MEETING
STATE OF CALIFORNIA
LANDS COMMISSION

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

THURSDAY, SEPTEMBER 13, 2007
1:06 P.M.

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

PETERS SHORTHAND REPORTING CORPORATION   (916) 362-2345
APPEARANCES

COMMISSION MEMBERS

Mr. John Garamendi, Lieutenant Governor

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

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

STAFF

Mr. Mario DeBernardo, Legislative Liaison

Ms. Barbara Dugal, Chief, Land Management Division

Mr. Curtis Fossum, Assistant Chief Counsel

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

Ms. Kimberly Lunetta, Executive Assistant

Ms. Matt Rodriguez, Senior Assistant Attorney General

Mr. Jack Rump, Chief Counsel

Mr. Paul Thayer, Executive Officer

ALSO PRESENT

Mr. John Asuncion, The Blue Whale Sailing School

Ms. Judy Asuncion, The Blue Whale Sailing School

Ms. Rhovy Lynn Cansino, Council Member Kansen Chu

Ms. Susan Gearhard, North Tahoe Citizens Action Alliance

Mr. Mark Hannelly, California Outdoor Heritage Alliance

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APPEARANCES CONTINUED

Mr. Robert Hulbert, self
Ms. Steven Kaufman, Woodfin Suites Hotels
Mr. Owen Li, Unite Here
Ms. Darlene Nicandro, San Diego Unified Port District
Ms. Colleen O'Brien, South Bay Yacht Club
Ms. Lordes Rivera, Alviso resident
Mr. Zachary Simmons, U.S. Army Corps of Engineers
Mr. Charles Taylor, South Bay Yacht Club
Ms. Sandy Threlfall, Waterfront Action

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Consider acceptance of one offer to dedicate lateral public access easement over land adjacent to State tidelands in the city of Malibu, APN 4473-020-017, Los Angeles County. (W 24665) (A 41; S 23)

Item 47 (Pulled from Consent for Discussion) 26
CALIFORNIA STATE LANDS COMMISSION AND CALIFORNIA COASTAL COMMISSION (PARTIES):
Consider acceptance of one offer to dedicate lateral public access easement over land adjacent to State tidelands in the city of Malibu, APN 4473-020-018, Los Angeles County. (W 24665) (A 41; S 23)

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PROCEEDINGS

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

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

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

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

(Laughter.)

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

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

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

ACTING COMMISSIONER SHEEHAN: I'll make a motion.

CHAIRPERSON GARAMENDI: We have a motion.

ACTING COMMISSIONER ARONBERG: Second.

CHAIRPERSON GARAMENDI: And a second by Cindy.

That leaves us to a vote, which is unanimous.

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

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

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

Several years ago, there were several people from this area, actually, who are in this room -- Sandy Threlfall and Ruth Gravanis, and several others came to the Commission and suggested that the work of the Commission would be enhanced if there were workshops to help communicate what we thought of the Public Trust Doctrine and to hear back from other people -- industry, the grantees, public interest groups on what they saw as the primary issues facing the Commission. So we held a very successful series of three workshops, again, two or three years ago.
Earlier this year, about the time we were thinking of holding these workshops, anyway, again, the Commission received a request for a rehearing of the Commission's decision from last December determining that the Woodfin Timeshare Project proposed in San Diego was inconsistent with the Public Trust Doctrine.

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

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

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

The -- I would like to really assure the public
that the concerns that they expressed at those workshops were meaningful to the Commission. I would like to take a few minutes to summarize the major concerns to close the loop here.

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

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

And finally, there was discussion about SB 815, in
the Migden bill, dealing with several different things --
Treasure Island but also seawall lot legislation. I
should parenthetically say that was passed this week. It
went on to the governor for signature.

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

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

In San Diego, there was a lot of testimony about
the Navy Broadway Complex. This is a condo project that's
been proposed on lands that used to be Public Trust, but
were taken over by the Navy, in which the Commission,
actually, the State, attempted to reestablish the Trust
there and lost in court. And a number of people hoped that the Public Trust Doctrine could be used to stop that project.

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

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

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

And finally, there was more discussion about the South Bay Power Plant. This is on port lands, and there's been a lot of efforts to try and close that plant. I think the power company's heading in that direction but
would like to build a new one. And there's some
resistance to that.

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

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

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

So that was the general -- that's the general
report on the general things that were discussed there.

But, of course, timeshares was a big part of why we held
these workshops. We had participation in San Francisco on
this issue, just from one representative of a union who
opposed timeshares. There were no comments in the San
Pedro workshop, but there was quite a bit of discussion at
the San Diego workshop.

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

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

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

And following the careful analysis, staff does not
believe that there was any new information that was brought up at this Public Trust workshop that was not heard, that was not originally heard, at the December hearing before the commission on this.

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

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

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

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

EXECUTIVE OFFICER THAYER: Very good.

