MEETING
STATE OF CALIFORNIA
LANDS COMMISSION

STATE CAPITOL
ROOM 126
SACRAMENTO, CALIFORNIA

MONDAY, FEBRUARY 5, 2007
10:00 A.M.

JAMES F. PETERS, CSR, RPR
CERTIFIED SHORTHAND REPORTER
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
APPEARANCES

BOARD MEMBERS
Mr. John Garamendi, Lieutenant Governor, Chairperson
Mr. John Chiang, State Controller
Mr. Michael Genest, Director of Finance, represented by Ms. Anne Sheehan

STAFF
Mr. Paul Thayer, Executive Officer
Mr. Jack Rump, Chief Counsel
Ms. Nicole Dobroski
Ms. Mary Hays, Manager, Division of Land Management
Mr. Alan Scott
Ms. Kimberly Lunetta, Executive Assistant

ATTORNEY GENERAL
Mr. Alan Hager, Assistant Attorney General

ALSO PRESENT
Ms. Sarah Abramson, Heal The Bay
Ms. Tracy Egoscue, Santa Monica Baykeeper
Mr. Jackson Gualco, California Council for Environmental and Economic Balance
Mr. Warren Hagberg, Tahoe Swiss Village Homeowner's Association
Mr. Tim Hemig, El Segundo Power & Cabrillo Power

PETE S SHORTHAND REPORTING CORPORATION (916) 362-2345
APPEARANCES CONTINUED

ALSO PRESENT

Mr. Steve Kaufmann, Woodfin Suite Hotels
Ms. Lorell Long, California Earth Corps
Mr. Karl Lytz, NRG
Ms. Linda Sheehan, California Coastkeeper Alliance
Mr. Sheldon Sloan, Woodfin Suite Hotels

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PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
CHAIRPERSON GARAMENDI: Good morning. I'm John Garamendi, the Lieutenant Governor. And joining me today is our State Controller, John Chiang.

John, you and I are freshmen.

COMMISSIONER CHIANG: We are.

CHAIRPERSON GARAMENDI: So we've got a lot to learn. Fortunately we have Anne Sheehan, who is on my left, who can help us when I miss a step in this agenda. And I know you've been at this for some time, Anne. Thank you.

Obviously we have a great staff, Paul and Jack -- Paul Thayer, Jack Rump. And also joined by Alan.

Are you going to keep us legally correct here, Alan, representing the Attorney General?

ASSISTANT ATTORNEY GENERAL HAGER: I will try.

CHAIRPERSON GARAMENDI: That's good.

You have my staff somewhere out there in the back of the room and the audience. And I see, John, you have your staff?

COMMISSIONER CHIANG: I do.

CHAIRPERSON GARAMENDI: And that is? Cindy Sheehan -- oh, Cindy Aronberg. I'm sorry. I sat next to Cindy Sheehan on the airplane ride up --

CHAIRPERSON GARAMENDI: I'm getting confused.
COMMISSIONER CHIANG: Sorry, Cindy.

CHAIRPERSON GARAMENDI: Okay. Well, as long as
we know who we are. And now we'll figure out exactly what
we're doing.

I call this meeting to order. We've introduced
ourselves already.

For those of you that are in the audience, the
State Lands Commission administers properties owned by the
state as well as the state's mineral interests. Today
we're going to hear proposals concerning the leasing and
the management of these public properties.

The first item of business will be the adoption
of the minutes from the Commission's last meeting. I
assume we've all reviewed that carefully.

And, Anne.

ACTING COMMISSIONER SHEEHAN: Yeah, I'll move
approval of the minutes.

COMMISSIONER CHIANG: I will second.

CHAIRPERSON GARAMENDI: And the vote is 3-0.

I assume you guys are okay with that, having made
the motion and the second.

Minutes are unanimously adopted.

The next order of business is the Executive
Officer's report.

Mr. Thayer, may we have your report.
EXECUTIVE OFFICER THAYER: Thank you, Mr. Chair.

The report will be brief this morning. I just have two items. One is to echo the sentiments that were expressed by the Chair. We're all looking forward as the staff to working with the new Commissioners, as well as Anne, with whom we've worked for the last few years.

We're trying to think about the last time we had two new Commissioners instantly like this. And it happened eight years ago. But at that time, Gray Davis had moved from becoming Lieutenant Governor to Governor, so it really wasn't that much of a switch in terms of the representation from the Department of Finance. So we really can't recall the last time, but it's been awhile.

And I know both the new members have worked for the public for a long time and with the public's interests at heart. And as the staff, we're looking forward to working with all of you. So on our behalf I wanted to welcome all of you to the Lands Commission.

The second item, I just wanted to note a retirement, which is that one of our lead people in the Marine Facilities Division, Ken Leveridge, who was in charge of our Hercules office in the Bay Area -- that office dealt with preventing oil spills from tankers recalling the Bay Area -- he is retired, not just to live the life of Riley, but he's going to be going to Africa,
to Chad, and will be working for his church over there
with his wife. And it's a big loss for us, but a big gain
for Africa for him to be over there. So I just wanted to
note we can honor him by mentioning that. I don't think
he's here today though.

CHAIRPERSON GARAMENDI: My recollection is
there's a major oil project underway with a pipeline that
has a tendency to spill. So perhaps he'll continue
working in an area he has knowledge.
(Laughter.)
EXECUTIVE OFFICER THAYER: Probably be calling on
him.
And that concludes the Executive Officer's
report.

COMMISSIONER CHIANG: Paul, let me thank you for
those warm words of welcome.
And I just wanted to reiterate that I am looking
forward to working with the Chair, John Garamendi, an
extraordinary public servant, and Anne Sheehan, who I've
served with in the Franchise Tax Board.

EXECUTIVE OFFICER THAYER: And that concludes the
Executive Officer's report.

CHAIRPERSON GARAMENDI: Very good.

EXECUTIVE OFFICER THAYER: Next item is the
consent calendar.
CHAIRPERSON GARAMENDI: On the consent calendar the normal process, as I understand it, is to ask if there's anyone in the audience who wishes to speak on any one of the items in the consent calendar. And so -- and we have a whole list of people that want to speak here. And I don't know if these are consent items or not.

EXECUTIVE OFFICER THAYER: No, these items as we look through them are all of the regular calendar items, the numbers on them.

CHAIRPERSON GARAMENDI: Okay. So these are all -- none of these are consent. So seeing no one jumping up and asking for the opportunity, the consent calendar is now before us.

Then I want --

ACTING COMMISSIONER SHEEHAN: Any issues you want to discuss, Paul?

EXECUTIVE OFFICER THAYER: Yes. Often we have items that we need to remove because of last minute problems. And I would like to note that after conversations with the Chair, that the Chair asked us to take Item 34, which is the Tahoe Swiss Village Homeowners Association lease that involve a number of old and new buoys, to have that taken off the consent calendar. So I would like to take that off and put it on the regular calendar. We've contacted the association, and I believe
the association president is here today to respond to any
questions. And staff is prepared to make a presentation.

We can hear it any time. But normally we would
just put those at the end of the regular calendar and take
them up at that time today.

CHAIRPERSON GARAMENDI: Very good.

ACTING COMMISSIONER SHEEHAN: So I'll move the
consent calendar with the exception of Item No. 34.

COMMISSIONER CHIANG: And I will second.

CHAIRPERSON GARAMENDI: Very good.

Any questions from any of us?

Not being any, I would assume we have a unanimous
support of the consent calendar. And so be it.

Our next are Items 41, 42, 43. And these concern
leases for the proposed power plants, the once-through
cooling systems.

Paul, if you would.

EXECUTIVE OFFICER THAYER: Certainly. Thank you,
Mr. Chair.

A couple of housekeeping items on this. Two of
these items were originally scheduled for hearing in
December, but there was a request from some public
interest groups that it be put over for some additional
work. We did that, and we're prepared to go today.

Then about a week and a half ago, a very
significant federal court decision came down related to the regulation of these facilities. And there was initially some move on the part of the same folks that had asked us to put it over in December to do that again. However, at the end of this last week we were able to work out the concerns that those folks had. And so we've made a couple of additions to the lease. And I wanted to make sure to highlight them so that people who had old versions of the staff report would understand what we're proposing. They're fairly technical and I don't think there's any problem I believe with the applicant.

So there are three changes:

First is -- and this is the most technical one -- that when you look at page 2 of the staff report, paragraph 2 towards the top, there's a reference to the Commission having the right to reopen the lease should additional requirements be imposed by other agencies, federal or state, regarding once-through cooling, and if those requirements are feasible. And that's a test that we don't think it's appropriate, because that same feasibility question has already been faced by the other state and federal agencies before they imposed those requirements, and would put us in a position of second guessing what the experts on once-through cooling think. So we'd like to remove that reference to feasibility.

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The second change would be to schedule a hearing five years out after these leases have been approved to review compliance with their terms. We don't normally do that. But we did do that last year where there were some concerns over the transfer of oil leases to a new company. And the Commission wanted an opportunity to review compliance in that instance as well.

So this is very similar to that process. And basically what would happen, the leases would be granted for a full term of 20 or 30 years, depending upon which of these are issued here. And then five years from now the Commission would conduct a public hearing in which everyone would participate in, see how we're doing with once-through cooling.

And then the last change is that all of these leases -- three of these leases require that an annual report be submitted by the applicant on compliance with once-through cooling requirements. And the only change is that we'll post that on the website so it will be easily available to anybody who approves. It's a public document anyway. It's just a question of getting it out there more easily.

So those are the three changes that we're recommending as part of these.

CHAIRPERSON GARAMENDI: Anne.
ACTING COMMISSIONER SHEEHAN: Yeah. So the only actual change on the lease is the language on the technology, the --

EXECUTIVE OFFICER THAYER: That's right.

ACTING COMMISSIONER SHEEHAN: -- the alternative technology.

The others would just be that -- as part of the minutes, as part of the record would reflect, we have a hearing every five years.

EXECUTIVE OFFICER THAYER: And we're contemplating putting those in the lease just to record that.

ACTING COMMISSIONER SHEEHAN: Oh, Okay. Because I --

CHAIRPERSON GARAMENDI: Let's make that up after we hear from people whether that should or should not be in the lease.

ACTING COMMISSIONER SHEEHAN: Yeah. Well, that's what I couldn't quite --

CHAIRPERSON GARAMENDI: Sure.

EXECUTIVE OFFICER THAYER: It's a little strange because a lease is basically a contract between the Commission and an entity. And if those two entities agree, you can make any changes you want. But I think there was some concern. But we can hear from witnesses.
CHAIRPERSON GARAMENDI: In looking at the -- please finish.

EXECUTIVE OFFICER THAYER: Oh, well, I just wanted -- the last thing I was going to say is that Alan Scott's going to give us an overview on once-through cooling, particularly for the benefit of the new Commissioners. We've heard this a lot last year.

All three of these items are very similar. They're existing power plants whose leases have expired, and we're going to renew them, raise the rent, that kind of thing. So our intention is to give an overview of once-through cooling and then describe all three items at the same time.

But obviously if at any point the Commission has questions or wants to look at these more individually, you know, we could do that.

CHAIRPERSON GARAMENDI: In looking at the requests to speak from the general public --

COMMISSIONER CHIANG: I'd like to make a comment.

After discussion with Paul and the chief counsel, and to avoid appearance of a conflict of interest, I resigned from the Board of Governors of Heal the Bay last Friday. So I wanted a full disclosure on that.

EXECUTIVE OFFICER THAYER: Thank you.

CHAIRPERSON GARAMENDI: Okay, John. Thank you.
In looking at the requests to speak, there are some people that want to speak on one, some people want to speak on three, some people want to speak on two of the items.

So I think what we'll do is we'll take the overview next and then we're hear from the individuals starting with Item 41, and then we'll take anybody that wants to speak on 41. And between now and that, I'll try to figure out how to make some sense out of all of this.

EXECUTIVE OFFICER THAYER: Sounds perfect.

Oh, so Alan Scott, who was with our Land Management Division, is now officially retired, but he's an expert on all of this stuff and has consented to come back as a retired annuitant on project updates. And he wrote the staff report for several of -- and will make the presentation.

MR. SCOTT: Thank you, Paul.

Good morning, Mr. Chairman and members of the Commission. Again, my name is Alan Scott. I'm a member of the Commission's Land Management Division, here today to speak on Calendar Items No. 41, 42, and 43.

These items each address proposed leases for the continued use of lands under the Commission's jurisdiction for existing facilities that are a part of once-through cooling systems for existing coastal power plants.
Before I go into detail into the individual calendar items, I'd like to take a few minutes to discuss once-through cooling.

Once-through cooling is a means used by some power plants and other industrial plants to cool parts of their facilities. In the case of power plants, the equipment that requires cooling includes the turbines, whether gas or steam, other parts of the electric generators, and boiler water. Cooling water is collected from a source, passes through the plant, cooling heated components, and then is returned to the source.

When the water source is located within waters of the United States, then it is used -- is subject to the Clean Water Act. Certain authority established within the Clean Water Act has been delegated to the state by the United States Environmental Protection Agency and is administered in part by the State Water Resources Control Board through the National Pollutant Discharge and Elimination System permit, most commonly referred to as an NPDES permit.

