APPEARANCES

COMMISSIONERS

Mr. John Garamendi, Lieutenant Governor, Chair

Mr. John Chiang, State Controller, represented by
Ms. Marcy Jo Mandel

Mr. Michael C. Genest, Director of Finance, represented
by Mr. Thomas L. Sheehy

STAFF

Mr. Paul D. Thayer, Executive Officer

Mr. Curtis Fossum, Chief Counsel

Mr. Joe Rusconi, Attorney General's Office

Mr. Mario T. De Bernardo, Legislative Liaison, Staff
Counsel

Ms. Kimberly Lunetta, Executive Assistant

Ms. Barbara Dugal, Chief, Land Management Division

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

Mr. Greg Scott, Chief, Mineral Resources Management
Division

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ALSO PRESENT

Mr. Richard Sipos, Wendel Rosen Black & Dean LLP

Mr. John Asuncion, Blue Whale Sailing School

Ms. Adrienne Klein, San Francisco Bay Conservation
and Development Commission

Mr. Tom Martinez, Santa Clara Valley Water District

Mr. Steven Kirby

Mr. Steve Coombs, Pacific Operators

Mr. Charles Cappel, Carone Petroleum

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Consider denial of an application for a Recreational Pier Lease and authorization for the staff of the California State Lands Commission and/or the Office of the Attorney General to take all steps necessary, including litigation, for trespass, ejectment and removal of an unauthorized pier with a boatlift, a boathouse with two boatlifts, sundeck with stairs, and four
mooring buoys located on sovereign lands in Lake Tahoe, adjacent to 4812 and 4826 North Lake Boulevard, near Carnelian Bay, Placer County, and the restoration of the land to its condition prior to the placement of the structures to the satisfaction of the Commission.

PRESENTATION TO MS. ANNE SHEEHAN

(40) BLUE WHALE SAILING SCHOOL, INC. (PARTY): Consider authorization for the staff of the California State Lands Commission and/or the Office of the Attorney General to take all steps necessary, including litigation, for trespass, ejectment, and removal of unauthorized docking facilities located on State-owned lands in Simonds Canal and Alviso Slough, town of Alviso, Santa Clara County, and restoration of the land to its natural condition, to the satisfaction of the Commission.

(41) CARONE PETROLEUM INC. (LESSEE): Consider finding Carone Petroleum, Inc., in default of Subsurface (No Surface Use) Oil and Gas Lease Nos. PRC 7911.1 and PRC 4000.1, Offshore, Santa Barbara County.

(42) CALIFORNIA STATE LANDS COMMISSION: Consider a resolution opposing the U.S. Department of the Interior, Minerals Management Services’ Draft Proposed 5-year Outer Continental Shelf Oil and Gas Leasing Program for 2010-2015.

(43) CALIFORNIA STATE LANDS COMMISSION: Consider supporting a grant application package requesting funds from the NOAA Coastal and Marine Habitat Restoration Project.
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Grants Program, which was authorized by the American Recovery and Reinvestment Act of 2009, for beach hazard removal in the counties of Santa Barbara and Ventura

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CHAIR GARAMENDI: Good morning. I'm Lieutenant Governor John Garamendi, Chair of the State Lands Commission. I'm calling this meeting of the State Lands Commission to order. Let's see. Tom Sheehy is here representing the Department of Finance. And --

DEPUTY STATE CONTROLLER MANDEL: Marcy Jo Mandel for State Controller John Chiang.

CHAIR GARAMENDI: Thank you, Marcy.

For the benefit of those of you in the audience, the State Lands Commission administers properties owned by the State as well its mineral interests. Today we will hear proposals concerning some leases and the management of these public properties.

The first item of business will be the adoption of the minutes from the Commission's last meeting. Tom, thank you for the motion.

DEPUTY DIRECTOR OF FINANCE SHEEHY:

Mr. Chairman. Thank you, Mr. Chairman. Having seen the minutes, they look like they're in order; and I would move approval of the minutes.

CHAIR GARAMENDI: Do we have a --
DEPUTY STATE CONTROLLER MANDEL: Second.

CHAIR GARAMENDI: And without objection, the
minutes from the last meeting are approved.

The next order of business is the Executive
Officer's report, as is our standard procedure. Paul
Thayer, please.

EXECUTIVE OFFICER THAYER: Good morning, and
thank you, Mr. Chair. I just have two items.

The first is just to affirm that we are now
scheduled to meet for our next meeting on June 1st in
southern California. We're still working on a location
for that.