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

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

Frequently, the patterns of use, while it was
being used as a base, ended up foreclosing the
opportunities to use what were originally Public Trust
lands for new Public Trust uses and some sort of
rearrangement of the Public Trust ownership have
benefitted both the Public Trust, in terms of making sure
we had lands next to the water, and benefitted new
development by delivering stuff that was free from the Public Trust.

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

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

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

EXECUTIVE OFFICER THAYER: Jack might want to add to that. But in general -- or Matt from the AG's office. In general, the land from which the Trust is lifted cannot be susceptible to additional or new Public Trust uses. It has to be fairly small. The land that comes into the Trust has to be susceptible for Public Trust uses. It has to be equal to or greater in value to the land from which the Trust has been lifted.
CHAIRPERSON GARAMENDI: Okay. We'll be hearing these things from time to time. Just framing this issue is useful.

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

Then let us go into the agenda.

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

EXECUTIVE OFFICER THAYER: -- 67.

CHAIRPERSON GARAMENDI: -- 67. 1 through 67.

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

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

Also, access along the State Trust land, both in the water as well as on the -- on the land itself are all
issues that are nearing or in discussion, and, as I understand, nearing completion.

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

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

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

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

CHAIRPERSON GARAMENDI: This is the first such communication that I'm aware of because we just took this up yesterday, and said maybe we should wait.
ACTING COMMISSIONER SHEEHAN: Because I think in fairness we need to let them know what the chair -- and I think also there are possibly others who would have applications in the queue currently who could also be affected by this. And I think as others know, Ms. Aronberg sits on a number of those. We're all for transparency and communicating with people, in fairness to the public out there. So I do think we need to communicate. I don't know if you guys can, through your database, you know, figure out who's coming up next or in the next few months.

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

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

Excuse me, 20 years.

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

CHAIRPERSON GARAMENDI: Well, I'm not one to speak
for TRPA. I have met with the chair of TRPA, discussing the Shore Zone issue, which seems to be a controversial figure in that process.

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

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

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

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

EXECUTIVE OFFICER THAYER:  So at the next meeting then?

CHAIRPERSON GARAMENDI:  October 30th.

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

CHAIRPERSON GARAMENDI:  That meeting is in San Diego.

EXECUTIVE OFFICER THAYER:  Yes.

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

Cindy?

ACTING COMMISSIONER ARONBERG:  I agree with that.

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

CHAIRPERSON GARAMENDI:  Correct. In the intervening time, all of these and others, what and why.

Okay?
EXECUTIVE OFFICER THAYER: My --

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

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

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

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

EXECUTIVE OFFICER THAYER: Yes.

ACTING COMMISSIONER SHEEHAN: So as I say, I am fine with postponing -- kind of hearing what is going on,
but also communicating with the folks up there, the people who come to us. Because we do get -- as those of us who sat on there for a while, we get these on a regular basis, the Tahoe piers.

CHAIRPERSON GARAMENDI: Anne, very well said.

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

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

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

And we'll lose those. And I understand the burden that
that presents, but that's the way, at least, I would like
to move.

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

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

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

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

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

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

Mr. Thayer, I mentioned this to you before. But,
on C-62, the under-sea cable, I wonder if you would give a
little bit of some background to the commission and
audience. Back, a long time ago, when, I think, I was
first involved with the Commission, we were approving a number of cables. And at least one of them has since been abandoned because the company filed for bankruptcy or something like that.

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

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

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

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

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

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

Is that responsive to --

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

EXECUTIVE OFFICER THAYER: Sure.

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

EXECUTIVE OFFICER THAYER: There is bonding. I'm not sure if it's sufficient for removing the cables.

Generally, the Commission has a choice on when the lease is abandoned. Either, it can require the improvements to be removed or allow them to be left in place. And in most -- in many circumstances, particularly where the cable's already buried, as we wanted to see happen, to minimize impacts, that removal of the cable causes more environmental impacts than leaving it in place. But for this particular one, I don't know if staff can tell --

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

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

ACTING COMMISSIONER ARONBERG: Thank you.

CHAIRPERSON GARAMENDI: Other questions?
ACTING COMMISSIONER SHEEHAN: The only -- I want to make sure that the leases that the chair referred to are the only ones that are pulled off consent.

EXECUTIVE OFFICER THAYER: There are two other items --

ACTING COMMISSIONER SHEEHAN: Okay.

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

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

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

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

EXECUTIVE OFFICER THAYER: Sure.

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

From a technical perspective, it might make sense
to go ahead and take these off, because we haven't
received the comments. We have a very brief staff
explanation.

CHAIRPERSON GARAMENDI: This is item?
EXECUTIVE OFFICER THAYER: 46 and 47.
CHAIRPERSON GARAMENDI: Okay. Then the request is
to remove those from the consent calendar and take them up
as a regular item?
EXECUTIVE OFFICER THAYER: Yes.
CHAIRPERSON GARAMENDI: Very good. They will be
removed.

