APPEARANCES

BOARD MEMBERS

Mr. John Garamendi, Lieutenant Governor, Chairperson

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

Mr. Michael Genest, Director of Finance, represented by Mr. Tom Sheehey

STAFF

Ms. Kimberly Lunetta, Executive Assistant

Mr. Paul Thayer, Executive Officer

ALSO PRESENT

Mr. Bruce Hayman, Dana Point

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C 01 AT&T CORPORATION (LESSEE/APPLICANT):
Consider the termination of a General Lease - Right of Way Use, adoption of a Final Environmental Impact Report (SCH No. 2007111029/CSLC EIR 745) and an application for a new General Lease Right of Way Use, of sovereign lands located in the Pacific Ocean, near the city of Los Osos, San Luis Obispo County, for the installation, maintenance and use of a fiber optic cable in an existing steel conduit previously authorized by the Commission. (W 26237/PRC 8144.1; RA# 31106) (A 33; S 15) (Negotiator: S.Young, S. McFarlin)
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C 02 ECOSYSTEMS MANAGEMENT ASSOCIATES, INC. (APPLICANT): Consider approval of a Non-Exclusive Geological Survey Permit on tide and submerged lands under the jurisdiction of the California State Lands Commission. (W 6005.119) (A & S: Statewide) (Negotiator: R. Greenwood)
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
CHAIRPERSON GARAMENDI: I think we're ready to roll here.

Lieutenant Governor John Garamendi, the Chair of the Commission at this time.

I believe we have representatives from the Department of Finance and John Chiang's office. I'm not sure John is on the phone. I didn't quite get that clear.

ACTING BOARD MEMBER ARONBERG: Lieutenant Governor, it's Cindy Aronberg representing the Controller.

CHAIRPERSON GARAMENDI: Thank you, Cindy.

And representing the Department of Finance?

ACTING BOARD MEMBER SHEEHEY: It's Tom Sheehey, Lieutenant Governor.

CHAIRPERSON GARAMENDI: Hey, Thomas.

Well, it's raining in Sacramento, and that's a good thing.

ACTING BOARD MEMBER SHEEHEY: Absolutely.

CHAIRPERSON GARAMENDI: We have -- I guess we just did the roll call. All done.

So we're going to turn this over to -- we have approval of the minutes from last meeting.

Tom, Cindy, I know you've read all these things.

Do you have comments?

ACTING BOARD MEMBER SHEEHEY: Lieutenant
Governor, they look like they're in order to me. And I would be happy to move approval of those minutes.

ACTING BOARD MEMBER ARONBERG: I would second.

Cindy Aronberg seconds.

CHAIRPERSON GARAMENDI: Thank you.

And the roll call on that.

Cindy?

ACTING BOARD MEMBER ARONBERG: Aye.

CHAIRPERSON GARAMENDI: Tom?

ACTING BOARD MEMBER SHEEHEY: Aye.

CHAIRPERSON GARAMENDI: The chair?

Aye.

Done.

Mr. Thayer, your report.

EXECUTIVE OFFICER THAYER: Thank you, Lieutenant Governor.

In the interest of time, because this is a telephonic meeting, I'm not going to offer the usual comments about violations. But I have background on that if anybody wants them.

Mario, are you there at the State Lands Commission?

EXECUTIVE ASSISTANT LUNETTA: We will get him, Paul.

EXECUTIVE OFFICER THAYER: We'll make him
The Commission at its last meeting approved Commission positions and sponsorship of some pieces of legislation. The bill introduction deadline was this last Friday, and I think we wanted Mario to give a quick update on what that is. Maybe we can --

CHAIRPERSON GARAMENDI: We'll take that out of order a little later.

EXECUTIVE OFFICER THAYER: And that would be all that I have in the Executive Officer report.

CHAIRPERSON GARAMENDI: We have a consent calendar. It's been published. There are two items on the consent calendar. Do either of my colleagues want to remove either of those two items from the consent calendar?

ACTING BOARD MEMBER ARONBERG: This is Cindy. I do have a question on the AT&A item. And if that necessitates removing it from the consent calendar, I'm sorry.

CHAIRPERSON GARAMENDI: Go with your question and we'll deal with the issue.

Before we take AT&T, the other consent item is a permit for geological studies off the coast. Any questions from the Commissioners about that issue?

If not, then let's get that one out of the way.
with a motion.

ACTING BOARD MEMBER SHEEHEY: Mr. Chairman, I would so move.

This is Tom Sheehy.

ACTING BOARD MEMBER ARONBERG: Aronberg seconds.

CHAIRPERSON GARAMENDI: Very good. We have a motion and a second.

Roll call.

Cindy?