And probably the largest item we'll be hearing
is the proposal to extend the lease for the Ellwood
Marine Terminal which serves Platform Holly. We'll be
hearing that in June, which is why we are meeting in
southern California.

The other item I wanted to go over with you is
the usual recounting of where we're at on some of these
enforcement actions, and there are some successes to
report.

First off is the South Bay Yacht Club. The
Commission, about a year and a half ago, required that
the club bring its facilities up to snuff. There's
been some repair and maintenance problems.
The yacht club needed to get approval from BCDC and Fish and Game in order to remedy some of that situation, particularly the weed removal, and finally it's been able to accomplish all of that.

Staff inspected the site this week and found that they've basically complied with everything the Commission has asked of them.

I expect that -- that particular yacht club is in a location where the maintenance is an issue. There's not much of a current through there, and the weeds, the -- they're not all weeds; some of them are native vegetation -- grow up quickly.

And so we're going to continue to monitor that club to make sure that they maintain the standards that the Commission expects of them.

The second one, Jeanne Bird Taylor. This was the applicant who wanted to renew her lease but had a houseboat, or really a floating house, at her dock and an onshore cabin that extended out over state tidelands.

Since we've worked with her, she has sold off the floating home, she's cut back the structure that extended out over Public Trust lands, she has shortened up the dock which had been over a hundred feet long and was much greater than we'd normally issue a
recreational pier lease for so that it again complies
with the standards on that, and she's removed several
pilings that were associated with the longer dock.
So at this point, we think she is in
compliance, and on the Consent Calendar today is
approval of her lease renewal.
We are still having to follow up, though, with
the person who bought her floating home. And that
work's going to continue until we figure out either
he's going to move it to someplace that's not under our
jurisdiction and do something else with it, convert it
into an office or a marina or something like that.
CHAIR GARAMENDI: Are we in touch with the
individual who owns the home?
EXECUTIVE OFFICER THAYER: Yes.
CHAIR GARAMENDI: I checked it out this
morning; it's still there.
EXECUTIVE OFFICER THAYER: It's still there.
Was there anybody on board?
CHAIR GARAMENDI: No sign of human life.
(Laughter)
EXECUTIVE OFFICER THAYER: Thank you for
checking.
CHAIR GARAMENDI: We've all got to do our
piece.

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EXECUTIVE OFFICER THAYER: The next one is Shawn Berrigan and Diane House, the Courtland Docks. Again, the problem there has been poor repair for the facilities, the docks, and the house that projected out over Public Trust lands, and the lack of a bond for the marina. That's a very small marina in Courtland. They have cut back the house, so they're now off of Public Trust lands. They've replaced all the docks. They still haven't brought their bond into compliance with the lease, in part because they don't have a lot of money and they're being sued by next-door neighbors and this sort of thing, and so the bonding companies are reluctant to proceed. But we're working with them on this. And they have reported that some of the lawsuits may be dismissed in June due to an expiration of the appeal process. So there is a way forward on this, and we'll keep working on that until it's done. But the physical changes have all been accomplished. On Holbert, again this was a family that overbuilt their dock along the Sacramento River so it was much taller than the Commission had approved.
There's been no resolution of that yet.

The office of Attorney General's filed a cross-complaint, and we're going through the preliminary interrogatories and other pretrial process to bring that to court.

The Spirit of Sacramento is the old, I think, ferry boat that is tied up on the Yolo County side of the Sacramento River near downtown Sacramento. And we're continuing to work with the AG's office to bring that to court. There's nothing new on that or --

Curtis, do you have something on that?

CHIEF COUNSEL FOSSUM: Yes. I believe -- this is Curtis Fossum, Chief Counsel. That complaint has been filed in that against the owner of the boat.

EXECUTIVE OFFICER THAYER: That was just this week?

CHIEF COUNSEL FOSSUM: Yes.

EXECUTIVE OFFICER THAYER: Great.

CHIEF COUNSEL FOSSUM: We filed two complaints. The Attorney General's office filed two complaints on the Commission's behalf, one against the Spirit of Sacramento and the other the Coronado, I believe. Is that correct?

EXECUTIVE OFFICER THAYER: San Diego.

CHIEF COUNSEL FOSSUM: San Diego actually was
moved.

EXECUTIVE OFFICER THAYER: Yeah.