Any other issues to be removed from consent?
EXECUTIVE OFFICER THAYER: No.
CHAIRPERSON GARAMENDI: Okay. The consent
calendar is before us as amended.

Do I have a motion?
ACTING COMMISSIONER ARONBERG: So moved.
CHAIRPERSON GARAMENDI: And a second?
ACTING COMMISSIONER SHEEHAN: I will second.
But on Item -- I show abstaining on the STRS --
THE REPORTER: I'm sorry. I can't hear you.
ACTING COMMISSIONER SHEEHAN: On Item 64 --
CHAIRPERSON GARAMENDI: Let's do this. Let's
remove Item 64. What we're going to do here is, the
motion is not accepted and withdrawn.
ACTING COMMISSIONER ARONBERG: Can we ask counsel whether we have a conflict? Because otherwise, there will be no vote on it.

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

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

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

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

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

(Laughter.)

SENIOR ASSISTANT ATTORNEY GENERAL RODRIGUEZ: I'm an attorney.
(Laughter.)

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

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

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

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

EXECUTIVE OFFICER THAYER: I think that would be fine.

If the Chair could ask if the Linders are present.

CHAIRPERSON GARAMENDI: Are the applicants present today?

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

Curtis?

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

Back in June, we had these same two items agendized for the Commission calendar. And at the request of Mr. Linder, we postponed them till this month.
He's said we had wanted to speak with counsel about the items and check into some legal issues. Yesterday, we heard from him again. And he asked, once again, to have the Commission meeting postponed, or he wanted to file his objection. And you have before you, I believe, in your packet, his objection.

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

CHAIRPERSON GARAMENDI: Is he requesting a further delay?

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

CHAIRPERSON GARAMENDI: And the -- therefore, the potential legal question arises as to when the 21 years
has run. The opinion of our staff is, it has not yet
expired; it will shortly expire?

ASSISTANT CHIEF COUNSEL FOSSUM: That's correct.
CHAIRPERSON GARAMENDI: I suppose if he has a
different opinion, we'll see him in court.

ASSISTANT CHIEF COUNSEL FOSSUM: That's correct.

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

ACTING COMMISSIONER SHEEHAN: I will second.

CHAIRPERSON GARAMENDI: We have a motion and a
second.

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

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

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

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

EXECUTIVE OFFICER THAYER: 68 is going to be
pulled. But let me just, for the record, explain that
there were several defaults or several faults in the
compliance with the lease for Bruno's Island Yacht Club.
But the bank has stepped in. The bank had lent money on
this project and was afraid of the lease being terminated and losing its interest and cured all the defaults. The rent is completely up to date, paid all the penalties and interests. They have assured that insurance is present and the bond is paid up.

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

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

EXECUTIVE OFFICER THAYER: Correct.

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

EXECUTIVE OFFICER THAYER: Correct. If the Commission agrees.

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

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

EXECUTIVE OFFICER THAYER: That's correct.

CHAIRPERSON GARAMENDI: I believe that staff, if
you could explain what this is about. And then I understand Mr. Hulbert is here to speak for himself.

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

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

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

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

Next slide, please.

--o0o--
MS. DUGAL: This slide, up here, behind you, represents what was approved by the Commission and actually a part of the Mr. Hulbert's lease. In October of 2004, pile driving began, and construction of the dock was completed in June of this year. Once the dock was constructed, we received a complaint from a member of the public. They expressed concern about the size of the boat dock.

Next slide, please.

---o0o---

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

Next slide, please.

---o0o---

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

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

Next slide.

---o0o---

MS. DUGAL: Next one.

---o0o---

MS. DUGAL: So that's the cabana with the kitchen. Inside the cabana, there was an electric grill, a cooktop, a sink with a garbage disposal.

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

---o0o---

MS. DUGAL: And two refrigerators have been placed on top of the dock.

Next slide, please.

---o0o---

MS. DUGAL: Keep going.

---o0o---

MS. DUGAL: Additionally, a toilet, sink, and a sewer line have been placed on the lower level boat slip area. And an outdoor hot and cold shower was constructed on the lower, outside, level.

---o0o---

MS. DUGAL: On July 5th, staff sent a letter to Mr. Hulbert, advising him that based on the site inspection and staff's preliminary analysis, that the covered boat dock was not constructed as approved and that
additional unauthorized improvements had been placed on the dock structure itself.

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

Next slide, please.

MS. DUGAL: Next.

MS. DUGAL: Thank you.

In early August, staff completed its analysis.

And on August 7th, a certified letter was sent to Mr. Hulbert advising that he was in default of the terms of the lease based on the following: First was the improvements placed on the dock that were that were not authorized; and second, the authorized improvements were altered without having the prior written consent of the commission.

Additionally, on August 10th, the Army Corps of Engineers sent Mr. Hulbert a letter advising him that he had not complied with the terms and conditions of the Corps permit and that he was directed by the Corps to remove the unauthorized structures and to construct the dock as was approved by the Corps.
On August 13th, Commission staff met with Mr. Hulbert to discuss the defaults of the lease. And he was advised at that time to remove the unauthorized accessories that were placed on the dock and to reconfigure the boat dock to the dimensions that were authorized.