ACTING BOARD MEMBER ARONBERG: Aye.

CHAIRPERSON GARAMENDI: Tom?

ACTING BOARD MEMBER SHEEHEY: Aye.

CHAIRPERSON GARAMENDI: Chair?

Aye.

That one is approved.

Now, Cindy, your question on AT&T.

ACTING BOARD MEMBER ARONBERG: I do.

Paul, we had talked about double checking to make sure in the event of any financial trouble with the owner of the cable that there are sufficient moneys to either survey it or remove it so that we don't have a situation like we did with the Global Photon. We have a cable line out there in the ocean still after that company had financial trouble.

Was there any success in figuring that out?
EXECUTIVE OFFICER THAYER: Yes. We went back to our engineers after your question, and they ended up concluding that the 500,000, which had been shown in the staff report, was probably not sufficient and had an estimate of 1.5 to two million. This is kind of a quick estimate. And we went back to AT&A and worked with Jim Burrows and others where amenable to raising the bond amount to $2 million. That now is the bond amount that's in the lease. And, again, our engineers believe that's an amount that would allow the cable to be removed should the Commission order it.

The second, this lease, as with many of our leases, provides at the end of the lease term the improvements would either be removed or retained in place at the discretion of the Commission. When the Commission has faced this question in the past, usually it's required an environmental review and gone with whatever mechanism is best for the environment. In some cases, it's best to leave it behind because of the environmental impact of removing something that's buried, a pipeline or a cable. In other cases it's required to be removed.

CHAIRPERSON GARAMENDI: Do you have another question, Cindy?

ACTING BOARD MEMBER ARONBERG: No. One quick follow-up on the bond. And the bond is something that
regardless of the status of the company will stay in
place, regardless of the financial status of the company;
is that right?

EXECUTIVE OFFICER THAYER: Yeah.

ACTING BOARD MEMBER ARONBERG: Great. I would be
happy to move approval of this item with that change.

CHAIRPERSON GARAMENDI: This is not on consent
any longer. I think we have an opportunity for the public
to comment on this issue.

So is there any comments from the public at any
of the locations?

ACTING BOARD MEMBER SHEEHEY: Lieutenant
Governor, this is Tom Sheehey with Curtis Fossum at the
Director of Finance's office, and there are no members of
the public here waiting for comment. But I'm going to go
double check real quick.

CHAIRPERSON GARAMENDI: Cindy?

ACTING BOARD MEMBER ARONBERG: We have members of
the public, but no one to comment on that item for public
comment.

CHAIRPERSON GARAMENDI: Okay. My office?

All right. The issue is before us.

Tom was about to make a motion before I cut him
off.

ACTING BOARD MEMBER SHEEHEY: Yes, Mr. Lieutenant
Governor, I would move approval of this item as amended.

ACTING BOARD MEMBER ARONBERG: I believe that's a second to my motion; is that right?

ACTING BOARD MEMBER SHEEHEY: I would second Ms. Aronberg's motion.

CHAIRPERSON GARAMENDI: Very good. We have a motion and a second.

Roll call.

Cindy?

ACTING BOARD MEMBER ARONBERG: Aye

CHAIRPERSON GARAMENDI: Tom?

ACTING BOARD MEMBER SHEEHEY: Aye.

CHAIRPERSON GARAMENDI: Chair?

Aye.

That's approved.

We now have other public comment, not including AT&T and the lease.

Anybody here at the Capitol office?

ACTING BOARD MEMBER ARONBERG: Do you not have anyone in your office, Lieutenant Governor?

CHAIRPERSON GARAMENDI: No. We have about ten people in this office, but I don't think anybody wants to comment.

ACTING BOARD MEMBER ARONBERG: I do have one speaker card here in the Los Angeles location, Mr. Bruce
Hayman who would like to speak about the boaters for Dana Point Harbor.

CHAIRPERSON GARAMENDI: Very good.

MR. HAYMAN: Good morning. This is Bruce Hayman. Can everyone hear me okay?

CHAIRPERSON GARAMENDI: Yes. Go ahead, Bruce.

MR. HAYMAN: Thank you, Chair, Commission, and staff. Thank you for the opportunity to address you this morning.

First of all, I'd like to thank you. We brought an issue up to you last August. And you helped -- your office helped us obtaining additional financial information on the harbor. We are very appreciative. That was helpful.

I understand that you subsequently had a discussion in October, and I would like to add to that discussion if I could a little bit. In specific, what we were looking for is some help with the California Coastal Commission in ensuring that the property is utilized for what the intent of the Tidelands Trust was.