Anyway, that brings us to the next two, which are the two large boats that were parked down the Delta semi-permanently without a lease. The -- one of them has been moved to an area near Rio Vista where the City has issued the vessel a lease. It's outside the Commission's jurisdiction, so in essence that's out of our -- it's in the City's hair now, not in ours at this point.

For the other one, the AG has filed a complaint for trespass against the ferry boat San Diego.

And those are all -- I think all of the violations that we're working on right now.

CHAIR GARAMENDI: Great.

EXECUTIVE OFFICER THAYER: Unless there's any questions, that concludes the --

CHAIR GARAMENDI: Mr. Thayer, just a couple of things.

First of all, it's extremely important that we pursue these vigorously, and I thank you and your staff for doing so. If we sit back and wait, the message goes out that people can basically do anything they want to do on State property, and that's not the case.
So the enforcement efforts that you're making is very, very important. I thank you for doing so.

A couple of the things that we covered. One is the cleanup of the river. In some cases, the owners of these derelict vessels are gone, and we've been pursuing an effort to use funds that are in the Boating and Waterways Department to provide the State Lands Commission with some money to go out and do it.

Right now, as I understand it, the counties have access to that money; we don't. The counties are reluctant in many cases to take action. And I'm wondering where we are with all of that, what the situation might be.

EXECUTIVE OFFICER THAYER: The program that the Chair is alluding to is one in which the Department of Boating and Waterways makes grants to local governments upon their application for specific projects for hazard removal.

There's about a half million dollars available for that program. Usually most of the money is subscribed to by the counties, but then the counties end up not going forward with the project and money's in essence returned to the State; it's left on the table that, as you know, our staff has been working on trying to secure for the State Lands Commission.
Mario might be able to report on this further, but my understanding is that we drafted legislation to deal with that particular issue and we're not able to find an author.

We were able to -- Senator Wolk consented to what we call our administrative penalty, abandoned vessel legislation, and that has been introduced -- it hasn't been heard yet -- in which the Commission would be given a more expedited process for removal of these vessels.

But we're still working on the monetary side of things, and I think there's some discussions about whether or not the monetary side can be amended into Senator Wolk's legislation.

Mario, do I have that correct?

LEGISLATIVE LIAISON, STAFF COUNSEL DE BERNARDO: Right. We -- I mean, I spoke to most -- should I get up?

Mario De Bernardo, legislative liaison for the State Lands Commission. Good morning, Commissioners.

I made an effort to get an author for legislation to authorize us to access the Department of Boating and Waterways money, and I approached nearly all of the legislators that represent districts in the Delta. And at least as of now, it hasn't been picked

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CHAIR GARAMENDI: Did you indicate that Senator Wolk might entertain the notion of amending her bill and picking up this opportunity for the authority for the Department -- excuse me -- for the State Lands Commission to access that money if it were to be available?

LEGISLATIVE LIAISON, STAFF COUNSEL DE BERNARDO: They are not considering that. They have been contacted by several boating -- recreational boating interests, and most of them are very protective of the fund and have tried to encourage her office --

CHAIR GARAMENDI: They are really interested in having derelicts in their path?

LEGISLATIVE LIAISON, STAFF COUNSEL DE BERNARDO: I think --

CHAIR GARAMENDI: Submerged objects that they can run onto?

LEGISLATIVE LIAISON, STAFF COUNSEL DE BERNARDO: I don't think that that's their interest. There's -- there is -- they're protective because this fund has been attacked in, I guess, many ways and directions; and there are several proposals out there. So despite explaining that this is going to help that effort, they are --
CHAIR GARAMENDI: Tom has assured us that Finance is not interested in ripping it off, but --

DEPUTY DIRECTOR OF FINANCE SHEEHY: No, we have our eyes on larger pots of money.

(Laughter)

CHAIR GARAMENDI: We understand. The point here is that -- and we will make this point -- if you could work with my office and we'll have -- and I think Tom is interested in this also -- see if we can have a conversation with Wolk and the parties that are opposed to it.

Because I understand that this money is allocated for the specific purpose of cleaning up the waterways, and this would simply allow an additional agency to do it anyway. And the money is already there for that purpose.

LEGISLATIVE LIAISON, STAFF COUNSEL DE BERNARDO: I'll continue pursuing that.

CHAIR GARAMENDI: Thank you.

Have we covered all of these issues? Stay with the enforcement. It's very important. And I know it's not easy, and I know we often find ourselves in lawsuits. But we have got to do it. Thank you.

EXECUTIVE OFFICER THAYER: I agree.