The intake of large volumes of water for once-through cooling has impact on coastal organisms by entrainment and impingement.

Impingement occurs when marine organisms are trapped against components of the cooling water system,
such as streams, where they die.

   Entrainment is the induction of small marine
organisms into and through the cooling system itself.
Most, if not all, of the organisms are destroyed by either
mechanical damage, temperature increases or
toxicity -- toxic stress.

   In addition, once-through cooling results in
biological impacts through thermal discharge. Thermal
discharge is the release of cooling water at temperatures
above ambient conditions, which results in the elevation
of the temperature of marine waters in the immediate
vicinity of the outfall. These effects adversely impact
coastal and ocean resources and uses that are within the
jurisdiction of the Commission.

   There are presently 21 coastal power plants that
utilize once-through cooling systems. Please see the
chart on the screen. And you have a map that shows the
approximate location of those coastal facilities.

   CHAIRPERSON GARAMENDI: We are about to see the
chart. So why don't we just cool ourselves for a while.

   Now we have the chart.

   MR. SCOTT: I can't see that you can't see.

   (Laughter.)

   MR. SCOTT: Continuing on. These once-through
cooling systems have a cumulative cooling water intake
flow estimated at 16 billion gallons per day. And there -- but there is one facility that utilizes wet cooling tower technology, and that's located in Suisun Bay.

Of these --

CHAIRPERSON GARAMENDI: Which one is --

MR. SCOTT: -- 21 plants -- excuse me.

Do you have a question, sir?

CHAIRPERSON GARAMENDI: I was just going -- you said one of them, it's located where?

MR. SCOTT: One of them's located in Suisun Bay.

And that is the one that uses a cooling water tour rather than once-through cooling.

CHAIRPERSON GARAMENDI: Okay. Thank you.

MR. SCOTT: Of the 21 plants, 10 have leases issued by the Commission. The other 12 coastal power plants are located within legislative grants to cities, counties, or are otherwise not located within the Commissioner's jurisdiction.

The 21 coastal power plants generate approximately 24,000 megawatts of power annually. Many of these plants are what are referred to as peaker facilities, which are operated at times of greatest energy demand.

In addition to the State Lands Commission, the
state agencies that exercise jurisdiction over various aspects of coastal power plants are the California Energy Commission, the Regional Water Quality Control Boards -- and the Regional Water Quality Control Boards.

The CEC is the state's primary energy policy and planning agency. In addition to forecasting energy needs, developing energy technologies, and promoting energy efficiency, the CEC licenses thermal power plants having a capacity of 50 megawatts or more. Substantial modifications to such plants in the form of expansion, replacement, or repowering are also reviewed by the CEC.

Application for new plants or modifications of existing facilities are assessed in compliance with the Warren-Alquist Act and the California Environmental Quality Act. This includes an assessment of cooling water impacts to coastal resources and mitigation for those impacts.

The CEC has also conducted studies of coastal power plants in order to document and analyze the engineering and environmental issues associated with each power plant to address such issues when applications are received for expansion, repowering, or replacing existing power plants.

The CEC has prepared an inventory of existing facilities permits and operational levels in order to
understand the facilities and their role in meeting the
state's electrical power needs.

Finally, the CEC has conducted a study to define
and analyze the performance, economic and environmental
trade-offs among available cooling water systems.

There are nine regional water quality control
boards in California. The boards have jurisdiction over
discharges to land or surface waters under the
Porter-Cologne Act and have Clean Water Act authority
exercised through the National Pollutant Discharge and
Elimination System.

NPDES permits are reviewed every five years.
Thus the primary responsibility for the assessment of
thermal impingement and entrainment impacts rests with the
boards.

The boards have in some cases issued temporary
extensions of NPDES permits in light of pending litigation
challenging the Environmental Protection -- U.S.
Environmental Protection Agency's rules on once-through
cooling which were issued in 2004. The Court recently
directed the U.S. EPA to revise their regulations to
better control environmental impacts of once-through
cooling.

The State Water Quality Control Board has held
various public workshops to gather information on whether
1 a statewide 316(b) policy should be adopted.
2 At the 2005 State Water Board workshop in
3 Oakland, board staff proposed the development of a
4 statewide wide 316(b) policy that would become part of the
5 existing State Water Board's California Thermal Plan. The
6 thermal requirements for power plants are currently
7 covered by this plan. Except for the potential addition
8 of 316(b) requirements to the California Thermal Plan, no
9 new action is planned for thermal requirements at this
10 time. The California Thermal Plan requirements will be
11 addressed and updated as some future point.
12
13 As described above, the requirements under 316(b)
14 have been primarily implemented independently by the
15 regional boards through the National Pollutant Discharge
16 and Elimination System permitting program. However, the
17 firm approach of the staff of the State Water Quality
18 Control Board would result in the development of a
19 statewide policy with requirements for both new and
20 existing once-through cooling power plants.
21
22 The Commission staff understands that the
23 proposed 316(b) policy will be developed based on a CEQA
24 evaluation which is still being prepared. The Commission
25 staff continues to monitor and provide comments to the
26 State Water Board.
27
28 The Commission previously has expressed concerns
about the potential environmental impacts to state waters caused by the continued use of those waters for once-through cooling. They were particularly concerned with the biological impacts caused by impingement mortality and entrainment. As mentioned previously, these impacts are generally regulated through the NPDES permits issued by the regional boards.

The calendar items before you today deal with leases covering the existing improvements located on lands under the Commission's jurisdiction that are used as part of once-through cooling systems for existing upland electric generation plants.

Even though there are some similarities among the three leases, there are some differences, and they will be covered as I discuss each individual calendar item.

Proceeding with Calendar Item 41.

This item asks the Commission to authorize a 20-year lease between the Commission and Cabrillo Power I, a limited liability company, covering the continued operation and maintenance of two existing rock-growing structures used as part of an existing once-through cooling system for the Encina power plant near the City of Carlsbad in San Diego County.

Co-located on the upland at the parkland site is a small desalinization test facility. A small amount of
brine water from the test facility is mixed with the
discharge waters from the once-through cooling system. A
full scale desalinization plant is proposed for this
location, but no application has been submitted for such a
project.

Further, the terms of the proposed lease will not
allow any other use of the leased area or existing
improvements located on the leased area without the prior
approval of the Commission.

The two structures covered by the proposed lease
consist of two rock groins protecting the entrance to Agua
Hedionda Lagoon, source of the cooling water for the power
plant; and two other rock groins with an open-water
channel between them crossing the beach in front of the
power plant used to return the cooling water to the
Pacific Ocean.

These facilities were previously covered by two
separate leases, both of which have expired, one in July
of 1999 and the other in December of 2002. These leases
are considered to be in holdover pending negotiations and
approval of a replacement lease. This process has taken
longer than normal due to consideration of a proposed
modification to the existing improvements, which has
subsequently been abandoned. The lessee has agreed to pay
rent for the period of holdover in the amount of $256,440;
and staff recommends acceptance of that amount.

Further, staff proposes that the two facilities be combined and covered by a single lease and recommends that the Commission authorize execution of that lease.

Special provisions have been incorporated into this lease. The lease provides for the automatic adjustment of the annual rent so that the rent will keep pace with changing economic conditions.

Because of previous Commissioners' concerns with the potential impact of once-through cooling on the environment, the lease contains specific language that requires the lessee to comply with laws and regulations issued under Section 316(b) of the Clean Water Act and with all other laws and regulations designed to minimize impacts of once-through cooling.

The lease requires an annual report identifying the regulatory --

CHAIRPERSON GARAMENDI: Hang on. We've got water.

(Laughter.)

MR. SCOTT: May I please.

CHAIRPERSON GARAMENDI: Just call it once-through.

(Laughter.)
MR. SCOTT: Thank you.

Let's see. Now, where was I?

Because of the previous Commissioners' concerns with the potential impact of the once-through cooling on the environment, the lease contains specific language that requires the lessee compliance with Section 316(b) and with other rules and regulations to minimize impacts.

The lease requires an annual report identifying the regulatory requirements imposed on the lessee and the status of compliance. The lease also provides for the Commission to review the lessee's regulatory compliance at a public hearing in five years.

Further, the lease allows the Commission to amend this lease should other regulatory agencies require an alternative cooling method not involving once-through cooling.

Calendar Item 42.

EXECUTIVE OFFICER THAYER: At this point, if the Chair wanted to take any witnesses on 41, we could continue the presentation after that.

CHAIRPERSON GARAMENDI: Thank you very much, Paul.

We do have a couple of witnesses that want to speak specifically to 41 and then several of them want to speak to all of the items, 41, 42, and -- so let's take...
Linda Sheehan. Apparently you only want to speak to Item 41.

MS. SHEEHAN: Good morning. My name is Linda Sheehan. I'm the Executive Director of the California Coastkeeper Alliance. We represent all 12 waterkeepers who span the coast from the Oregon Border down to San Diego. And we've been working on this issue for quite awhile.

And I did bring for you today to complement your presentation six copies of our just released Waterkeeper national magazine that is focused exclusively on once-through cooling systems, so you can see what's going on around the country.

This Commission approved a precedent-setting resolution last April identifying the devastating impacts of once-through cooling and urging other agencies to come up with policies as soon as possible to eliminate or significantly minimize the impacts of this devastating system. And I would like to again thank the Commission for their foresight in this regard, particularly Commissioner Sheehan who was here last year and approved the resolution.

The Court decision that Mr. Thayer referenced just a few minutes ago, Riverkeeper versus U.S. EPA, it can't be understated the significance of this decision.
My organization, California Coastkeeper Alliance, was a named plaintiff. And one of the first things I did when I started my job over two years ago was to write a declaration to be part of this litigation. And it found that EPA's once-through cooling regulations on which the leases before you today are based are illegal, and they were sent back for further review.

A couple of the key points that the Court made in doing this were, one, that EPA had required the best available technology that could be reasonably borne by the industry, that no cost benefit analysis was allowed; it had to be the best.

And the second thing that they focused on was no restoration would be allowed. You can't mitigate after the fact. It just doesn't work. You have to prevent the impacts.

So the point's clear: The status quo of allowing these systems to continue is going to change, and it's going to change quickly, which is why we would of course far prefer much shorter leases than decades' long leases.

But at a minimum, as our comment letter requested, we would like to see a five-year hearing, as Mr. Thayer indicated. And we think that that's a good way for the public to track compliance with a rapidly changing environmental regulatory landscape.
We would also like to see, and we totally approve, the additional change that Mr. Thayer recommended with regard to annual reports being placed on the web so we could track things as they quickly change.

And then, additionally, the requirement with respect to feasibility in paragraph 2 at the top of the page, we support Mr. Thayer's oral articulation of that change and ask that that phrase, should the technology become feasible, be struck as the resolution is approved.

These requests apply to Items 41, 42 and 43. And other speakers will address the specifics of those plans and why it's important -- Cabrillo that's a proposed desalinization facility that would use the same pipes as these systems. And if these systems are changed, that would obviously be a problem, especially in light of the Commission's resolution which highlighted the need for a very careful evaluation of desalinization facilities that are hooked up with these systems.

So thank you very much.

CHAIRPERSON GARAMENDI: Any questions of the witness?

Thank you very much for the information. Thank you.

MS. SHEEHAN: Thank you.

CHAIRPERSON GARAMENDI: Is there anyone out there
that would like to speak specifically to 41?

So everyone wants to speak to every one of those.

Okay.

(Laughter.)

CHAIRPERSON GARAMENDI: We can deal with that.

Why don't you go ahead and continue. And then

we'll pick them all up after you've finished your

presentation.

MR. SCOTT: Thank you.

Continuing on. Calendar Item 42.

CHAIRPERSON GARAMENDI: Excuse me. Just one

question on 41. These riprap structures, are they on the

beach or in the lagoon?

MR. SCOTT: Two of the groins extend from the

mouth of the lagoon and protect the opening to the lagoon

so that the tidal influence can exchange water with the --

between the ocean and the lagoon itself.

The power plant extraction, it's cooling water

from a basin in the lagoon. There is an outfall channel

that crosses the beach in front of the lagoon and there

are two rock groins that protect that channel. And they

extend across the sandy beach and into the waters of the

ocean.

EXECUTIVE OFFICER THAYER: But generally they're

perpendicular to the beach rather than along the beach.
MR. SCOTT: Yes, they're perpendicular to the beach.

CHAIRPERSON GARAMENDI: Such structures have historically interrupted the flow of sand along the beaches?

MR. SCOTT: That's correct. And they're -- at this particular power plant, they dredge periodically the entrance into Agua Hedionda Lagoon. And that sand is deposited downstream of the -- on the beach downstream of the.

CHAIRPERSON GARAMENDI: Outflow?

MR. SCOTT: -- return channel, yes. So that it does enhance the beach.

CHAIRPERSON GARAMENDI: Does the lease speak to the issue of the disruption of sand flows?

MR. SCOTT: Mr. Chairman, no, I don't believe it does. Although there is a separate lease for the dredging and the beach enhancement that does speak to the continued deposit of sand downstream of the outlet channel to protect the beach.

