APPEARANCES

BOARD MEMBERS

Mr. John Garamendi, Lieutenant Governor, Chairperson

Mr. John Chiang, State Controller, also represented by
Mr. Ron Placet

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

STAFF

Mr. Paul Thayer, Executive Officer

Mr. Jack Rump, Chief Counsel

Mr. Colin Connor, Assistant Chief, Land Management
Division

Ms. Barbara Dugal, Chief, Land Management Division

Ms. Kimberly Lunetta, Executive Assistant

Mr. Dave Plummer, Regional Manager, Land Management
Division

ATTORNEY GENERAL

Mr. Alan Hager, Deputy Attorney General

ALSO PRESENT

Mr. Gordon Bennett, Sierra Club

Mr. Bob Gressens, Cambria Community Services District

Mr. J.B. Morais

Mr. Bob Vellanoweth

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INDEX

PAGE

I. OPEN SESSION 1

II. CONFIRMATION OF MINUTES FOR THE MEETING OF MAY 10, 2007 4

III. EXECUTIVE OFFICERS REPORT 5

IV. CONSENT CALENDAR C01 - C61 13

GENERAL LEASES

C. 14 CAMBRIA COMMUNITY SERVICES DISTRICT (LESSEE/APPLICANT): Consider termination of Lease No. PRC 7858.9, a General Lease Public Agency Use and an application for a new General Lease Public Agency Use, of sovereign lands located in the Pacific Ocean, at San Simeon State Beach, San Luis Obispo County; for the construction of two temporary groundwater monitoring wells, including temporary equipment to perform groundwater pumping tests. (W 26226; RA# 26806) 64

V. REGULAR CALENDAR ITEMS 62 - 64

62. EVERETT G. NORD AND GRETTA L. NORD (LESSEES); ROBERT L. VELLANOWETH AND KELLY A. VELLANOWETH (APPLICANTS): Consider the termination of Lease No. PRC 5065.9, a Recreational Pier Lease, and an application for a new General Lease Recreational Use, of sovereign lands located in the Sacramento River, near the city of Sacramento, Sacramento County; for the construction of a covered floating boathouse with second-story sundeck and handrail, boat lift, steel pilings, and an existing gangway, and wood pilings previously authorized by the Commission. (WP 5065.9; RA# 16404) 14

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NORTH BAJA PIPELINE, LLC (LESSEE): Consider certification of an Environmental Impact Report (SCH 2006081127/CSLC EIR 739) and authorization of an amendment to Lease No. PRC 8378.2, a General Lease - Right of Way Use, of State school lands located near State Highway 78 in Imperial County; for the construction of an additional steel pipeline for the transmission of natural gas. (PRC 8378.2; RA# 24404)  

CALIFORNIA STATE LANDS COMMISSION: Consider a resolution proposed by the Controller opposing federal preemption of state laws that would reduce greenhouse gas emissions.  

VI PUBLIC COMMENT  
VII CLOSED SESSION  
Adjournment  
Reporters Certificate
CHAIRPERSON GARAMENDI: We're going to start the meeting. So if you could take your places and we'll be underway here in a few moments.

Controller John Chiang will be joining us shortly. But we have sufficient members of the Commission to begin the meeting, as in we have a quorum. Two of us.

I'm John Garamendi, Lieutenant Governor and current Chair of the State Lands Commission.

We have an agenda today that we want to move through expeditiously, but also allow people to participate as they choose.

We're going to take a couple items off the consent calendar.

Paul, which ones are those? I think you said there were two that we were going to take off the consent calendar.

EXECUTIVE OFFICER THAYER: Yes. I'm looking for the on switch button. It sounds like it's on.

CHAIRPERSON GARAMENDI: Yeah, I looked for that, and I don't think you have them.

EXECUTIVE OFFICER THAYER: I think it's on. Is it on?

Okay. There are two items we'd like to take off consent and here today. Often when there's last-minute
opposition to items, we put them over for a future meeting in an attempt to resolve those differences. But there are various deadlines associated with these two, that we'd like to add them to the regular calendar and conduct the hearing. And those are Items 14 and 42.

We also have some other items where there were last-minute glitches and for which we think we have enough time to work them out before the next Commission meeting.

And so if the Chair would like, I can read you those as well.

CHAIRPERSON GARAMENDI: Yeah, let's deal with those. I'm aware of what they are. But let's make sure everybody in the audience is.

EXECUTIVE OFFICER THAYER: Sure. Those would be items 37 and 38, 40, 41 --

CHAIRPERSON GARAMENDI: Tell us which items they are as you go through.

EXECUTIVE OFFICER THAYER: Sure.

Items 37 and 38 are offers to dedicate public access-ways easements in Malibu. They will expire in October. The Commission has a record of accepting these to prevent them from expiring. There was last-minute opposition from a property owner. If we hear this September 13th we'll still have the opportunity to be timely with our acceptance. He called late last night or
this morning.

Next two, items 40 and 41, are rent reviews for Tesoro, two different oil terminals. We will have the opportunity to hear this again in September. And it won't change the revenues to the state at all. We'll backdate if they have to pay back rent for anything that's changed because of putting it over two and a half months.

Item 49 is an item involving a new powerline across the Colorado River proposed by the Western Area Power Administration. There's a disagreement as to whether or not the feds want to enter into a lease with us. And so we need to straighten that out. And again it won't affect the project, the timing of the project.

Item 54 is a memorandum of understanding involving mitigation for L.A. diversion of water from the Owens River. There are a number of parties that need to be part of this amendments to the memorandum, including Fish and Game; Sierra Club; the Owens Valley Committee, which is an environmental group. And not all those parties have agreed to all the terms. So we'll bring that back in September as well.

Finally, Item 63 is the North Baja Pipeline. And that was originally scheduled for today. But staff found that, in working with the consultant, that we didn't think that the documents would be prepared in a timely enough
way so the public would have an opportunity to adequately review them. Specifically, the statement of findings for the Commission adoption wasn't going to be able to go up until this week on the Internet. And that's 240 pages long.

So as a result, as I think all the Commissioners know, we've rescheduled this for a special hearing on July 13th at 3:30 probably at the STRS office. But we'll be posting details for that meeting on the web probably tomorrow.

CHAIRPERSON GARAMENDI: I know there are several people in the audience that were here for that specific issue of the North Baja Pipeline. We will now hear that on July 13th. Details and locations to be announced.

EXECUTIVE OFFICER THAYER: That's correct.

CHAIRPERSON GARAMENDI: All right. Those items we will take off the consent and off the calendar and take them up -- two items come off the consent and will be dealt with today, and the remaining items will be dealt with at subsequent meetings.

Okay. Let's move on to the minutes.

ACTING COMMISSIONER SHEEHAN: If there are no changes, I'll move approval of the minutes.

ACTING COMMISSIONER PLACET: Second.

CHAIRPERSON GARAMENDI: So moved. Unanimously
approved. So the minutes have been adopted.

The Executive Officer's Report.

Mr. Thayer.

EXECUTIVE OFFICER THAYER: Thank you.

There are a couple items I want to discuss. I'd like to lead off with further details about our public trust workshops.

The Commission will recall that earlier this year there were some discussion about time shares and whether or not we wanted to gather some additional information. And the Commissioners agreed that the way to approach this would be to redo something we've done in the past, which is to conduct some public trust workshops up and down the state. And so as we did four or five years ago, we're having workshops in San Francisco, Los Angeles and San Diego.

The dates have been sent out to all interested parties, and details. But basically it will be July 6th in San Francisco at 4 in the San Francisco -- the Port of San Francisco's Hearing Room; July 13th in Los Angeles at the Port's Hearing Room; and July 17th in San Diego, also at the Port Board Room. All these meetings will be from 4 to 7. Staff will be giving a presentation on the Public Trust Doctrine. There will be a representative from the Attorney General's Office there to answer the legal

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We'll discuss time shares during the San Diego meeting. There are local issues at each of the other locations, in San Pedro and San Francisco area, that will be under discussion.

We'll also have a panel involving -- at each of these meetings involving representatives of the port, environmental groups, and industry, so we can get a good exchange of ideas.

And once those workshops are completed, we'll report back to the Commission on highlights of them.

CHAIRPERSON GARAMENDI: Sometime ago you shared with me a brochure that describes the Public Trust. I think we may want to consider updating that, making that available, not only on the website -- an updated version of it on the website, but also available for the public who attend our hearings and others who might be interested, so that there's better understanding of what this incredibly important concept principle's all about.

EXECUTIVE OFFICER THAYER: I think that's a great idea. The Commission three or four years ago had formally gone through a hearing process and adopted a public trust policy in conjunction with a report primarily prepared by the AG's Office. And both of those are on the website. But we've been looking at a brochure in Hawaii that they
used to explain the Public Trust Doctrine, and it's
written in a much easier, more comprehensive -- or
comprehendible manner.

CHAIRPERSON GARAMENDI: You've got about 20
people behind you saying that that would be a great idea.

(Laughter.)

EXECUTIVE OFFICER THAYER: So we're trying to
work up a California version of that.

CHAIRPERSON GARAMENDI: Good.

Okay. Let's move that little project along.

EXECUTIVE OFFICER THAYER: Then the next item I
wanted to talk about -- unless there are any questions
about the public trust workshops -- is that we have a
number of retirements actually. And there's one in
particular that I think perhaps now is the right time to
do.

I'd like to note that Alan Hager, sitting to my
right, has been the representative of the Attorney
General's Office for State Lands Commission matters, a
variety of matters, for over 30 years. He's been sitting
at this table for fewer of those. But even when he wasn't
here, he was kind of the lead guy on the Long Beach oil
matters. The state has as much money as it does, there
hasn't been as bad financial shape because of his good
work. He has been stalwart on, as I say, oil issues. But
also he supplied, I can say personally, a key memorandum dealing with the San Francisco waterfront a couple years ago.

And so, as important as he has been to the Commission's deliberations and the staff's work, it's as much as we're going to miss him. So we have a memento that we'd like to have presented to him on behalf of the Commissioners. And I think the Chair has that up there.

Alan, if you want to join --

CHAIRPERSON GARAMENDI: Alan, come on up. We really value and appreciate all that you've have done. And we, you know -- photo. Paul, if you and Jack could come up and join us.

(Thereupon a photo was taken.)

CHAIRPERSON GARAMENDI: Don't hurt yourself.

(Laughter.)

CHAIRPERSON GARAMENDI: Paul, why don't you take that side.

Okay. On the official website.

Thank you so much.

(Applause.)

DEPUTY ATTORNEY GENERAL HAGER: Thank you.

CHAIRPERSON GARAMENDI: I know that everyone in the audience and certainly the staff at the State Lands Commission and the Governor's staff as well as the
Controller's staff and certainly my staff depend heavily on your work, Alan. We know that when we get that work, it's going to be well reasoned and factually correct. And we thank you so very, very much for that.

And we don't here debate about your analysis.

(Laughter.)

CHAIRPERSON GARAMENDI: We certainly here debate about my analysis.

(Laughter.)

CHAIRPERSON GARAMENDI: So, Alan, thank you very much.

John.

COMMISSIONER CHIANG: Mr. Chair, thank you very much.

Alan, I just wanted to express our office's deepest gratitude. You've provided extraordinary and exceptional service to the residents of California and, frankly, we're stronger as a state because of your service. Thank you very much.