CHAIR GARAMENDI: Paul?
EXECUTIVE OFFICER THAYER: And actually, to follow along with that, of course, three of the items we have before the Commission in regular session are all enforcement sorts of actions, and we will continue to follow that direction from the Commission.

The next item then, we're moving to the Consent Calendar.

CHAIR GARAMENDI: Is there anybody in the audience that would like to comment on the Consent Calendar?

Are any of the Commission members interested in removing anything from the Consent Calendar?

DEPUTY DIRECTOR OF FINANCE SHEEHY: Hearing know requests --

DEPUTY STATE CONTROLLER MANDEL: I just have one question before we do the Consent Calendar. And it's just -- is that appropriate to ask the question at this point?

CHAIR GARAMENDI: Sure.

DEPUTY STATE CONTROLLER MANDEL: It's just a question for, I guess, the AG's representative on Item 35 on the Consent Calendar. And it's just a question of whether we're required to approve this item.

DEPUTY ATTORNEY GENERAL RUSCONI:

Commissioner, your discretion has been limited in this

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case and it's basically a ministerial act to approve these.

And so yes, your discretion is to -- you don't have discretion here.

DEPUTY STATE CONTROLLER MANDEL: Okay. Thank you.

CHAIR GARAMENDI: Very good. Then the Consent Calendar is before the Commission.

DEPUTY DIRECTOR OF FINANCE SHEEHY: Mr. Chairman, seeing no request to remove anything, I would move approval of the Consent Calendar.

DEPUTY STATE CONTROLLER MANDEL: Second.

CHAIR GARAMENDI: Without objection, Consent Calendar is adopted.

Moving on. The next item is 39. Deals with an unpermitted facility in Lake Tahoe. Paul?

EXECUTIVE OFFICER THAYER: Thank you, Mr. Chair.

Making the presentation for staff this morning will be Barbara Dugal, who's chief of our Land Management Division.

DIVISION CHIEF DUGAL: Good morning, Mr. Chairman and Members of the Commission. As Paul mentioned, my name is Barbara Dugal, and I'm the chief of the Land Management Division for the State Lands.
Commission. And I'm here today to present you with information regarding calendar item number 39. This item is asking the Commission to consider denying a lease application that was made by Jeffrey Richmond Naess in the name of the Evelyn Richmond Trust, et al for an existing pier and boatlift, a boathouse with two boatlifts, a sundeck with railing and stairs, and four mooring buoys, all located on sovereign lands in Lake Tahoe and to consider authorization for litigation for trespass and ejectment.

And I'd like to just briefly go into some of the history here which I think is important to explain to the Commission and why we're where we're at today. Based on the information from our files, the pier in question, which is depicted up here on the screen and also in the packet that you were just handed, was built in early 1960s. However, it appears that the boathouse, the boatlift, the sundeck with the railing and the stairs, and the mooring buoys were added at a later date.

But the applicants have not submitted any information identifying the dates these additional improvements were placed on the pier, and staff has been unable to confirm any of those dates.
These improvements are located partially on State-owned sovereign lands. Again, there is the demarcation of 6223, which is the -- anything below low water at Tahoe we issue a lease for.

And they're adjacent to two upland properties that are now owned by the applicant located at 4812 and 4826 North Lake Boulevard near Carnelian Bay.

And while I'm talking, there's going to be some photos which you also have copies of showing that, the pier.

Commission staff first became aware of the pier in 1969. A letter was sent in July of that year to Burnell Richmond, the upland owner at that time, advising him that the pier adjacent to his upland property was located on State-Owned sovereign land and that a lease from the Commission would be required.

A response was subsequently received from Mr. Richmond, but an application was not submitted at that time.

Commission staff sent another letter to Mr. Richmond in August of 1969 advising him that the pier was constructed without authorization from the Commission and that the pier had been in trespass since construction.

Subsequently, in January of 1970, Mr. Richmond
finally submitted a lease application for the pier. The lease documents were prepared by the staff, and they were sent to Mr. Richmond for execution. However, he never executed the lease because he disagreed with the proposed rent, which was before the enactment of Public Resources Code 6503.5 which was enacted in 1978, and to the claim by Placer County to the ownership of the land intervening his upland property.

Over the next several years, letters were sent back and forth between the Commission staff and between Mr. Richmond regarding the proposed lease terms. Ultimately, the rent and the county issues were resolved in July of 1978, and a new lease was sent to Mr. Richmond, but the lease was never signed and returned.