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

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

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

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

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

Next.

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

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

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

MS. DUGAL: To terminate the lease.

CHAIRPERSON GARAMENDI: Terminate the lease,
remove the structure.

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

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

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

In building the initial shade structure on top of
the boathouse, it grew for two reasons: We wanted to have
an enclosed storage area on the sun deck for chairs,
towels, life vests, etc. We had a utility permit, and we took full advantage of that. I thought it would be nice to catch a fish and be able to clean it and grill it out there.

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

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

The showerhead was added to allow washing river water off, prior to coming back in. The remedy? Remove and cap the line.

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

The remedy? Allow as built.

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

The remedy? Allow it as built.
The spiral staircase was in place of a standard staircase due to the amount of steps necessary to get to the bottom deck. The overall footprint is now smaller due to a spiral versus a standard -- the standard one.

The remedy? Allow it as built.

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

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

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

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

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

We ask the Commission for you understand and allow
the permit for the boat house and a pitched roof structure as requested.

Again, thank you for your understanding.

CHAIRPERSON GARAMENDI: Thank you for your presentation.

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

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

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

MR. HULBERT: Well --

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

MR. HULBERT: Well, the dock would unfortunately have to be completely removed. I got a letter from my builder, Louis Uhl, California Custom Dock, and it said it would be very impractical if there's very -- we have two
large H beams that are connected. So to shrink it would be very hard.

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

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

Yes, sir?

MR. HULBERT: Yes, sir.

And hiring Gil Labrie at DCC Engineering, he -- it was always his understanding, that he relayed to me, that these are general footprints. And when he wrote to the staff regarding all items on August 21st, he again said,
it's always been common to proceed or at least
consideration to represent a conceptual footprint.

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

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

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

My own mistake is that I did not submit the exact
blueprints. I did -- I have to say, I did drop the ball
on the upper storage structure. We -- it was originally
designed as was a straight -- safe structure. But then we
had riffraff, people that were coming, and some of the
workers lost some tools. And I thought that, well, we can
close that down to protect our belongings.

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

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

And so it grew 7 feet. The -- I had no idea that
there were -- nowhere in the general permits was saying
there was a height for the garage door. And so when I
told Mr. Barham that we had a bigger engineered structure
and he -- I have no reason to lie. I'm not lying. He
won't -- he doesn't recollect it. But I told him we had a
bigger structure, and so when he passed it, I thought we
were good to go. And so Gil had always conveyed to me
that these were general footprints. And so now, this is
my first boathouse and now I'm caught in a web.

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

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

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

And so, yes, we did some things that were maybe
wrong but they can be easily remedied.
CHAIRPERSON GARAMENDI: Well, here's the -- I appreciate your expression of good will and good effort. Along -- throughout the state, we have many piers, docks, that are not in compliance with the lease, some because they have been allowed to deteriorate, as you have suggested; others because people, owners, have gone way beyond what was allowed and permitted.

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

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

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

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

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

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

Is that a possibility?

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

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

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

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

EXECUTIVE OFFICER THAYER: I think there's a
CHAIRPERSON GARAMENDI: Is there somebody from the Corps of Engineers here? I would like to know what the Corps of Engineers is going to do about this.

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

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

That's part of the lease.

CHAIRPERSON GARAMENDI: That's standard on all leases?

EXECUTIVE OFFICER THAYER: Yes.

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

EXECUTIVE OFFICER THAYER: Correct.

CHAIRPERSON GARAMENDI: -- you need written authorization?

EXECUTIVE OFFICER THAYER: Yes.

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

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

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

CHAIRPERSON GARAMENDI: Is this structure as built
considered to be a floating home?
   MR. SIMMONS: Yes, it is.
   CHAIRPERSON GARAMENDI: Because of the kitchen, the toilet, the shower?
   MR. SIMMONS: Yes.
   CHAIRPERSON GARAMENDI: Now, with regard to whether or not the structure, as proposed to be modified by the applicant, by the lessee, complies with the Corps Regulations, have you a chance to take a look at that?
   MR. SIMMONS: It would no longer fall under the definition of a floating home. So then we would be able to accept an application, and we would process it accordingly and go through the due process and all notices would have to take place before making a decision on that.
   CHAIRPERSON GARAMENDI: Do you have any criteria that you would judge by which you would judge a structure that is not a floating home, such as height, size?
   MR. SIMMONS: As far as I understand, as suggested by Dr. Hulbert, it would actually -- there's no other criteria we could that would --
   CHAIRPERSON GARAMENDI: That would cause it to be out of conformance?
   MR. SIMMONS: Yes. If a permit were, in fact, issued for that, it could be done.
   CHAIRPERSON GARAMENDI: Okay.
Now, Mr. Hulbert, you apparently are willing to modify this structure to some extent?