In specific, I'd like to read a quick passage. And that is from the 1961 Tidelands Trust document. And it says,

"Said lands shall be used by said county, and its successors, only for the establishment,
improvement, and conduct of a harbor and for the
construction, maintenance, and operation thereon
of wharves, docks, piers, slips, quays, and other
utilities, structures, facilities, and appliances
necessary or convenient for the promotion and
accommodation of commerce and navigation and for
recreational use, public park, parking, highway,
playground, and businesses incidental thereto."

What we have is an issue with the current
proposal that's coming before the Coastal Commission next
month is that it's actually expanding things by about
50 percent, and those are the things that are incidental
thereto. And in order to -- since Dana Point Harbor is a
very constrained area, they're having to remove a lot of
harbor functions and a lot of harbor capacity in order to
create space for these incidentals.

What I'm asking the Commission to do is if they
could help us try and draw this balance in so we don't
lose trailer, tow, vehicle storage areas or parking areas.
We don't lose dry boat storage areas. We don't lose land
for our ship yard, which is a required function for a
harbor. And also boater parking. Because quite honestly,
it's hard for us to do those things inland. Whereas,
restaurants and stores, which are incidental to, can be
built on the water, but they also can be built inland,
unlike a harbor.

And so I'm just asking if you can help us draw a balance to this. Thank you.

CHAIRPERSON GARAMENDI: Paul.

EXECUTIVE OFFICER THAYER: Thank you, Chairman.

Staff is in receipt of several letters as well as oral context for the speaker's comments. And we have investigated this over the last few months. Particularly, the request that was made of the Commission to get involved with the LTP amendment that is coming before the Coastal Commission.

One of our staff counsel, Jennifer Lucchesi, looked into the two questions which are at issue here. One is are the improvements that are contemplated in the LTP amendment consistent with the terms of the grant from the Legislature. And Mr. Hayman had a quote there from the grant.

And it was the conclusion of staff that that grant subjects management of these granted lands to the same restrictions and requirements that are generally required of other grantees and of the Commission pursuant to the public document. So there's no exclusion of uses unique to Dana Point from that grant. And the full panoply of public trust can occur. And that includes the incidental ones that Mr. Hayman was referring to anywhere...
from a hotel, to a restaurant, a bar, that kind of thing are all permissible.

The second thing that staff did was to look at the LTP amendment, and all of those contemplate uses for -- are restricted to uses which would be consistent with the public trust document.

And the final point which Mr. Hayman makes is whether or not the choices being made in the management of Dana Point is appropriate. In other words, he's saying that perhaps space necessary for storage of boats or trailers is being taken away in lieu of or in favor of these other new uses that are coming in.

The Commission generally has not gotten involved in those sorts of management division decision. It's clear direction from the Legislature in making these grants is to transfer those management decisions from the State Lands Commission to a local entity. So we've usually not overseen that kind of operation.

So we did send a letter back to Mr. Hayman describing all of this and copies to the Commissioners' offices. So our recommendation at this point is to not get involved with this item before the Coastal Commission. Of course, we couldn't take that action now anyway since this is in public comment and it hasn't been noticed. But we would not recommend doing that.
Of course, we'll continue to track this. And in fact, as a result of Mr. Hayman's interest, we've gone out there and inspected the operation of Dana Point. And we found two uses we don't think are consistent with the trust. And we've advised -- one was a perfumery, and one was a store that was selling a lot of shoes.

In fact because of his input, we've advised Dana Point Harbor District that those uses aren't permissible and they're looking at ways to deal with it.

CHAIRPERSON GARAMENDI: And commercial office building and things of that sort. Okay.

I think it's clear at this point.

Questions, Cindy, on your side?

ACTING BOARD MEMBER ARONBERG: Anyone here have any questions?

No questions.

CHAIRPERSON GARAMENDI: Tom?

ACTING BOARD MEMBER SHEEHEY: Yes. I had one, Lieutenant Governor.

I want to know if Paul Thayer was nosing around out there.

CHAIRPERSON GARAMENDI: That he was.

ACTING BOARD MEMBER SHEEHEY: Okay. Just wanted to clarify that.

EXECUTIVE OFFICER THAYER: I was out there.
CHAIRPERSON GARAMENDI: All right. Any further public comment? Okay. That concludes the public comment. And I think that concludes the public portion of this meeting. So if the public would exit the location. I guess Los Angeles is the only place where there is a public member around. We now go into a closed session.

(Thereupon the California State Lands Commission recessed into closed session at 10:14 a.m.)
CERTIFICATE OF REPORTER

I, TIFFANY C. KRAFT, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing hearing was reported in shorthand by me, Tiffany C. Kraft, 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 hearing nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of March, 2009.

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Certified Shorthand Reporter
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