In 2002, the ownership in the upland properties passed to Mr. Richmond's heirs on whose behalf Jeffery Richmond-Naess is now acting. In August of 2002, Commission staff contacted Mr. Naess regarding the unauthorized pier and again advised of the need for lease. In June of 2003, a lease application was submitted by Mr. Naess and other family members, and the 2003 application was for the pier, a boatlift, a
boathouse with two additional boatlifts, and the four
mooring buoys.

In August of 2003, staff prepared a
recreational pier lease for the existing improvements,
and it was sent to the applicants for execution.

The lease documents were returned back to the
Commission in November of 2003 unsigned and with
significant modifications to the proposed lease, and
those changes were proposed by the applicants' attorney.

The requested modifications to the
Commission's standard lease covenants included
objections to the following. And I'm going to briefly
go over these; but in your handout, you have letters of
the attorney and of the marked-up lease.

So those areas of the lease that are in
contention are:

Insurance.
The repair and maintenance clause.
The restoration of the lease permits clause.

Assignments.

And default and remedies.

Staff and the applicants' attorney were unable
to resolve the differences, and the negotiations
basically stalled.
In May of 2007, staff reinstated discussions and -- but was informed by the applicants' attorney that the applicants' position had not changed from that stated back in 2003.

During that time, staff conducted another review of the application, and we learned that there was a sundeck with stairs and railing that had been construction on top of the boathouse.

At that time, staff advised the applicants and their attorney that the sundeck, railing, and staircase would not be recommended by staff for approval.

The applicants were also advised that staff would not be recommending approval of the four mooring buoys because the lease application lacked verification as to when the buoys were placed in Lake Tahoe and also lacked any permits from the Corps of Engineers or the Tahoe Regional Planning Agency.

Based on these facts I just outlined, staff then prepared a new recreational pier lease which was again sent to the applicants' attorneys. This new lease included our standard language for our recreational pier leases, and it also required removal of the sundeck, the railing, and the staircase from the boathouse.

More discussions were held between the
applicants' attorney and staff; and while some of the
minor issues were resolved, there was no agreement
reached on the core issues.

Based on the above and given the length of
time, over 40 years, that Commission staff has
attempted to get the pier under lease, staff recommends
that the Commission deny the application submitted on
June 13, 2003 by Jeffrey Richmond-Naess and other
family members; and ratify staff's determination that
the structures that have been placed on State land by
the Richmond Trust are in trespass on the State-owned
sovereign land; and then to also authorize Commission
staff and the Attorney General's office to take all
steps necessary which would include litigation to eject
the Richmond Trust from State property and to remove
all improvements from State sovereign land in Lake
Tahoe; and also to require the restoration of the
sovereign lands at that location to their condition
prior to placement into the Commissions's satisfaction;
and then also to recover the Commission's damages and
costs.

We have got other staff here available for
questions. I don't know if there is a representative
here for the applicant or not.

CHAIR GARAMENDI: Thank you for that
presentation.

I would like to hear from -- I understand the
attorney representing the family is here? Richard
Sipos. You have requested to testify, and I'd
appreciate hearing from you.

MR. SIPOS: Good morning, Members of the
Commission. My name is Richard Sipos with the law firm
of Wendell Rosen, and I represent --

CHAIR GARAMENDI: Pull your microphone up.

MR. SIPOS: Thank you. My Name is Richard
Sipos, Wendell Rosen, and I represent the various
family members of the Richmond and Naess families that
own the property.

And I just wanted to start with a little bit
of background on this property and the pier lease.

The original property was purchased by Edmund
Richmond back in 1928, and the pier was constructed
shortly thereafter. Excuse me. The property was
acquired in 1928.

The actual pier that is the subject of this
hearing was constructed in 1958, and it was constructed
with a building permit from the county.

In approximately 1968 or '69, correspondence
began between the State Lands Commission and Vernal
Richmond, the then owner of the property. During the
course of that dialogue, which essentially went from 1969 through 1978, a series of different jurisdictional approvals were necessary.

That was not mentioned by staff, but the first impediment was that the State Lands Commission required county approval, and the county would not give its approval, Placer County, because there was an issue of whether the county had a right of way in the shorefront land.

So that stalled any approval of the pier lease for a number of years.

Then approval was necessary from the Army Corps of Engineers, and the Army Corps of Engineers said that it was not going to issue any permits until -- or in light of the fact that TRPA was being formed in the 1970s.