MR. HULBERT: Yes.

CHAIRPERSON GARAMENDI: Go ahead.

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

CHAIRPERSON GARAMENDI: Please.

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

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

CHAIRPERSON GARAMENDI: Cindy, you have a question?

ACTING COMMISSIONER ARONBERG: I do. I actually just wanted a couple of things. I wanted to -- I know the discussion, I assume, will continue. But I'm very inclined to go with staff's recommendation. I want to
make that motion and throw it out there. And I'm sure the
discussion will continue.

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

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

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

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

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

CHAIRPERSON GARAMENDI: After it was built?

MS. DUGAL: After it was built.
And we used the drawings that were -- again, were submitted by his representative to determine the height of the overall structure itself.

CHAIRPERSON GARAMENDI: Was the drawing to scale?

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

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

MS. DUGAL: Yes.

CHAIRPERSON GARAMENDI: Cindy, further questions?

ACTING COMMISSIONER ARONBERG: Jack or Paul?

So just move to adopt staff's recommendation.

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

EXECUTIVE OFFICER THAYER: Correct. Yes, sir.

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

EXECUTIVE OFFICER THAYER: We've had internal discussions on this. And the conclusion is, we would probably recommend denial because of the size. Staff has informally gone back and looked at, you know, other
existing -- the scale of other boathouses, particularly where there was the siding. The siding is here, which presents the larger building.

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

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

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

ACTING COMMISSIONER SHEEHAN: I wanted to ask --

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

ACTING COMMISSIONER SHEEHAN: I was asking about what our criteria is, someone comes in, you know, to ask us -- so the way for them to find out the size is what?

Just through question and answer and discussion with staff?

EXECUTIVE OFFICER THAYER: And we often have potential applicants come in and say, "Hey, I would like
to do something on the river. What sort of thing would
need approval?"

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

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

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

EXECUTIVE OFFICER THAYER: Correct.

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

EXECUTIVE OFFICER THAYER: Right.

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

ACTING COMMISSIONER SHEEHAN: I think the pictures
are in -- I think we have them in our thing.
So the issue would be that we have seen other structures that accommodate boats this size --

MS. DUGAL: Right.

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

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

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

I'm looking at your plans here. And I don't know if this is the -- this document is what they proposed? Can I have a copy of the -- of what is permitted? Of the
Okay. The original proposal appears to have a ramp around the -- just above the water level, a ramp above the outside of boathouse, and a ramp around the inside of the boathouse. One point -- 1'4". Just trying to read this thing for the first time. And what you have built is a little longer, a little wider, and a whole lot taller; is that correct? I think it's correct.

MS. DUGAL: That's correct.

CHAIRPERSON GARAMENDI: 7 feet longer.

MS. DUGAL: 7 feet taller.

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

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

MR. HULBERT: I think it's 32. It's 32 feet wide.

CHAIRPERSON GARAMENDI: So it's 7 feet longer.

MR. HULBERT: It's 7 feet longer. And if I would have known that there was some restriction for some measurement of the height, you know, I didn't know, you know. And I asked Dale about it, and he said these are all conceptual. And I asked Louis Uh1, and I said -- and he said, "Well, you signed off on them, so I'm off the hook."
So now I'm all tangled up.

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

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

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

MR. HULBERT: For the what?

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

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

ACTING COMMISSIONER ARONBERG: Just yes or no is fine.
And what about the shower?

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

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

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

So if --

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

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

So I can't say -- I can't -- you know, to tell the truth, I put the toilet in for my mom. She said, "Where are the ladies going to go?" And I had to have a little sanitary sink right there. And so I didn't think --
didn't think anything of it. And at that time, I didn't
even know what Public Trust meant, you know?

ACTING COMMISSIONER ARONBERG: Thank you.

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

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

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

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

Now, I was just looking at the plan here, and it's
pretty clear how high this thing is going to be. It's all
done to scale. And it looks to me, I don't know, 16 feet.
That's to the top of the railing that was subsequently disallowed.

MS. DUGAL: Yes.

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

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

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

CHAIRPERSON GARAMENDI: The -- I think the answer is with regard to the length, yes. With regard to the width, probably, yes, until you begin to get into the navigable area of the river. And with regard to the height, big question. We're not interested in having --
I'm not interested in having the visual beauty of the Sacramento River destroyed by big boathouses on the river. That's -- and I think that's one of the things we have to look out for is the public's enjoyment of the river, which I believe is significantly lessened by big structures sitting on the river.

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

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

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

ACTING COMMISSIONER ARONBERG: Do you have a boat?

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

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

MR. HULBERT: It's on order. And as soon as I get this, I go to get through it, and the boat just came out on January 7th. The boat is down on the drawing board. We started with -- way back when, so we were building the boathouse to bring the boat home. And so as soon as this matter is cleared up, we can move on. So it's a
step-by-step. And plus, the enormous cost of building this, it took a lot of effort, a lot of effort.

