resources.

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

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

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

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

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

1 provides guideposts for conduct inherent in the doctrine.

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

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

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

13 CHAIRPERSON GARAMENDI: We certainly agree with  
14 that.

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

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

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

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

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

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

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

7           (Laughter.)

8           CHAIRPERSON GARAMENDI: But do send it to us.

9           I think that completes our work.

10          CHIEF COUNSEL RUMP: Yes, it does.

11          CHAIRPERSON GARAMENDI: Thank you all very much.

12          Meeting's adjourned.

13          (Thereupon the State Lands Commission  
14 meeting adjourned at 3:48 p.m.)

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## 1 CERTIFICATE OF REPORTER

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

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

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

13 IN WITNESS WHEREOF, I have hereunto set my hand  
14 this 10th day of December, 2007.

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JAMES F. PETERS, CSR, RPR

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