By the mid 1970s, the negotiations continued between the landowner and the State Lands Commission, and a dispute arose over the imposition of rent.

And at a certain point, there was a Senate Bill at issue raised by Vernal Richmond that indicated that rent was not going to be charged for pier leases, and Mr. Richmond at that time was not agreeing to pay the rent.

Ultimately, the Public Resource Code was
enacted, and rents were not required.

All communication ceased between the parties in 1978 and were not resumed until 2002 when Evelyn Richmond, daughter-in-law of Vernal Richmond, made an inquiry to the State Lands Commission regarding construction of an adjacent pier and movement of some buoys.

That then started the dialogue that essentially brings us here today.

And staff is correct that a form lease was submitted to the family. I made revisions to it and submitted it back. The response from staff was that no modifications would be made to the State Lands Commission lease.

At that point, all communication ceased, and from 2003 through 2007 there were no communications. In 2007, I was recontacted by a State Lands Commission representative and directed that individual to our prior response.

Another year went by with no response from the State Lands Commission.

However, in 2008, I was recontacted by another representative of the State Lands Commission with a new lease. Interestingly enough, the new lease incorporated language I had suggested back in 2003 when...
I had been told that no changes would be made to the lease.

In late 2008, a series of negotiations occurred between myself and representatives of the State Lands Commission. We greatly narrowed the areas in dispute down to essentially six core issues involving the pier lease, and I would like to just briefly address those issues.

And I had a question for the Commission, and the question is whether the Commission has -- and if they don't, I have a copy here for the members of my June 6, 2009 letter which has the latest version of the lease and has in red lines showing what the disputed areas are.

CHAIR GARAMENDI: I think --

DEPUTY DIRECTOR OF FINANCE SHEEHY: Mr. Chairman, before we get into the witness asking us questions, I'd like us to have an opportunity to ask the witness questions. I think you are sort of procedurally out of order at this point.

CHAIR GARAMENDI: Do you want to ask a question? Well, go ahead. Go ahead and finish, and you can ask your questions after we ask questions.

MR. SIPOS: I really didn't have so much as a question. I just wanted to make sure -- I was going to
walk through the lease just so the Commission
understands what the precise areas of dispute are. And
I have a copy of the latest version of the lease that
is at issue if that would help. But if not --

DEPUTY DIRECTOR OF FINANCE SHEEHY:

Mr. Chairman, Kim Lunetta on the State Lands Commission
staff described what I believe is the document this
gentleman is talking about.

Is that right, Paul.

EXECUTIVE OFFICER THAYER: That's it.

DEPUTY DIRECTOR OF FINANCE SHEEHY: So we do
have that.

MR. SIPOS: Okay. So --

CHAIR GARAMENDI: Make your points.

MR. SIPOS: The first issue has to do with
insurance, as noted, and that appears on page 4 of the
lease. And that precise section is D2E. And
essentially, the landowners have agreed to all of the
Commission's requested insurance coverages.

The only provision that I added was a
qualifier that the family would only have to get those
coverages providing they can get them.

My point was, if insurance is not available,
it would be improper to hold a party in breach of a
lease for coverage they can't obtain. So that --
CHAIR GARAMENDI: Excuse me, I have a question of the State.

Do we routinely require insurance?

CHIEF COUNSEL FOSSUM: Yes, Mr. Chairman. In addition, we have a list of over a dozen insurance companies that are issuing lease --

CHAIR GARAMENDI: That's fine. That's not -- the point is --

CHIEF COUNSEL FOSSUM: Insurance at Lake Tahoe, and it is a standard covenant.

CHAIR GARAMENDI: The point is it's standard procedure. All right.

Next point that you'd like to make, sir.

MR. SIPOS: The next one had to do with Section D4, which has to do with repair and maintenance.

DEPUTY DIRECTOR OF FINANCE SHEEHY: I just want to make sure I'm following. Is that still on the same page?

MR. SIPOS: Same page, page 4.

DEPUTY DIRECTOR OF FINANCE SHEEHY: Thank you.

MR. SIPOS: And it is in the middle -- the highlight or red lining at the top are not in dispute. It's the center of that paragraph.

I added two provisions, one that the lessee be
afforded the opportunity to make the repairs, weather permitting, and second providing they can obtain a permit.

And I illustrated this in my cover letter.

This is a very real issue. There was a time period where TRPA ceased all permits for piers at Lake Tahoe.

So if this, the Commission's form, stayed in place, pier owners would be held in breach of a lease over which they had no control based on a governmental agency's refusal to issue permits.