CHAIRPERSON GARAMENDI: Is there any requirement ongoing over the next -- over the term of this lease that would require the power company to maintain or to mitigate any loss of sand downflow of the normal flow of the ocean from their riprap?
MR. SCOTT: No, there's nothing specific in our lease that assures that. But I think that -- as I recall, the outlet channel is a very short structure, not nearly as long as the entrance channel to the lagoon. And I'm not positive, but I think that the sand problem does transit between -- from upstream around the structure and then downstream.

CHAIRPERSON GARAMENDI: Now, these --

MR. SCOTT: But it would really take a coastal engineer to tell you what impact that --

CHAIRPERSON GARAMENDI: I'm more than a little curious about this. It's been an ongoing problem across the entire nation coastally. And the interruption of the normal flow of sand by such structures is well known and well documented.

I'm going to ask the power company to address this before we complete this item.

Please continue on.

MR. SCOTT: Thank you.

Calendar Item 42.

This item asks the Commission to authorize a lease between the Commission and the El Segundo Power I and El Segundo Power II, both limited liability companies, covering the continued operation and maintenance of two sets of submerged pipelines located in Santa Monica Bay in
the City of El Segundo, Los Angeles County, that provide cooling water to lessees' upland electric generating facilities.

Co-located at the power plant is a small desalinization test facility. A small amount of brine from that test facility is mixed with the discharge waters from the once-through cooling system.

At this time, no desalinization plant is proposed for this location. However, if a plant were to be proposed, the terms of the lease will not allow any other use of the leased area or existing improvements located on the leased area without the prior approval of the Commission.

This lease replaces a lease that expired in 2002 and is for a term of 30 years, beginning December the 14th, 2006. A 30-year term for this lease is proposed because some of the older upland electric generating facilities are in the process of being replaced by more modern, efficient, and environmentally sound combined-cycle turbine generating equipment.

It has been the practice of the staff to negotiate and recommend lease terms and conditions that reflect the economic life of lessee's constructed improvements located on or associated with the Commission's lease, including the length of the lease and
periodic adjustments of the rent.

The rebuilt upland generating plant has a designed life that exceeds the proposed 30-year term of the proposed lease. If the upland electric generating plant is not developed as proposed, the lease reserves the right for the Commission to reduce the term of the lease to 20 years, making it consistent with other leases for comparable older generating plants.

As in the lease covered in Calendar Item 41, this lease also contains specific language covering automatic rent adjustment, provisions for changing to the cooling system, and requires the Commission's lessee to comply with laws and regulations issued pursuant to Section 316(b) of the Clean Water Act along with all other regulatory requirements.

The lease requires an annual report identifying the regulatory requirements imposed on the lessee and the status of compliance, and further provides for the Commission to review the lessee's regulatory compliance at a public hearing in five years.

In addition, this lease requires compliance with conditions imposed by the California Energy Commission during the CEC's certification and then licensing program for the upland plant redevelopment. These include several conditions dealing with the cooling water system, such as...
reducing the total amount of water allowed for intake from the current amount of 220 billion gallons per year to 127 billion gallons per year, requiring funds to be committed to the Santa Monica Bay Restoration Commission to study current ecological conditions in Santa Monica Bay of an initial $1 million up to a total of $5 million, and requiring our lessee to test a physical aquatic barrier at the intake pipeline intended to reduce the intake of aquatic organisms with the cooling water.

The lessee must also meet all requirements of the Clean Water Act, including Section 316(b), administered by the Regional Water Quality Control Board through its NPDES permit.

The lessee's application for renewal of their NPDES permit is currently being processed by the regional board, while their previous permit from 2002 remains in effect.

The prior lease expired in October of 2002 and has been in holdover pending processing of the CEC's license and negotiation of a replacement lease. The lessee has agreed to pay back rent for the period from expiration of the prior lease through December the 13th, 2006, in the amount of $806,495. And staff recommends that this amount be accepted as the total rent owed for the period of holdover between the end of the old lease

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and start of the new proposed lease.

Staff recommends that the Commission authorize execution of this lease.

Calendar item 43.

This item asks the Commission to authorize a 20-year lease with AES Huntington Beach, a limited liability company, for the continued operation and maintenance of two submerged pipelines located in the Pacific Ocean offshore of Huntington Beach State Park in Orange County.

These pipelines are for the intake and return of seawater used in a once-through cooling system for the existing upland electric generating facilities.

As in the above two leases, this lease also provides for automatic rent adjustment, allows the lease to be changed to an alternative cooling system, and requires the lessee to comply with laws and regulations issued pursuant to Section 316(b) of the Clean Water Act as well as with other -- all other regulatory agency requirements.

The lease requires an annual report identifying the regulatory requirements imposed on the lessee and the status of compliance, and also provides for the Commission to review the lessee's regulatory compliance at a public hearing in five years.
The Santa Ana Regional Water Quality Control Board approved the issuance of a new NPDES permit to AES on August the 25th of 2006. That permit contains reopening provisions that allow the permit to be changed based on future changes to 316(b) regulations.

Similar to Calendar Item 42, the California Energy Commission certification and licensing of the AES facility requires a number of conditions of certification including some that involve the cooling system. The CEC required mitigation for impacts to marine life in the form of a contribution of $5.5 million to the Huntington Beach wetland conservation -- excuse me -- wetlands conservancy for the purchase, restoration, and maintenance of 66.8 acres of tidal wetlands. As is the case with Calendar Item 41, a full scale desalinization plant is proposed for location adjacent to the existing power plant, and proposes to use the existing seawater intake and outfall pipelines. No application has been received for this desalinization project.

Further, the terms of the proposed lease will not allow other use of the leased area for the existing improvements located on the leased area without the prior approval of the Commission. Based on this, staff recommends the Commission authorize execution of this lease.
This concludes my presentation. And I'd be happy to wait for any questions the Commissioners might have.

And there are representatives of both -- all three of the power facilities in the audience, and they are also available to respond to any questions you might have.

Thank you.

CHAIRPERSON GARAMENDI: Thank you very much.

Just stand -- sit by.

(Laughter.)

CHAIRPERSON GARAMENDI: And we'll undoubtedly come back to you for some clarification along the way.

We now have several witnesses that would like to speak.

Lorell Long.

I'm going to call three names. And if you'd kind of line up.

You want to translate it?

COMMISSIONER CHIANG: Looks like Karl Lytz.

MR. LYTZ: That's correct.

CHAIRPERSON GARAMENDI: Very good.

MR. LYTZ: I would like to respond to questions only, and would follow Mr. Hemig, representative from NRG, and in the event that follow-up is necessary.

CHAIRPERSON GARAMENDI: All right. How about
Tracy --

MS. EGOSCUE: -- Egoscue.

CHAIRPERSON GARAMENDI: Thank you, Tracy.

And Jackson Gualco.

Those will be the next three.

Please begin. I think I mispronounced your --

MS. LONG: Lorell.

Lorell.

MS. LONG: I'll be brief. I came prepared -- I'm with the California Earth Corp.

I came prepared to ask for a 30-day extension on this particular item. But after listening to the presentation, it seems that there's enough flexibility in this lease that -- in these leases that the issues that we have, because of the hearing -- or because of the federal case, has -- there's enough flexibility here to where I think we -- that the Commission can look at this.

I would like you to be mindful of the desalinization plans, because I think here is where you might have some trouble. I don't think you would like to see companies expending capital on a project that requires once-through cooling. But I still think that there's enough flexibility here to where that you can -- when that appears to be the case, when items come up like that, that you can look at it and have a hearing or alert people to
CHAIRPERSON GARAMENDI: Thank you very much.

MS. LONG: -- that's it.

Thank you.

CHAIRPERSON GARAMENDI: Tracy.

MS. EGOSCUE: Good morning. My name is Tracy Egoscue, and I'm the Executive Director of the Santa Monica Baykeeper. I welcome this opportunity and thank you for this chance to speak on El Segundo Generating Station, Item No. 42.

I'd like to start by a little digress. I wasn't prepared. But I'm reacting to the map that was supplied by the staff with all of the once-through cooling plants. And I just have to take the opportunity to state that the impact in our area, in particular Southern California, is significant. And the little inset of the Los Angeles area is a perfect illustration of what we've been fighting against.

As referenced in paragraph 7 in your staff report, the California Energy Commission did indeed recently recertify this plant. Santa Monica Baykeeper along with Heal The Bay were named actually environmental intervenors for all parties. And we joined with the CEC staff in recommending the abandonment of these intake
cooling systems.

The commission found that the 316 regulations were significantly -- were a significant burden on these intake systems. And no offense meant, but it's sort of like the dog chasing it's tail, to read in the staff report what the Energy Commission did in relying on the 316(b) regulation, in a manner that if this power plant came in front of the CEC today, it most likely would not be recertified using these intake systems.

For that reason and because we were also named plaintiff in the Riverkeeper versus the United States Environmental Protection Agency lawsuit, we are here to support the five-year mandatory reopener, so that we can ensure that if the state regulation comes down and it renders these intakes obsolete, that this lease will be flexible enough that we'll be able to adapt to the changing regulatory environment and that this action today by the Commission will not be arbitrary and capricious.

Thanks.

CHAIRPERSON GARAMENDI: Thank you very much.

Mr. Gualco.

MR. GUALCO: Mr. Chairman, Commissioners, good morning. Jack Gualco on behalf of the California Council for Environmental and Economic Balance for Items 41 through 43, and for AES on Item 43 and respond to specific
questions on that lease proposal.

But let me just succinctly state that we think
that the proposals in front of you strike a reasonable
balance. CCEEB intends to be very much involved in the
316(b) development here in California, as the staff well
knows. And we look forward to working with the
Commissioners and the staff when both the reopener
provision and other developments technologically is made
and come about as a result of 316(b).

Thank you, Mr. Chairman.

CHAIRPERSON GARAMENDI: Thank you.

I'll call up three more people. Sarah --

ACTING COMMISSIONER SHEEHAN -- Abramson.

CHAIRPERSON GARAMENDI: Come on up, Sarah.

(Laughter.)

CHAIRPERSON GARAMENDI: Apparently people know
who you are and how to pronounce your last name.

Tim Hemig and Steve -- I guess it's Kaufmann.

EXECUTIVE OFFICER THAYER: Mr. Kaufmann wants to
speak during the public comment period at the end of the
meeting and not on this item.

CHAIRPERSON GARAMENDI: Karl Lytz.

All right. Sarah.

MS. ABRAMSON: Good morning. My name is Sarah
Abramson. I'm a staff scientist with Heal the Bay. I
thank you for welcoming us to give public comment on the items before you here today, both 42 and 43.

Would you like me to address both of those items in this comment now? I had submitted two comment cards.

CHAIRPERSON GARAMENDI: All at once. You're here. Take all three if you'd like.

MS. ABRAMSON: Thank you so much.

First of all, I'd like to just support the comments made by my colleagues Tracy Egoscue and Linda Sheehan. We wholeheartedly support the comments that they gave today.

I'd also like to add just a couple of things. First of all, I'd like to commend the State Lands Commission for its leadership in addressing the impacts of once-through cooling, specifically in its April 2006 resolution where the Commission found that once-through cooling causes significant harm to coastal and marine sources and found that alternative cooling technologies and sources of cooling water are readily available.

Specifically, we support the inclusion of a five-year minimum reopener in the lease, which was addressed by Mr. Thayer today, along with the other changes that he addressed.

We also support the change in lease fees, as they better reflect the damages done to the natural resources.
and the environment.

The coastal power plants using once-through cooling have significant damage to the marine and coastal resources in southern California, and especially in the Santa Monica Bay. The three plants that we have in the bay are estimated to consume 13 percent of the near-shore water every six weeks. So these are significant impacts.

And the provisions outlined by Mr. Thayer are reasonable and will ensure that compliance with the likely change in 316(b) regulation and ensuing state policy are complied with and required by the State Lands Commission as part of its lease.

In respect to the Huntington Beach generating station, the AES generating station, I would like to raise to your attention that other agencies are taking a similar precautionary approach when granting permits for these plants, given the changing regulatory arena of 316(b) and the complementary State policy.

In August 2006 the Santa Ana Regional Board renewed the NPDES permit for AES Huntington Beach. And at the time of the renewal the Second Circuit Court decision had not yet been issued, so they include reopener language for that as well as the ensuing state policy.

CHAIRPERSON GARAMENDI: Excuse me.

MS. ABRAMSON: Um-hmm.
CHAIRPERSON GARAMENDI: A question has come. And it's not to you. It's to staff here.

We've had three witness up here that say there's a mandatory reopener of five years. Is it indeed a mandatory reopener that we're discussing here?

EXECUTIVE OFFICER THAYER: It's not a mandatory reopener in the sense that five years the Commission will go in and look at this again. Instead, the Commission with these provisions can reopen the lease at any time where there's a change to the regulatory environment, you know, changes from the federal side or the state side. The five-year reference though is to a public hearing, which will require the Commission to conduct a public hearing on compliance and make sure that these issues are being addressed. And at that time, as with any other time, the Commission would have the opportunity to open the lease and impose additional conditions.

I presume that's consistent with your understanding of this.

MS. ABRAMSON: Our understanding is there would be a public hearing at five years so that the public was able to review the lease itself and its compliance with 316(b) and state policy.

