

MEETING
STATE OF CALIFORNIA
LANDS COMMISSION

TSAKOPOLOUS LIBRARY GALLERIA
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828 I STREET
SACRAMENTO, CALIFORNIA

THURSDAY, JANUARY 23, 2014
10:02 A.M.

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

A P P E A R A N C E S

COMMISSION MEMBERS:

Mr. John Chiang, State Controller, Chairperson,
represented by Mr. Alan Gordon

Mr. Gavin Newsom, Lieutenant Governor, represented by Mr.
Chris Garland

Mr. Michael Cohen, Director of Finance, represented by Ms.
Eraina Ortega

STAFF:

Ms. Jennifer Lucchesi, Executive Officer

Mr. Mark Meier, Chief Counsel

Mr. Colin Connor, Assistant Chief, Land Management
Division

ATTORNEY GENERAL:

Mr. Joe Rusconi, Deputy Attorney General

ALSO PRESENT:

Ms. Jan Brisco, Tahoe Lakefront Owners' Association

Mr. George Clyde, East Shore Planning Group

Mr. Anthony Evans, Meeks Bay Vista Homeowners Association

Ms. Carol Ross Evans, representing Kathleen Stephens

Mr. Michael Hooper

Mr. Gilbert Labrie, DCC Engineering

Mr. Gregg Lien

I N D E X

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I 10:00 A.M. - OPEN SESSION	1
II CONFIRMATION OF MINUTES FOR THE MEETING OF DECEMBER 2, 2013	1
III EXECUTIVE OFFICER'S REPORT	2
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THE FOLLOWING ITEMS ARE CONSIDERED TO BE
NON-CONTROVERSIAL AND ARE SUBJECT TO CHANGE AT ANY
TIME UP TO THE DATE OF THE MEETING.

MINERAL RESOURCES MANAGEMENT

C01 ECOSYSTEMS MANAGEMENT ASSOCIATES, INC.
(APPLICANT): Consider approval of a
Non-Exclusive Geological Survey Permit on
tide and submerged lands under the
jurisdiction of the California State Lands
Commission. (W 6005.141)
(A & S: Statewide) (Staff: R. B. Greenwood)

LEGAL

C02 MAXIM COMMERCIAL CAPITAL LLC (PARTY):
Consider approval of a revised Interim
Authorization to Effectuate Vessel Removal
for the vessel known as "the Frank M. Coxe,"
also/formerly known as "Dago Mary's,"
"The Sherman," and "The Showboat," among
other names, as well as removal of the
gangway, pilings and other restaurant-
related improvements, including restoration
of the Premises located at 410 Airport
Boulevard, Burlingame, San Mateo County.
(WP 5467.1) (A 19; S 8) (Staff: S. Haaf)

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- C03 THE U.S. BUREAU OF LAND MANAGEMENT, U.S. FISH AND WILDLIFE SERVICE, CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE, CALIFORNIA DEPARTMENT OF WATER RESOURCES, DUCKS UNLIMITED, GALT JOINT UNION ELEMENTARY SCHOOL DISTRICT, NATURAL RESOURCES CONSERVATION SERVICE, SACRAMENTO COUNTY REGIONAL PARKS DEPARTMENT, NATURE CONSERVANCY, CALIFORNIA STATE LANDS COMMISSION, AND SACRAMENTO VALLEY CONSERVANCY (PARTIES): Consider a new agreement for the cooperative management of lands contained within the Cosumnes River Preserve, Sacramento County. (PRC 8041.9) (A 9; S 5) (Staff: E. Gillies, E. Milstein)
- C04 CALIFORNIA DEPARTMENT OF PARKS AND RECREATION, THE OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE (SUCCESSOR AGENCY TO THE SAN FRANCISCO REDEVELOPMENT AGENCY), THE CITY AND COUNTY OF SAN FRANCISCO, THE PORT OF SAN FRANCISCO AND THE CALIFORNIA STATE LANDS COMMISSION (PARTIES): Consider the approval of the Record of Survey for the Initial Closing Phase of the Hunters Point Shipyard/Candlestick Point Title Settlement, Public Trust Exchange and Boundary Line Agreement and the Candlestick Point State Recreation Area Reconfiguration, Improvement and Transfer Agreement, and related parcel boundary adjustments, concerning lands within Candlestick Point and the former Hunters Point Naval Shipyard, City and County of San Francisco. (AD 557; W 26279; G11-00.7, G11-01) (A 13; S 3) (Staff: J. Porter, K. Colson)
- V INFORMATIONAL - NONE

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VI. REGULAR CALENDAR

- 05 CALIFORNIA STATE LANDS COMMISSION (PARTY):
Consider proposed amendments to Sections
1900, 2002, and 2003 of Title 2, Division 3,
Chapter 1 of the California Code of
Regulations, relating to Definitions,
Categories of Leases or Permits, and Rental.
(W 26535) (A & S: Statewide)
(Staff: C. Connor) 4

VII PUBLIC COMMENT 54

VIII COMMISSIONERS' COMMENTS 54

IX CLOSED SESSION: AT ANY TIME DURING THE MEETING
THE COMMISSION MAY MEET IN A SESSION CLOSED TO
THE PUBLIC TO CONSIDER THE FOLLOWING PURSUANT
TO GOVERNMENT CODE SECTION 11126:

A. LITIGATION.
THE COMMISSION MAY CONSIDER PENDING AND
POSSIBLE LITIGATION PURSUANT TO THE
CONFIDENTIALITY OF ATTORNEY-CLIENT
COMMUNICATIONS AND PRIVILEGES PROVIDED FOR
IN GOVERNMENT CODE SECTION 11126(e).

1. THE COMMISSION MAY CONSIDER MATTERS THAT
FALL UNDER GOVERNMENT CODE SECTION
11126(e)(2)(A):

Seacliff Beach Colony Homeowners
Association v. State of California et al.

State of California, acting by and
through the State Lands Commission
v. Singer

Defend Our Waterfront v. California
State Lands Commission et al.

The Melton Bacon and Katherine L. Bacon
Family Trust et al. v. California State
Lands Commission, City of Huntington
Beach

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SLPR, LLC et al. v. San Diego Unified
Port District, State Lands Commission

San Francisco Baykeeper v. State Lands
Commission

City of Los Angeles v. Great Basin
Unified Air Pollution Control
District et al.

City of Los Angeles v. California Air
Resources Board et al.

California State Lands Commission v.
Edward L. Clark Jr.

2. THE COMMISSION MAY CONSIDER MATTERS THAT
FALL UNDER GOVERNMENT CODE SECTION
11126(e)(2)(B) or (2)(C).

- B. CONFERENCE WITH REAL PROPERTY NEGOTIATORS.
THE COMMISSION MAY CONSIDER MATTERS THAT
FALL UNDER GOVERNMENT CODE SECTION 11126(c)
(7) - TO PROVIDE DIRECTIONS TO ITS
NEGOTIATORS REGARDING PRICE AND TERMS FOR
LEASING OF REAL PROPERTY.

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

2 ACTING CHAIRPERSON GORDON: I call this meeting
3 of the State Lands Commission to order.

4 (Laughter.)

5 ACTING COMMISSIONER GARLAND: You've been waiting
6 for that for a whole year.

7 ACTING CHAIRPERSON GORDON: Yeah. He had this
8 thing for a whole year and wouldn't let me touch it.

9 (Laughter.)

10 ACTING CHAIRPERSON GORDON: All the
11 representatives of the Commission are present. My name is
12 Alan Gordon representing State Controller John Chiang.
13 I'm joined today by Chris Garland on behalf of Lieutenant
14 Governor Gavin Newsom to my right. And to my left is
15 Eraina Ortega, representing the Department of Finance.

16 The first item of business will be the adoption
17 of the minutes from the Commission's regular meeting of
18 December 2nd, 2013. May I have a motion to approve the
19 minutes, please.

20 EXECUTIVE OFFICER LUCCHESI: Actually, may I just
21 jump in real quick. Because the two Constitutional
22 officers are represented by alternates, only one may vote
23 on the minutes, and then the rest of the agenda as well.

24 ACTING COMMISSIONER ORTEGA: I'll move the
25 minutes.

1 ACTING COMMISSIONER GARLAND: I'll second.

2 ACTING CHAIRPERSON GORDON: All right. All those
3 in favor?

4 (Ayes.)

5 ACTING CHAIRPERSON GORDON: Minutes are
6 unanimously adopted.

7 Next order of business is the Executive Officer's
8 report. Ms. Lucchesi, may we please have that report?

9 EXECUTIVE OFFICER LUCCHESI: Yeah, I just have
10 two announcements. I want to acknowledge the retirement
11 of Gary Gregory, Chief of our Marine Facilities Division.
12 This is actually his re-retirement.