DEPUTY ATTORNEY GENERAL HAGER: Thank you. I certainly enjoyed every minute of it.

CHAIRPERSON GARAMENDI: Now, we do have a program called retired annuitant.

(Laughter.)

DEPUTY ATTORNEY GENERAL HAGER: Yes.
CHAIRPERSON GARAMENDI: So if you get a call, please respond positively.

DEPUTY ATTORNEY GENERAL HAGER: I understand the paperwork has been signed yesterday.

(Laughter.)

EXECUTIVE OFFICER THAYER: We hope to benefit from his advice as a retiree. As you say, retired annuitant with some time to come. He'll be back on special projects.

CHAIRPERSON GARAMENDI: Thank you.

Paul, please proceed.

EXECUTIVE OFFICER THAYER: There is one other retirement. We don't have a resolution or a lot of frills for this because he's -- the gentleman specifically asked that we not do this. So I'm just going to say --

(Laughter.)

EXECUTIVE OFFICER THAYER: -- I'm just going to announce that Dave Plummer is also retiring. He's probably been working for the Lands Commission even longer than Alan's been working for the Attorney General's Office. He has specialized in base closures, to ensure the state got back the public trust lands that originally went into those bases. And he's also specialized in northern California work. He worked very hard on the same San Francisco waterfront project that alluded to earlier
in connection with Alan. And that would be Dave Plummer.

(Applause.)

LAND MANAGEMENT DIVISION REGIONAL MANAGER

PLUMMER: -- call that four days.

(Laughter.)

CHAIRPERSON GARAMENDI: Is he still employed?

EXECUTIVE OFFICER THAYER: Still employed.

CHAIRPERSON GARAMENDI: Well, then maybe we should tell him he's going to get a picture taken anyway.

(Laughter.)

CHAIRPERSON GARAMENDI: Other duties as assigned.

Can we have that -- you can't read the writing.

(Laughter.)

CHAIRPERSON GARAMENDI: Kind of fuzzed this part.

(Laughter.)

CHAIRPERSON GARAMENDI: Thank you.

(Applause.)

CHAIRPERSON GARAMENDI: Paul, we'll go ahead and continue on here.

Are we losing any more key people?

(Laughter.)

EXECUTIVE OFFICER THAYER: I hope not for a while.

CHAIRPERSON GARAMENDI: I hope not, not for a
while anyway.

When you mentioned the base closure issue, I think I was on the other side of several of those issues with Dave when I was back at the Department of Interior. And we were wrestling over who actually owned the land. At that point I now admit, that I was wrong representing the federal government.

(Laughter.)

LAND MANAGEMENT DIVISION REGIONAL MANAGER PLUMMER: Well, thank you.

CHAIRPERSON GARAMENDI: Finally. But anyway, over the years we actually changed positions.

(Laughter.)

CHAIRPERSON GARAMENDI: Take a different position.

EXECUTIVE OFFICER THAYER: Well, thank you. It's a big man would can admit those sorts of things.

(Laughter.)

CHAIRPERSON GARAMENDI: Circumstances.

(Laughter.)

EXECUTIVE OFFICER THAYER: And then the only other announcements I had have already been foreshadowed. But, again, our next Commission meeting we expect will be a one-item-only meeting on July 13th regarding North Baja at the STRS building. There may be one or two other items
if they can't wait for the September meeting.

And the September 13th meeting will be the next regular meeting. It will be conducted in Oakland. And, again, details will be posted on the web and sent to you when they're arranged.

And that concludes the staff -- the Executive Officer's Report.

CHAIRPERSON GARAMENDI: Any questions?

Very good. The next thing on our agenda is the consent calendar. We have taken two items off the consent calendar. Actually more than two, I think. And we will then have the consent calendar before us with the exception of those items that were previously announced and moved.

Any questions from --

ACTING COMMISSIONER SHEEHAN: I'll move approval of the consent agenda.

COMMISSIONER CHIANG: I'll second that.

CHAIRPERSON GARAMENDI: Any objection from me, I suppose?

No.

So it passes unanimously.

The consent calendar's been adopted.

We now have items -- which items are we moving to, Paul?
EXECUTIVE OFFICER THAYER: I think Item 62, the dock deck, the Vellanoweth issue is probably the first thing up.

CHAIRPERSON GARAMENDI: All right. Item 52 is now before us.

EXECUTIVE OFFICER THAYER: And that would be -- Item 62 will be presented by Barbara Dugal from the staff. And this is back on. Commissioners heard it at the last meeting, with a discussion of generally whether or not the Commission wanted to approve decks on private docks. And this item's back for our vote.

LAND MANAGEMENT DIVISION CHIEF DUGAL: Good morning, Mr. Chairman and Commissioners. I'm Barbara Dugal. I'm the Chief of the Land Management Division. And I'm presenting information for you today on Calendar Item 62.

You will recall that the application before you today was presented to the Commission at the May 10th meeting. The staff recommendation to approve the dock and a boathouse but not the deck because non-water dependent private use of the public's waterways raised issues and had not been previously addressed before.

At the May meeting, the Commission Chair suggested that the Vellanoweth application might be approved subject to certain criteria and if restrictions...
were made a part of that lease.

This criteria included the following:

That the railing around the deck could be provided but only for public safety purposes. The design of the roof would be for the purpose of shading the boat and not to enhance the use of the ridge of the deck. And no permanent deck-related improvements like wet bars, barbecues, grills, hot tubs, refrigerators, sinks, and sun shades, those types of improvements, would not be allowed to be constructed or placed on the deck.

No permanent roof or other enclosure would be constructed or permitted above the deck. And any of the improvements that could be construed as a residential use such as enclosed patio, a bathroom, a sunroom, an office, a studio or apartment would be prohibited.

The Chair also proposed that rent would be charged for a deck which is part of a recreational pier. While staff has analyzed the Chair's proposal, staff remains concerned that dock decks are a non-water dependent private use of the public's waterways and are akin to a private residential backyard and should be located on private uplands or non-public lands.

However, the following responds to the Chair's proposal:

The Commission has been given the responsibility
as the trustee under the public trust to manage California's waterways on behalf of the public. That trusteeship obligates the Commission to act as a fiduciary in protecting the public's rights and means associated with its navigable waters.

Public trust lands are to be protected for and used in furtherance of not only the traditional commercial and recreational navigation and fishing, but also for ecological preservation.

In addition to the Public Trust Doctrine, the public's access to and fishing on navigable waters are rights protected in the California Constitution.

The Commission determines what uses are be made of public trust lands on a case-by-case basis, and based upon the factual and legal circumstances involving a particular location and proposed use.

So then the question to be answered is, if a deck like the one proposed in the Vellanoweth application is a private recreational improvement located on state public waters, is it consistent with the public trust?

The public trust is a common law doctrine. It's not static. But it is subject to the changing needs of the public. There are traditional uses such as harbors, waters, marinas, and boat docks that have been constructed in support of navigation and fishing and are accepted.
trust consistent uses; and other such uses such as private
residences or general commercial uses such as office and
non-visitor serving retail that are inconsistent with the
public trust. Dock decks fall somewhere in between.

The Attorney General's Office representative has
informally opined that decks are not sufficiently
residential to be per se inconsistent with the Public
Trust Doctrine. As the trustee, the Commission generally
looks to those uses that benefit the public and the
public's use of trust lands. However, other uses that are
ancillary incidental to trust uses can be considered.

Therefore, the Commission may legally issue a
lease for a deck if under the particular circumstances
they do not interfere with the public's rights and needs
of the navigable waterway, and that the lessee compensates
the public for the value of the property being used for
its own private purpose.

The other question that was raised during the May
10th meeting was as to what types of improvements would
qualify for a rent-free recreational pier lease. Under
California law, construction of a dock or a pier in the
state waters is a privilege and not a right. However,
pursuant to the provisions of Public Resources Code
section 6503.5 enacted in 1977 and 1978, no rent is
charged for any private recreational pier constructed on
state property for the use of a littoral landowner.

A littoral landowner is defined as a natural person or a person who owns littoral land that has improved the land and used it for a single family dwelling, or any association of or any nonprofit corporation consisting of natural persons who own parcels of land, each of which is known to be used solely for a single family dwelling.

Further, a recreational pier lease can only be issued if the improvement is solely used for the docking or mooring of the boat, and is used by the littoral landowner. Therefore, any other type of a structure, such as a sun deck or a swim float or a mark buoy, that is not used solely for the docking or mooring of the boats would not qualify for a rent-free recreational pier lease. In these situations a general lease recreational use would be issued, and then rent would be charged for that portion of the improvement that does not qualify for rent-free status.

Should the Commission decide to approve the Vellanoweth application, staff would recommend that rent be for the deck.

Another issue that was brought up was compliance. The Commission's Land Management staff is responsible for managing over four million acres of sovereign lands and

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over four thousand leases. Prior budget cuts and significant staff reductions have resulted in Land Management staff focusing its attention on various priority matters such as new applications, replacement of existing leases, responding to public inquiries and rent reviews. Even with these reductions, staff is diligent when it's made aware of a concern regarding any lease of the Commission -- by the Commission.

However, because of the these budget cuts in the large area that staff is responsible for, staff really relies on public agencies and the general public to advise on the compliance on leases issued by the Commission. Currently staff's enforcement options are limited. The Commission does not have the statutory authority to levy monetary penalties or to issue cease and desist orders requiring the movement of unauthorized improvements.

More fundamentally, while approval of minimalist effects that minimize conversion of public trust lands to residential-like uses, there is likely to be a fundamental tension between those restrictions and the intended use of the deck.

Because decks will be located away from the lessee's home, the lessee is more likely to want to construct prohibited improvements to facilitate eating,
drinking, or other activities that typically would occur on a residential deck. This is likely to increase enforcement issues for a dock deck.

Should the Commission approve the Vellanoweth application, staff would monitor the lease to make sure that its compliance was constructed as approved if it is approved.

As outlined in the staff report that's before you today, staff continues to recommend the dock deck for the Vellanoweth application not be approved. However, staff believes that the Commission has the authority to approve the issuance of a general lease recreational use for the Vellanoweth dock and deck.

Finally, if the Commission decides to act on the Vellanoweth application, individual applications will continue to be -- excuse me -- will continue to need to be evaluated on a case-by-case basis.

And this concludes my presentation.

CHAIRPERSON GARAMENDI: Let's go into this in a little more detail here.

What exactly do we have before us today?

EXECUTIVE OFFICER THAYER: An application for a revised dock, which would include -- which would generally meet the rec pier requirements except that it is -- there is a proposed deck on the roof of that dock.
CHAIRPERSON GARAMENDI: Okay. So the dock itself is not an issue of concern?

EXECUTIVE OFFICER THAYER: No.

CHAIRPERSON GARAMENDI: And the size of the dock is not an issue of concern?

EXECUTIVE OFFICER THAYER: It is not. It's reasonably consistent with the other docks that are built under these leases.

CHAIRPERSON GARAMENDI: And the location in which the dock is to be built or has been built is not of concern?

EXECUTIVE OFFICER THAYER: That's correct. There are other docks in the vicinity, the Corps has been consulted with, and we don't see any particular issues with this.