CHAIRPERSON GARAMENDI: And the Commission reserves the right to reopen the lease at any time there
is a significant -- whatever that means -- or change in the environmental regulations?

EXECUTIVE OFFICER THAYER: That's correct.

CHAIRPERSON GARAMENDI: I think we better define -- we take a look and have our Attorney General representative take a clear look at this as to whether what is -- if the word is "significant," which sounds to me like an opportunity for a great debate.

EXECUTIVE OFFICER THAYER: The lease is outlined -- you know, what matters most is the language in the lease obviously, not the staff report. But as outlined in the staff report, the word "significant" isn't there. It's just whenever there's a change that would require Commission approval, that we have that opportunity to do that. We don't have to sit back say we can't make any changes to the lease for the 30 years, but one of them runs.

So, for example, if some mitigation is imposed on once-through cooling that involves a different kind of screening or different kind of physical change to the pipes, we'd have the ability to go in there and make changes. But I think the Commission might very well want to look at other ancillary impacts from those kinds of changes as well. And I'm sure most of those speaking today would want us to not implement.
ACTING COMMISSIONER SHEEHAN: Yeah, because I guess -- when I am seeing this in the language that we reserve the right to modify the lease to require the applicant to implement alternative environmentally superior technology such as alternative cooling systems, should such systems become feasible and be required by another permitting federal or state agency? And that sort of takes us back to the, okay, if the Water Board completes their 316(b), or the Energy Commission, then requires something else for these plants, then that gives us ability to have our lease reflect what is already going to be required by those permitting agencies.

EXECUTIVE OFFICER THAYER: Yes.

ACTING COMMISSIONER SHEEHAN: And the five years really is to, okay, what has happened since the last five years? Have we done anything to put in that new technology? You know, what has the Water Board required, how have we, you know, met those requirements?

EXECUTIVE OFFICER THAYER: Yes.

ACTING COMMISSIONER SHEEHAN: That's what I'm seeing this, you know, versus -- I mean the reopener is there linked to a requirement by the other regulatory agencies, because then --

EXECUTIVE OFFICER THAYER: That's correct.

ACTING COMMISSIONER SHEEHAN: -- we had a lot of
discussion about this last year in terms of those really are the ones who put the specific technical requirements on. And ours is, "Tell us what you've done to make sure you're meeting those."

EXECUTIVE OFFICER THAYER: And I think, you know, our existing boilerplate for all leases require that the applicant's being compliant with other law, other leases, other permits, that kind of thing.

This though provides the specificity and I think a clear direction from the Commission to the applicant that it's going to be looking pretty closely at this particular issue.

ACTING COMMISSIONER SHEEHAN: And I think from at least the discussion this member has had, you know, with the various players in this, they recognize this is coming. They're looking at these. They know the technology is coming. They know the technology is, you know, close to development and economic feasibility so that they can meet these.

You know, one of the issues in terms of the length of the lease is making sure -- one, making sure that we can still continue, you know, to keep the power to the grid in the state. We're still in a very tenuous situation. But also keep the applicants aware that they need to continue to take the steps that they are to make.
sure they're meeting with the new technology and working
with the Energy Commission as well as the water boards in
meeting the new requirements, which is why the 20- or
30-year lease, you know, so that financially we can see
these things going.

So it is a balance of all that. But I think this
language reflects well what the intent is. And I think
the applicants -- and I will let them -- I don't want to
speak for them. I'd let them speak for themselves. But I
think they fully understand what those requirements are.

EXECUTIVE OFFICER THAYER: I think so.

And just I wanted to say parenthetically that
that particular paragraph that you read has the
feasibility language in there that we're going to take
out. So -- and you've read --

ACTING COMMISSIONER SHEEHAN: Well, and -- but
whatever is required from the permitting agency is what
needs to be in there, right?

EXECUTIVE OFFICER THAYER: Correct.

ACTING COMMISSIONER SHEEHAN: We can't second
guess in terms of the technology for the 316(b). That's
what the Water Board is there for.

EXECUTIVE OFFICER THAYER: Right.

ACTING COMMISSIONER SHEEHAN: Okay. Thanks.

MS. ABRAMSON: All right. Just to finish up --
CHAIRPERSON GARAMENDI: I think we interrupted your flow there.

MS. ABRAMSON: That's all right.

Basically what I'd like to say is that we support both the language that you were discussing here and the mandatory five-year reopener because it allows for a public review. It's a public hearing. We come and check and see what the State Lands Commission's been doing and also see how it acts in relation to what's going on with 316(b).

CHAIRPERSON GARAMENDI: I want to make this clear. As I understand it, there's not a mandatory five-year reopener. There's a mandatory hearing in five years to review the circumstances surrounding the environmental requirements from various agencies as well as the power companies at hearing those requirements, and perhaps any other thing that the Commissioner may want to take up at that time.

EXECUTIVE OFFICER THAYER: I think that --

CHAIRPERSON GARAMENDI: It's not a reopener at five years. There may be, depending upon the environmental -- upon the requirements of the various reviewing agencies, there may be a reopener that would be required -- a reopener would occur as the basics of -- as a result of the requirements put forth by those other
agencies. In other words, the lease might have to be modified because now we don't have -- the outfall is 2700 feet rather than 1600 feet.

EXECUTIVE OFFICER THAYER: I could be wrong -- and Sarah will stop me if I am -- but I think the word "reopener" has a variety of different meanings. And from the perspective of some who are outside the Commission, the fact that we would hold a public hearing and open up the issue that people could then bring information to the Commission about compliance with these other agencies is what a lot of people are thinking about when they talk about a reopening. It gives -- otherwise there's no hearing on this project for another 30 years. And --

CHAIRPERSON GARAMENDI: As long as there's clarity here, is the lease may or may not be reopened.

EXECUTIVE OFFICER THAYER: Correct.

CHAIRPERSON GARAMENDI: There is a review or reopening of the issue.

MS. ABRAMSON: Right. I guess I'd like to say that we support the five-year hearing, the discussion of the issue, and at that stage the possibility of reopening the lease in light of compliance with other things. It may or may not happen, but it's reviewed properly.

CHAIRPERSON GARAMENDI: Yeah, there may be a reopening of the lease at any time based upon the
requirements of the other agencies.

MS. ABRAMSON: Correct. I apologize for the confusion.

I think that's the gist of my comments today.

Thank you very much.

CHAIRPERSON GARAMENDI: Appreciate you being there so we could discussion this.

Karl.

MR. HEMIG: Good morning, Mr. Chairman and Commissioners. My name is Tim Hemig with the applicant for Agenda Items 41 and 42. And Karl would only speak, you know, if necessary, on particular comments in his expertise.

But I would like to address some of the points brought up earlier. And I work for NRG energy and we're the owner and operator of both the El Segundo Generating Station and the Encina Power Station. Both of these power stations are located in critical locations for grid reliability. The El Segundo station is just south of the LAX Airport. And the Encina Power Station is in the City of Carlsbad, northern San Diego County.

And combined these power plants produce over 1600 megawatts of power-generating capacity. And with the kind of current needs of -- on a per-person basis, that's about a million people worth of power. And we seem to be using
more and more energy on a per-person basis. So I mean
what used to be, one megawatt was about a thousand people.

So we are here to request your approval of both
of these leases. Not only are they once-through cooling
structures, which are critical components of these
power-generating facilities, but they're the
power-generating facilities themselves that we're
approving since they rely on these cooling systems.

And just to kind of bring you in the big picture,
actually 44 percent of the in-state generation relies on
once-through cooling as its technology for cooling. So
this is a big form of cooling and a very efficient form of
cooling throughout the state.

And really we don't object to the three changes
that the staff has brought up. And we know that 316(b) is
an important issue. I think there's over a dozen agencies
that are involved in this in the state, and we're looking
forward to working with those to achieve compliance. And
so the three changes are acceptable to us.

And certainly within the next five years I think
there will probably be a lot of other hearings within the
jurisdiction of other agencies. So there will be lots of
opportunity for public comment.

And just so everybody knows, all of the
information we submit for 316(b) compliance is -- are
public documents. And if you go to the Los Angeles Regional Water Quality Control Board and the San Diego Regional Water Board, they have this information on their websites; the State Water Board has information on their website. So it's very accessible.

Just to get, you know, kind of clear on a couple of questions that Mr. Chairman brought up about the Cabrillo power jetties. We do perform dredging. In fact, we're doing it right now. And the dredging is actually something we have to do for operations. If we don't do this dredging -- I don't know. Is this timing --

CHAIRPERSON GARAMENDI: Please continue on.

MR. HEMIG: The dredging we do is -- if we didn't do it, we'd have to actually -- the lagoon mouth would close. And not only would the power plant not be able to operate, but the health of the lagoon would be significantly compromised.

So I think you should be assured that this is happening very frequently just for the pure nature of continuing to operate and for maintaining the health and tidal prism of the lagoon. But on a requirements side, we have an agreement with the City of Carlsbad to do the dredging and to place sand in a particular spot so that there isn't an impact to beaches. In fact, we blend the amount of sand between north and south of the jetty so

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that even though sand transport is south of the jetty,
particularly we do put some north so that the beaches
remain, you know, with good clean sand in both areas.

    And that particular dredging does more than just
support the power plant. It also supports other benefits
within the lagoon like aquaculture. They grow mussels and
oysters there. And there's also a hub Sea World White Sea
Bass Fish Hatchery inside the lagoon. And by dredging and
keeping that lagoon healthy supports more than just the
power plant.

    And then on the El Segundo lease, as was talked
about by several people, that the California Energy
Commission did approve the repowering of that site. That
is a fully approved license from the Energy Commission.
It's valid for five years. And we are about a year and a
half into that. And so it's -- there isn't any debate on
that particular project. It is fully approved by the CEC
and the license is effective.

    So we ask that you adopt and approve both of
these leases for our two power plants. And I'm available
for any questions.

    CHAIRPERSON GARAMENDI: I do have a question.
And thank you for responding to the issue of the sand
replenishment.

    I think the sand belongs to the state?
EXECUTIVE OFFICER THAYER: Any sand below the mean high-tide line belongs to the state.

CHAIRPERSON GARAMENDI: The agreement that you have with the City of Carlsbad is apparently the only mechanism that is formally in place for the replenishment of sand that might be lost as a result of the jetties or the riprap; is that correct?

MR. HEMIG: You know, actually I do not know the answer if there's anything more than that. I do know that we are permitted by the Army Corps, the Coastal Commission, the Regional Water Board, and the State Lands Commission, and Park and Recreation Department to do this dredging. I can't tell you if there's a frequency or the obligation in writing. I do know the City of Carlsbad agreement for the proper placement of the sand is in effect.

CHAIRPERSON GARAMENDI: I'm thinking that this lease should address the disruption of the flow of state property both north -- well, it would be basically south -- I believe the currents are moving southward in that area. And it's just a fact that all of these types of jetties or riprap do disrupt. And the power company, since it's your disruption, you should be responsible for dealing with that. And I would like to see an amendment to this that there is a specific responsibility in the
lease for the maintenance of the beaches to the south of both of the jetties, assuming you're responsible for both of them.

EXECUTIVE OFFICER THAYER: We can add that.

CHAIRPERSON GARAMENDI: Perhaps the Commission ought to discuss this.

Any comments from my colleagues, any comments from the staff on this?

EXECUTIVE OFFICER THAYER: I think we would want to check and see what other agencies are doing to make sure we're not getting cross purposes. Although, I think that the agencies that are involved share the same interests as the Chair and the rest of the Commission on this. I'm just struggling a little bit to make sure we put the right standard in there. Because, as I'm sure the Commission is aware, there are a variety of causes of the loss of sand in southern California. Dams on the rivers that prevent the flow -- the natural flow of sand from the upstream to replace the sand that eventually moves out. So we would want to have any lease condition establish a responsibility for the impact of the sand on the beaches that's caused by the groin, to not assign a responsibility to them for anything occurring because of some of these -- because of some of these other factors. So I think that would tie it up in a way that would put...
them properly in -- would properly make them responsible for the impacts that they cause.

And so I could imagine crafting some language. We might run it past the Commissioners' offices, past the applicant. And if there's no disagreement, then we can just put it in. If there's come confusion or problem, we can just bring it back to the next Commission meeting if there's some issue.

ACTING COMMISSIONER SHEEHAN: Yeah, I think that's -- I think that's a good suggestion. What I would be fearful of is us wandering inadvertently into an area we haven't researched enough; and just make sure that we're not either making requirements or making promises that we haven't done our homework and our due diligence.

So I think your suggestion is probably a good one in terms of what the other agencies require and what is the city -- it all may be, you know, much ado about nothing, but just making sure that it's drafted correctly and whoever the proper agencies that would have to be consulted before we add the language.

EXECUTIVE OFFICER THAYER: Certainly. So then we can take that approach.

And the other thing of course is that we know the Chair's interested in this subject and it's something we'd be more prepared on the next iteration.
CHAIRPERSON GARAMENDI: Yeah, the Chair has spent
too many years on this subject in Washington DC just to
let this one go by.

COMMISSIONER CHIANG: So, Paul, do you recommend
a process here?