13 Gary is really the father of the Commission's
14 Marine Facilities Division and the Commission's Oil Spill
15 Prevention Program. On September 24th, 1990,
16 Lempert-Keene-Seastrand Oil Spill Prevention and Response
17 Act passed, which established the Marine Facilities
18 Division in the Commission.

19 On November 1st, 1990, Gary retired from the U.S.
20 Coast Guard as a full Commander and became the first Chief
21 of Marine Facilities Division. During his 25 plus years
22 as Division Chief, Gary also acted as Assistant Executive
23 Officer of the Commission, and also interim administrator
24 of OSPR. During both the Deep Water Horizon and the
25 Enbridge Pipeline spill, which was in Michigan, Gary was

1 asked to be a member of the response teams. He spent
2 several weeks at each of these spills, lending his
3 expertise to the incident command.

4 Gary first retired from State service in December
5 of 2010. In 2012, Gary returned to the Marine Facilities
6 Division to once again take the reins as Division Chief to
7 help us out through certain transitions.

8 Gary retired for real from State service on
9 December 31st, 2013. He will be greatly missed by his
10 colleagues at the Commission, the Coast Guard, and
11 throughout the trade and shipping industry. We wish him
12 the very best in retirement with his family in Henderson,
13 Nevada.

14 While we are sad to say goodbye to Gary, I am
15 very excited to announce the appointment of our new Chief
16 for the Marine Facilities Division Laura Kovary. Laura
17 served as Assistant Chief for the Division for most of
18 2013. Prior to entering State public service, Laura was
19 an officer on on-board ocean going vessels for 17 years
20 for various companies, including BP shipping.

21 Laura has a Bachelor's degree in Nautical
22 Industrial Technology and a Master's in Maritime
23 Management. I'm confident that Laura will experience much
24 success leading our Marine Facilities Division and support
25 the Commission's mission and goals relating to oil spill

1 prevention. That's all I have.

2 Thank you.

3 ACTING CHAIRPERSON GORDON: All right. The next
4 order of business will be the adoption of the consent
5 calendar. Anyone in the audience who wishes to speak on
6 any item on the consent calendar?

7 If not, the group of consent items C01 to C04
8 will be taken up as a group for a single vote. We'll now
9 proceed with the vote. May I have a motion, please.

10 ACTING COMMISSIONER ORTEGA: I'll move the
11 consent calendar.

12 ACTING COMMISSIONER GARLAND: Second.

13 ACTING CHAIRPERSON GORDON: All those in favor?

14 (Ayes.)

15 ACTING CHAIRPERSON GORDON: The consent calendar
16 is adopted.

17 Next order of business will be the regular
18 calendar. Item 05 is to consider proposed amendments to
19 three sections of the California Code of Regulations
20 pertaining to the Commission's Surface Leasing Program.

21 May we have the presentation, please.

22 EXECUTIVE OFFICER LUCCHESI: Colin Connor, our
23 Assistant Chief of our Land Management Division, will be
24 presenting this item.

25 (Thereupon an overhead presentation was

1 presented as follows.)

2 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

3 There we go.

4 Good morning, Commissioners. My name is Colin
5 Connor. I'm the Assistant Chief of the Land Management
6 Division. Thank you for having this special meeting,
7 appreciate it. I'm here to present the staff report on
8 Calendar Item 5, which is the proposed adoption of the
9 amendments to the Commission's Surface Leasing
10 Regulations.

11 As you will recall, the Commission considered the
12 adoption of the proposed amendments to the regulations at
13 its December 2nd Commission meeting. At the meeting,
14 staff identified four main areas of concern as expressed
15 in the public comments and how staff proposed addressing
16 them.

17 Let me grab this here.

18 --o0o--

19 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

20 These are the proposed amendments that we
21 considered at the December 2nd Commission meeting.

22 --o0o--

23 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

24 And these were the four main areas of concern:

25 Definition of sovereign lands, the annual

1 administrative fee, the appraised value of the leased
2 land, and the impact area.

3 --o0o--

4 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

5 In the definition of sovereign lands, what was
6 changed was the reference to -- it was originally the mean
7 high tide line and we changed it to the ordinary high
8 water mark and we deleted the reference to the Public
9 Trust. The annual administrative fee we restricted to
10 certain categories of leases, so as not to be onerous to
11 the general public and the majority of the general public
12 recreational leases.

13 The appraised value of the leased land was simply
14 a change back to the way the original language was in the
15 existing regulations. The impact area is the area that
16 garnered the most interest from the public comments,
17 including the public comments at the December 2nd
18 Commission meeting.

19 --o0o--

20 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

21 Basically -- I'll move forward here. The impact
22 area -- this is the language that we were originally
23 proposing. And the public comments had a number of
24 concerns about this. And at the December 2nd Commission
25 meeting, after hearing that, the Commissioners deferred

1 voting -- excuse me, considering or making a determination
2 on the regulations until this had been resolved. They
3 basically directed staff to go back and address limiting
4 the impact area to those areas that were actually used or
5 that restricted public access and addressed the
6 seasonality issues.

7 We went back and we had conversations with some
8 of the stakeholders specifically the Tahoe Lakefront
9 Owners Association, and we addressed -- we believe we
10 addressed their concerns with this modification. One of
11 the key things, moving away from the microphone, is we
12 took out the deterrent effect and we added this language
13 in the red. And this was the language that was discussed
14 at the December 2nd Commission meeting.

15 Primarily, I would draw attention to the last
16 sentence, "The Commission may consider the seasonal use
17 and other local conditions when establishing the impact
18 area and rent for that impact area".

19 So we've done that. And again, we've had
20 conversations with Tahoe Lakefront Owners Association, and
21 we believe that they're okay with this. We've actually
22 worked out, to some extent, how this would be implemented
23 at Lake Tahoe.

24 So, at this point, we believe that the first
25 three items that were identified in the December 2nd

1 Commission meeting are okay, and that we've addressed the
2 last item of the impact area.

3 I would conclude by saying that staff is
4 available to, you know, answer any of your questions. I
5 believe that Jan Brisco from Tahoe Lakefront Owners
6 Association is also here. So any questions you may have.

7 EXECUTIVE OFFICER LUCCHESI: And if I may just
8 add on to the presentation and talk about that last
9 sentence, and specifically how that particular idea -- or,
10 excuse me, regulation will be implemented at Lake Tahoe
11 under the local conditions category.

12 After receiving additional information about
13 boating activities up at Tahoe, and the use of boats and
14 that sort of thing, we have come to a conclusion as staff,
15 that as we move forward in implementing these regs, should
16 the Commission adopt them, we will be implementing them at
17 Lake Tahoe where the impact area width will be nine feet,
18 the seasonal use at Lake Tahoe is four months, which
19 basically equates to a 67 reduction in rent for the impact
20 area.

21 And so those conclusions by staff were the result
22 of many discussions with Lake Tahoe representatives from
23 the LTOA. Including consideration of the additional
24 documentation information that they provided, we think
25 this is reasonable. Staff thinks this is supportable and

1 that's how staff intends to implement these regulations on
2 a go-forward basis on individual leases and their
3 recommendations as they come before the Commission.

4 The other thing I just want to highlight is that
5 there will be many folks that received Commission
6 authorization for a lease last December and before that.
7 And they will likely want to consider whether to come back
8 to the Commission for basically a recalculation of their
9 rent based on the new practices going forward should the
10 Commission adopt these regulations.

11 Staff has thought about that very hard, and we
12 have come up with a plan to address that, and that
13 includes that if the individual lessee would like a
14 reconsideration of the rent, they can apply for an
15 amendment to their lease, and we will charge -- we
16 typically charge \$1,500. We believe that we can go
17 through the process for \$1,000. And that, of course, if
18 we don't actually spend that in staff cost, we will refund
19 any money that's left over.

20 But I will want to highlight that this is a
21 business decision that each individual lessee will have to
22 make, because pursuant to our lease -- general lease
23 terms, at the five-year mark of the 10-year lease term,
24 there is a rent review that occurs by staff on staff's own
25 dime. So the choice that the lessee has to make is it

1 better to submit an application today and pay the \$1,000
2 processing fee or is it worth -- is it better to wait from
3 a business decision until the five-year rent review where
4 we will re-calculate the rent pursuant to the regulations
5 should they be adopted and go forward from there.

6 But we think that there is a cost savings that we
7 can provide any applicant at \$1,000, if they apply solely
8 to amend their lease for a re-calculation of rent.