CHAIRPERSON GARAMENDI: So the issue is about the additional use to which the dock would be placed?

EXECUTIVE OFFICER THAYER: Correct.

CHAIRPERSON GARAMENDI: And in this case it is a deck on top of a covered area that otherwise would cover a boat -- or I guess not otherwise -- but does cover a boat?

EXECUTIVE OFFICER THAYER: Yes, sir.

CHAIRPERSON GARAMENDI: So the issue is the additional use to which that roof is put?

EXECUTIVE OFFICER THAYER: Exactly.
CHAIRPERSON GARAMENDI: Okay. And as I recall the discussion from before, we had a question of whether -- how big the dock -- the platform area of the dock could be. Access to the boat, is it two feet, twenty feet wide, so forth? That could also be a question. If it was a very large -- I'm speaking about as you come down the gangway and you enter on to the dock itself. Is it wide enough for a boat? Or was it wide enough for a fraternity party?

EXECUTIVE OFFICER THAYER: If it were a very small fraternity --

(Laughter.)

EXECUTIVE OFFICER THAYER: But in general, it's sized in a way that is appropriate for its use to accommodate a boat. I mean you need a certain amount of space to leave your water ski or assemble, that kind of thing. And so it's going to be more than two feet wide. But it is not unreasonably large, what's proposed.

CHAIRPERSON GARAMENDI: So we don't have concern about that?

EXECUTIVE OFFICER THAYER: No, sir.

CHAIRPERSON GARAMENDI: The concern in this specific case is the deck or the top of -- the roof, the top, that has potential of being used for a small fraternity party?
EXECUTIVE OFFICER THAYER: Exactly. And, you know, the staff had brought this to the Commission because, although some have been approved, there hadn't been that many proposed so far. And the staff believe that the Commission had never consciously expressly addressed this issue about whether or not it wanted these to be public waterways. So basically this is the decision point to decide how we want to proceed.

CHAIRPERSON GARAMENDI: A docket is brought to us -- a proposal that's brought to us, that is, its purpose of which is to moor the boat. I think the sizes move up -- is there a specific size limit about which we've said, "What amendment?" Now, you've got a commercial operation. So 40 feet, 100 feet, 140 feet.

EXECUTIVE OFFICER THAYER: We informally look at all docks with that analysis in it. The dock is heading above, say, 50 or 60 feet, we ask them, you know, if you have about the same effort, is what's the purpose for that? So we do look at that as a criterion.

CHAIRPERSON GARAMENDI: Okay. So up to a size 50, 60 feet, that would be routine?

EXECUTIVE OFFICER THAYER: Yes.

CHAIRPERSON GARAMENDI: And sufficient space to answer the agreement goods, food, equipment on to the boat of sufficient size, that would be routine?
EXECUTIVE OFFICER THAYER: Yes, sir.
CHAIRPERSON GARAMENDI: If it gets to be a dance floor, that's not routine?
EXECUTIVE OFFICER THAYER: That's correct.
CHAIRPERSON GARAMENDI: If it gets to be a hot tub, that's not routine?
EXECUTIVE OFFICER THAYER: No.
CHAIRPERSON GARAMENDI: Okay. And in this case we're talking about a railing around the dance floor -- no, excuse me -- the deck?
EXECUTIVE OFFICER THAYER: Yes, sir.
CHAIRPERSON GARAMENDI: Okay. And we would consider that not to be routine and subject to a review -- a different kind of review?
EXECUTIVE OFFICER THAYER: Yes, sir. And that's the fundamental question, whether this ancillary use should be allowed on these docks.
CHAIRPERSON GARAMENDI: Now, ancillary use in and of itself is not prohibited; is that correct?
EXECUTIVE OFFICER THAYER: If they're associated with the enjoyment of the water. So, for example -- Alan can step in here in a second because I'm going to trip -- a restaurant or a hotel are considered -- or a restaurant are ancillary uses. So they're not directly --
CHAIRPERSON GARAMENDI: Let me rephrase my
EXECUTIVE OFFICER THAYER: Okay. Sorry.

CHAIRPERSON GARAMENDI: The previous discussion that I had about the specifics of a dock, mooring of a boat up to a reasonable size, 50, 60 feet, sufficient space on the deck around the boat to ingress and egress with food, equipment, so forth, no problem. Okay.

Now, when you go beyond that and it becomes more than that in effect, we then may be allowing it but it may be that it has to be paid for?

EXECUTIVE OFFICER THAYER: Yes, sir.

CHAIRPERSON GARAMENDI: Okay. So that's where the distinction comes. In other words, we could allow a deck, but they're going to have to lease the land and pay for that privilege?

EXECUTIVE OFFICER THAYER: Yes.

CHAIRPERSON GARAMENDI: Is that the way we describe this?

EXECUTIVE OFFICER THAYER: And this is what we've done in the past from the few that have been approved.

CHAIRPERSON GARAMENDI: And so we're going to make a decision here about whether to allow this rooftop deck to be built free of charge or to be built at all or to be built and charged -- or paid in some sort of a lease format --
EXECUTIVE OFFICER THAYER: That's correct.

CHAIRPERSON GARAMENDI: -- is that basically it?

EXECUTIVE OFFICER THAYER: I would -- Alan can weigh in on this again. But I think that the Commission probably would be obligated to charge rent, that there's less of a question about that. The more fundamental question is whether to allow them at all, because we don't think they meet the definition of a recreational pier.

Alan --

DEPUTY ATTORNEY GENERAL HAGER: Yes, I agree, because of the statute -- and I won't say what it is -- that authorizes rent-free recreational piers, so it stays only for the docking or mooring of boats. And anything that goes beyond that does not fit in within the definition of a rent-free lease.

CHAIRPERSON GARAMENDI: Rent free. Now --

DEPUTY ATTORNEY GENERAL HAGER: If it's more than that, you have to charge rent.

CHAIRPERSON GARAMENDI: Okay. So we have to charge rent, some sort of a fee.

Are we prohibited from allowing them to be -- for that additional space to be built for an activity in addition to mooring a boat?

DEPUTY ATTORNEY GENERAL HAGER: I don't believe so under the Public -- there's nothing in the statute that
would prevent you. And the question would be under Public Trust Doctrine. And as Paul has said, you know, it's not per se prohibited. I think one of the things that staff is concerned with is mansionization, if I may use that word. I think that could be -- that that that's the problem and --

DEPUTY ATTORNEY GENERAL HAGER: Mansionization. Big deal in Los Angeles.

DEPUTY ATTORNEY GENERAL HAGER: Turning them into a mansion.

EXECUTIVE OFFICER THAYER: I think that might be part of it. But I think, no matter the size of the deck, the staff's concern is whether or not this is more of a residential private use of what is otherwise public property and whether or not the Commission wants to allow that or not.

CHAIRPERSON GARAMENDI: So the issue really is one, are we going to allow these enhanced docks to be built at all?

EXECUTIVE OFFICER THAYER: Correct.

CHAIRPERSON GARAMENDI: And if we choose to allow them to be built, what are the limits, if any?

EXECUTIVE OFFICER THAYER: Yes, sir.
CHAIRPERSON GARAMENDI: And then a subsequent question is: How much are they -- what would be the rent? I don't think we're debating whether there should or should not be rent; if we allow them, there should be rent, correct?

EXECUTIVE OFFICER THAYER: Yes. And we usually -- we're required by law to charge a fair market rent. And we'll bring in an appraiser who will look at the square footage and that kind of thing. It's fairly mechanistic.

CHAIRPERSON GARAMENDI: Do these enhanced docks -- is that a fair way to describe it and use that as sort of a word that would deal with it?

EXECUTIVE OFFICER THAYER: Sure.

CHAIRPERSON GARAMENDI: Do these enhanced docks now exist along the rivers and lakes?

EXECUTIVE OFFICER THAYER: Yes. There are not a great number of them, but there are some.

CHAIRPERSON GARAMENDI: How do we -- you say put this into fair market value. How would you go about determining that?

EXECUTIVE OFFICER THAYER: I think Colin -- he's an appraiser and he can give you a lot of details. But basically it involves comparing with nearby dry land how much -- you know, comparables. And then there's usually a
deduction if it's an exclusive use. But I don't know if
you want more detail --

CHAIRPERSON GARAMENDI: Yeah, let's have a
discussion about that. It seems to me if we're to allow
these things at all, somebody's going to have to pay a
handsome sum of money.

Colin Connor's our Assistant Division Chief for
Land Management but is also -- works on appraisals.

LAND MANAGEMENT ASSISTANT DIVISION CHIEF CONNOR:
Mr. Thayer is correct. We're basically using a
sales comparison approach and finding sales of similar
upland properties. If the use excludes the public from
the area, then we do not provide any sort of discount.
It's typically just straight up market value for that
portion -- that area.

CHAIRPERSON GARAMENDI: The deck is 200 square
feet. The upland property is worth a thousand dollars a
square foot. Is that --

LAND MANAGEMENT ASSISTANT DIVISION CHIEF CONNOR:
That would be basically -- and the rent is based
on 9 percent of annual rate of return. So we're looking
at 9 percent of whatever the fair market value is. The 9
percent is stipulated in the Code of Regulations.

CHAIRPERSON GARAMENDI: Anne.

ACTING COMMISSIONER SHEEHAN: Yes. Have we
figured out based on their design what the rent would be for this one?

LAND MANAGEMENT ASSISTANT DIVISION CHIEF CONNOR: I have not done any analysis on that at this point.

ACTING COMMISSIONER SHEEHAN: Okay.

CHAIRPERSON GARAMENDI: So you take the land value adjacent to the dock. Say it's a five-acre parcel and it's worth $200,000. How many square feet do we have here? Something like 300 -- almost 400,000 -- over 400,000 square feet?

LAND MANAGEMENT ASSISTANT DIVISION CHIEF CONNOR: Forty-three hundred -- or 43,560 times whatever, yeah.

CHAIRPERSON GARAMENDI: Okay. Simple division and simple application to the square footage of that deck?

LAND MANAGEMENT ASSISTANT DIVISION CHIEF CONNOR: That is correct.

CHAIRPERSON GARAMENDI: Okay. Well, at least we understand. We don't have a number yet. What is the square footage of this proposed deck? Do you have any idea?

EXECUTIVE OFFICER THAYER: The applicant may.

CHAIRPERSON GARAMENDI: Yeah, we're going to have to hear from the applicant here in a few moments.
Now, the staff recommendation is to don't allow it, period?

EXECUTIVE OFFICER THAYER: Staff recommendation is to approve the top but without the deck, yes.

ACTING COMMISSIONER SHEEHAN: Can I ask a question?

CHAIRPERSON GARAMENDI: Yeah, sure.

ACTING COMMISSIONER SHEEHAN: Correct me if I'm wrong, and my memory may be hazy on this. It's not so much the roof that we object to; it is the railing on the roof?

EXECUTIVE OFFICER THAYER: -- and the use that's contemplated.

ACTING COMMISSIONER SHEEHAN: -- that would go -- am I correct in that?

LAND MANAGEMENT DIVISION CHIEF DUGAL: That's correct.

ACTING COMMISSIONER SHEEHAN: So while we have approved docks, you know, that have a roof, you know, and you park the boat underneath, it is the deck around the roof and then obviously, you know, the access to the roof, you know, and then the use of that?