EXECUTIVE OFFICER THAYER: Well, what I would
suggest, if the applicant is agreeable, that -- after all
this is the contract, and the Commission would want to
approve it in this more general sense, that we would craft
at least conditions which would require the applicant to
maintain -- or prevent impacts or maintain the beach as it
otherwise would be absent their groins, of somewhat to the
groins, and make that a condition of the lease, and that
we work with the applicant to develop that language and
send it around to the Commissioners' offices as well. As
I say, if there's any disagreement amongst all of those
individuals, we'll just bring it back to the Commission
for a more formal review.

I mean normally we like to have the precise
language worked out before we come to the Commission. But
on something like this that's as focused as we're talking
about, you know, this might be a way to expedite the
process, if the Commission's comfortable with that.
Otherwise, we could just put it over and come up with some
language and bring it back at the next meeting.
COMMISSIONER CHIANG: I'd like to have a full discussion on it. You know, I don't know if everybody's had the opportunity to comment on the proposal that's been raised.

EXECUTIVE OFFICER THAYER: Sure. Then we can bring it back at the next Commission meeting, which would likely be in April.

CHAIRPERSON GARAMENDI: That's fine.

COMMISSIONER CHIANG: But I think it's a great idea.

CHAIRPERSON GARAMENDI: I'm comfortable with the general intent. But I'm always comfortable with what my colleague would like to have.

EXECUTIVE OFFICER THAYER: I guess the one thing I would ask the applicant is whether that delay creates any issues.

MR. HEMIG: No, actually at this point I think I'd prefer to go back and make sure -- maybe I can provide some assurance on it and maybe I -- you know, as mentioned, maybe it's already covered and rather than try and figure it out right now -- then a delay till April is not a problem for that particular lease.

EXECUTIVE OFFICER THAYER: Okay.

CHAIRPERSON GARAMENDI: Okay. With regard to -- yes.

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MR. SCOTT: Mr. Chairman, just as a side comment, the City of Carlsbad has had what they refer to as an opportunistic beach sand replenishment program for any number of years, where they have identified locations along the -- particularly along the north coast in San Diego for beach enhancement and for sites for taking sand to be used in those locations. So that may be a place where we can look to see what's being proposed for that area already. And they did some significant coastal engineering to make the determination as to where the specific site should be for beach enhancement that would allow the literal drift to continue to maintain the widths of beaches in north coast San Diego, and also sites that may be even inland that were available for sand to be used in those locations.

CHAIRPERSON GARAMENDI: That's all well and good. My issue here is -- I want to be very clear about it -- that we're providing a lease for a structure that obstructs the normal flow of sand. And I believe that those who have the lease and build the obstruction must be responsible and must mitigate any damages that occurs as a result of that obstruction. And that's where I'm coming from on this. This will be here for the next four years whenever these leases come up. So be aware.

And if there's other agencies that are -- that
have adequately dealt with this, I'm quite happy to have
them deal with it rather than this agency. But if they're
not, then I expect that, at least insofar as I'm
concerned, I will push this issue so that there is a
responsible party for damages that occur as a result of
the leases and the structures that are built consistent
with that lease.

MR. HEMIG: We have a suggestion from my
colleague Karl for -- go ahead and adopting the lease as
is and then have a reopener clause for bringing back this
particular issue.

CHAIRPERSON GARAMENDI: No.

EXECUTIVE OFFICER THAYER: I think one of the
Commissioner's had indicated they wanted to get this
resolved before we conclude --

MR. HEMIG: Sure. That's acceptable as well.

CHAIRPERSON GARAMENDI: Thank you.

Further discussion on these leases?

Anne.

ACTING COMMISSIONER SHEEHAN: So we would see
this in April?

EXECUTIVE OFFICER THAYER: That would be our
goal.

Now, obviously if we run into some big technical
issue that takes longer, we'll let you know and --
ACTING COMMISSIONER SHEEHAN: Right, and to find out in terms of this. Because it -- you know, having been through this, you know, wanting to keep the discussion going on this. I think it's an important issue. I think a lot of it is just what is happening, what are the requirements, you know, what other agencies are involved.

So to the extent that, you know, we can bring back language that's acceptable to all the parties in April, I think that would be good instead of continuing, you know, on this. And then coming back and having a full discussion of this issue with the members at that time that you come back with specific recommendations on language, I think would be very helpful.

EXECUTIVE OFFICER THAYER: Great. We'll do that.

CHAIRPERSON GARAMENDI: Thank you very much.

MR. HEMIG: Thank you.

CHAIRPERSON GARAMENDI: I believe that completes the comments -- the public comments on Items 41, 42, and 43?

There being no other people wishing to speak to that, we now have -- I believe Item 41 we're going to put over until the next hearing. Items 42 and 43 are now before us.

Any questions from the Commissioners?

ACTING COMMISSIONER SHEEHAN: It was Item 42 and
CHAIRPERSON GARAMENDI: Yes, Item 41 will be put over to the next meeting. Items 42 and 43 do not have -- as I understand it, do not have this particular issue.

EXECUTIVE OFFICER THAYER: That's correct.

CHAIRPERSON GARAMENDI: Okay. Item --

COMMISSIONER CHIANG: I'll move approval.

CHAIRPERSON GARAMENDI: Mr. Chiang.

COMMISSIONER CHIANG: I move to approve.

CHAIRPERSON GARAMENDI: Move to approve Item 42 and 43.

Do we have a second?

ACTING COMMISSIONER SHEEHAN: I'll second.

CHAIRPERSON GARAMENDI: All Commissioners in support?

(Ayes.)

CHAIRPERSON GARAMENDI: Very good.

Those two are approved -- those two leases are approved.

All right. That leaves us with Item 44.

EXECUTIVE OFFICER THAYER: Thank you, Mr. Chair.

Item 44 is a semiannual report which the Commission is required to make to the Legislature concerning the Ballast Water Program. And since this is a relatively new program to the Commission -- it's been
around five or six years -- and some of the Commissioners are new, we've asked staff to make a presentation on the Ballast Water Program, much of which is -- much of that background information is contained in this report.

And making this presentation will be Nicole Dobroski.

MS. DOBROSKI: Thank you, Mr. Thayer.

(Thereupon an overhead presentation was Presented as follows.)

MS. DOBROSKI: Good morning, Mr. Chairman and Commissioners. Nicole Dobroski on the 2007 biannual report on the California Marine Invasive Species Program.

CHAIRPERSON GARAMENDI: Would you like to move to this side?

MS. DOBROSKI: I think I'll be fine. I think I went forward too far.

CHAIRPERSON GARAMENDI: If you're more comfortable, we've got plenty of room over here. That little red light you can see from over there as well.

ACTING COMMISSIONER SHEEHAN: That way you can see --

CHAIRPERSON GARAMENDI: There are three options available to you.

(Laughter.)

MS. DOBROSKI: Thank you.
As a bit of background. Non-indigenous species, or NIS, are organisms transported by humans to a region where they do not occur historically.

NIS may have serious negative economic, environmental, and/or human health impacts in the receiving environment. For example, zebra mussels, seen in the upper photo, have cost billions of dollars in damage to the water piping and intake systems in the Great Lakes. And just last month they were -- just last month the closely related quadra mussel was discovered in Lake Havasu on the California border.

CHAIRPERSON GARAMENDI: Excuse me. You can slow down a little bit. We're not going to run the clock on you here.

(Laughter.)

MS. DOBROSKI: The Chinese mitten crab, seen in the lower photo, is not only a host to a parasitic lung fluke that can infect humans, but it also burrows holes in levees and thus has the potential for undermining levee integrity.

These and other species have arrived in U.S. waters by way of a variety of mechanisms for vectors, such as recreational boating, intentional release, and aquaculture. However, the ballast water of ships is one of the major vectors of species released in aquatic and
marine habitats.

Ballast water is used by vessels to maintain the trim and stability at sea. It is estimated that more than 7,000 species are transported around the world each day in the ballast water of ships.

--o0o--

MS. DOBROSKI: The California State Legislature acknowledged the significant threat of species introduction from ballast water release and, thus, passed legislation in 1999, which was later revised and reauthorized as the Marine Invasive Species Act of 2003. The act established the Marine Invasive Species Program, which includes four major components:

Ballast water management, tracking, compliance, and enforcement;

Sound policy development in consultation with experts and stakeholders;

Applied research that advances the strategies for prevention of species introduction; and

Outreach and education to bridge the knowledge gaps between scientists, legislators, and stakeholders.

--o0o--

MS. DOBROSKI: As a part of the ballast water management component of the program, all vessels are required to submit a ballast water reporting form upon
departure from each port of call in California. These forms provide storage information as well as details on ballast water management and compliance.

Based on these reporting forms, we have compiled the following trends and statistics:

As seen in the top left figure, vessel calls to California ports have increased steadily since the beginning of the program.

Looking at the lower right, the Los Angeles/Long Beach Port complex seen here receives the vast majority of vessel traffic to California, followed next by Oakland.

Almost 50 percent of the vessels arriving to California ports are container ships. And that would be the kind of pinky red color there. Tank vessels account for roughly 19 percent of the calls to California ports; and bulk vessels, approximately 9 percent.

--o0o--

MS. DOBROSKI: Over the last six years, the percent of vessels discharging ballast in California waters has continued to decrease. During that time period, 78 percent of vessels on average retained all ballast water on board.

Of the roughly 22 percent of vessels that did discharge in California waters, almost three-quarters of that volume came from bulk and tank vessels. So bulk and
tank vessels make up only 28 percent of vessel calls to
California ports, but they are responsible for 75 percent
of the volume of the discharged ballast water in the
state.

--o0o--

MS. DOBROSKI: Since 2004, over 250 million
metric tons of ballast water has been carried into
California in ships. Ninety-nine percent of that water
was managed in compliance with the law, either through
retention of all ballast on board or through proper
exchange, which includes a full flushing of ballast tanks
with offshore waters prior to discharge.

Looking specifically at discharge ballast
water -- the left side over here -- of the noncompliant
water -- I'm sorry. Excuse me. Looking specifically at
discharge ballast water, between 83 and 91 percent of
discharge water has met the requirements of the law.

Of the noncompliant water -- looking here on the
right figure -- the majority was exchanged prior to
discharge but was exchanged in the wrong location. So,
for example, it was exchanged at 100 nautical miles from
shore as opposed to the required 200 nautical miles.

In 2006, we see an increase in the discharge of
non-exchanged ballast water. This could be attributed to
the implementation in March of 2006 of new regulations
governing the management of ballast water in coastal vessels. Keep in mind, however, that this increase in vessels discharging without exchange is reflective of only eight additional vessels over the second half of 2005 statistics. And this is out of approximately 6,000 vessels that visited the state in the first six months of 2006.

CHAIRPERSON GARAMENDI: The same eight over and over again, the same ships are not exchanging properly, is that it?

MS. DOBROSKI: Oh, it's not necessarily the same eight vessels. But in an eight -- the number of additional vessels over the 2005 statistics. But keeping in mind that that's out of 6,000 vessels that visited in the first half of 2006.

Bulk and tank vessels account for as much as 85 percent of the volume of noncompliant water that is discharged in the state in recent years. And the geographic source of this noncompliant ballast water varies. But over one-third can be attributed to Mexican waters, and a full one-quarter from within the U.S. West Coast Region.
Program has completed many reports and projects over the last two and a half years. In March of 2006, new regulations governing the management of ballast water in coastal vessels went into effect. In 2006, the program also produced a report recommending standards for ballast water discharge. These recommendations were incorporated into the Coastal Ecosystem Protection Act, Senate Bill 497, which was signed by the Governor in the fall of 2006.

In conjunction with recommending performance standards, we have been investigating and funding projects, working towards the development and evaluation of new ballast water treatment technologies that will be required to meet the new standards.

We have also been investigating the role of the non-ballast vessel vectors, such as hull fouling, in their role in species introductions. The program completed a report on these non-ballast vectors in early 2006, and legislation is currently being considered.

Throughout we have encouraged and funded when possible research that will help us improve our management of non-indigenous species, including the testing and evaluation of ballast water treatment technologies, methods and techniques capable of verifying ballast water exchange, and an assessment of the patterns in risk of species introductions due to vessel fouling.
MS. DOBROSKI: Over the next two years, the Marine Invasive Species Program will address many questions and challenges in order to fulfill new legislative directives and to continue to move toward the elimination of the discharge of non-indigenous species in the state waters.

Under California's Coastal Ecosystems Protection Act of 2006, the program is required to develop and adopt regulations to implement the ballast water discharge performance standards as detailed in our staff report. Additionally, based on our expanded and extended responsibilities, we will require regulations to reset the program fee.

CHAIRPERSON GARAMENDI: What's the timing for your regulatory activities?

MS. DOBROSKI: By January 1, 2008, for the performance standards. And for the regulations -- I mean for the fee -- sorry -- I know we plan to --

CHAIRPERSON GARAMENDI: But you expect to have them completed by January of 2008?

MS. DOBROSKI: Yes.

CHAIRPERSON GARAMENDI: Have the public hearings been scheduled?

MS. DOBROSKI: Not yet.
EXECUTIVE OFFICER THAYER: And the regulations will implement those standards, which were subject to public hearings, both in the original development by a joint committee involving environmentalists, industry, and state representatives; and then those came to the Commission about a year ago and were subject to a hearing then.