9 ACTING CHAIRPERSON GORDON: Any comments by the
10 Commission?

11 Mr. Garland.

12 ACTING COMMISSIONER GARLAND: Actually, let's do
13 public comment, first.

14 ACTING CHAIRPERSON GORDON: Okay. We're going to
15 go to public comment then. Ms. Brisco, why don't you
16 start and then we will go through in order of the comments
17 as received.

18 MS. BRISCO: Good morning, Commissioners, staff.
19 Jan Brisco for the Tahoe Lakefront Owners Association.
20 It's been a very interesting year in retrospective review.
21 We have worked out a compromise for the language of the
22 regulations and as they will be applied to Lake Tahoe,
23 which I find is unprecedented in many of the agencies with
24 whom we work. We credit Jennifer and her staff for
25 stepping forward and stepping up to the plate on this,

1 based on the Commission's last action and direction.

2 We have further had conversations about the
3 regulations as they were related to the impact area. That
4 additional language where it says any area where the
5 public's access or use is being impacted, staff has
6 assured us that they don't find any of those situations at
7 Lake Tahoe right now. Maybe Jennifer can expound on that
8 briefly.

9 But we find that this at least gives us a working
10 framework. We will obviously keep that line of
11 communication open and working on specific issues as they
12 arise, but we are here to say that we can support the
13 compromise at this point.

14 Thank you very much.

15 Any questions?

16 ACTING CHAIRPERSON GORDON: Thank you, Ms.
17 Brisco.

18 Mr. George Clyde.

19 EXECUTIVE OFFICER LUCCHESI: While we're waiting
20 for Mr. Clyde to come to the podium, I just wanted to
21 quickly address what Jan had mentioned. And as part of
22 the changes to the regulations language, it's -- there is
23 a phrase that where if the facilities clearly prohibit
24 public access or use. At this point in time, staff is not
25 aware of any facilities in Lake Tahoe that would meet that

1 criteria.

2 ACTING CHAIRPERSON GORDON: Ms. Lucchesi, are
3 there places around the State where you have come across
4 that situation?

5 EXECUTIVE OFFICER LUCCHESI: The one that comes
6 to mind is Huntington Harbor.

7 ACTING CHAIRPERSON GORDON: And that is where?

8 EXECUTIVE OFFICER LUCCHESI: Southern California.

9 ACTING CHAIRPERSON GORDON: Thank you.

10 Go ahead. Sorry, sir.

11 MR. CLYDE: Good morning, Commissioners and
12 Executive Officer Lucchesi, and Mr. Connor, and staff. My
13 name is George Clyde. I'm with East Shore Planning Group,
14 which is a group of about 90 property owners on the east
15 shore of Tomales Bay in Marin County. If you know Nick's
16 Cove Restaurant, that's our territory.

17 Many of our homes are on stilts over the
18 tidelands of Tomales Bay. They -- some of their -- some
19 other homes on Tomales Bay are in the Inverness area,
20 including the properties that gave uprise to the Marks v.
21 Whitney case.

22 A few of our homes have piers that extend beyond
23 their property lines onto public property, and those have
24 leases. Some have piers that extend into submerged lands,
25 and those have leases. However, most of our properties

1 are within the tidelands, between the low water mark and
2 the high water mark. We all have good title going back to
3 patents of the 19th century. This is my deed. This is my
4 title insurance policy.

5 So we are sitting there very happily, and we
6 happened to come across the regulations that you're
7 proposing. And this is the problem, it's Section 1900,
8 definition of sovereign lands, which is a definition which
9 is considered a term of art for purposes of leasing. It
10 states very specifically that, "The State's sovereign
11 ownership extends landward to the ordinary high water
12 mark". That's our property.

13 There are two exceptions to that, one for fill
14 and accretions and another for agreements with State
15 Lands, but they don't apply. So what this regulation says
16 is that the State owns our properties, which isn't true,
17 because of the patents. The properties have been conveyed
18 to us many, many years ago.

19 This, as I say, just came to our attention as
20 potential lessees. We weren't aware of this until it
21 happened. One of our members was on the agenda in
22 December.

23 So it's simply untrue that the State sovereign
24 fee -- State fee ownership covers our property. We
25 appreciate the fact that all of our properties are subject

1 to the Public Trust doctrine. That's another matter
2 entirely. But as far as whether the State Lands
3 Commission could require leasing or any other property
4 rights with respect to what happens on those tidelands,
5 they can't. They're ours and not the State of California.

6 So the question is at this late date in your
7 process, with no desire I'm sure to make corrections at
8 this point that would impair the process from going
9 forward, what to do?

10 We would ask the Commissioners to inquire of
11 staff as to whether they see these concerns that have been
12 expressed -- and you have a copy of them in your packet,
13 and I have a colored version if you'd be interested that
14 actually shows the homes a little better, if -- but I
15 would ask that the Commissioners ask staff as to whether
16 they view this as a legitimate concern and what their
17 intentions would be about addressing it in the future, so
18 that it's clarified or corrected?

19 Thank you very much.

20 ACTING CHAIRPERSON GORDON: Jennifer.

21 EXECUTIVE OFFICER LUCCHESI: Thank you. Mr.
22 Clyde raises some very good points. Just to give some
23 context about Tomales Bay, the State owns the submerged
24 lands. Mr. Clyde is absolutely correct that the upland
25 private property owners own the fee interest in the

1 tidelands from the ordinary high water mark to the
2 ordinary low water mark.

3 The State holds a Public Trust easement over
4 those fee-owned ownerships. The State, I think in its --
5 the State Lands Commission in its 75 years has only
6 exercised the easement and leased that easement interest
7 one time in Morro Bay, and that was to protect the bay and
8 lease it to Fish and Game for habitat and preservation
9 purposes.

10 The State Lands Commission staff and the
11 Commission, as far as I've been with the Commission, has
12 no intention to lease the Public Trust easement interest
13 that the State holds, whether it's in Tomales Bay or Lake
14 Tahoe or other places.

15 And in terms of the definition of sovereign
16 lands, you know, as I mentioned, Mr. Clyde raises a very
17 good point. I do want to point to the last part of that
18 definition that talks about court orders. And court
19 orders in Tomales Bay - he mentioned the Marks versus
20 Whitney case - have confirmed fee ownership in those
21 upland private property owners.

22 But regardless, I can appreciate the fact that
23 this may cause some consternation among upland property
24 owners and their title to those tideland patents. And so
25 we will continually look to improve these regulations as

1 we move forward. It's been 20 years, I think, since we
2 last updated these land management regulations. That will
3 not happen again. We are continuous -- we are devoted to
4 continuously reviewing and improving these regulations to
5 make it as clear and transparent as possible for the
6 public.

7 So this is on our to-do list to reevaluate that
8 definition in the next go-around for updating the land
9 management regulations.

10 ACTING CHAIRPERSON GORDON: Let me just be sure
11 I'm clear on the issue here. So the issue is the
12 definition that essentially says -- it's the delta between
13 the low water mark and the high water mark.

14 EXECUTIVE OFFICER LUCCHESI: Yes.

15 ACTING CHAIRPERSON GORDON: And our existing
16 regulations say we have fee interest up to the high water
17 mark. Actual law says we would go -- give me the
18 difference between the two. I'm getting lost.

19 EXECUTIVE OFFICER LUCCHESI: The definition in
20 the regulations say we have fee ownership up to the
21 ordinary high water mark, except for where there's been
22 fill or artificial accretion, or there's been an agreement
23 between the State, the Commission, and the upland private
24 homeowner that fixes the boundary and title, or there's
25 been a court order -- a court decision that basically

1 confirms title under different circumstances.

2 And so we believe that covers the situation of a
3 tideland patent -- a valid tideland patent that conveyed
4 the fee ownership to a private individual. But again, I
5 can appreciate the fact that there might be some differing
6 opinions about that. So we're going to continuously look
7 to how to improve that definition without including every
8 single exception that there is to State ownership.

9 This is -- we're talking about tidelands,
10 submerged lands, water boundaries. This is a very complex
11 area of the law, and so we want to make sure that any
12 changes that we do make don't have unintended
13 consequences. And I think that's the very point that Mr.
14 Clyde is trying to make with this language.

15 So like I said, we are going to continually look
16 at this to improve it, to make it more clear and
17 transparent.

18 ACTING CHAIRPERSON GORDON: Mr. Clyde, thanks for
19 coming before us today and raising this issue. We
20 appreciate it.

21 MR. CLYDE: Thank you very much.

22 ACTING CHAIRPERSON GORDON: Mr. Evans, Anthony
23 Evans.

24 MR. EVANS: I won't put you through the agony of
25 watching me read something, as I did before. You were

1 very patient, I want you to know that, Mr. Gordon. That
2 was great.