EXECUTIVE OFFICER THAYER: That's correct.

ACTING COMMISSIONER SHEEHAN: Because what we have, staff is comfortable with the roof, you know, for
the purposes of, you know, storing and keeping it out of
the -- it is really putting the railing on?
EXECUTIVE OFFICER THAYER: Putting the railing
and the use itself.
So I mean obviously if you're just using it for a
roof that might be corrugated aluminum, it might bear some
of your weight or it might be comfortable to walk on, it
might not. But if you're actually doing a deck, there
will be railings but there will also be some kind of
decking and basically that's --

ACTING COMMISSIONER SHEEHAN: Yes, because
that's -- as I recall the pictures in term of that.
But at some point we will hear from the
applicant, right?

CHAIRPERSON GARAMENDI: Oh, yes.

ACTING COMMISSIONER SHEEHAN: Okay.

CHAIRPERSON GARAMENDI: I want to -- before we
hear from the applicant, the issue of the enforcement was
raised. So I'd like to go into that.

LAND MANAGEMENT DIVISION CHIEF DUGAL: You mean
the list -- did you --

EXECUTIVE OFFICER THAYER: Well, to just
summarize, I think there are -- there are two issues. One
is -- I mean we, like every other agency, have received
cuts. But since about 1991, they've been fairly dramatic.
And so we don't have a staff to get out there on site as much as we wish. But we do have some mechanisms for enforcement. There's a five-year rent review. And when -- and there's a ten-year renewal on the lease. We have the opportunity -- we ask for pictures when we renew the lease. So we have an opportunity to review it that way.

So that's one aspect is whether or not we are going to be able to monitor this to meet your criteria.

CHAIRPERSON GARAMENDI: Essentially the enforcement is, "You cheated. You've put a dance floor on top of your roof and you didn't tell us about it. And therefore you're not going to get a renewal. Remove your" --

EXECUTIVE OFFICER THAYER: That's right, we can tell you to remove that, yeah.

CHAIRPERSON GARAMENDI: "remove the dock"?

EXECUTIVE OFFICER THAYER: That's right.

CHAIRPERSON GARAMENDI: Okay. What other enforcement options do we have?

EXECUTIVE OFFICER THAYER: That's the primary -- that's the primary one, is if they're in violation of the lease, then we could go in court and have them remove the improvements that are in violation.

CHAIRPERSON GARAMENDI: Now, that was different.
That's a different one. The first one is you don't get a renewal.

EXECUTIVE OFFICER THAYER: That's correct.

CHAIRPERSON GARAMENDI: Okay. The second one you just said we'd go to court and tell them to yank it out.

EXECUTIVE OFFICER THAYER: Well, yes, they're in violation of the lease. And so if we found out, for example, before the lease was being renewed, you know, what should we do? We would probably come to the commission and ask for authority to enforce the conditions of the lease.

Furthermore, if we didn't renew the lease ultimately, unless the applicant in fact did remove the improvements, then we would have to go court.

CHAIRPERSON GARAMENDI: Do we have any other enforcement? Looking at the memo here, we have no authority to fine?

EXECUTIVE OFFICER THAYER: No.

LAND MANAGEMENT DIVISION CHIEF DUGAL: None.

CHAIRPERSON GARAMENDI: No authority to issue a cease and desist on our own?

EXECUTIVE OFFICER THAYER: No, sir.

CHAIRPERSON GARAMENDI: We'd have to get a court to approve -- or to enforce our request for a cease and desist?

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EXECUTIVE OFFICER THAYER: Yes, sir.

CHAIRPERSON GARAMENDI: Anne.

ACTING COMMISSIONER SHEEHAN: Do we have authority to put in the lease other provisions that would require some sort of financial remuneration, additional lease payments if they were in violation?

EXECUTIVE OFFICER THAYER: I think Jack can answer that.

CHIEF COUNSEL RUMP: We determine a negotiation. I'm not sure there would be a set amount. The question is whether or not some form of liquidated damage or what the provision is.

ACTING COMMISSIONER SHEEHAN: Because the issue we get -- I understand we don't have a cease and desist penalty. And we've had this discussion before I know with the staff over the past few years. But I guess my issue is since we are signing a lease, which is really a contract, you know, and you put in what the other side agrees to contractually, and both sides sign, you know, they are well aware of what they are obligated to in the lease, in the contract, and I guess the question that I just -- I discussed this -- is additional provisions in the contract, in the lease that could be added, you know, that both sides would sign on the dotted line and agree. And that -- and it could be short of going to court, you
know, to get it done. If it is being abused, they take
down the deck or some sort of financial enhancement to the
lease payment if we feel that they've gone beyond the use
of what has been authorized, would be the suggest that I
would have.

EXECUTIVE OFFICER THAYER: Right. I think your
question would be is whether or not the financial burden
is sufficient to really discourage the conduct. In other
words would people just say, "Well, really I can get what
I want," and there's a certain amount. So I don't know if
the amount would be sufficient to really stop that or do
they think it's just an additional charge.

CHAIRPERSON GARAMENDI: We may still have to go
to court to enforce the contracts?

CHIEF COUNSEL RUMP: Yes.

DEPUTY ATTORNEY GENERAL HAGER: I was just going
to say, I mean -- I think your object would be to remove
the inappropriate use. And you may still have to go to
court to do that.

CHAIRPERSON GARAMENDI: To get that done. So we
could write into the contract, but we're still going to --
our only real enforcement is the court?

ACTING COMMISSIONER SHEEHAN: Right. But I guess
the issue is if both sides agree to the contract upfront,
you know, and understand, you know, what a court would
do -- you know, maybe you don't know -- but at least it's in there.

DEPUTY ATTORNEY GENERAL HAGER: Well, if you wrote a provision that had some sort of -- well, I will call it liquidated damages, or whatever, then would we -- do we -- we have to make it very clear that that isn't in lieu of going to court and getting the thing -- the inappropriate -- yeah, because it could be saying -- the argument could be made that, "Well, fine, you can enhance the use of the dock as long as you pay more money for it."

ACTING COMMISSIONER SHEEHAN: Well, I guess --

DEPUTY ATTORNEY GENERAL HAGER: And you don't want to get into that bind.

ACTING COMMISSIONER SHEEHAN: That is correct. I understand it's, you know, in terms of sort of, you know, financial disincentives in lieu of a penalty or a cease and -- you know, a fix-it type of ticket, type of a thing.

CHAIRPERSON GARAMENDI: So the question here -- this issue of enforcement applies to a standard or -- a normal lease for a dock only, purpose of which is to access the boat. This issue would also apply if we decide to move forward with allowing decks. So this enforcement applies either way.

EXECUTIVE OFFICER THAYER: That's correct.

CHAIRPERSON GARAMENDI: Would also apply to
somebody that we issue a lease for a standard dock --

excuse me -- a standard dock and they decide to build a
dock.

EXECUTIVE OFFICER THAYER: That's correct.

CHAIRPERSON GARAMENDI: Okay. So the fundamental

question before us is whether to allow a deck on a dock.

(Laughter.)

CHAIRPERSON GARAMENDI: Okay. Let's hear from

the applicant.

I think -- why don't you take this one right

here.

How many of you are there? Just the two of you?

Okay. Go up there then.

MR. VELLANOWETH: Good morning, staff and

Commission. My name is Rob Vellanoweth. I'm the

applicant for the proposed lease, as you know, on the

Sacramento River.

J.B. will be covering most of our arguments

and -- a lot of them.

CHAIRPERSON GARAMENDI: Do you have a light on

that microphone?

MR. VELLANOWETH: It's on now. Is that better?

CHAIRPERSON GARAMENDI: Good. Start over.

MR. VELLANOWETH: Okay. Good morning. My name

is Rob Vellanoweth. I'm the applicant for the proposed
lease on the Sacramento River. You probably recall most
of our arguments from the last meeting that took place,
you know, for about an hour almost. But J.B. will be
covering most of those arguments again briefly so we don't
take up much of your time.

I just want to talk to you about myself on a
personal note and this lease. I'm generally not an
individual who's geared to make strong opposition in any
type of situation; but, you know, especially when you guys
are dealing with multi-million dollar projects. You know,
I'm just a little guy on the totem pole. It seems like
it's become a big issue.

But I feel my proposed lease isn't out of the
norm, you know, it's somewhere I live. And I am making it
an issue because, you know, I plan on living there in this
house for some time. And I think having an upper deck
isn't out of the norm, especially the way my house sits
compared to, you know, other properties that are outside
the City of Sacramento.

A couple things that I'd like to point out based
on two points that the staff made on the last
presentation. It seems like two of the main arguments
were: 1) Blocking the public's view. And my specific,
you know, situation the way my house is laid out there's
no view to block, one, because it's private and, two,
there's a dense population of Oak trees. So really that's
not what I consider an issue there.

And, secondly, you know, it seems like one of the
main arguments was that people are building outside of
their permits. And I can totally cope with the staff in
that situation, because, you know, two people within a
mile of my boat dock were permitted to build these
structures, and built these enormous things way outside
their permits, and, you know, have huge deck areas and,
you know, are making my application look bad. I've been
stuck in the middle of this, which -- what it seems like
I've been in the permit process for two and a half years
now.

I've been very thorough about going about this
the right way. I could have, you know, gone outside my
permit like these individuals. But I decided to go about
this the right way and have gotten permits from six
different agencies, and you guys were number 7. So, you
know, I don't think it's something that's definitely out
of the norm. You know, I do appreciate your consideration
on this matter, you guys taking the time to discuss this
thoroughly. And, you know, I do feel that they should be
looked at on a case-by-case situation versus, you know,
just saying yes or no. Because in my situation I don't
think it's quite out of the norm. But thanks.
MR. MORAIS: Good morning. My name is Jay Morais. I'm the contractor.

After the last meeting, I was under the assumption that the project would be approved if we made sure that we were within the parameters discussed. And we checked with our staff representative and made sure that they understood that we would not construct any ancillary or residential structures on this dock or any other items that the Commission desired to restrict.

Up until a week ago we thought that the staff was busy crafting the policy discussed in May. And unfortunately we were informed that they again planned to recommend denial.

After reading the memorandum dated June 19th that's on the website, I was somewhat relieved to see the staff write, quote, "Representatives of the Attorney General's Office have said that decks are not sufficiently residential to be per se inconsistent with the Public Trust Doctrine." And they say, "Therefore, the Commission may issue leases for decks if under particular circumstances they do not interfere with the public's rights and needs in the navigable waterways and the lessee compensates the public for the value of the property being used for its own private purposes."

Commissioners, we intend to compensate the state.
We are applying for a general lease and not the rent-free lease. And we feel this project in no way interferes with the public's rights and needs in the navigable waterway.

I believe that the critical definition here is the allowable use. And I believe that at the last meeting and in the memorandums it's the consensus that recreational activities such as sunbathing, picnicking, relaxing, or just hanging out on the dock is allowed. And if these uses are allowed on the lower portion of the dock or a regular dock without an upper deck, they should be allowed on an upper deck.

It's really just a design change, moving the usable space from the lower level to the upper level.

Conversely, if there's a use that's not allowed on a regular dock, including installing -- kitchens, affixed barbecues, et cetera, then that shouldn't be allowed on an upper deck. The mere construction of an upper deck is not going to promulgate residential uses and encourage people to build an outdoor kitchen, for example, up there.