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

And so....

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

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

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

And as far as narrowing the structure, because of a rigidity [sic] -- rigidness of it, Louis was saying that it probably would be nearly impossible.
ACTING COMMISSIONER SHEEHAN: So in essence, you were saying you would have to start off over again?

MR. HULBERT: I'm sorry?

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

Okay. That was the question I had.

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

Do we have a second to that motion?

Okay. That motion is not accepted.

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

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

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

I think that's an alternative that I would -- and the choice is, it's up to the lessee. You can do it...
either way. You can take that structure and rebuild it as permitted with an additional 7 feet allowed, or remove it. That would be the proposal that I would make. And if there's a motion, then at least there's one vote for that.

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

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

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

EXECUTIVE OFFICER THAYER: Certainly.

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

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

So....

ACTING COMMISSIONER SHEEHAN: Anyway, so yes, I make that motion.
CHAIRPERSON GARAMENDI: Cindy, you were out of the room when I made the proposal. I will offer it to you for your consideration. And that is that the lessee be given an option: Remove the structure because it is in violation of the permit, or modify the structure to be consistent with the permit, with the exception that additional 7 feet of length be allowed.

ACTING COMMISSIONER ARONBERG: Not the height?

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

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

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

ACTING COMMISSIONER SHEEHAN: I will move that.

CHAIRPERSON GARAMENDI: -- is satisfied with that.

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

EXECUTIVE OFFICER THAYER: I was just going to -- the attorney general made a good suggestion which is, we may want to impose a some sort of time limit by which either of these actions would have to be carried out. So
if he was going to remove the improvements, perhaps 30 or
60 days. If it was going to be modified, it might take
him longer to do that, maybe 90 days.

ACTING COMMISSIONER SHEEHAN: That's fine.

CHAIRPERSON GARAMENDI: 180 days.

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

CHAIRPERSON GARAMENDI: For both. 180 days for
both.

EXECUTIVE OFFICER THAYER: Fine.

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

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

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

CHAIRPERSON GARAMENDI: Within 30 days, tell the
Commission which of the two options they would choose, and
then 180 days to effectuate the change.
EXECUTIVE OFFICER THAYER: And as to the width, they would as well go back to the originally approved width?

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

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

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

CHAIRPERSON GARAMENDI: The width is not an issue.

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

EXECUTIVE OFFICER THAYER: The width?

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

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

ACTING COMMISSIONER ARONBERG: So I will support this motion. I was very concerned that no one benefit from a violation. And so if it would have been approved
anyway, that's fine.

CHAIRPERSON GARAMENDI: We have a motion.

The Corps has a question?

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

CHAIRPERSON GARAMENDI: And opens?

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

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

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

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

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

CHAIRPERSON GARAMENDI: That's the construction
window?

MR. SIMMONS: Yes, on the Sacramento river.
ACTING COMMISSIONER ARONBERG: A three-month window?

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

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

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

EXECUTIVE OFFICER THAYER: So next October 31st then?

CHAIRPERSON GARAMENDI: '08.

EXECUTIVE OFFICER THAYER: '08.

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

MR. SIMMONS: That's something I would have to verify, because that would go back to Fish and Wildlife...
CHAIRPERSON GARAMENDI: Well, then let's just go with the opening and the closing.

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

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

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

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

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

ACTING COMMISSIONER SHEEHAN: I moved it.

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

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

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

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

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

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

CHAIRPERSON GARAMENDI: As a courtesy to the chair, she seconded the motion. Note that in the record.

And we have a two to one vote.

ACTING COMMISSIONER ARONBERG: Two to one? No.

3-0.

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

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

(Thereupon a break was taken in proceedings.)

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

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

Mr. Thayer?

EXECUTIVE OFFICER THAYER: Thank you, sir.
Mary Hays from the Land Management Division will give the staff presentation on this matter.

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

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

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

The default issues associated with the lease are:

One, failure to maintain the lease premises in good repair and safe condition; two, failure to maintain the electrical lines and overgrown vegetation, which have created a fire hazard; three, the failure to obtain the necessary permits to maintain the facilities in a safe condition; four, failure to provide public access; and five, allowing residential use of the lease premises.

In September and October of 2005, staff performed
site visits of the lease premises and had discussions and correspondence with the yacht club regarding the condition of the facility, the abandoned vessels, and utility hookups that suggested that residential use may have occurred -- or may have been occurring, excuse me.

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

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

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

In April of 2007, staff conducted another site
visit of the lease premises which noted no visible progress towards remedying the overall disrepair nor the unsafe fire hazard conditions nor provided adequate public access.

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

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

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

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

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

The first photos were taken in 2004.