3 I have three main points to cover this morning.
4 And one of which is I understand that there's been the
5 discussion, and I'd like to oppose the discussion with
6 regard to paying a \$1,000 fee to have the leases that have
7 already been signed as they're being amended to reflect
8 the new rent based upon the use area.

9 We paid \$1,700 to have the lease drafted when it
10 was drafted. And it was drafted kind of the cart before
11 the horse, so to speak, or otherwise we wouldn't be
12 revisiting it. So I would ask that those of us that paid
13 a substantial fee to you for administrative fees that we
14 shouldn't have to pay another \$1,000 or anything.

15 And the other thing that I'd also ask staff, if
16 you would, to also let us know what the rent reduction is.
17 That's a pretty easy thing to do to take a 30-foot pier
18 easement at the end of our pier and do something. I'm
19 just talking about different situations or different --
20 are going to represent different amounts.

21 If we are going to be charged some sort of a fee,
22 at least let us know in advance how much the rent is going
23 to be reduced, because if you have a short pier, probably
24 not worth it to spend the \$1,000. Do you see?

25 So that's the one thing.

1 The other thing I did want to bring up is that we
2 really have not, in terms of Commissioners giving
3 direction to staff, the issue with regard to the impact or
4 now use area around the buoys. The buoy is -- the radius
5 is 25 feet, but the use of the pier -- or of the boat at
6 the end of the buoy is stationary. The rest of the 99
7 percent of that radius is available to the public just as
8 it is in the impact area or previous impact area under the
9 pier, other than the use area. So the use area is flawed
10 with regard to that.

11 ACTING CHAIRPERSON GORDON: Mr. Evans, let me
12 just cut you off for a second. My understanding of the
13 regs is that it's a flat fee for the buoy of \$375 that
14 really doesn't have anything to do with a use area with
15 the buoy. It's just a --

16 MR. EVANS: Well, if that's -- I know that was
17 part of the discussion in terms of input from staff to the
18 Commissioners at the last meeting. But there was a
19 calculation that came to \$377 that was based upon an
20 impact area of 25 feet, and a radius of 25 feet.

21 ACTING CHAIRPERSON GORDON: I think we can
22 probably put you at ease on this one. It's a -- tell
23 me -- staff, tell me if I'm wrong. It's a straight \$377
24 fee per buoy that has nothing to do with what the area is
25 around the buoy.

1 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

2 That is correct.

3 ACTING CHAIRPERSON GORDON: It's a straight fee.

4 MR. EVANS: If I may address that then. And
5 strongly on behalf of our homeowners association and
6 everyone that we've talked to, we were paying \$35 to \$50.
7 Now, we're paying 377. It is absolutely astounding.
8 That's a 1,000 percent increase. Please, if there's going
9 to be a flat fee, and that's an understandable thing to
10 do. We've recommended a flat fee in our correspondence
11 with you as recently as January 5th.

12 So can we say, you know, \$75, \$100. Three
13 hundred and seventy-seven dollars per buoy is a hardship.
14 And I mean, I can tell you my neighbors that's just --
15 they're going to -- they can't do that.

16 And, I mean, I'm asking if there would be some
17 direction from the Commissioners to not go a 1,000 percent
18 increase in a buoy fee to something that's more reasonable
19 and easier to -- not easier to administrate, because we've
20 come to that 377 or whatever it is. But, I mean, \$100 is
21 something that's reasonable, but I honestly -- \$740 for
22 two buoys is --

23 ACTING CHAIRPERSON GORDON: Sir, I'm going to
24 have staff respond to where they came up with the 377.

25 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

1 Certainly. As you'll recall, in 2012, we went
2 through the Lake Tahoe benchmark. We actually had two
3 Commission meetings that discussed the methodology of
4 this. A number of points were raised during that. And
5 one of them was the genesis of the Lake Tahoe benchmark
6 and how the calculation was arrived at.

7 The Lake Tahoe benchmark is basically adjusted by
8 the percentage increase over the prior benchmark for
9 buoys, okay, not piers. I'm not talking about piers.

10 Originally, the Lake Tahoe benchmark looks like
11 it started in the mid-eighties at \$50, which is kind of a
12 standard buoy fee. And then as we updated it, if it was a
13 five-year -- and the benchmark was updated unfortunately
14 at irregular intervals. But those intervals represented a
15 survey of the buoys at Lake Tahoe. And if our rate was
16 \$50, but the survey indicated that from 1985 to 1987 that
17 the market went up 25 percent, we adjusted the \$50 by 25
18 percent, and we've continued to do that.

19 The 377 literally represents the increase in the
20 market for buoys at Lake Tahoe. However, it is not
21 parallel to that. And I want to point this out, Lake
22 Tahoe buoys -- if you were to rent a buoy at a marina,
23 it's anywhere from \$1,500 to over \$5,000. To say that
24 \$377 creates a hardship, I -- I don't even how to respond
25 to that.

1 ACTING CHAIRPERSON GORDON: Do either of the
2 other Commissioners have any comments on the three -- I
3 mean, from the perspective of the Controller, \$377 seems a
4 reasonable fee for a year buoy on State property. It's
5 \$31 a month, which does not appear to me to be a hardship.
6 I'm waiting to hear if either of my other colleagues have
7 any comments.

8 ACTING COMMISSIONER GARLAND: We've been through
9 this, you know, for the better part of two years, and I
10 think we've heard testimony. And I think staff has done a
11 fantastic job of getting us to this point. And I don't
12 think now is the time to revisit the buoy issue. I think
13 it's a reasonable outcome.

14 And while I appreciate Mr. Evans' comments, I
15 don't see any reason to revisit that at this time.

16 ACTING CHAIRPERSON GORDON: Let me go actually
17 back to your first point, Mr. Evans. The \$1,000 charge to
18 revisit -- to review the leases that were signed under
19 regulations that we are now amending, as I'm understanding
20 it.

21 So how many parties are we talking about here
22 that signed their leases under the regs that we are now
23 changing?

24 EXECUTIVE OFFICER LUCCHESI: That's very hard to
25 calculate, because it could go back many, many years. So

1 and just for an example, in December, I believe that there
2 was maybe 25 to 30 items for Lake Tahoe.

3 ACTING CHAIRPERSON GORDON: Okay. The issue that
4 Mr. Evans raises that has resonance for our office is
5 the -- you know, the fact that he has recently paid \$1,700
6 to sign a lease, and now we want to charge him another
7 1,000 if that lease -- if they determine that they want to
8 do that prior to the five-year review. That causes me
9 some concern. I don't know whether either of my
10 colleagues feel the same way.

11 ACTING COMMISSIONER ORTEGA: I agree. I have
12 that -- I wrote a note to come back to this issue. I have
13 the same concern. So maybe there's some way of thinking
14 about this in terms of who's most recently signed. And I
15 don't know. I think this question of it being hard to
16 know how many there are, I think it would be really
17 helpful to know how many there are, in terms of what the
18 demands on staff would be if you were to go through them
19 all and --

20 EXECUTIVE OFFICER LUCCHESI: Yeah. So that's
21 what's very hard, because it's hard to calculate what the
22 demand is without actually knowing what the -- having
23 people call us and say this is what -- you know, Mr. Evans
24 also talked about understanding more what they would be
25 charged under the new construct of the regulations. And

1 that's something we can easily do. It just takes a phone
2 call to our staff. We can pull the file, run the numbers,
3 and give that information to the lessee, so that they can
4 start making that decision.

5 We do -- we operate in generally a reimbursable
6 type of environment. So our staff costs need to be
7 recovered for processing these types of applications. We
8 can continue to think about whether there is an
9 opportunity for the reduction -- even further reduction of
10 staff costs in processing the amendments to those leases.
11 There is -- it's not just running the calculation and
12 plugging it in and printing out a new lease with that new
13 number. We have to go through any kind -- it would be an
14 amendment to the lease, which would take the action of the
15 Commission and you have to go through the various
16 processes to do that, including CEQA review.

17 And I'm not saying that includes hours and hours.
18 Typically, these leases, 99.9 percent of them, are covered
19 under an exemption, but that's still a process that we
20 have to go through to comply with the law. So I guess
21 what I would say is we can go back as staff to think about
22 is there an equitable way, based on the period of time in
23 which these people -- the applicants have come to the
24 Commission, gotten approval, and were issued a lease
25 versus the change in the regulations.

1 But I will also say that we don't believe it's
2 going to cost any more than \$1,000. And it could cost
3 substantially less. And we don't pocket that money we
4 don't use in processing. We refund that to the applicant.
5 And so we will know better how that actually plays out, in
6 terms of how many hours of staff costs there are for
7 processing these types of amendments.