Believe me, in my line of work, as a dock builder, I've seen it all. And there's residential uses at water level on docks all over California. And to my knowledge there's only one example of that large dock that was built outside of its permits that actually has

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something built up on the top deck.

Bottom line, this applicant is not asking for or planning to do anything on the upper deck that's not allowed at water level. We agree that there should not be permanent accessories on decks. We've never requested any of these items. And because one lessee went ahead with the type of improvement that -- that does not mean that every applicant coming along will do the same.

If a lessee is allowed to gather, sunbathe, have a picnic, read a book or just stare out at the water, which they consider recreation, there should be no reason why he has to be limited to remaining at water level and not allowed to do it on an upper deck. It should be the use that's defined and not the location.

In conclusion, I would like to quote from the staff's conclusion in the memo of June 19th, which quotes, "Staff believes the Commission has the authority to approve the decks consistent with the Public Trust Doctrine. The conditions to be inserted into the lease would minimize the impact of the decks by requiring the docks not be designed to enhance the decks and by keeping backyard improvements like barbecues off of them."

Staff goes on to say that the Commission determines what uses are to be made on public trust lands on a case-by-case basis, and based upon factual and legal
circumstances involving the particular location and
proposed use.

Commissioners, please remember that in this case
the applicant's house is on the other side of the levee
with no view of the water. Also, the river side of the
levee is a steep, unusable levee, basically a rock wall.
The only way for this upland owner to recreate on or use
or even see the river would be from this dock.

We will accept your conditions and -- we'll
accept the conditions that will result in this dock being
consistent with the public trust doctrine. We have no
desire to construct this dock and utilize the dock outside
of your conditions.

Once again, I urge you to support this concept
and to approve this dock with the upper deck.

Thank you.

CHAIRPERSON GARAMENDI: Thank you very much.

Questions, Anne?

ACTING COMMISSIONER SHEEHAN: Yeah. I guess the
question I'd have for staff is the point about what they
could do on, you know, a regular dock, that just goes
straight out, the recreational use, you know, could be
done on the upper one.

Can you -- do you disagree with that? Do
you -- but that's kind of what I'm struggling with,
because it's -- you know, the point he makes is because of
the way it is, I think, you use the upper deck. So you
can -- if somebody takes a chair out to enjoy the water,
recreational use, on just a regular deck, and he says we
want to do this on the upper one --

EXECUTIVE OFFICER THAYER: We would not -- and I
think we've talked about this a little bit in the last
meeting. Our view is we're not going to go out there and
tell somebody not to sit out there in a chair and read a
book or even bring a sandwich down there to eat or that
kind of thing.

But, again, in terms of looking at the design of
the dock itself, we would be concerned if there were
features of that dock that weren't consistent with its use
for the boating. And so, if people put railings around
their dock or put in other things there that facilitated
the non-dock use, then we would have some concerns.

I might also say that -- respond to one argument
that Mr. Morais made, which is that these are merely
moving space from the dock up to the roof. Our view is
that the size of the dock can only be built, as the Chair
was describing, to accommodate the boating use. It cannot
be built larger in order to accommodate the other kinds of
uses you're talking about, the chairs and that kind of
thing. So there's no movement of space here. It's the

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same size no matter what. It's the size you need to get in and out of the boat.

The other thing I wanted to respond to is, since the last meeting we appreciated the tips -- the discussion about the other uses. We hadn't been looking at those. And we've gone out and inspected one of those and we're working on the other one. So we're following up on those. But they didn't generate our approach to this dock. It was the larger issue of statewide what -- you know, what does the Commission want out there? And feeling that the Commission hadn't looked at this. And so from a staff's perspective I think the applicant's right. You know, we believe it's within your authority to go either way. And we just want the Commission to -- decide what it wants to do with it.

ACTING COMMISSIONER SHEEHAN: Okay.

CHAIRPERSON GARAMENDI: Do we have a -- we approve these things case by case. Each one is unique and we handle it uniquely.

I'd like to see the plans. Do you happen to have them with you?

MR. VELLANOWETH: I do.

CHAIRPERSON GARAMENDI: I've got them.

ACTING COMMISSIONER SHEEHAN: Do you have any other drawings, pictures of what it --
EXECUTIVE OFFICER THAYER: We have some additional ones here that are condensed versions of -- Mr. Morais has some he's giving you.

CHAIRPERSON GARAMENDI: I assume this is going to look like this Steakhouse boathouse after it was downsized.

Are the sides open or the sides closed?

MR. MORAIS: It's a boathouse where the sides are enclosed.

CHAIRPERSON GARAMENDI: And it's opened at one end?

MR. MORAIS: Yes.

MR. VELLANOWETH: Enclosed there, basically to be able to leave the boat there and secure it.

CHAIRPERSON GARAMENDI: Close it up and secure it.

And you're using the float to lift it up?

MR. VELLANOWETH: We intend to.

ACTING COMMISSIONER SHEEHAN: Yeah, I guess -- this is a difficult one. I understand the staff's concern. And I also understand the applicant who got into this process at the time that we had these other ones. So we're sort of, you know, stuck in this -- you know, you're really stuck in this sort of bureaucratic timeline. And, you know, just sort of in fairness I'm very sympathetic to...
that in terms of, okay, you've got these other ones, and
now all of a sudden I'm the one who has to do this.

I guess where I am predisposed is -- you know,
because the application process started what, two and a
half years ago through this --

MR. VELLANOWETH: February 2005, I believe it
was.

ACTING COMMISSIONER SHEEHAN: You know,
reluctantly, you know, you got stuck in this without us
sort of giving people a warning that we're going this way.

I am extremely concerned though about making sure
that -- I do think we need to develop some better policy
and communicate to people about what we're doing and what
is allowed and what isn't allowed going forward.

I also do believe -- and, you know, heaven
forbid, in terms of dealing in this building, you know,
some sort of ability for us to -- not you, but use the --
you know, penalize, you know, where they have abused the
Public Trust Document, because it is a privilege in term
of us providing that right, you know, that access to you
in terms of that.

You know, my feeling is if -- and then this is
why it talked about staff -- you know, if we see and we
don't have the enforcement. But, you know, we do have
people going up and down the river reporting back abuses,
you know, that you've got to tear down the railing if it's abused. I don't know if we can put that in the lease, but, you know --

MR. VELLANOWETH: Yeah. I would say terminate the lease, you know, period, is going to be quite devastating on the applicant. And that right there alone is sufficient to keep someone from abusing it.

ACTING COMMISSIONER SHEEHAN: I mean I don't know what we -- you know, in terms of the lawyers -- you terminate the lease immediately. I think we need to publish and, you know, let people know the direction that we are going. Because we will have other leases coming to us for renewal that they know we're out of compliance -- that could be out of compliance at that point in time with what would be a new policy that we are taking in terms of this.

So I don't say that makes sense. But it at least begins to focus that discussion on what clarification we are making, you know, as the policymaking body over the public trust document.

CHAIRPERSON GARAMENDI: Well, at this point we're dealing with individual leases and we're trying to apply the Public Trust Document and the law on a case-by-case basis. Now, it may be that we should undertake at some point in the future a process to establish a specific
regulation or policy. That's not where we are today. And I understand what you're saying about that task.

ACTING COMMISSIONER SHEEHAN: Yeah. I mean that can be separate.

CHAIRPERSON GARAMENDI: And I'd like to make sure that's a separate task from where we are at this moment. I share a concern that the staff has, this recreational enhanced docks. Enhanced docks can, and in fact I know from my own view of the river, has gotten out of control. And so we must pursue this.

At this point, the one thing that I find that is likely to trouble us as we move forward is the design of the railing. I hate to get into this. But that railing design gives the impression that this is really something spectacular, different. I don't know what you can do about that. But just looking at it, people are going to go, "Oh, I can do that and I'll do it a little bit bigger and I'll do a little more." I don't know.

I'm prepared to move forward with this one. And then I'm going to make you pay a fee for that little enhancement deck on the dock. If I have one more vote we will.

So that's where I'm looking at this thing, in that view, that I'm prepared to allow this to go forward. I want it to be very clear that I am very, very concerned
about where this may lead. And I want to start a process
that will make -- will better define how we should move
forward with this.

In this case, your deck on the dock -- your deck
on the boathouse on the dock is, in my view, beyond the
requirements of the -- or the allowance of the current
state law, which allows you to have a free dock. My view,
you can have a free dock, but your deck you're going to
pay for. Okay. We've heard how that can be -- how the
value can be determined. And that process will -- and
assuming I have one more vote, will be allowed, will go
into place.

And I want to make it clear that if you do more,
there's a penalty. And I like your penalty. Your lease
is terminated and you will remove the dock, the deck, the
boat house. The boat you can leave there if you can tie
it to a tree.

Okay. I think I've covered what I want to cover.

Anne.

ACTING COMMISSIONER SHEEHAN: I am comfortable
with supporting the Chair's motion if we also begin that
other process that I had discussed in terms of, you know,
really beginning to rationalize what we are doing and
communicating with people.

CHAIRPERSON GARAMENDI: Paul, we have a meeting
on the -- excuse me, Anne.

    ACTING COMMISSIONER SHEEHAN: Sure.

    CHAIRPERSON GARAMENDI: We have meeting on July 13th. And if you or your staff can come back with how we might fulfill Anne's request and what might be entailed in that discussion at that time.

    EXECUTIVE OFFICER THAYER: If I could have just a little bit more detail on what Commission Sheehan is suggesting.

    So you're talking about perhaps some guidelines or policies specific to this particular issue?

    ACTING COMMISSIONER SHEEHAN: Yeah, to this -- well, this application will be behind us. But letting people know we are beginning to undertake the development of some guidelines, policies on this issue that we feel, while we have provided these applications, it's been abused, you know, by some people, they've gone beyond what their authority is; and the fact that the Lands Commission is beginning to look at this issue and will be taking steps on these at least renewals and new applications, that type of thing.

    That's what I am -- so that people know when they start the process --

    CHAIRPERSON GARAMENDI: -- here are the parameters.
ACTING COMMISSIONER SHEEHAN: Right, what is the expectation and they know what the rules are.

EXECUTIVE OFFICER THAYER: Certainly. We'll come back with sort of a plan for that. You're right, we're going to have to look at ones that have already been approved and how we want to apply this, or whether we want to grandfather in what they've already got.

ACTING COMMISSIONER SHEEHAN: Yeah, you've got those. And then you've got, you know, ones to come, as we know.

EXECUTIVE OFFICER THAYER: And of course there's going to be a discussion about whether we can adopt the guidelines without making them regs or whether we just want to say, okay, let's adopt some regs.

So we'll investigate that and come back with -- not the full report, but with kind of an outline of where we think we're going so we have some --

ACTING COMMISSIONER SHEEHAN: How do we proceed in terms of --

CHAIRPERSON GARAMENDI: Give us a road map.

EXECUTIVE OFFICER THAYER: Right.

CHAIRPERSON GARAMENDI: How do we proceed and some time frames of what it would take to do -- to carry it out, whether it's a guideline or a regulation, and if there's a difference between the two, what that might be.
Okay. I think we've covered this specific issue.

I wanted to be quite sure that it's clear what we're doing here.