And so those were the only qualifiers I added to that section.

CHAIR GARAMENDI: A question once again of the staff: Are these requirements standard in our lease at Tahoe?

DIVISION CHIEF DUGAL: Yes.

CHAIR GARAMENDI: So these are standard requirements for Tahoe leases?

DIVISION CHIEF DUGAL: Yes.

DEPUTY DIRECTOR OF FINANCE SHEEHY: I have a follow-up question, Mr. Chairman.

Have we ever had a situation with our leases around Lake Tahoe where the owner of such a structure has applied for a permit to do necessary maintenance or modifications necessary to the lease and been denied
and had action taken against them because they were denied? Has that ever happened?

DIVISION CHIEF DUGAL: Not that I'm aware of, no.

DEPUTY DIRECTOR OF FINANCE SHEEHY: Paul, are you aware of that ever happening?

CHIEF COUNSEL FOSSUM: I think there has been circumstances where other agencies have had either a moratorium or other type of -- but the Commission, to my knowledge, has never taken any action because of that.

EXECUTIVE OFFICER THAYER: And Curtis, those moratoriums were on construction of new piers, generally?

CHIEF COUNSEL FOSSUM: Typically.

EXECUTIVE OFFICER THAYER: Not repair.

CHAIR GARAMENDI: Thank you.

Please continue, sir.

MR. SIPOS: The next provision is issues on the same page, page 4. That's the restoration of lease of premises.

I requested deletion of that provision, and the reason was that the lessees do not believe that's appropriate to require removal if the Commission doesn't issue a new lease as contrasted with -- and I
offered to have a provision that if the lessee fails to
sign a lease, then that would be appropriate. But if
the Commission refuses to sign a lease, it would not be
appropriate to force the landowner to remove their pier
without compensation.

CHAIR GARAMENDI: Once again, Curtis?

CHIEF COUNSEL FOSSUM: Mr. Chairman, the pier
as -- we don't see it on this, but the diagram that you
had for the exhibit that shows the pier shows a pier
existing from the shoreline out to low water and
beyond.

If the Commission found that the entire pier
between high and low water, including the area between
high and low water, needed to be removed, then the
property owner would in fact need compensation for the
area between high and low water.

However, below low water, that is State
property, and the owner of the pier is there at the
will of the Commission and so there is no right for
them to maintain it and there is no obligation for the
Commission to extend or to even issue a lease for that
area; but if the Commission so desires, it certainly
can, upon application.

CHAIR GARAMENDI: Is this standard

procedure --
CHIEF COUNSEL FOSSUM: Absolutely.

CHAIR GARAMENDI: -- across the entire state?

CHIEF COUNSEL FOSSUM: Everywhere.

CHAIR GARAMENDI: Is this also procedure on any leased property, public or private?

CHIEF COUNSEL FOSSUM: All property.

CHAIR GARAMENDI: Public and private?

CHIEF COUNSEL FOSSUM: I would expect all private property we would similarly not give somebody an automatic extension to always stay on the property.

A leasehold is a term -- for a term of years. And at the end of that term, typically the owner of the property has the authority to either take possession of the improvements or have them removed.

CHAIR GARAMENDI: Thank you. Next point, sir.

Bev? Can I see you for a moment? Please continue.

MR. SIPOS: The next area is the assignment/subletting provision on page 5, subsection D 9. And there I added two provisions: That, one, the lessor's consent would not be necessary for an assignment in the event the sale of the littoral land occurred, which would include the pier as well; and, second, that transfers between family members would not require the consent of the Commission. And those requested changes were not acceptable.
DEPUTY DIRECTOR OF FINANCE SHEEHY:

Mr. Thayer, could you please comment on that objection?

EXECUTIVE OFFICER THAYER: I'll ask Curtis to do that.

CHIEF COUNSEL FOSSUM: The Commission, for as long as I've been with the Commission, which is over 30 years, has always provided that any kind of an assign would come before them before it would be transferred to another owner.

The Commission typically has an opportunity at that time to make sure that the new owner has the proper type of property interest in the property, as well as insurance, sometimes bonds and other things.

So it's very typical. In fact, I know of no exceptions.

The law does provide that an assignment in California could not be unreasonably withheld. And so if the subsequent property owner has the wherewithal to maintain the leased premises, then the Commission has an obligation to assign that lease.