So the legislation is new. But kind of the develop of these standards that eventually will have to be implemented has been going through a public process right along.

But having said that -- and I think I may have mentioned this to you and the other Commissioners -- this is a going to be very difficult, because to a great extent the technology is still being developed that will be necessary to meet these standards. So it's going to take a lot of work and we're going to have to be monitoring regularly how we're doing on that.

CHAIRPERSON GARAMENDI: Those two pieces, there's that piece and then there's the development of the regulations themselves.

EXECUTIVE OFFICER THAYER: Right. And the regulations will implement the standards that the Commission have been working on. And so the substance of those regulations in terms of what needs to be done is

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that the standard that has to be met has been -- has been
discussed. But that's, as I say, the first half of that.
And the second half will be how they're done.

CHAIRPERSON GARAMENDI: To get all that done in
one year is -- you have to hop to it, don't you.

EXECUTIVE OFFICER THAYER: You bet. You're
right.

MS. DOBROSKI: Echoing what Mr. Thayer just said,
one of our biggest challenges over the next couple years
will be the standardization of specific testing procedures
and performance criteria necessary to assess the status of
the ballast water treatment systems.

The program will also be required to conduct the
review of available treatment technologies in order to
determine if appropriate technologies exist to achieve the
standards.

But of course the program will continue our focus
on improving vessel compliance with the requirements of
the Act.

---o0o---

MS. DOBROSKI: In coming years the focus of the
State Lands Marine Invasive Species Program will continue
to be on protection, prevention, outreach and education,
and solution-based actions.

We make the following recommendations to the
Legislature for their action:

Broaden the state program to include the control and prevention of non-indigenous species release due to commercial vessel fouling; and to

Support research promoting technology development related to vessel fouling.

--o0o--

MS. DOBROSKI: And with that, I'll take any questions.

CHAIRPERSON GARAMENDI: Questions?

COMMISSIONER CHIANG: The legislative action that's required, what's the status of where the Commission is and to pursue those?

MS. DOBROSKI: We have it on our calendar for this year. I believe by June or so we wish to send the text to OAL.

COMMISSIONER CHIANG: Okay. Thank you.

CHAIRPERSON GARAMENDI: Other questions from the Commission?

Fine.

Mr. Thayer, if you could deliver to the Commission, what's your timeframe to complete this task that's out there?

EXECUTIVE OFFICER THAYER: Well, there are a variety of different mileposts along the way, and this
submittal to OAL is the first one. But ultimately we
would anticipate bringing these regulations to the
Commission in December. We meet regularly in December,
and that's where we would have it considered.

CHAIRPERSON GARAMENDI: Could we see those
mileposts?

EXECUTIVE OFFICER THAYER: Certainly.

CHAIRPERSON GARAMENDI: If you can develop those
and deliver them to us so that we can see what else is
required of our staff.

Apparently we have comments from the public on
ballast water, Sarah Abramson and Linda Sheehan.

You'd like -- pardon?

It says ballast water.

You don't want to speak on ballast water?

All right. Moving on.

(Laughter.)

ACTING COMMISSIONER SHEEHAN: Do we need to
approve this formally?

EXECUTIVE OFFICER THAYER: Yes, we'd like to
take -- the Commission take action just to approve the
report prior to our submittal to the Legislature.

COMMISSIONER CHIANG: Move approval.

ACTING COMMISSIONER SHEEHAN: Second.

CHAIRPERSON GARAMENDI: Without objection,
EXECUTIVE OFFICER THAYER: Mr. Chair, members of the Commission. Item 45 is a resolution that was proposed by the Controller's office regarding offshore oil development, specifically a prohibition of that.

The state has actually a long history of digging in its heals and trying to slow down offshore oil development even in state waters. Not many people know, but almost 50 years ago the Legislature in the state adopted the first restrictions on offshore oil development in state waters; prohibited new leases off of northern California and some places in central California. And steadily since then the Legislature's added additional areas where an outright prohibition against new leases, until I think it was 1994 the Legislature adopted a total ban of new offshore oil leases except in very limited circumstances.

The Legislature has also addressed the federal side of the equation and has adopted resolutions right through the nineties opposing new leases in federal waters. The state only has jurisdiction out three miles. And the majority of the platforms right now, several dozen of them, are in federal waters.

So the Legislature adopted a number of
The State Lands Commission has also exhibited a lot of leadership on this issue. Following the 1969 Santa Barbara spill, the Commission has not approved leasing any new areas. And prior to the Legislature adopting the statutory prohibition on new leases, the State Lands Commission had adopted administratively that policy, that it wasn't going to approve new leases in state waters.

On the federal side the Commission has also been active. And since 2000 I think we've approved five or six resolutions that deal with various aspects, various proposals that have been rooted in Washington DC to advance new leases. There were proposals for inventories of oil and gas. There were various proposals to actually start new leases. And the Commission has a record of adopting a number of different resolutions opposing that.

And so this resolution is in that tradition. And I think the Controller's office wanted to have an opportunity for this Commission with two new members to indicate that it was going to be consistent in that approach.

The resolution takes the form of identifying the impacts to California from new offshore oil development and notes the importance of California's coastal economy to the overall state economy, the importance of the
coastal resources for recreation, tourism, economic activities like fishing; and voices its support for a newly introduced bill in Congress as Senate Bill 151, which has been introduced jointly by the two senators from California. And so adoption of the resolution would indicate the Commission's support for that bill. And that bill specifically prohibits any new oil and gas leasing in federal waters off California.

The resolution also would command staff to send copies to the congressional delegation of the state's delegation as well as some named administrative officials back in DC.

So staff recommends that the Commission adopt the resolution and send it on once that's occurred.

And that concludes staff's presentation unless there's any questions.

CHAIRPERSON GARAMENDI: Any questions that we have by the Commission?

We have two people that apparently want to speak, not to ballast water but to this particular resolution.

(Laughter.)

CHAIRPERSON GARAMENDI: Linda Sheehan and Sarah Abramson.

You can do it if you would. Come on up.

(Laughter.)

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1 MS. SHEEHAN: Thank you, Chair Garamendi. Linda
2 Sheehan with the California Coastkeeper Alliance. And,
3 for the record, I co-sponsored the original ballast water
4 legislation that set up this program with the State Lands
5 Commission, and they've been doing an excellent job. I
6 highly commend your staff for their work.
7 In brief, we would like to thank the Controller's
8 office for this resolution. We have 12 waterkeepers
9 spanning the coast of California, including at Santa
10 Barbara and Ventura County, particularly impacted by
11 ongoing drilling, and we strongly support the resolution,
12 particularly in light of the recent report by an
13 international team of scientists highlighting the problems
14 with global warming. This is exactly the right path, this
15 type of resolution, and that California needs to be going.
16 And so we support it.
17 Thank you very much.
18 MS. ABRAMSON: Sarah Abramson, staff scientist
19 with Heal The Bay.
20 Again, I would like to reiterate the comments of
21 Linda Sheehan, my colleague, and that I wholeheartedly
22 support this resolution. And thank you for your
23 leadership on this very important issue.
24 Personally, I was a resident of Santa Barbara for
25 quite some time. I went to graduate school there and saw
the rigs off the coast, which is a constant reminder of
the issue of offshore oil drilling. So I just -- I'm
really personally committed to what you're doing here and
teach you very much.

CHAIRPERSON GARAMENDI: The resolution itself?

ACTING COMMISSIONER SHEEHAN: I'll move approve
of the resolution.

COMMISSIONER CHIANG: Second.

CHAIRPERSON GARAMENDI: Have approval and second.
I see no more audience participation.

Move for a vote.

Everyone's in support, 3-0.

Very good.

Do we have any other items before us?

Mr. Thayer.

EXECUTIVE OFFICER THAYER: The one item remaining
then would be to revisit the Tahoe Swiss Village
Association's -- Homeowners Association.

CHAIRPERSON GARAMENDI: The one I took off
calendar.

Yes, let's deal with that.

EXECUTIVE OFFICER THAYER: To give a staff
presentation for background is Mary Hayes from the Land
Management Division.

DIVISION OF LAND MANAGEMENT MANAGER HAYES: Good
morning, Mr. Chairman and members of the Commission. My 
name is Mary Hayes and I'm a land management -- I am the 
Land Management Manager with the Commission of Land 
Management Division. And I'm here to present information 
on Calendar Item No. 34.

This item asks the Commission to authorize a 
lease between the Commission and the Tahoe Swiss Village 
Homeowners Association covering the use and maintenance of 
multiple-use recreational facilities located in Lake 
Tahoe.

The facilities include 2 piers, 31 mooring buoys, 
and 2 marker buoys previously authorized by the 
Commission, and the retention of 39 additional existing 
buoys not previously authorized by the Commission.

The association is composed of 80 member lots and 
2 lakefront lots owned in common by the membership. The 
recreational facilities are located off shore of the 
common-owned lots.

The association has been a lessee of the 
Commission since 1975 when the two piers and a swim float 
were authorized under a 15-year lease.

In 1980 the association obtained permits from the 
Tahoe Regional Planning Agency and the U.S. Army Corps of 
engineers for 31 mooring buoys and one swim float that 
were existing at that time. That same year the Commission
authorized an amendment to the lease to include the 31
eexisting buoys, one of which was used as a swim float.
The buoys are located in fish habitat and must be removed
from September 16th through May 14th.

In 1991 the Commission authorized a new five-year
lease for 2 piers and the 31 moorings. And again in 1996
the Commission authorized a new ten-year lease which
expired on October 14th of 2005.

In 2005, the association applied to the
Commission to renew their lease and for authorization to
retain the additional 39 existing buoys that the
association has stated were placed some time before 1990.

The lease before you today contains specific
language that requires the association to obtain a permit
for the additional 39 buoys from the Tahoe Regional
Planning Agency within two years of the adoption of the
Lake Tahoe Shore's own EIS and the approval of the new
amended ordinances.

Staff recommends that the Commission authorize
issuance of the lease because the association has a buoy
field alignment that arranges the buoy field -- excuse
me -- arranges the mooring buoys in a grid pattern in
accordance with the current and proposed regulatory
standards, that's identified each buoy with an association
tag, has removed four buoys placed by nonmembers, has
placed marker buoys to ensure safe navigation, maintains a
maintenance and repair program, and enforces a buoy
allotment program for ensuring use to all of its members.
Commission staff as well as Mr. Warren Hagberg,
President of the Tahoe Swiss Village Homeowners
Association, are here to answer your questions.
This is my presentation.
CHAIRPERSON GARAMENDI: I'd like to hear from the
association's representative.
DIVISION OF LAND MANAGEMENT MANAGER HAYES: Mr.
Hagberg.
MR. HAGBERG: Mr. Chairman Commissioner and
Commissioners. My name is Warren Hagberg. I'm the
President of the Tahoe Swiss Village Homeowners
Association.
CHAIRPERSON GARAMENDI: Thank you for coming.
This is kind of like do you ask for permission or
do you ask for forgiveness. This Chairman doesn't believe
in forgiveness.
So tell me why -- apparently you've come before
us for a couple of leases and these buoys were not
mentioned in those leases?
MR. HAGBERG: The present board, which started
around 2002, has made a commitment to comply with the
rules and regulations and any compliance that's from TRPA
and also State Lands Commission, and tried to go back and
reconstruct what happened. My own knowledge goes back to
1968. And prior to that, being in the area for around 60
years.

However, what I've been able to reconstruct is
that, for instance, the 31 buoys were placed, as I
understand it, before TRPA was formed and before we
applied with the State lands. The people who were in
charge at the time, the board of directors and so on, I've
been unable to ascertain too much because they are all
deceased.

CHAIRPERSON GARAMENDI: That would limit the
conversations.

(Laughter.)

MR. HAGBERG: And so the present position of the
board is to be forthright and straightforward and say this
is the situation as it is. We wish to comply and we have
applied for that purpose for the existing situation. As
Ms. Hayes represented, we've gone through and tried to
find these buoys and so on, and there were some that were
not in our area and so we've had them removed.

And we plan to control them, police that in the
future.

CHAIRPERSON GARAMENDI: This practice of placing
buoys and indeed piers without appropriate leases has not
been limited to your homeowners association, I suspect?

MR. HAGBERG: I'm sorry?

CHAIRPERSON GARAMENDI: The practice of seeking forgiveness rather than permission is probably not limited to your situation.

Now, I'm told that we don't have the staff to count buoys at Tahoe. But I suspect if we would to do so, we would find numerous home owner associations and individuals who have buoys, perhaps even docks, without the appropriate leases.

MR. HAGBERG: As I understand, the piers were there before the --

CHAIRPERSON GARAMENDI: I'm not -- we're not questioning your piers in this case. I'm making a general comment.

MR. HAGBERG: You are correct. And I understand. That's why we certainly agree with the whole approach of regulation and bringing -- and maintaining the scenic beauty as well as everything else that goes along with this natural resource. We just went through three and a half years with TRPA regarding the two parcels and beach revetment. And the number of agencies, including the fish -- the people who are in charge of that. And then also plant -- mitigation of any plant problems and so on.