We are going to approve this application as presented in the design. Is what's before the Commission?

Is this actually the design?

EXECUTIVE OFFICER THAYER: Yes.

MR. MORAIS: We also have a copy of it.

ACTING COMMISSIONER SHEEHAN: This is actually it.

CHAIRPERSON GARAMENDI: Okay. And the size is -- this is what you're going to build, correct?

MR. VELLANOWETH: Exactly.

MR. MORAIS: Correct.

CHAIRPERSON GARAMENDI: Including the railing, which I have some troubles with, but I'm not going to go that way right now.

How's the gangway get to this?

MR. MORAIS: After the last meeting we had talked -- we went out and remeasured and decided that we can have the gangway come to the upper deck, which is going to be -- one of the benefits of this design is having a less steep gangway, have it come to the upper deck. From there a staircase will go down to the lower deck.
CHAIRPERSON GARAMENDI: Okay.

ACTING COMMISSIONER SHEEHAN: To access the boat.

MR. MORAIS: To access the boat, correct.

CHAIRPERSON GARAMENDI: And the access of the boat will be inside the boathouse or outside the boathouse?

MR. VELLANOWETH: The point I made, Mr. Garamendi, was that typically on the bottom deck people get on and off the boat. And it makes sense to have a railing on the upper deck because people can be standing there scheduling to get on and off the boat where it's not as practical --

CHAIRPERSON GARAMENDI: My question is really -- we're into such detail here. I really don't like to see us having to do this. But it is a case by case, so proceed.

Okay. This was the design and that's what you're going to build.

MR. MORAIS: And the answer of your question there is three feet access on each side inside the boathouse, which is --

CHAIRPERSON GARAMENDI: Outside the boathouse it's three feet also.

MR. MORAIS: The minimum that we can -- you know, you can safely walk. And, you know, we didn't try and go
beyond what was a minimum.

CHAIRPERSON GARAMENDI: All right. Now, the remaining -- the other issue is the question of the valuation of the deck -- or the value of the deck. And you will pay accordingly, okay, based upon the discussion we had earlier, and that's standard operating procedure?

EXECUTIVE OFFICER THAYER: Yes. Usually we try and have that worked out before the Commission acts so it's clear. I'm trying to think about how -- you folks want to start construction as soon as possible, I presume. And so --

CHAIRPERSON GARAMENDI: Paul, there's a formula -- there's a standard operating formula, correct?

EXECUTIVE OFFICER THAYER: Okay.

CHAIRPERSON GARAMENDI: All right. And that is the valuation of the land -- adjacent land?

EXECUTIVE OFFICER THAYER: Right.

CHAIRPERSON GARAMENDI: Which as I understand, it's required that the dock owner has to own the land adjacent to the dock.

EXECUTIVE OFFICER THAYER: That's correct.

CHAIRPERSON GARAMENDI: Okay. And whatever that valuation is, that's determined by an appraisal and then the -- it's just a proportion.

EXECUTIVE OFFICER THAYER: Sure.
LAND MANAGEMENT DIVISION CHIEF DUGAL: Nine percent.

CHAIRPERSON GARAMENDI: I'm sorry.

LAND MANAGEMENT DIVISION CHIEF DUGAL: Nine percent.

CHAIRPERSON GARAMENDI: Nine percent of that.

EXECUTIVE OFFICER THAYER: And then of course we'll want to see --

CHAIRPERSON GARAMENDI: Pay once?

LAND MANAGEMENT DIVISION CHIEF DUGAL: Annually.

CHAIRPERSON GARAMENDI: Thank you. That's what I thought it would be.

ACTING COMMISSIONER SHEEHAN: So it's a five-year lease?

EXECUTIVE OFFICER THAYER: Five-year rent review, ten-year lease term. And we would want to see the revised plan as well to make sure they -- I mean I presume the Commission's intent is that the approval would accommodate the changes he's talking about and generally within about the same size as the present plans are.

CHAIRPERSON GARAMENDI: Well, let's -- is this what you're building?

MR. MORAIS: Yes.

ACTING COMMISSIONER SHEEHAN: Yes. They've changed the gangway access, as I understood --
MR. MORAIS: Well, before it just went to the lower deck. And We're just raising it up at a different angle so it rests on the upper deck. It's the same gangway -- same existing gangway.

CHAIRPERSON GARAMENDI: This is what I'm approving, sure.

EXECUTIVE OFFICER THAYER: And then, finally, I presume also the conditions that were -- that the Chair had outlined at this meeting, the last one, would apply to would apply to this lease as well and no additional improvements and that kind of thing? The same conditions you previously described.

CHAIRPERSON GARAMENDI: Correct.

Okay. I think we've covered it.

The one thing that I want to be quite clear about is the termination of the lease should this not be -- something different -- greater than this be built. Okay?

I want that in the lease.

EXECUTIVE OFFICER THAYER: Would that also apply if the criteria that you enumerated were violated or would you only apply that if --

CHAIRPERSON GARAMENDI: I'm sorry, Paul, would you repeat that. I didn't understand what you said.

EXECUTIVE OFFICER THAYER: I heard you describe that that penalty would be imposed if the deck was -- or
if the dock was constructed any different from these
plans. Would that penalty as well apply if, for example,
at some future -- four years from now they added a
barbecue or a spa or violated one of the other criteria
that you list there?

CHAIRPERSON GARAMENDI: Most definitely, yes.
EXECUTIVE OFFICER THAYER: Okay.
CHAIRPERSON GARAMENDI: No permanent barbecue, no
hot tubs, wet bars, dry bars, et cetera, et cetera. Okay?

Very good. I think that covers all of this.
And Anne's request, we'll talk again on the 13th
about that.

EXECUTIVE OFFICER THAYER: Yes, sir.
CHAIRPERSON GARAMENDI: Okay. I don't know that
I can make a motion. But I would if I could.

But you can.

ACTING COMMISSIONER SHEEHAN: I'll move --
CHAIRPERSON GARAMENDI: And I'll second and --
ACTING COMMISSIONER SHEEHAN: -- the motion as we
discussed, with the conditions, the rent, the lease
termination, the other conditions that were discussed.

CHAIRPERSON GARAMENDI: Very good.
Motion. Second?
I'll second it.

And it's approved on a two vote. Okay.
ACTING COMMISSIONER PLACET: No.

CHAIRPERSON GARAMENDI: Two to one vote.

All right. Moving on. Paul, I want you and your staff to know that this is -- these decks are of great concern to -- certainly to me, and I think also Anne is tending in perhaps that direction. Obviously Mr. Chiang and his staff are concerned about this. And we expect to have a -- give us a good road map and help us understand which way we are going here.

I think it's very clear that my concern is significant. And if somebody wants to bring in a -- what do you call them? -- mansion dock, they're in deep trouble.

I also want to -- I would like to have a discussion about enforcement of the existing docks. I think that we have docks out there in the rivers that are way beyond what was -- what has been presented to the Commission. A little overexuberance on behalf of the owner. And I'd like to have a discussion about that. It seems to me we ought to be able to find some interns and a small stipend and a boat and --

ACTING COMMISSIONER SHEEHAN: A lot of navigable waters.

CHAIRPERSON GARAMENDI: Well, we could start on the Sacramento River. We've already discussed this
possibility on lake Tahoe, a summer at Tahoe perhaps, and
a canoe and a camera, and a lot of sunscreen.

ACTING COMMISSIONER SHEEHAN: Probably have a lot
of volunteers.

CHAIRPERSON GARAMENDI: I'm sure we'll have a lot
of volunteers.

(Laughter.)

CHAIRPERSON GARAMENDI: It sounds like half of
the staff would do that.

Dave's willing to do that in his retirement for
us.

But I think we ought to look at that as something
that ought to be part of the commission of the Commission.

EXECUTIVE OFFICER THAYER: And we appreciate
hearing support for that approach from the Commission.

And, as I say, these two that were mentioned by Mr.
Vellanoweth and Mr. Morais, we're investigating right now.
And our preliminary review indicates that one of them was
built much larger than the Commission approved and there's
some other frills on it, a bathroom, things like this that
we think are inappropriate. And so we're likely to return
to the Commission. Given the amount of money that the
owner has put into it, he's probably going to fight about
this.

CHAIRPERSON GARAMENDI: That's okay. I don't
mind a fight. I'm well known for fighting.

(Laughter.)

ACTING COMMISSIONER SHEEHAN: I'd also add in terms of if staff, you know, in consultation with our legal counsel, feels we need more statutory enforcement authority. Because through this discussion the many months that we've had this, you know, penalty, cease and desist, you know, some other type of authority that would put a little more teeth into the leases and the permits, short of having to go fight everything out in court, would be very helpful. So that at least to me would be helpful.

EXECUTIVE OFFICER THAYER: Sure. We will review that.

CHAIRPERSON GARAMENDI: And early on, maybe at the first meeting, the issue of trespass came up. And we've talked about it, but I'm not sure we've had a good legal analysis of the -- just the trespass laws of the state and how that might relate to all of this.

EXECUTIVE OFFICER THAYER: And since that meeting staff -- I've talked to Commissioner Sheehan about this, I haven't with the other Commissioners -- is the staff has moved forward on a number of fronts to look at some of these issues, these related issues. We're conducting a comprehensive review of improvements that we know about that don't have any lease or on leases that have expired.
We look at trespasses kind of our first weapon on that. And we're going to be proceeding. We'll be bringing you enforcement actions that haven't occurred in the past from the Commission, because we think this is the only way to get a handle on this.

CHAIRPERSON GARAMENDI: Which means we may have to hire another summer intern with a cable cutter at Tahoe.

(Laughter.)

CHAIRPERSON GARAMENDI: Okay.

EXECUTIVE OFFICER THAYER: And the other thing is that we've been reviewing leases for rental rates. One thing that wasn't included in the discussion earlier about how we set our rents. On a case-by-case basis it's difficult because the amount of time it takes to do a new appraisal for each one is much too much time. So we establish benchmarks for different areas. In the last six months we've redone the benchmark at Tahoe. So the rents there have increased dramatically to reflect that. And the Delta area is the next area we're going to to revise that. And I think that will get us closer to the fair market rent and get the public what it deserves for renting its property.

CHAIRPERSON GARAMENDI: Very Good. Thank you.

Let's move on. I think we have two items that
were on the consent calendar, were taken off the consent calendar, items 14 and 42; is that correct?

    EXECUTIVE OFFICER THAYER: That's correct. And also the resolution.

    CHAIRPERSON GARAMENDI: Let's take those up.

Let's take up the two items. Then the resolution will be the last.

    Let's take 14.

    EXECUTIVE OFFICER THAYER: Okay. Calendar Item 14, we have a staff presentation ready for that. This is the item that -- just by way of background, this is the item that deals generally with two experimental wells that are proposed for the -- by the Cambria Community Services District on a state beach.

    There had been no opposition to this that we heard of up until two days ago when we received a fax letter which is part of -- I think your comment letter's up there -- it's included in your files. And then today I think we've got a -- received an e-mail on the same subject, raising objections. And I think staff is prepared to make a presentation.

    Colin Connor from LNP will make that presentation.