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

The next set of photos were taken in 2005 --

--o0o--

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

--o0o--

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

--o0o--

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

--o0o--

--o0o--

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

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

--o0o--

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

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

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

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

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

Second, electrical repairs and overgrown vegetation. No electrical repair work or weed abatement has been done on the lease premises. This breach of the lease has not been cured;
Number three, permits. First, the yacht club has not obtained a BCDC permit for the electrical repairs or a BCDC permit for the repairs needed to the remaining dock facilities on the lease premises; two, has not obtained a permit from BCDC for two unauthorized finger dock extensions, five pilings, and a dock extension located on the north end of the lease premises; three, has not obtained possible -- possible permits needed from the San Francisco Bay Regional Water Quality Control Board, U.S. Corps of Engineers, U.S. Wildlife, Fish and Wildlife Service, and the Department of Fish and Game for vegetation and/or root removal; and five [sic], has not obtained authorization from the Commission -- has not obtained authorization from the Commission and may need permits from the BCDC and possible other agency [sic] for a fuel line observed on the dock facilities. This breach of the lease has not been cured;

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

Five, residential use of the boats in the yacht club. This issue is not being pursued at this time because yacht club representatives assured staff that there are no live-aboards on the lease premises;
Six, derelict and abandoned vessels. The yacht club representatives assert that this issue is being addressed and there that are no derelict or abandoned vessels on the State-owned portion of the facility.

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

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

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

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

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

Behind me, this is Mr. Tom Laine. He's the
present staff commodore of the South Bay Yacht Club. And the reason we're up here together is there are some questions that the Commission would probably get better answers by asking Mr. Laine than from me.

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

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

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

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

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

CHAIRPERSON GARAMENDI: We do have the work plan...
MS. O'BRIEN: Because I see that photos from the work plan have been submitted but not for the work plan itself.

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

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

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

MS. O'BRIEN: We think 120 days.

CHAIRPERSON GARAMENDI: To get it all done?

MS. O'BRIEN: We have a permit, an encroachment permit, from the Water District. And we have an application in, with BCDC, for the electrical work and the dock repair. There are apparently some technical problems with the permit as submitted to BCDC, which we're working
with BCDC to resolve. We have a contractor. We have arrangements made with the salvor for removal of the three vessels that have been identified by BCDC as our responsibility.

Is there another item you want me to address?

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

EXECUTIVE OFFICER THAYER: Public access.

CHAIRPERSON GARAMENDI: Public access, etc.

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

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

MS. O'BRIEN: We think 120 days.

CHAIRPERSON GARAMENDI: For everything?

MS. O'BRIEN: For everything.

CHAIRPERSON GARAMENDI: Cindy?

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

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

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

(Laughter.)

CHAIRPERSON GARAMENDI: 24 months -- three months.

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

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

ACTING COMMISSIONER ARONBERG: Correct.

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

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

CHAIRPERSON GARAMENDI: Comfortable with that?
ACTING COMMISSIONER SHEEHAN: We meet the 30th of October. And when again?

EXECUTIVE OFFICER THAYER: December 3rd.

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

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

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

EXECUTIVE OFFICER THAYER: Probably.

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

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

EXECUTIVE OFFICER THAYER: Of course, if there's some issue, we have the October 30th meeting. You could come back and address the Commission. In fact, we
probably should in terms of the progress that's been made
to deal with this as far as the previous --

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

Understood?

MS. O'BRIEN: Understood.

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

(Yeses.)

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

(Yeses.)

CHAIRPERSON GARAMENDI: No? Then don't testify.

Yes, then testify.

You see those little lights up there? One is
green, one is yellow, one is red. Prepare to finish when
it's yellow and when it's red, to step back, and you're
done. We're moving on here.

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

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

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

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

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

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

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

MS. ASUNCION: I disagree.

CHAIRPERSON GARAMENDI: And you want it shut down now?

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

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

MS. ASUNCION: Well, a lot of the agencies throughout California have known about this problem, but
it has been gone on deaf ears.

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

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

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

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

Next person, please.

MS. ASUNCION: Thank you.

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

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

THE REPORTER: State your name, please.

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

And I will be the first to tell you that no one feels worse about the condition itself than the members.
And you can hear the old timers lament about the history of the slough and the yacht club and it will bring a tear to your eye. I'm very serious. It sounds ridiculous, but that's the case.

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

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

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

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

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

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

And what the problem has been, it's just so difficult. There are four government agencies -- I heard a couple more mentioned. Now there's the Corps of Army of Engineers and others that we have been trying to navigate
this maze of permits -- permission, some of the which have
been getting conflicting information. So we finally had
to get counsel and address these issues. It has been very
difficult, as you know, dealing with these issues.

And if you want to actually --

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

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

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

CHAIRPERSON GARAMENDI: So does my lawn. Fine.
You have 90 days to do it. And you say you can do
it? You will have a chance to prove it.

MR. TAYLOR: Okay.

CHAIRPERSON GARAMENDI: Okay? You got 90 days.
Thank you.

MR. ASUNCION: Hi. It's nice to see you,
Lieutenant Governor and staff. I'm John Asuncion.

CHAIRPERSON GARAMENDI: And Commissioners.