8 ACTING CHAIRPERSON GORDON: Mr. Garland.

9 ACTING COMMISSIONER GARLAND: I have a slightly
10 different take on this. And I guess I have a question,
11 first. The regulations we're adopting today do not just
12 affect Lake Tahoe.

13 EXECUTIVE OFFICER LUCCHESI: That's correct.

14 ACTING COMMISSIONER GARLAND: So we would be
15 opening a door for revisiting leases -- all of our leases
16 that are affected by these regulations.

17 EXECUTIVE OFFICER LUCCHESI: That's correct.

18 ACTING COMMISSIONER GARLAND: I would be
19 comfortable with -- you know, with staff giving us the
20 assurance that they will do this in the most economical
21 way possible to help the folks who do wish to amend their
22 lease, but I think the \$1,000 fee is actually reasonable.

23 EXECUTIVE OFFICER LUCCHESI: And May I just --
24 may I offer too is you have my assurances that staff will
25 not be padding the books. We'll be processing these

1 requests with the utmost efficiency and effectiveness.
2 And we will know very clearly how much that will cost come
3 our February meeting. And I can report to the Commission
4 about the actual costs on that, and then we can, depending
5 on what those are, come up with other alternatives, if the
6 case, you know, leads us to that.

7 ACTING CHAIRPERSON GORDON: Here are the two
8 issues that concern me on this. Number one is the time
9 horizon. If someone has come under lease in the last --
10 and I don't know what the right time is -- one year or two
11 years, where the information is going to be pretty
12 current, it seems to me it should be -- a review might be
13 different and less costly than if it was seven or eight
14 years ago.

15 The second would be how much they paid in that
16 recent time. As in Mr. Evans case, if he recently paid
17 \$1,700 for a review. And he would have significant
18 savings now. It seems to me that that should be very
19 different than someone who came under review in 2005, and
20 paid a couple hundred dollars for the review.

21 And I would like to see us, you know, in maybe a
22 more formal manner take care of that issue. I'm trying to
23 picture folks in the public. And as this -- I mean, as we
24 found with this -- as the word has gotten out about the
25 new rates and everything, the interest has increased. And

1 to come into someone who says, you know, in 2010, we paid
2 \$1,700, and now it's another 1,000, I have worries about
3 how that's going to go down in the public, and whether we
4 will be -- that's totally justified.

5 ACTING COMMISSIONER GARLAND: Can I just point
6 something out here. In the scenario you just mentioned,
7 those people would be up for a review in less than a year,
8 that would be at our cost. Remember, we're talking about
9 a 10-year lease and a five-year review period. So the
10 folks who were affected by what we're discussing here are
11 folks who would have signed a lease in the last five
12 years, who are running up to that timeline of the review
13 that would cost -- it would be at our cost. So just keep
14 that in mind as we discuss it.

15 ACTING CHAIRPERSON GORDON: All right. Mr. Evans
16 you had a third point. You can respond to what we -- this
17 conversation, and then you had a third issue.

18 MR. EVANS: I am. And I meant to start out by
19 thanking staff --

20 (Laughter.)

21 MR. EVANS: -- and the Commissioners for all the
22 time that you've given to this, and for the new
23 regulations as they are currently drafted. I think there
24 have been some wonderful things that you've done, and
25 we've all benefited.

1 You may not be able to even make a comment about
2 \$377 and you may feel, Commissioners, that it's fair. It
3 is -- it's based upon market conditions in commercial
4 areas around Lake Tahoe. There are thousands and
5 thousands of us out there that don't have the ability
6 specifically in our lease to generate revenue from our
7 buoys. And we put the buoys in. We maintain them. We do
8 everything, and we've got a little block down there and a
9 chain.

10 And if you understand how silly it is to us in
11 terms of the other perspective about a benchmark that was
12 based upon commercial leases, and the appreciation of
13 those leases. I understand that Newport Beach or at Lake
14 Tahoe in a commercial venture, sure. You know why? Those
15 people bring their boats up, put them on for a summer, and
16 they've got a lot of money and a big boat.

17 We have dinghies out there and a lot of our buoys
18 have nothing on them whatsoever at all during the summer.
19 My neighbor to the left has two buoys that nothing on
20 them. My neighbor to the right, two buoys they've never
21 put anything on them for the last three years. So
22 understand you have a block and a chain and a little buoy,
23 and \$377 is outrageous. Last point. But thank you so
24 much for your time.

25 ACTING CHAIRPERSON GORDON: Thank you, sir.

1 ACTING COMMISSIONER ORTEGA: I guess if you're
2 not using the buoy, you could remove it, right, and
3 terminate the lease?

4 EXECUTIVE OFFICER LUCCHESI: That's correct. The
5 lessees always have the option, if they don't want to
6 enter into a lease with the Commission, pay the rent, they
7 can remove their buoys.

8 ACTING COMMISSIONER ORTEGA: Before we leave the
9 \$1,000 issue, I would like to talk more about this at the
10 next meeting, because I think for a limited number of
11 folks, there is a real equity issue of having to pay the
12 money or else pay the higher fee for nearly five years.
13 So I would like to talk a little -- I don't know that much
14 about this, so I would like to talk a little more about
15 that.

16 EXECUTIVE OFFICER LUCCHESI: Of course.

17 ACTING CHAIRPERSON GORDON: Carol Evans.

18 MS. EVANS: Thank you, Commissioners. I was not
19 planning on speaking this morning, but on the way down I
20 received an email from our neighbor, and she asked if I
21 would please read a statement for her. And so I hope I
22 can read it off of my iPhone. The print is a little
23 small.

24 I think you'll all remember at the last December
25 meeting Kathleen Stephens who had a very moving statement

1 about her grandparents and so forth. And I thought she
2 was very effective. Well, that is my neighbor. So this
3 is what Kathleen sent to me this morning to please present
4 to you.

5 "Hi. My name is Kathleen Stephens, and I am
6 66 years old and I want to tell you my Tahoe
7 story. A few years before I was born, my
8 grandmother and grandfather..." -- now, she has
9 in parentheses this is the time when I'm supposed
10 to start to cry like she did as you recall from
11 her testimony in December, "...bought a little
12 piece of property on a relatively unknown lake
13 called Tahoe. The dream property was where they
14 camped each summer.

15 "Wait a minute. You all know my story
16 already. I just hope you have not forgotten that
17 not all Tahoe lakefront owners are as wealthy as
18 Bill Gates. After my talk at the last meeting,
19 the staff mentioned that wealth does not make a
20 difference in determining the rental income from
21 our piers and buoys, that a school teacher and a
22 billionaire have to be charged the same rent to
23 make it fair. But it would only be fair if the
24 rents are kept to a reasonable rate, that the
25 poorest pier and buoy owner could pay.

1 "My next door neighbor whose family cabin was
2 built before mine can barely make ends meet in
3 this tough economy. He can't take one day off
4 work to even drive to a meeting like this. He
5 told me he would have to take his boat, and it's
6 not a luxury yacht, off the lake if any more buoy
7 fees were imposed. There's simply no room in his
8 budget for a high rent fee. Please consider him
9 when you calculate the fee."

10 So I just wanted to present that on behalf of
11 Kathleen, my neighbor.

12 And also just relative to the discussion we were
13 just having about the administrative fee to amend the
14 lease, our lease was just completed in 2012, so it was not
15 very long ago. And I would suggest that the look-back
16 period, at least for Lake Tahoe piers, be when the law
17 changed. Prior to SB 525, there was -- there were
18 rent-free piers. So it seems to me to be a very limited
19 number that have been amended since that time.

20 Ours was a new lease, and so we fell under the
21 new impact fees, but I think it would be a relatively
22 small look-back period for Lake Tahoe.

23 ACTING CHAIRPERSON GORDON: Thank you, Ms. Evans.
24 Michael Hooper.

25 MR. HOOPER: I'd also like to thank the

1 Commission for giving us this opportunity. One thing I'd
2 like to ask is a little bit of a recognition. I had asked
3 for the email notification of these changes and
4 modifications that was discussed by the Commission. I
5 received my notice from the -- for today's meeting with
6 the changes that are in yellow highlight the day after the
7 close of the public comment period.

8 It was emailed out on the 9th, and the close of
9 the comment period was the 8th. So to some extent, I'm
10 giving you in person what I'd prefer to have put in
11 writing. But I think that there's an element of
12 discussion that was given at the last meeting that part of
13 the issue here that I can see is that the -- is that this
14 whole process is somewhat unknown to a number of the
15 landowners or they call it the impacted folks. I guess
16 Tomales Bay would be case-in point.

17 I think that that's being ignored, and I think
18 it's a bigger deal than just the Lake Tahoe group, which
19 has been fairly represented by the association.