    LAND MANAGEMENT ASSISTANT DIVISION CHIEF CONNOR:

    Good morning, Mr. Chairman, Commissioners. I'm
Colin Connor, Assistant Chief of the Commission's Land Management Division. I'll be presenting background information regarding the proposed project that you're considering today in Calendar Item No. 14.

The item involves the termination of an existing general lease - public agency use and the issuance of a new general lease - public agency use.

On October 25th, 1995, the Commission approved the issuance a 25-year general lease - public agency use to the Cambria Community Services District. That lease was for the construction of two 10-inch diameter intake lines, one 10-inch diameter outfall line, and other pertinent facilities enclosed within a 30-inch diameter 2300-foot-long pipeline. These authorized improvements were never constructed, and staff is therefore recommending termination of this lease.

On May 17th of this year the district applied for a new General Lease - Public Agency Use for the construction, maintenance, and monitoring of two temporary groundwater monitoring wells. The purpose of the wells is to collect groundwater information that will be used in preparation of a future Environmental Impact Report/Environmental Impact Statement for proposed future desalination facilities. Data collected from the monitoring wells will be used to characterize the
groundwater that's available.

The district intends to share information gathered when the concept's developed from this project with other agencies within the state.

Each of the vertical wells will consist of a four- to six-inch diameter PUC pipe -- excuse me -- PUC pipe well casing that was drilled to a depth of up to 125 feet. The top of the well was going to be capped approximately four feet below the surface of the beach. The well heads will be uncovered and uncapped only during periodic monitoring of the groundwater. The well heads will then be recapped and reburyed. Only hand tools will be used during the periodic uncovering and reburying.

The proposed lease requires the district to perform weekly monitoring of the wells to ensure that they remain buried. If at any time during the lease term the well heads become uncovered, then the district will immediately rebury them. If needed, the district will recut and cap the well casings at a lower depth to prevent future occurrences.

The proposed lease also requires removal of the wells and restoration of all disturbed areas to the satisfaction of the Commission within 90 days of the expiration of the lease. Removal and restoration are to be performed at the district's expense.
Because of the nesting season of the threatened Western Snow Plover runs from mid-March to mid-September, and the winter storm season generally begins in November, the district's construction window is from late September through October, a period of approximately six weeks. While the actual drilling of the wells may take only five to ten days, the staging and set up prior to drilling may last several weeks.

In order for avoiding a breaching bluff in constructing an access ramp, a truck crane will be placed on the bluff above the drill sites, which will lower the drill rig to the beach.

The district, as lead agency for the California Environmental Quality Act, prepared and adopted on October 25th, 2005, a mitigated negative declaration. Because portions of the project occur within the federal jurisdictional areas, the environmental assessment was also prepared in order to comply with National Environmental Protection Act. The U.S. Corps of Engineers is the lead agency for that topic.

Proposed circulation and commenting on the environment assessment concluded on February 2007. A finding of no significant impact, also known as FONSI, is currently being finalized.

The project has also received water quality
certification from the California Regional Water Quality Control Board, Central Coast Region. The project still requires approvals from the Coastal Commission, the United States Army Corps or Engineers, and the California Department of Parks and Recreation for access across San Simeon State Beach.

It should be noted that the district has received a letter from Department of Parks and Recreation that states it intends to grant the right of entry subject to the district continue all other necessary local, state and federal permits.

Based on concerns expressed during the public hearing process, the project has been modified as to well heads in access to and across the beach. The well heads will now be capped and buried to a minimum of four feet below the surface of the beach instead of extending above the beach and being set in concrete footings to the aprons.

Also, the project originally called for breaching of bluff and construction of an access ramp for the drilling rig. But the plan now calls for a crane to lower the drill rig to the beach.

In conclusion, there are two actions that the staff is asking the Commission to consider today:

First is the termination of the existing lease;
and the second is the issuance of a new general lease -
public agency use for the construction, maintenance and
monitoring of the two temporary groundwater monitoring
wells for a term of two years.

This concludes the presentation. Staff is
available so answer any questions you may have.

And Mr. Bob Gresens, District Engineer for the
Cambria Community Services District, is also available to
answer your questions.

Thank you.

CHAIRPERSON GARAMENDI: Are there people here in
the audience opposed to this project -- opposed to the
lease?

I think all we have are the letters before us; Is
that correct?

LAND MANAGEMENT ASSISTANT DIVISION CHIEF CONNOR:
Yes, sir.

CHAIRPERSON GARAMENDI: I would like to hear from
the representatives of the public service district.

Just sit next to the staff, please.

The objection letters that we have before us say
that the project -- the scope of the project has been
changed. How much change, if any, has occurred in the
scope of the project?

MR. GRESENS: We do not believe with regard to
the two groundwater monitoring wells that are subject here has changed at all from our adopted initial study mitigated neg dec that occurred back in October of 2005. There are changes being recommended by the Coastal Commission that they believe would lessen the potential impacts of the project that we would be willing to do at the Coastal Commission level when we get to that point. And that's been discussed in an earlier Coastal Commission meeting on February 14th. But they've postponed their action at that point.

CHAIRPERSON GARAMENDI: So we're acting ahead of the Coastal Commission here with allowing the lease itself, and the lease itself is -- the lease is for the two wells, and there's been no change in what we're involved in, correct?

MR. GRESENS: I'm Sorry, but my hearing is a little --

CHAIRPERSON GARAMENDI: I'm saying we're approving a lease for two monitoring wells and there's been no change in that portion of the project?

MR. GRESENS: Correct.

CHAIRPERSON GARAMENDI: And the Coastal Commission will act subsequent to our action, assuming we act today?

MR. GRESENS: That's correct.
CHAIRPERSON GARAMENDI: Okay.

EXECUTIVE OFFICER THAYER: The Coastal Commission generally requires us to act first because they won't entertain applications unless the applicant can demonstrate that they have the property right to proceed.

So they need a lease also for the -- moving forward too.

CHAIRPERSON GARAMENDI: Thank you.

Appreciate the new information. I'll learn along the way.

(Laughter.)

CHAIRPERSON GARAMENDI: What are the wells for?

MR. GRESENS: The wells are for gathering scientific information so that we can come up with alternatives that will be analyzed in the future Environmental Impact Report/Environmental Impact Statement for a desalination project. The intent is to avoid entrainment and intentional issues that have plagued other projects by looking very closely at the subterranean conditions there. So they serve as a means to gather the water quality characteristics at different depths. And that's why we have a two-year timeframe. We want to get some seasonal variation in that snapshot of information.

They will serve as a pumping test to determine hydraulic characteristics of the subterranean soil and sand mix as well as a seismic reflection study where

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there's a device placed inside and it generates sound that allows us to get a clearer picture of what they call the lithology or the layering of the materials that have been deposited over geologic time.

CHAIRPERSON GARAMENDI: Well, we're going to have several of these issues before us over the next several months or year. Once-through cooling puts us into the same situation, as I understand it. And we have two or three desal proposals that have gone -- so they ended up working.

Okay. Well, I don't personally see any reason to delay you. And that's my personal opinion. And I'm prepared to move this thing forward, assuming I've got one or two other votes.

ACTING COMMISSIONER SHEEHAN: I am comfortable moving this forward just for the process. So I will move approval of the staff's recommendation.

Was there anybody else who -- we asked if there's anybody else who -- I'll move approval.

CHAIRPERSON GARAMENDI: I don't know if anybody else wants to speak to this from the audience.

ACTING COMMISSIONER PLACET: I just had a couple questions.

CHAIRPERSON GARAMENDI: Sure, please.

ACTING COMMISSIONER PLACET: Where are -- looking
at the map here. Are the wells being dug offshore, just
into the water? Are we talking right on the beach or --

MR. GRESENS: We're on the beach where the
drilling will be done. They're going to be looking at
timetables to make sure they sequence the actual operation
to avoid, you know, high tide periods. But it's the exact
same equipment that we described in our earlier initial
study mitigated neg dec. So just below the new high tide
line.

ACTING COMMISSIONER PLACET: Okay. So once
they're installed, how long do we go out to the site and
check it?

MR. GRESENS: Well, the condition that's in the
lease right now is once every week we would be checking to
make sure they're not exposed. And we would lower them.
We're flexible on that too, if you feel a more frequent
checking. But we felt once per week was reasonable, that
we would lower them should they become exposed.

ACTING COMMISSIONER PLACET: When the lease is
over and you're done with your drilling and your testing,
how long would it take to remove the wells?

MR. GRESENS: Our geologist believes that's going
to take less than a day. Maybe a day's setup time. But
they've told me that they've done hundreds of these where
they'd remove these entirely. They use what they call a
hollow-stemmed auger machine, which has a drill head on
the top of it, that has these sort of corkscrew flights.
And when they drill down, they grind up the PVC pipe. And
then these flights lift all the material to the surface, and that will be removed to safely disposed of away from
the beach. So they'll make sure there's no more plastic pieces in that. They'll let it spin for a while.
There'll be a geologist out there the whole time inspecting that to make sure that we remove that in its entirety.

ACTING COMMISSIONER PLACET: Okay. Then the depths of the wells is what?

MR. GRESENS: It will vary. The deepest they would ever be is about 125 feet. They may be from 60 to 125 feet.

ACTING COMMISSIONER PLACET: All right. Thank you.

CHAIRPERSON GARAMENDI: Okay we have a motion.

ACTING COMMISSIONER PLACET: Second.

CHAIRPERSON GARAMENDI: And a second.

And approved.

Next issue is Item 42.

EXECUTIVE OFFICER THAYER: We have a proposal for a wetland restoration in Marin County in Tomales Bay where
the National Parks Service would carry out that
restoration, but some of that would occur on state lands. And so they've asked for a lease from the state. We received a letter from the county I think late yesterday --

LAND MANAGEMENT DIVISION REGIONAL MANAGER

PLUMMER: Six o'clock last night.

EXECUTIVE OFFICER THAYER: -- six o'clock last night with concerns about whether there were enough trails. And I think we're prepared to respond to the issues raised.

LAND MANAGEMENT DIVISION REGIONAL MANAGER

PLUMMER: Good morning, Commissioners. My name is Dave Plummer. I'm the Regional Manager of the Land Management Division. And I'm here today to present some background on what is known as the Giacomini Wetland Restoration Project at Tomales Bay, a proposal by the National Park service.

There are four actions that the staff is asking the Commission to consider today:

The first is to certify the Environmental Impact Report that was prepared pursuant to CEQA.

Second is to adopt the mitigation monitoring program.

Third is to adopt the findings made in conformance with state CEQA guidelines.
And fourth is to authorize issuance of a General Lease - Public Agency Use to the National Parks Service for construction of the wetland project.

The Giacomini Wetland Restoration Project encompasses approximately 600 acres and includes the former Giacomini Ranch, which is owned by the Parks Service; Lagunitas Creek, which is under the Commission's Jurisdiction; and Olema Marsh. And I can show you that really fast.

Whole project area -- this is Olema Marsh; this is Lagunitas Creek, which is owned by State Lands Commission; and this is Giacomini Ranch, east and west parcels.

The potential importance to the health of Tomales Bay and the outer Marin coastline of restoring hydrologic connectivity between Giacomini Ranch and Olema Marsh and Tomales Bay is underscored by the relative scarcity of coastal wetlands present along the central California coastline. Giacomini Ranch and Olema Marsh account for as much as 12 percent of the historic wetlands present along the outer central California coast.