It's too valuable an area to allow to get out of
CHAIRPERSON GARAMENDI: I'm using your lease and -- to make a point. And the point is this, is that the protection of Tahoe requires very strict adherence to all of the regulatory requirements -- TRPA, water, air. And the placement of illegal docks, piers, and buoys, to the extent that we find out about it, they'll be removed. And to the extent that we can place fines and other things, I expect it to be done. I've spent too much of my life on Tahoe issues to simply not use this opportunity to say "enough already."

MR. HAGBERG: I appreciate that.

CHAIRPERSON GARAMENDI: All right. Any comments from the staff or from my colleagues?

COMMISSIONER CHIANG: Yes, I'd like to ask Paul a couple questions.

How do we guard against unapproved construction?

EXECUTIVE OFFICER THAYER: It's very difficult. And there's a lot of water area. And we often get violations that are more minor. So we'll have one buoy out there. Where we find out about it, we try and do something about it. But, frankly, it's very difficult to get a judge to order a buoy to be removed.

And sometimes we work with other agencies. I think we generally take more action depending upon the
size of the illegal development and also whether or not there's a hazard involved. So we've worked cooperatively with some agencies in San Francisco Bay to get rid of derelict boats and illegal river boards, and that kind of thing. And generally that sort of group approach works best, because we don't have an authority to impose any fines. And so usually if there's a violation in that it doesn't have a lease from us, the development doesn't have leases from other entities too which do have that fining authority.

So --

COMMISSIONER CHIANG: Would you please repeat that.

EXECUTIVE OFFICER THAYER: It's to our advantage to work cooperatively with other agencies that do have the authority to impose fines, have a bigger stick than we have.

So I guess that would be -- there's more of this going on than we'd like. But we do, particularly where there's particular health impacts or the development is particularly significant.

COMMISSIONER CHIANG: Would it require a statutory change to impose fines?

EXECUTIVE OFFICER THAYER: I'm not sure -- I would ask our attorney to respond to the possibility of --
ASSISTANT ATTORNEY GENERAL HAGER: Yes, you would.

EXECUTIVE OFFICER THAYER: -- in violation of the lease.

COMMISSIONER CHIANG: The charges -- in point, can we just put it in the lease?

CHAIRPERSON GARAMENDI: Any violation of the lease would result in some -- not fine but some payment for violation of the lease.

ASSISTANT ATTORNEY GENERAL HAGER: Yes. If you would say -- okay, let's say the lease says you're supposed to -- you could have no more than 25 buoys and you found that there were 35, yes, you could put in something like a liquidated damage clause that if there are, you know, an additional buoy, the fine would be -- you've got to spell it out in a lease. You can't just sort of leave it vague.

CHAIRPERSON GARAMENDI: So we would put in liquidating damage of $10 million for each buoy that's not --

(Laughter.)

ASSISTANT ATTORNEY GENERAL HAGER: It may be not more than 8 or 9 million.

(Laughter.)

EXECUTIVE OFFICER THAYER: And my understanding,
in talking with our staff over the years about this issue, is that there are real limits on what the courts will sustain in the way of related damages, that the amount of money is usually equivalent to --

CHAIRPERSON GARAMENDI:  Okay, $10,000 or some appropriate liquidating damage.

ASSISTANT ATTORNEY GENERAL HAGER:  Yeah, it would -- yeah, I mean liquidated damages have to be what is the damage to the state as a result of it. And to pay $10,000, that's too much. If you want to have a penalty that is a deterrent, which I think is really what you're looking for, I think a statute giving you a specific -- providing you a specific penalty, which is punishment, not damages for your loss, that's a better way of doing it.

CHAIRPERSON GARAMENDI:  The lease is canceled and you've got to remove all the buoys and the pier, for example.

(Laughter.)

EXECUTIVE OFFICER THAYER:  Well, I think the Chair's actually right, that that's the -- that's the one remedy we have, which is that if you're not compliant to the lease, you know, you forfeit the lease.

CHAIRPERSON GARAMENDI:  You forfeit -- for every buoy and pier, you have to remove three.
Executive Officer Thayer: But of course the enforcement problem, we have some of -- we're looking at right now, which is that a lessee has more improvements than the lease provides for. But the other issue is where there's no lease at all. And in those cases we can go to court and ask that the development be removed. But I'm not sure how much authority we have to impose a punishment. I don't think we have it.

Assistant Attorney General Hager: No, we don't.

Commissioner Chiang: Well, do we have any other enforcement remedies available?

Chairperson Garamendi: Isn't it a -- excuse me.

Go ahead, John. I'm sorry.

Executive Officer Thayer: We do not generally have --

Commissioner Chiang: -- other than a court action?

Executive Officer Thayer: So that's why we generally go other agencies. Like BCDC, we do -- which does have an administrative fine available to them.

Coastal Commission has the same thing.

Commissioner Chiang: Why don't we have staff put together a memo spelling the various remedies that we may want to pursue. I'm interested in a statutory action. I
mean if you have this consistent bad behavior, you know,
I'd like to have the -- the Commission have the
opportunity to discuss whether we want to levy a fine.
EXECUTIVE OFFICER THAYER: We'd be glad to do
that.
CHAIRPERSON GARAMENDI: Is it not a trespass?
CHIEF COUNSEL RUMP: Yes, it is.
CHAIRPERSON GARAMENDI: And whatever's already in
the law on a trespass would be available, correct?
ASSISTANT ATTORNEY GENERAL HAGER: Correct.
CHAIRPERSON GARAMENDI: Well, in any case you're
right, John. Let's get a memo on it.
EXECUTIVE OFFICER THAYER: We'll do that. And
we'll get that back to you before the next meeting. So
then you'd have the opportunity, if necessary, in closed
session, to talk about that you, know, as --
ACTING COMMISSIONER SHEEHAN: -- an option.
EXECUTIVE OFFICER THAYER: -- an enforcement
option, right.
COMMISSIONER CHIANG: Paul, can I have that memo
prior to the next meeting?
EXECUTIVE OFFICER THAYER: Yeah, that's --
COMMISSIONER CHIANG: Actually if you could have
it sooner, the members have reviewed it, to be scheduled.
EXECUTIVE OFFICER THAYER: Exactly.
CHAIRPERSON GARAMENDI: Further comments?

Well, I appreciate Tahoe Swiss Village Homeowners Association providing us with this opportunity to discuss this issue, which I believe is important, and apparently my fellow Commissioners do also.

Do I hear a motion on renewing this lease as presented to us by staff?

COMMISSIONER CHIANG: So moved.

ACTING COMMISSIONER SHEEHAN: Second.

CHAIRPERSON GARAMENDI: The vote of the Commission is unanimous to renew the lease.

MR. HAGBERG: Thank you very much.

COMMISSIONER CHIANG: We look forward to your stewardship -- correct stewardship.

CHAIRPERSON GARAMENDI: Further business before the Commission?

Mr. Thayer.

EXECUTIVE OFFICER THAYER: One last item is the public comment period. And I understand that representatives from Woodfin, a time share developer, would like to speak.

CHAIRPERSON GARAMENDI: Very good.

CHAIRPERSON GARAMENDI: Let's hear from our witnesses on time shares.

MR. KAUFMANN: Thank you. Good morning, Mr.
Chairman and Commissioners. My name is Steven Kaufmann, and I represent Woodfin Suite Hotels.

MR. KAUFMANN: I'm here today to request the Commission to agendize two matters at your next meeting: First, a workshop on the issue of time shares on public trust lands. And, second, following the workshop, reconsideration and reevaluation of Woodfin's hotel project, which includes a modest time share component.

At the December meeting Commissioners Sheehan and Bustamante expressed an interest in the workshop or a forum in which the time share issue could be considered further. On Friday the Port of San Diego also sent you a letter joining in our request for a workshop.

The issue of time shares on public trust lands is of current statewide interest. We believe this Commission and its staff would benefit greatly from a public hearing and input from a panel of experts, including the Attorney General's Office, which has written a formal opinion on the issue; interested stakeholders; hoteliers; financiers; and time share experts; of course the many tidelands grantees in the state who actively manage tidelands and public trust lands; and members of the public; and interest groups.

Last August the Coastal Commission conducted just such a workshop on one type of development structure for
financing new hotel development, condominium hotels. The
Commission itself appointed a subcommittee of two
Commissioners to help set up that workshop. The result
was a very successful, balanced workshop and it helped to
thereafter shape and condition Coastal Commission
approvals of condo hotel projects in Huntington Beach and
at the Hotel Del in Coronado.

Commissioners, the hospitality industry of
California is currently responding to changes in the
economy. The cost of construction is dramatically
increasing because of the demand for core construction
materials and also the impact of both national and
international disasters. So the nature and financing of
hotel development is necessarily changing, and that's true
with respect to Woodfin, which proposes a 140-unit hotel
project but with a 40-unit carefully regulated time share
component.

Woodfin seems to be the test case for public
trust consistency. And we believe that a workshop would
be informative to you and would de-mystify the time share
financing mechanism, and demonstrate to you that there is
indeed a way to approve a carefully limited and carefully
regulated time share component consistent with the public
trust.

The Coastal Commission found it sufficient to
hold one workshop, and it took about a half the day. And we respectfully request that this Commission do the same, perhaps right here in Sacramento; and then take up Woodfin again and apply the lessons learned from that workshop. I'm certainly happy to participate in such a workshop if either you or your staff think that might be helpful.

We truly appreciate your consideration of our request.

Thank you.

CHAIRPERSON GARAMENDI: Mr. Sloan.

MR. SLOAN: Good morning. My first opportunity to congratulate both you -- well, I haven't had the opportunity to congratulate the Controller Chiang, so congratulations on your election.

And I'm not going to take a lot of your time because I join what my colleague had to say.

Unfortunately at the last hearing, I did not really have the opportunity to fully discuss the kind of thing that ought to be discussed about the appropriateness of time shares on public lands.

And we really believe that it's not invasive, it's certainly not residential, and it's really a tool by which a developer can appropriately create the kind of improvements for the public that you're seeking in all these lands. And so I will suggest that at the minimum
the representatives of your major ports, Oakland, San Francisco, San Diego, Los Angeles and Long Beach, be included as well as any other delegatees, because all of these people are looking at this issue as a possibility for really improving the quality of all of our ports and all of our tidelands for the public.

So I really urge that you consider this request.

Thank you.

CHAIRPERSON GARAMENDI: Thank you.

Mr. Thayer.

EXECUTIVE OFFICER THAYER: Thank you, Mr. Chair.

Just to fill in the history of what brought these two individuals here. There was a hearing in December -- well, earlier last year the Port of San Diego approved a lease or an agreement with Woodfin to put in a hotel which includes a time share component that was just mentioned.

At that time, there was a lot of public debate before the Port Board. We sent letters indicating our perspective, and there was a lot of testimony.

The Port Board noted that the Lands Commission had not weighed in on whether or not time shares could be on public trust lands. The basic issue is whether these are hotel-like or whether they're more private. So do they include more people coming to the coast; or because
they occupy space that otherwise might be taken by a
full-fledged hotel that anybody could go to, whether they
end up excluding people? It's not something the
Commission has taken a position on.

So, noting this, the San Diego Port Board
approved the project, with oral discussion about making
this a test case, to bring it to the Lands Commission,
that if the Lands Commission cared, it could speak up and
get involved.

We received a letter from several different
groups in the San Diego area asking us to do just that.
We initially tried to schedule this for a hearing in
October. There was a notice problem. We canceled that
meeting so that all the groups were aware of our interest
in this, including Woodfin and other groups. But we put
over the meeting and had the action meeting in December on
this.

We heard about two hours of testimony from a
number of the same interests that were just outlined in
terms of being appropriate for a workshop. It included
Woodfin and other representatives of industry, unions,
public interest groups. The Port of San Diego testified,
and a number of time share owners testified.

At the conclusion of that, the Commission voted
to find that Woodfin was not consistent with the Public
Trust Doctrine. There were several concerns -- and I think Commissioner Sheehan should describe her own involvement in this. But there were several concerns expressed about whether or not this -- whether, by doing this, there might be some impact to affordability of accommodations along the coast. It was something that both she and Commissioner Bustamante had some concerns about. And there was some discussion about whether or not a workshop would be the best way to deal with that.

Staff has gone off and thought about this and now discussed this with Commissioner Sheehan because she was the one who was there and most interested in this.

And, if I may, one approach that we were thinking we could take to this would be twofold:

The first one is that the Commission often, as it has just now, asks staff to provide additional information about different matters, and staff often responds with memos or other correspondence, that kind of thing.

I think that given the breadth of the review of the time share issue, that the nature of the request for information that came from the Commissioners in December was on that order, that the -- we had a very comprehensive discussion. And so it's our intent to go back and research that further. For example, the Coastal Commission has an affordable accommodation in its policy,
so it's not the Lands Commission operating solo on this issue. There's a variety of state policies and state law that affect that.

The other approach that we were talking about with Commissioner Sheehan is to replicate what we had done five or six years ago, which was an attempt to do an outreach on the Public Trust Doctrine, which can be confusing to people who haven't dealt with it before. And we held staff workshops in San Francisco, in San Pedro, and San Diego. And as part of all those workshops, we had panels that involved people industry, the Attorney General's representative was there to deal with the legal issues, and we invited public interest groups to speak. And we went through a variety of specific topics like time shares. We did not do time shares this time.