20 As I sit here right now, I still have no idea
21 what my fee is. I understand it's nine feet instead of
22 the ten feet. I don't know if it's going from the low
23 water mark, where the low water mark is, how it affects
24 the pier that I have. We have a -- it's a family
25 situation where, you know, right now, we've been in this

1 property now for about 22 years. And the taxes and the
2 fees right now exceed what the amortization schedule would
3 be for the purchase of the property 22 years ago.

4 So I mean these are -- the property taxes are
5 higher because we have a pier. The property taxes are
6 higher because we have a buoy. We had to pay extra for
7 the house, because it has these improvements. So, in a
8 sense, we're being taxed twice or taxed plus fee however
9 you want to view it.

10 But, at this point, I still do not understand and
11 do not know what the -- you know, I have a 200-foot pier
12 that probably by the end of the summer will be ankle deep
13 in water at the end of it, okay. And the reason it's 200
14 feet is is to offset the low water situations at best, but
15 you, know that's an issue.

16 We have a -- we do have a buoy that is used. We
17 don't use it primarily because we use a hoist, so the boat
18 is lowered into the water, got on, and left. And so we
19 leave -- when we come back in that particular boat, it is
20 hoisted out of the water. There's no -- even though the
21 pier may be 200-feet long, it's only the area where we use
22 the hoist that is -- that is used.

23 The rest of it is not usable because of a couple
24 of reasons. One is the water is exposed. The wave action
25 will tear up the pier if you tie a boat up to it. So

1 again, we used the hoist. So, you know, having that
2 circumference of the pier to have an additional fee is
3 something that is -- you know, we have no use for that
4 particular area that is being referred to as a use impact
5 area.

6 Finally, with regard to the buoys, even though we
7 are paying taxes on it, I will point out that one of the
8 market values -- let me rephrase that. The market
9 strength in the last several years has been imposed, not
10 necessarily by this Commission, but by the State of
11 California with regard to the requirement of inspections.

12 I mean, I go up to launch a little fishing boat,
13 I can't do it until the chains are down at the local
14 marina or go down to one of the boat commercial facilities
15 and have them launch it, and then pay the fee for the --
16 you know, when I bring it back out to have it, you know,
17 resealed.

18 That's a factor that is creating a huge amount of
19 demand on these buoys, and it's being overlooked. That's
20 part of the reason why the buoys are more valuable today
21 than they were then.

22 We used to have -- we have a friend that used to
23 bring his boat up, launch it, go skiing, come out in the
24 morning and by noon it's on the trailer in front of the
25 house. You can't do that anymore. You have to have --

1 you have to pay for the -- and I don't know if the
2 Commission is aware of the particulars of what I'm
3 referring to. But when the boat comes out of the water in
4 Tahoe, it has to be inspected. It has to be sealed to
5 assure that it's not launched in another area.

6 ACTING CHAIRPERSON GORDON: This is in regard to
7 Quagga mussels and things like that.

8 MR. HOOPER: That's correct. And I'm not --

9 ACTING CHAIRPERSON GORDON: You're talking about
10 the inspections for invasive species, which are increasing
11 the value of everybody on the lake.

12 MR. HOOPER: I'm not arguing the benefit of the
13 inspections, believe me. I've seen them down in Emerald
14 Bay as an example, and it costs a lot of money to abate
15 it. But the fact of the matter is, is that there have
16 been some imposed procedures that is causing this value of
17 the buoys to be -- people want to keep their boat on a
18 buoy, rather than back and forth every day. And that's an
19 issue that I think is being ignored.

20 And I will -- I still really appreciate getting
21 an understanding of if I have a low water mark, what is
22 the square footage fee for my property?

23 ACTING CHAIRPERSON GORDON: Sir, I think the one
24 thing -- one of the major changes that were made -- that
25 was made in response to the December meeting is that you

1 will be charged only for the impact area where the boat
2 could be launched. The previous, where you would
3 essentially have a perimeter around the pier, is no longer
4 in effect. The way the new regs read, where the cleats
5 would be, where that hoist would be, and an average size
6 of the boat, that's where they came and they went -- you
7 know started at 10. Folks argued for seven and a half or
8 eight, and came up with nine.

9 So where the specific location where you are
10 capable of launching the boat would be the only impact
11 area you would be charged, which does seem to be fair and
12 has been agreed to by a majority of the people who have
13 been involved from the affected community.

14 MR. HOOPER: I do understand that. Okay. Let's
15 just measure that in square feet, okay. How much is it
16 per square foot or whathaveyou?

17 EXECUTIVE OFFICER LUCCHESI: The benchmark for
18 Lake Tahoe at this time is \$0.79 per square foot. And I
19 would just encourage you, our land manager for the Lake
20 Tahoe area is Ninette Lee. Ninette, can you just raise
21 your hand. Please, go talk to her right now, give her --

22 MR. HOOPER: I will. I promise you.

23 EXECUTIVE OFFICER LUCCHESI: And she can go back
24 to the office this afternoon and do the calculations based
25 on your particular property and your pier and buoys.

1 I do just want to note that the low water mark
2 has been established in Lake Tahoe by the California
3 Supreme Court, so that is a fixed low water mark.

4 MR. HOOPER: It is the low water mark that has
5 been defined. I hear this high water issue. And again, I
6 mean, I'm not claiming to be as versed as well as you
7 folks are on this, okay.

8 EXECUTIVE OFFICER LUCCHESI: Yes, of course.

9 MR. HOOPER: But finally, the last thing -- and I
10 mean, I -- maybe I'm a little bit more sensitive to it is
11 the snickering with regard to affordability of \$375, okay.

12 I know certain people that maybe in this room
13 make --

14 ACTING COMMISSIONER GARLAND: I'm going to stop
15 you here, sir, for a second. Snickering, and you've now
16 mentioned twice that we've ignored people. I think this
17 Commission has spent a lot of time working with the
18 stakeholders in the area, and done -- the staff has done
19 an excellent job.

20 And I have a problem with the characterizations
21 of snickering and ignoring, because I think neither of
22 those things have taken place. And that this Commission
23 has paid a great deal of attention to the people who have
24 brought their concerns to us and heard them and directed
25 staff to do yeoman's work to bring us to this point.

1 So I just -- do me favor, I know you don't mean
2 it in a mean way, because I can tell by your demeanor.
3 Let's be careful about language, because I don't want
4 people's feelings to get hurt.

5 MR. HOOPER: All right. Well, let me just say
6 that there is a perception of lakefront property being
7 reserved for the ultra wealthy. I realize Bill Gates may
8 not characterize a lot of the people. But the fact of the
9 matter is, is that our property, as well as our --
10 probably one of our closest friends, is a widow whose
11 husband recently passed away, these are, what we call,
12 split lake fronts, if you understand what I'm referring
13 to. In other words, we've got essentially a high traffic,
14 high speed road that separates the house from the water.

15 Okay. So the parcel that includes the pier in
16 both of these instances is separated. It's not like it's
17 a serene lakefront property, okay. So the 375 in that
18 context, you know, for particular people that have spent
19 far -- let me just say far less than the average
20 Sacramento home price, okay, within the last 22 years
21 okay, it is a significant amount of money when you're
22 working on fixed incomes, okay.

23 And I think that that is a factor that -- the
24 perception is is that you're dealing with mega
25 millionaires, and it's not always the case. And I know

1 that Ms. Evans related the story that the gal -- and I
2 don't know if you heard her at the last meeting, but you
3 know it's compelling anyway.

4 But I appreciate the opportunity to speak and
5 thank you.

6 ACTING CHAIRPERSON GORDON: Mr. Labrie. Gilbert
7 Labrie, please.

8 MR. LABRIE: Thank you. My name is Gilbert
9 Labrie. I'm a Delta stakeholder, and a dock owner down in
10 the Delta or in the waterways. It sounds like Lake Tahoe
11 has been sufficiently represented in discussions with
12 staff. I can tell you that I don't think there's -- we
13 don't have an organization representing all of us,
14 Sacramento River and other areas that have private docks
15 that have been eligible for the free recreational pier
16 permit. And I think that's unfortunate, because there's
17 probably some issues there that may come up that haven't
18 been addressed.

19 I did appear at one of the public workshops,
20 presented a statement. I wasn't able to make the December
21 meeting because of a conflict. I do represent some Delta
22 islands levees. I'm a levee engineer. I also process
23 permits through the State Lands.

24 I raised some questions, and I think some of
25 which still are kind of unclear to me. We pay a fee to

1 process our lease now. So I guess one of my early
2 questions, and I still don't -- is the -- what's the
3 annual rent going to be used for? Is the administrative
4 fee going to be reduced so that, in effect, the rent is
5 compensating for the administrative cost of administering
6 that thing or is it -- is this being added? And if it's
7 being added, then how are we going to benefit in the
8 waterway that we're leasing or the State lands that we're
9 leasing? Is it going to go for rock on the levees that
10 now comes up as part of the permit process?