The proposed project would remove levees that were constructed in the 1940s to reclaim tidelands for the operation of a dairy. Removal of the levees would restore natural tidal and floodplain processes to the project.
area. The project will improve rearing and smolting
habitats of federally endangered Coho Salmon in Lagunitas
Creek and address recommendations of the California
Department of Fish and Game's recovery strategy for
California Coho Salmon.

Expansion of the marshes is also designed to
support growth of population of threatened Black Rails to
sustainable numbers. It is important to note that because
of its importance to wildlife, Tomales Bay as part of the
Golden Gate biosphere reserve is a designated California
critical coastal area. And in 2002 Tomales Bay was
nominated as a wetland of international importance under
an international treaty called the Convention on Wetlands,
commonly known as the Ramsar Convention.

Marin County has written us a letter alleging
inaccuracies in the final EIR/EIS. The letter mainly
focuses on the selection of one project alternative over
another, how the alternatives relate to public access, and
whether the selected project alternative is consistent
with the county plans.

Staff believes the EIR before you is in full
compliance with CEQA and is consistent with currently
adopted county plans.

Today, we have Mr. Eric Gillis from the Division
of Environmental Planning and Management. And he's here
to describe the environmental process, the selection of alternative, and the inclusion of the public access component throughout the CEQA and NEPA review process.

Also here today is Don Neubacher, the Superintendent of Point Reyes National Seashore, and members of the staff, as that issue's raised in the county's letter, and are available for questions. And I also believe we have Mr. Gordon Bennett from Sierra Club here today.

CHAIRPERSON GARAMENDI: Let's hold -- what's the county up to.

EXECUTIVE OFFICER THAYER: I don't think there's anyone here.

CHAIRPERSON GARAMENDI: Is the county represented here?

EXECUTIVE OFFICER THAYER: I don't believe so.

CHAIRPERSON GARAMENDI: They sent us a letter and this is about access. What kind of access are we talking about here?

LAND MANAGEMENT DIVISION REGIONAL MANAGER PLUMMER: It has to do with a, we suggest, a pump kind of access that would go from Point Reyes Station to Inverness. And there was public access workshops that have been held throughout the process. Selected alternative does not preclude public access. And really
their main focus is over a bridge over Lagunitas Creek, which ultimately would have to come back to the Commission for approval.

The selected alternative's an environmentally superior alternative. And it doesn't preclude the bridge from being constructed at a later date.

CHAIRPERSON GARAMENDI: What's the county's beef with it? What do they -- what's the problem they see?

EXECUTIVE OFFICER THAYER: Can you see this from there?

CHAIRPERSON GARAMENDI: Yes.

EXECUTIVE OFFICER THAYER: Okay. Basically the county would like to have a trail that comes from Point Reyes Station here over to Inverness. We have this large area that's being restored to wetlands.

The alternatives being looked at for this county trail is either along the road right here, the levee top road, or through the restored area, primarily in this area north of the creek, which parallels the road right here. And then potentially with a bridge crossing the creek and then continuing along, not on the road, but in the green area through here.

The county much prefers that second alternative than having it along the street here. However, during the public review process there was a lot of discussion about
whether that creek bridge here and the increased use that would occur if this trail would go straight through here would be incompatible with restoration goals, with the wetland habitat goals.

The final plan recommended for approval in the EIR does provide for a trail out to the creek here, but not the bridge across. So there's not the connection that the county wants. The county has some concerns as to whether or not it's practical to build the pedestrian walkway and the bicycle access along the road here, whether that's too dangerous or not.

The EIR ends up saying the environmentally preferable alternative is the one that has a big restoration, larger acres of restoration, and leave the bridge out. But it also specifically says that if enough funds are -- it's also a funding issue here as to whether there's enough money for the bridge. But the EIR leaves open a possibility that down the road if the county and the parks want to do a separate environmental review on that bridge, if you can find it's justified, it could be done at that point.

CHAIRPERSON GARAMENDI: So presumably the county wants us to delay this entire project so they can figure out what to do with the bridge?

EXECUTIVE OFFICER THAYER: How to get the bridge
and how to get that access there.

The reason staff did not wait for further discussions here, particularly with the comments coming so late from the county, is because there's a funding problem where there's a limited amount of federal funds in a particular fund. And unless all the approvals are accomplished by July --

CHAIRPERSON GARAMENDI: October 31st.

EXECUTIVE OFFICER THAYER: So -- yeah -- July 31st, I think.

CHAIRPERSON GARAMENDI: Federal budget, not total --

ACTING COMMISSIONER SHEEHAN: Well, I think we have to do ours under ours to get some of those federal dollars. But, anyway.

EXECUTIVE OFFICER THAYER: So staff is concerned that waiting until September to hear this means that the project won't get funded.

CHAIRPERSON GARAMENDI: I thought I heard Finance say they had money.

(Laughter.)

ACTING COMMISSIONER SHEEHAN: I have a question. So truly it is -- if we leave them sort of hold harmless, they could go either way.

EXECUTIVE OFFICER THAYER: Yes.
ACTING COMMISSIONER SHEEHAN: Because we allow them to do the trail up. They can decide on the bridge, or they could go by the roads, either way. So it's nothing -- it's sort of no harm, no foul if we move forward. The issue would be holding up all of this until we decide -- until they decide. Yeah, I'd be reluctant for the work that's gone in -- and especially since we haven't really, you know -- it's up to them as to which way they want to go in terms of moving forward in the future. We haven't in any way harmed them.

EXECUTIVE OFFICER THAYER: No, they would probably have to come back and get a lease from us because our land is basically the streambed through here. So I'm putting the bridge. They would need another lease. But we would consider it, certainly.

ACTING COMMISSIONER SHEEHAN: Unless I'm missing something.

EXECUTIVE OFFICER THAYER: No, I think the county -- I don't mean to speak unfairly for them. But I think they see -- they really would like to do this trail and they'd like the best trail possible. And they see this as a decision point that might enhance their ability to get that trail.

CHAIRPERSON GARAMENDI: Otherwise known as a leverage opportunity.
Okay. We've had a discussion. I would appreciate additional information, but I'm not sure that it's necessary.

ACTING COMMISSIONER SHEEHAN: Well, does the Sierra Club --

EXECUTIVE OFFICER THAYER: I think the Sierra Club member's here, who could probably testify as long as we want.

MR. BENNETT: I'm here if you want more information.

CHAIRPERSON GARAMENDI: I don't need more information.

Anne.

ACTING COMMISSIONER SHEEHAN: Don't you want to try and explain what the county's doing?

MR. BENNETT: Well, I think you used the word "holdup," and I think that's what this is.

I live right in this area. And the area that needs most of the trail is for -- I live further up. And so just from a local perspective, I'd rather see any money going into extending the trail where it's most dangerous. There's already a bridge there that people can use. It's not a great bridge. It could use improvement. But the county hasn't been part of this process the whole way through. We've sent letters asking them to be part of the
process. And now they're coming in at the last minute.

You know, everyone needs to sit down at the table and work
out a good solution, and we done have it now.

Thank you.

EXECUTIVE OFFICER THAYER: Your recommendation
would be that the Commission move forward at this time?

MR. BENNETT: Absolutely. Please do not hold up
this restoration. This is a separate project. There's no
harm, no foul. We can go in. If the bridge ends up
wanting to be there, it can be there. There's no reason
to hold this restoration up at all. It's an important
restoration and it needs to move forward.

CHAIRPERSON GARAMENDI: We need your name for the
record.

MR. BENNETT: Gordon Bennett.

ACTING COMMISSIONER SHEEHAN: Well, if there are
no further comments, I move staff's recommendation on this
one.

ACTING COMMISSIONER PLACET: Second.

CHAIRPERSON GARAMENDI: We have a unanimous vote
then to move this project.

Okay. We have one more, a resolution.

EXECUTIVE OFFICER THAYER: Yes, sir.

This is a calendar item that was requested by the
Controller's Office. It's a resolution that is proposed
for adoption by the Commission. It deals with greenhouse
gas and climate change.

California, as most people know, has adopted a
leadership role in controlling greenhouse gas emissions.

It was adopted in 2002, AB 1493, by Pavley, that would
have the Air Resources Board adopt regulations to reduce
greenhouse gas emissions from vehicles. And last year AB
32, Nunez and Pavley, which would call for further
regulations to regulate greenhouse gas emissions by the
Air Resources Board.

The greenhouse gas emissions of course are
attributed to causing climate change in the world. It
affects California. In a recent meeting of the Ocean
Protection Council, that the Chair was in attendance,
there was testimony from a variety of agencies as to the
impacts to California.

For the State Lands Commission those impacts are
primarily going to come from sea level change. That will
change our jurisdiction. It will also affect the public
trust values that we're required to protect. It will
diminish the size of beaches and affect wetlands that have
already been supposedly saved but may be converted to
something other than these wetlands by the increased
water.

So there are genuine impacts to California and to
the jurisdiction of the State Lands Commission from sea
level rise and climate change.

A representative in Congress, Rick -- I'm sorry,
I'm going to mispronounce his name.

ACTING COMMISSIONER SHEEHAN: Boucher.

EXECUTIVE OFFICER THAYER: Boucher? -- has
distributed draft legislation which if adopted would
preempt all states including California from controlling
greenhouse gas emissions particularly from vehicles.

This proposal was resisted. A letter was sent
opposing this from -- signed by eight governors, one of
them being California’s Governor, and also signed by 14
attorneys general from 14 different states, including
California’s Attorney General.

The OPC, the Ocean Protection Council, adopted a
resolution last meeting two weeks ago on climate change in
which it opposed this. To date Representative Boucher has
dropped his proposal for the energy bill, which was now
moving through Congress, but has indicated that although
he's dropped it now --

CHAIRPERSON GARAMENDI: Paul, that's an excellent
explanation. I think we got three votes now.

(Laughter.)

ACTING COMMISSIONER SHEEHAN: If you keep
reading, we have less --
CHAIRPERSON GARAMENDI: If you keep reading,
you're losing them.

(Laughter.)

EXECUTIVE OFFICER THAYER: Therefore, the staff
recommends that the Commission approves -- adopts this
resolution.

CHAIRPERSON GARAMENDI: All right. Obviously a
very important issue, one that I know all three of us,
Anne representing Governor Schwarzenegger and the
Administration, and Mr. Chiang and myself are adamantly
opposed to what Mr. Boucher and Mr. Dingell are trying to
do.

Very good.

Without objection, then move, seconded, and
adopted.

ACTING COMMISSIONER PLACET: Moved.

CHAIRPERSON GARAMENDI: Seconded.

Your motion then, right?

ACTING COMMISSIONER PLACET: Yes.

CHAIRPERSON GARAMENDI: Okay. Now, I think that
completes our public work.

We have some private work to do.

EXECUTIVE OFFICER THAYER: And as well, I don't
know if anybody wants to speak during the public comment
period.

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CHAIRPERSON GARAMENDI: Ah, public comment period. I assume -- nobody is rising to speak. We're now into the private section. Thank you all very much for participating thus far.

You may leave.

(Thereupon the State Lands Commission meeting adjourned at 11:54 a.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 11th day of July, 2007.

JAMES F. PETERS, CSR, RPR
Certified Shorthand Reporter
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