So it seemed to Commissioner Sheehan that we should replicate that and that we should once again go out on the road -- and it's appropriate anyway, it's been five or six years since the last time -- and have these workshops where people can participate; and perhaps in San Diego, where there was especially a keen interest in time shares, devoting a panel which we could invite Woodfin to be part of.

Commissioners who wanted to come to any of these workshops would be welcome to do that. Of course we'd
publicize this very well.

So it's staff's recommendation that we proceed with additional work on time shares in those two venues, providing information to the Commission, and then doing workshops so that all elements of the public could participate on this issue as well as others.

We do not recommend reconsideration of the Woodfin issue because the Commission really did have a comprehensive hearing on this. A variety of interests spoke. It was well noticed. There was a lot of warning about the hearing. I think it was very well covered.

CHAIRPERSON GARAMENDI: Very good.

Questions from the Commissioners?

ACTING COMMISSIONER SHEEHAN: Did you want to add -- say something else?

MR. KAUFMANN: Well, thank you, Commissioner Sheehan. Mr. Chairman.

Of course our interest is not on a general topic, which we have a hotel project, which is a good project. And we believe that we do comply with the public trust. And in a sense, we're thinking -- this came up in San Diego. You didn't have all your grantees there. They weren't really informed that this was going on on a generalized topic of time share on public trust lands. So in a sense you have a project driving some type of policy
rather than the reverse, which is policy after being informed and having the benefit of input then determining how a project can or should be approved.

CHAIRPERSON GARAMENDI: Thank you.

Other comments from the Commissioners?

COMMISSIONER CHIANG: I have a procedural question of Paul.

If we vote to support a discussion or a workshop on the Public Trust Doctrine and vote to deny agendizing a discussion on Woodfin's application, can they bring back an appeal for the Woodfin application if we do decide that time shares -- Jack, you're answering no?

CHIEF COUNSEL RUMP: No.

COMMISSIONER CHIANG: Procedurally why does that --

EXECUTIVE OFFICER THAYER: They could always file -- well, the first thing is the approval was before the Port Board. And as such, the Commission's involvement was on a policy basis, and expressing the view of the Commission on this particular project and more generally on time shares.

So they have already asked for an additional hearing. And the Commission could of course do that if it wants to. But we're not voting on the lease per se. It's just the consistency of the Public Trust Doctrine with
this project. The Port has its leasing authority in the
granted areas.

I don't know if that's responsive to your
question.

ACTING COMMISSIONER SHEEHAN: Jack, do you want
to clarify?

CHIEF COUNSEL RUMP: There's several matters that
are procedural here.

First of all, this is a public comment section.

It hasn't been properly noticed. So there's not really
technically a vote that you could take on this.

The matter was disposed and completed as a vote
of the Commission in December. It's final. There's no
appeal.

Essentially both parties know that this is a test
case. And perhaps it's better resolved in court if we
have those basic disagreements.

So I think we're faced today with whether or not
these workshops may be of benefit. But I would not
recommend trying to reopen because it's final at this
point.

CHAIRPERSON GARAMENDI: Yeah.

ASSISTANT ATTORNEY GENERAL HAGER: In short,
you're not voting on anything.

COMMISSIONER CHIANG: I'm sorry?
Assistant Attorney General Hager: In short,
you're not voting on anything.

Commissioner Chiang: I understand.

Chairperson Garamendi: Okay. Anne.

Acting Commissioner Sheehan: There's nothing
before us to vote on. I mean I think what we can do is
instruct staff to collect information, to come back; that
at least this member thinks it is good to have the public
forums in the discussion on this.

I guess the one question I would have is: If
Woodfin wanted to come back with a revised application or
a different project, that is always within their purview.

Chief Counsel Rump: Yes.

Executive Officer Thayer: Two responses to that.

First, absolutely the case. They can come back to the
Port and make a new application for a project.

And also -- Woodfin can clarify this, or the
representative from Woodfin -- but I believe the Port's
approval would permit this project to go forward entirely
as a hotel if the time shares -- if Woodfin chooses not to
pursue the time shares. Is that correct?

Mr. Kaufmann: It was originally drafted in that
manner. And it kind of evolved, because the time share
component became much more strictly regulated and then it
came an integral part of it. Whether or not it morphs
into that, I can't say.

I can say this though. I've been with the Attorney General's Office. And having represented state agencies like the Coastal Commission and to a far lesser extent your commission, this project didn't come to you in the typical quasi-judicial manner in which some of the projects came before you today. In fact, this type of project is something that would be determined by your tidelands grantee. That's why you have them. They manage the tidelands. And they made their decision. Your staff, responding to a request for information, took this up and brought it to you.

And certainly in December the Commission made a decision on it. But I would have to say this isn't your usual decision. And I don't believe it's final.

And I also believe the wisdom of this would be:

Let's not take it to litigation. Let's try to figure out what the answer is. That's I think a better approach.

CHAIRPERSON GARAMENDI: This is a question of Mr. Thayer and Mr. Rump or Mr. Hager.

What exactly is before -- was before the Commission? Does this commission have any specific authority to approve or disapprove the Woodfin project?

EXECUTIVE OFFICER THAYER: There's -- the answers are yes and no. The Commission in the normal course of
events would not have heard this item. It wouldn't have
come as any other item had been before you today as an
application, because it is on lands that have been granted
to a local entity to administer.

However, the Commission retains statutorily an
oversight responsibility for how grantees are carrying out
the terms of their grant and whether they're following the
Public Trust Doctrine. So it is the Commission's business
to look at what the grantees are doing and decide whether
it's appropriate or not.

And the Commission has occasionally heard
specific projects in this context. The most recent one
would have been the Mills project, that I think Ms.
Sheehan was here for, along the San Francisco waterfront.

We've also gotten involved with litigation in the
past where grantees have taken money out of a port, as it
was the case with Los Angeles, and tried to bring it
downtown to pay for municipal purposes.

So we have regularly gotten involved with this.

Not five times a year. But about every year or so there's
some issue that involves the more general administration
of the Public Trust Doctrine where we will get involved
with grantees.

CHAIRPERSON GARAMENDI: So what's being requested
here now is a review of this Commission's policy with

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regard to a specific type of development --

EXECUTIVE OFFICER THAYER: Correct.

CHAIRPERSON GARAMENDI: -- as it may exist in any
of our direct authority and where we have -- where the
authority has been granted to others, right?

EXECUTIVE OFFICER THAYER: Yes.

CHAIRPERSON GARAMENDI: If we hold a hearing, a
workshop, that would inform the new Commissioners as to
this entire issue of time shares as it applies across the
state. We could then take up that issue as it -- I
suppose we could -- we can go back over the specific
Woodfin action in December and say it's absolutely right
or it's not. We'd have the additional information, which
would certainly inform me and -- John, you know all about
this; you don't need anymore?

COMMISSIONER CHIANG: No, I need a lot more.

(Laughter.)

CHAIRPERSON GARAMENDI: He needs a lot more too.

So the issue before us right now is whether we
want to or not hold an informational hearing on time
shares on state lands and on lands that have been granted
to other authorities as to its adherence to the Public
Trust Doctrine. And that's what's before us. Okay?

EXECUTIVE OFFICER THAYER: That's what the
request is. And, again, it's staff's position that,
number 1, the Commission of course can do that. It's
within your jurisdiction.

CHAIRPERSON GARAMENDI: Let me add to what I just
said.

And that the issue of Woodfin specifically, I
would recommend we deal with it later and not make any
prediction now as to whether we will or will not want to
take that issue up again.

EXECUTIVE OFFICER THAYER: But I -- staff would
go on. As I say, you have the ability yourselves to
decide what you want to hold hearings on, and you can
certainly conduct one on this. But that was in fact the
purpose of the December meeting, was to look at this, not
just with respect to Woodfin. And the transcript would
show that much of the discussion had to do generally with
the time share industry and these issues.

So this was -- the December hearing was intended
in fact for the Commission to grapple with this. That's
not to say that you don't have your own independent
knowledge, requirements, and needs, which could be met
through a variety of different ways. But the Commission
did grapple with this both specifically with respect to
Woodfin and in a larger sense in December.

CHAIRPERSON GARAMENDI: Ms. Sheehan.

ACTING COMMISSIONER SHEEHAN: Yeah, let me add at
couple of things that we -- Paul, I think you're right.
We did grapple with this. But the reason that I wanted to
have additional workshops is some of the issues,
specifically the affordability, the economics, some of
those issues that had come up, which we didn't really
have -- they came up anecdotally. And so the idea was:
All right, let's find out what are the economics of some
of these projects; you know, who is coming; who are using
these? You know, this type of financing mechanism for
vacations. Are we -- and I think the issue that the
Lieutenant Governor had brought up, you know, are we
excluding people through some of these decisions? -- it
was kind of going down that path a little bit in terms of
what projects are affordable at the coast. And so getting
a little more information on that.

But I guess what I want to make sure is it
isn't -- I mean I am a proponent of workshops sort of
discussing the public trust theory. This being one
component of that, because we are seeing it more. And
having been in San Francisco the other day and knowing
those pier projects are coming back to us on the -- those
issues that we need to have a discussion about, with two
new members on the Commission understanding what the
public policy is involved in this.

So I do think the -- getting additional
information. Having the forum -- the workshops would be very good. But I want to make sure it's not exclusively time shares. It's, you know, what other issues are on the forefront in the Public Trust Doctrine that is coming towards us. I mean some of it's, you know, office development on the piers, you know, that aren't necessarily -- you know, is it enough public trust use or are we excluding other uses? Some of the issues that we have kind -- some of the other projects that we know are coming before us.

EXECUTIVE OFFICER THAYER: Certainly. And that's of course what we were trying to do with this alternative proposal where we would have held these workshops, not just one, but staff workshops up and down the state to gather information as well to respond to this economics question that came out of the last meeting.

But, again, whatever the Commission wants to do in this.

CHAIRPERSON GARAMENDI: John.

COMMISSIONER CHIANG: Yeah, I concur with Anne's approach. I'd like a more universal discussion about public trust. I think if you have a discussion that's limited to time shares, we're going to miss out on a lot of issues.

EXECUTIVE OFFICER THAYER: Okay.
CHAIRPERSON GARAMENDI: So we're headed for workshops, which the Commissioners can choose to attend or not.

And, Paul, if you'll make a specific recommendation. It will at least initially not be a commission meeting. We may decide to take the issue up and then formalize our views on this. That would be a subsequent time.

So you'll give us a schedule?

EXECUTIVE OFFICER THAYER: Yes, we will, as well as outline the potential subject matter. And we'd welcome input from the Commission on any of that.

COMMISSIONER CHIANG: Paul, do you envision a timeframe on this?

EXECUTIVE OFFICER THAYER: As I recollect -- it's been a while since the last time, but I think it took four or five months to kind of set these up and run them. So it took several -- you know, we'd set up one, get the witnesses together, and then move on to the next part of the state.

So I'm anticipating by the end of the summer having run through all three of these, if that seems appropriate to the Commission.

CHAIRPERSON GARAMENDI: John.

COMMISSIONER CHIANG: I just want the best
process possible. It seems a little long to me, but
that's fine.

CHAIRPERSON GARAMENDI: A little long.
EXECUTIVE OFFICER THAYER: We'll try and expedite
it.

CHAIRPERSON GARAMENDI: I think we've gone
through this issue. But the view of the Commission is
pretty clear with regard to the public workshops that are
out there, and that at this time not interested in
bringing back the Woodfin issue. That may become later.

MR. SLOAN: May I just say here, Mr. Garamendi,
that the entire state is really watching this, because
time shares in particular, which we feel do not violate
the public trust and are acceptable, as opposed to condo
hotels and fractionals and other of the mystifying --

CHAIRPERSON GARAMENDI: Well, do you --

MR. SLOAN: -- viewed as -- if I could just
finish. One second.

The entire state's watching us because it's
really a developmental tool that's really enabling the
kind of developments that I think you want. So --

CHAIRPERSON GARAMENDI: Mr. Sloan. Thank you.

MR. SLOAN:

CHAIRPERSON GARAMENDI: Apparently there's going
to be at least one -- and from Mr. Thayer's discussion --
two or three more opportunities for that debate to be thoroughly aired. In the meantime, we have decided that we're going to do public workshops. And the Commission may or may not choose to come back and deal with the Woodfin issue.

MR. SLOAN: I understand. I'm just urging that it be sooner rather than later.

CHAIRPERSON GARAMENDI: Thank you very much.

MR. KAUFMANN: Thank you.

CHAIRPERSON GARAMENDI: Mr. Thayer, any other business before the Commission?

EXECUTIVE OFFICER THAYER: That concludes the public hearing. And we have a brief closed session scheduled.

CHAIRPERSON GARAMENDI: Very good.

Thank you all very much. We're going to have a closed session, which means all of you can leave, except the staff.

(Thereupon the California State Lands Commission meeting adjourned at 12:21 p.m.)
CERTIFICATE OF REPORTER

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, and thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of February, 2007.

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