11 ACTING CHAIRPERSON GORDON: On our time, sir, let
12 Ms. Lucchesi respond.

13 EXECUTIVE OFFICER LUCCHESI: Yeah. So just to
14 clarify on a couple of different cost issues. There is
15 the cost to submit an application, an application fee for
16 the staff, costs associated with processing that
17 application and bringing it to the Commission with a
18 recommendation to enter into that lease.

19 There's the administrative fee that is in the
20 proposed regulations for -- that would be an additional
21 fee for the management of that lease. However, that
22 administrative fee is only limited to certain types of
23 leases, including commercial and industrial uses. It is
24 not applicable for those entities or individuals that have
25 recreational piers. So there will not be an

1 administrative fee charged for that.

2 The administrative fee is something that we would
3 want to include in our commercial or industrial leases,
4 for example, to Chevron for a marine oil terminal where we
5 have mitigation monitoring and ongoing staff costs
6 associated with managing those lease terms. That's not
7 applicable to those folks that have recreational piers in
8 the Delta, Huntington Harbor, and Lake Tahoe.

9 And finally, then there is the rent. And as
10 we've been talking about, that is based on a benchmark
11 that's updated every five years for a particular location.
12 We have a Sacramento/Delta benchmark. And the rent
13 proceeds that come in through our leases go directly into
14 the general fund, with the exception of the Lake Tahoe
15 lease revenues/rent payments, due to a new law that was
16 just recently effective January 1st of this year, where
17 that will go into a separate fund for use on Lake Tahoe to
18 improve the lake.

19 MR. LABRIE: Okay. So the rent -- so the annual
20 rent is not going to offset the cost of renewing a
21 lease --

22 EXECUTIVE OFFICER LUCCHESI: No, sir.

23 MR. LABRIE: -- when it comes up? It's going to
24 the general fund.

25 EXECUTIVE OFFICER LUCCHESI: The rental payments,

1 yes, go to the general fund.

2 MR. LABRIE: Okay. That's interesting. All
3 right. The only other thing I wanted to mention, and it's
4 a -- I did submit a comment with respect to -- for the
5 December meeting regarding the ordinary high water mark,
6 mean high water mark issue.

7 And so maybe that's something is if you're going
8 to kind of do an iteration and look at that, because when
9 you get down into the tide exchange area, I mean, the mean
10 high water mark is something that's -- it's out there.
11 The ordinary high water mark is going to -- it's a
12 floating -- it changes. It's going to be different this
13 year than it was last year, when you get down into that
14 tidal change, because of the -- so you may need to have
15 two pieces in there to make it easier for those of us down
16 in the Delta, at least, to inter -- to relate with you
17 when it comes to establishing where that line is, which is
18 really pretty important when you get there.

19 The one last I do want to ask, in terms of
20 siphons and irrigation pipes, are they going to be subject
21 to a fee at some point? They're agriculture. Where do
22 they fit within this thing?

23 EXECUTIVE OFFICER LUCCHESI: Yeah, if we have
24 pipelines, irrigation types of facilities on our property,
25 we will require a lease.

1 MR. LABRIE: No, I know you require a lease. I
2 guess my question is, because I've got some processing,
3 are those people going to be subject to a rent?

4 EXECUTIVE OFFICER LUCCHESI: Yes. Well, let me
5 let Colin Connor answer this.

6 LAND MANAGEMENT DIVISION ASSISTANT CHIEF CONNOR:

7 There is a section of the Public Resources
8 Code -- there is a section in Public Resources Code, 6327,
9 which allows for basically no lease required from the
10 Commission for taking water out of the Sacramento River,
11 the Delta area, or, you know, for certain beneficial type
12 purposes.

13 So we would have to evaluate anything that comes
14 in to see how it's being used. So if that structure falls
15 under the provision of that code section, it would not
16 require a lease from us. There are caveats with that.
17 They do require certain permits from Corps of Engineers,
18 DWR, things like that.

19 EXECUTIVE OFFICER LUCCHESI: Thank you.

20 MR. LABRIE: All right. Thank you for your time.
21 I appreciate it, sir.

22 ACTING CHAIRPERSON GORDON: Thank you, sir.

23 Mr. Lien. Greg Lien.

24 MR. LIEN: Good morning, honorable members of the
25 Commission and distinguished staff. My name is Greg Lien.

1 I've had my law office in Tahoe City for 30 plus years.
2 And it's a pleasure to be able to speak to you this
3 morning. I wanted to address kind of a follow-on issue to
4 the one that we're talking about mostly focused on fees.
5 But there are a lot of changes in your administrative
6 regulations, many of which were non-controversial and
7 many, frankly, that were just good improvements.

8 And I spoke to some problems that we'd had before
9 with regard to, you know, what can you lease. And there
10 was wording in the regulations, as you'll recall, about
11 limited to the docking of boats and that kind of thing.

12 Now, we've opened it up, because of course we
13 know people use their piers for all kinds of things,
14 general recreational use, swimming, sun bathing and so on,
15 so we can begin to be a little more rational about uses
16 and so on.

17 And I think that just highlights, by way of one
18 example, the fact that these changes are going to have a
19 follow-up, which is to revise your standard lease form.
20 And I think we have an opportunity here, is what I want to
21 point out, to come up with language that is fairer and
22 more reflective of what your policies have been and should
23 be going forward from this point.

24 A lot of the testimony today continues to talk
25 about this problem of the tale of two economies, tale of

1 two mind sets. Of course, we don't all have rich folks
2 out there. There are a lot of people that it truly is
3 going to be a hardship for to have \$375. I mean, you
4 know, it just -- it really is. And there will be people
5 for whom it's chump change. We can't address that.

6 The other mindset kind of difference here is it's
7 not just a tale of two economies, it's a tale of two
8 mindsets, where many people would perceive that what they
9 bought and paid for many, many decades ago, if they bought
10 a property with a pier, was they bought their pier. And
11 to, in effect, have to rent their own pier from someone
12 else that they feel they bought and paid for, that mindset
13 then faces your mindset, which is a little different, that
14 gee whiz, this is on State lands, it must be ours. You
15 know, that's another mindset that we need to overcome, or
16 at least recognize that there's very different points of
17 view going through here that lead to different things.

18 Let me get down to just a couple of examples of
19 areas where I think we could profit by taking the success
20 of this process, and going forward now let's look at how
21 we negotiate over the standard lease language.

22 One example is currently in Section 3, Paragraph
23 13, and I know a lot of your staff just, you know, go
24 through these all the time, crank them out, and you've got
25 a number of different versions. You know, tack on Section

1 3 to the end. You know, Section 2 is whatever you draft
2 and so on and so forth and we go through this all the
3 time.

4 And, for example, in paragraph 13, it says
5 there's -- at the end of the term of the lease, whatever
6 improvements you have there cease to belong to you and
7 they now belong to the State. And the State can have you
8 retrofit the property down to nothing, if the State likes
9 the idea of doing that, and you'll restore it. And not
10 only that, Mr. Lessee, we're going to require you to give
11 us some kind of quitclaim deed or something that gives up
12 that pier that again, in your mindset, you thought was
13 yours. You thought you bought and paid for. You thought
14 it's been in your family for generations and you take care
15 of it and it's quite valuable.

16 So most people, if they actually read the fine
17 print -- and I think most people don't, but when you do,
18 you find some very disturbing language. And I would
19 submit since you haven't removed a pier from Lake Tahoe
20 pursuant to that language -- as long as I can remember, I
21 don't think it's ever been done -- we probably don't need
22 that kind of draconian language. And it ought to be
23 changed, not just from a perception point of you but just
24 a fairness point of view. Let's have language in there
25 that's fair.

1 ACTING CHAIRPERSON GORDON: Can I stop you for
2 one second, sir.

3 MR. LIEN: Yes.

4 ACTING CHAIRPERSON GORDON: This is more a
5 comment to my two colleagues. I have actually had that
6 issue raised from several other folks, in addition to this
7 gentleman. If both of you could read it before the next
8 hearing, because I'm pretty confident we're going to have
9 some folks coming before us with regard to that specific
10 Section 3, Paragraph 13, and we're going to have to deal
11 with that. I have read it and actually share some of your
12 concerns with regard to that language.