MR. ASUNCION: And Commissioners. Excuse me.

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

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

The gentleman that just spoke, I applaud him for trying to get anything cleaned up. But in the same token,
you don't use taxpayers' money to clean up a yacht club.

And the Water District should be scolded for allowing them
to squat on their property and pollute it. They pollute
your property that you have a lease with. They pollute
the property that the Water District owns. And then they
pollute the property where the state owns again.

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

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

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

Thank you very much for you time.
CHAIRPERSON GARAMENDI: Thank you.

Next?

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

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

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

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

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

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completed.

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

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

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

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

CHAIRPERSON GARAMENDI: Thank you.

Next.

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MS. CANSINO: Good afternoon, Chair and Commissioners.

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

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

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

CHAIRPERSON GARAMENDI: Thank you.

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

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

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

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

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

ACTING COMMISSIONER ARONBERG: I --

CHAIRPERSON GARAMENDI: Or shall we have staff?

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

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

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

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

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

So thank you very much.

CHAIRPERSON GARAMENDI: Thank you. Discussion?

ACTING COMMISSIONER SHEEHAN: I will move approval.

CHAIRPERSON GARAMENDI: We have a motion.

ACTING COMMISSIONER ARONBERG: Second.

CHAIRPERSON GARAMENDI: And a second.

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

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

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

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

One of the problems that has arisen lately, since August 1st, we did hear from the UC Davis Tahoe Research saying that the clarity of the lake was diminishing, and the algae were foreign algae and that the water was
contaminated and that the type of fish, the sturgeon and catfish that were out on the lake were not usually able to survive there. And so what it is, is a complete warming of the lake.

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

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

The environment improvement program, that allows the developers to not only be approved as a demonstration project but allows them also to get other commodities in
the form of increased commercial space, increased TAUs, or
tourist accommodation units, and mixed use, they can
increase their program by becoming a project.

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

Thank you.

CHAIRPERSON GARAMENDI: Thank you.

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

MS. THRELFALL: Good afternoon, Commissioners.

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

Our concern is that too many Trust decisions are
being made behind closed doors. If, in fact, the Public
Trust belongs to the people of California, then I believe the decisions affecting the Trust must be made in a public forum, and not by the final vote of a closed session. That is not a public forum.

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

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

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

CHAIRPERSON GARAMENDI: Quickly.

MS. THRELFALL: The Oak to 9th, which is, again, an open development, has a trade as part of it. So that
housing can be put on what was originally, in our general plan, a park. 3100 housing units are going in. And the trade substitution at this point, the Trade lands, will be industrial. Yes, that is a Public Trust use. But that is not, to me, the validation of what Public Trust lands are, especially when they take away our parks for housing.

Thank you for this opportunity to speak.

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

Owen Li.

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

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

Now, the commissioners discussed defaults and high interest rates associated with this product, last December, when they concluded this test case failed both
the pre- and post-1996 promise. Unite Here and the San
Diego Imperial County Central Labor Council agree with
this decision along with every environmental group which
was at the meeting.

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

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

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

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

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

Thank for your time.

CHAIRPERSON GARAMENDI: Thank you.

Darleen Nicandro, San Diego Unified Port District.

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

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

I would like to read Chair Rios's letter to the Commission for the record, if I may.
"Dear Chairman Garamendi and honorable commissioners. As the local tidelands grantee, the Board of Port Commissioners supports the request by Woodfin, a port tenant, for the California State Lands Commission to agendize an item of statewide interest at its upcoming October 30th, 2007, meeting in San Diego -- reconsideration of the Port Master Plan Amendment, which included a timeshare component.

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

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

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

"The nature and financing of hotel development is necessarily changing as the hospitality industry is..."
currently responding to changes in the economy.

Accordingly, a tenant on Public Trust lands receives financing advantages from timeshare components within visitor-serving uses" --

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

Bottom line?

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

CHAIRPERSON GARAMENDI: Thank you very much.

MS. NICANDRO: Thank you.

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

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

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

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

CHAIRPERSON GARAMENDI: You had better.
MR. KAUFMAN: Thank you.

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

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

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

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

Commissioner Aronberg, who chaired at the end of the meeting, stated, "Perhaps the hearing or workshops of
And Commissioner Sheehan stated, "Questions could be for more fully answered, either by more discussion or a workshop."

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

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

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

And lastly, what's new since December?

Well, you have two new commissioners. And the comments of commissioners in December, that there be a further dialogue, I assume that's so you could consider it.
Secondly, at the workshop I raised a new legal reason. Based on your decisions and case law, this should be addressed.

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

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

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

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

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

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

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

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

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

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

Further comments from the staff here?

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

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

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

I thank you all very much. Without further adieu,
this meeting is adjourned.

(Thereupon the Commission entered into closed session.)

(Thereupon the State Lands Commission meeting adjourned at 3:43 p.m.)
CERTIFICATE OF REPORTER

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

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

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

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

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