13 ACTING COMMISSIONER GARLAND: Can staff get that
14 to us?

15 EXECUTIVE OFFICER LUCCHESI: Oh, of course.

16 ACTING COMMISSIONER GARLAND: Thank you.

17 MR. LIEN: Thank you, Mr. Chairman.

18 And kind of a second example too is how do we
19 administer language, and we have a shorthand description
20 for an issue that's come up repeatedly called the
21 Vanderbeeks. So we've had Vanderbeek 1. We've had
22 Vanderbeek 2. Now, we've got a Vanderbeek 3. I've
23 represented all three of them, so I know this issue pretty
24 well.

25 And I think we need to revisit the issue of how

1 upland users are dealt with. In your regulations and the
2 way this is tightened up, it's abundantly clear that
3 people who have use rights in what they view to be a
4 homeowner's pier can also be lessees and qualified to be
5 on your lease.

6 On Vanderbeek 2, I wanted to give you a quick
7 update. You'll recall that many of you expressed
8 sympathetic comments to my client's problem, which they
9 were the upland users, the homeowners, and you issued a
10 lease solely in the name of the lakefront owner.

11 Now, the lakefront owner has blocked off the pier
12 to the homeowners, refuses to let them use the pier, and
13 it just leads to problems. So, you know, some tweaking of
14 the language here or some manner of addressing this issue
15 would avoid a lot of ill-feeling between homeowners,
16 igniting little range wars that never really needed to
17 exist in the first place.

18 Anyway, I think the main point is let's get down
19 to a process where we look at the standard lease language
20 and begin to make that reflect the fairness and the duty
21 of straightforwardness and fair dealing that we have.

22 Since we're going to have some changes in
23 language, I know you're talking about going -- looking
24 back at, you know, what we've recently approved. And I
25 wondered if we could say let's also look at what we could

1 term the pipeline.

2 There are a couple of leases that either have
3 been already approved by the Commission or are on the
4 agenda for February 21st, or in the process or soon
5 thereafter. And maybe we can work in some of the language
6 changes sooner than later and kind of expedite a process
7 for this. So that concludes my comments.

8 Any questions?

9 EXECUTIVE OFFICER LUCCHESI: May I just speak to
10 that last part?

11 ACTING CHAIRPERSON GORDON: Sure.

12 EXECUTIVE OFFICER LUCCHESI: That is our
13 intention to address -- to implement these changes
14 beginning today, should the Commission approve the
15 regulations, for those that are already in the pipeline.

16 The crux point is for those that have already
17 been authorized by the Commission, because we've already
18 gone through the entire process. But for those that are
19 pending with staff, right now, that have not yet gone to
20 the Commission, and even for those that will be coming to
21 the Commission for your consideration in February, we will
22 implement these regulations and the practices that I
23 outlined in the beginning for that February meeting.

24 ACTING CHAIRPERSON GORDON: Okay. I have
25 somewhat of a comment and then a question, and this

1 addresses Mr. Hooper's comments also. I think we've
2 worked really hard over the time we've been working on
3 this issue to deal with the fact that we -- that the
4 Commission recognizes that the range of incomes of people
5 with properties on the Lake is incredibly varied. That
6 you go from Steve Wynn and Bill Gates down to retired
7 school teachers and firefighters and things like that.

8 I think we've gotten a long way there. My
9 question to staff would be, and I guess maybe to counsel
10 also is, is there any way in the regulations we could
11 implement some type of hardship exemption. And I don't
12 know how one would define that.

13 But for someone who truly is on a fixed income,
14 retired, fixed income, I'm wondering if there is anyway --
15 I don't think it would be a large group of people, but
16 that someday they could prove up that the \$377 fee truly
17 is a hardship for them?

18 EXECUTIVE OFFICER LUCCHESI: Chair, I think that
19 we can look into that option. I don't think it's
20 something that we could effectuate through our
21 regulations. It would have to be legislatively statutory.
22 And we have to look at the legal implications of that,
23 from the constitutional prohibition on the gift of public
24 funds and assets and other legal aspects of that, but we
25 will certainly look into that.

1 ACTING CHAIRPERSON GORDON: Okay.

2 Any other comments by Commission members?

3 Then our last person who has submitted a request
4 to speak -- and I can't tell because it's just an initial.
5 Mr. or Ms. Vargas.

6 Not here?

7 That being the case, is there anybody else who
8 wishes to comment?

9 Staff have anything they need to add?

10 No.

11 That being the case, Ms. Ortega.

12 ACTING COMMISSIONER ORTEGA: Well, if you're
13 ready to entertain a motion?

14 ACTING CHAIRPERSON GORDON: I am ready to
15 entertain a motion.

16 ACTING COMMISSIONER ORTEGA: I want to thank
17 everyone in the audience and the staff for what appears to
18 be a Herculean effort to get to the place we are here
19 today. I think that the proposal before us has come a
20 long way to addressing a lot of the concerns that were
21 raised.

22 And so with that, I'm happy to make a motion to
23 approve the regulations as recommended by staff.

24 ACTING CHAIRPERSON GORDON: Do I have a second?

25 ACTING COMMISSIONER GARLAND: You want to vote or

1 do want me to vote?

2 ACTING CHAIRPERSON GORDON: Okay. I'll vote on
3 this one.

4 I would second the motion.

5 And I would also like to add the comment, I think
6 staff has done an amazing job. I have been involved in
7 State government for 27 years now, and there are not all
8 that many circumstances where bureaucrats -- and I mean
9 that in a positive sense -- and the public interact and
10 come to a end-product that is significantly better than
11 what we started with. And I think the State Lands
12 Commission staff has done a phenomenal job here.

13 And I would also like to compliment all of you
14 who have been involved in the affected community for the
15 civility and the intelligence you brought to this process.
16 The letters I have read have been wonderfully informative.
17 They helped me reach a better understanding of what the
18 folks deal with on this issue. And I think everybody
19 involved in this process, you guys could hold some kind of
20 seminars for the folks in Washington and other places on
21 how the public and the private sphere is supposed to
22 interact to the benefit of both.

23 With that, I would like to put it to a vote.

24 All those in favor?

25 (Ayes.)

1 ACTING CHAIRPERSON GORDON: The regulations are
2 adopted.

3 Thank you very much.

4 ACTING COMMISSIONER GARLAND: Mr. Chair, if I
5 might?

6 ACTING CHAIRPERSON GORDON: Yes.

7 ACTING COMMISSIONER GARLAND: Obviously, because
8 of the rules, we were not able to vote. But this process
9 started while actually I was over here and Gavin was the
10 Chair. And I do want to echo the comments of the two
11 other Commissioners and thank Jan specifically who's
12 worked with our office an awful lot and has been a good
13 partner in this and staff as well.

14 And I also want to say to the folks who came in
15 from the other affected communities, because, you know,
16 this issue has been very hot, and we thought of -- you
17 know, we see it as a Tahoe issue because that's the folks
18 who are here. But to the folks from the Delta who have
19 come in and -- you know, I'm sure there's folks in
20 southern California who this affects who couldn't have
21 been here, I just want to assure you that the attention
22 that we paid and the work that we did with the affected
23 stakeholders in Tahoe should something come up that
24 adversely affects you, I want you to know that it is this
25 Commissioner's intention to make sure that we pay the same

1 exact amount of attention, and that we work with you in
2 the same way we did the Tahoe lessees, and that we
3 understand your concerns.

4 And, you know, should something come up, the --
5 you will get the same care and attention that we've given
6 to the Tahoe landowners.

7 ACTING CHAIRPERSON GORDON: Ms. Lucchesi, next
8 order of business.

9 EXECUTIVE OFFICER LUCCHESI: We move to public
10 comment.

11 ACTING CHAIRPERSON GORDON: Is there anyone in
12 the public, in the audience who would like to offer a
13 public comment on this or any other issue that is before
14 us?

15 No.

16 Any of the Commissioners have any comments or
17 questions?

18 With that, this concludes the open meeting.
19 We'll now adjourn into closed session. Will the public
20 please clear the room and thank you all very much.

21 (Off record: 11:13 AM)

22 (Thereupon the meeting recessed
23 into closed session.)

24 (On record: 11:48 AM)

25 ACTING CHAIRPERSON GORDON: I'm going to adjourn

1 the closed session and come back into open session. If
2 there aren't any public comments, at this point in time,
3 this meeting -- special meeting of the State Lands
4 Commission is hereby adjourned.

5 (Thereupon the California State Lands
6 Commission meeting adjourned at 11:48 AM)

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C E R T I F I C A T E O F R E P O R T E R

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

That I am a disinterested person herein; that the foregoing California State Lands Commission meeting was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California;

That the said proceedings was taken before me, in shorthand writing, and was thereafter transcribed, under my direction, by computer-assisted transcription.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of January, 2014.



JAMES F. PETERS, CSR, RPR
Certified Shorthand Reporter
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