DEPUTY DIRECTOR OF FINANCE SHEEHY: Mr. Fossum, isn't it -- my understanding is with these matters, and really unrelated matters but that involve leases with the State Lands Commission, isn't it standard practice in any assignment of any lease,
whether it's for oil drilling or structures being built on State tideland property, that we have the ability to approve that assignment?

CHIEF COUNSEL FOSSUM: That's correct.

DEPUTY DIRECTOR OF FINANCE SHEEHY: And have there been any exceptions to that so far that you are aware of?

CHIEF COUNSEL FOSSUM: Not to my knowledge.

DEPUTY DIRECTOR OF FINANCE SHEEHY: Okay.

Thank you, Mr. Chairman.

CHAIR GARAMENDI: Please continue, sir.

MR. SIPOS: The next change appears on page 6, and that is in subpart D11 which is the default remedy section.

In that section, I added the requirement that before a default occurs which would require removal of the pier, the boathouse, or the defaulting material, that is a reflection of the existing law in California; and therefore, to the extent the Commission's form lease would require essentially a death penalty remedy based on a trivial default, the lease does not -- is not in accordance with existing California law. The default would need to be material.

I also changed the cure period from 30 to 60 days, again based on the realities up in Lake Tahoe.
where there are stretches of periods where repair work
cannot be completed due to weather conditions.

And then lastly, in subpart B1, I included a
provision that a final judgment would be necessary to
require -- essentially a judgment of ejectment before
requiring removal of the pier.

This is essentially a restatement of the
earlier issue that we do not believe it's appropriate
to require lessees to agree in a lease that they have
to remove the pier and boathouse-type property without
just compensation.

Staff has already indicated to the Commission
different parts of the pier are within the zone that
would require compensation based on the Fogarty
decision, and there is no such language in this lease
that states that.

So that's the rationale behind those requested
changes.

CHAIR GARAMENDI: Curtis?

CHIEF COUNSEL FOSSUM: Yes.

On the last point, this lease does not cover
anything above the low water mark, and therefore that
portion of the property that belongs to the private
party, even though there's a public easement on it, is
not included within the leased premises.
And therefore, again, this does not affect that part of the pier. They would be able to maintain that pier regardless, unless the Commission found that it was inconsistent with the easement; and if they did that, then the Commission wouldn't be required to compensate under the code sections and case law.

CHAIR GARAMENDI: Thank you. Next issue, sir.

MR. SIPOS: Terms of the pier and boathouse, the last issue, is on page 7. It has to do with a new provision that came out in this lease that was not in prior leases that I'd been provided with.

And that would require the family to tear out an existing stairwell that accesses the roof of the boathouse along with railings around the perimeter of the roof.

The governing code section, Section 6505.5, specifically states what a recreational pier includes. And the language in that code section states includes. It does not state that -- language such as, quote, it is limited to.

And if the Legislature had intended to prohibit ancillary minor facilities such as a stairwell or a safety rail or a flagpole to be prohibited under the code section, it would have so stated.

I would further add that there are piers all
over Lake Tahoe which the Commission permits these
types of facilities, and therefore enforcement of this
provision would be arbitrary and capricious.

In some instances, the Commission charges
rent; in some instances, it does not. In our instance,
the Commission is attempting to force the family to
remove existing structures that have been around since
the inception of the pier.

CHAIR GARAMENDI: Was the staircase and
railing there since the inception of the pier?

MR. SIPOS: Not the exact one, because in 1987
the pier and boathouse were renovated with a permit
from the Army Corps of Engineers. There was previously
a stairwell, and there previously was a railing on the
roof. This is just a newer --

CHAIR GARAMENDI: Did you obtain a permit from
the State at that time of the renovation?

MR. SIPOS: The owners did not. They were not
aware of that.

DEPUTY DIRECTOR OF FINANCE SHEEHY: I have a
question.

CHAIR GARAMENDI: Were the owners aware that
there was a question as to whether there was a lease or
not?

MR. SIPOS: They were not. The -- all prior
negotiations were handled by Vernal Richmond, who passed away in 1980. There was no communication between the State Lands Commission from 1978 until 2002.

CHAIR GARAMENDI: So the family had no knowledge that they did not have a lease?

MR. SIPOS: They had no knowledge that there was a requirement of a lease or that there was or wasn't a lease.

This came about in 2002 when the family inquired about a neighboring -- actually a property on a complaint about buoys being removed, and that then triggered --

CHAIR GARAMENDI: On this subject?

EXECUTIVE OFFICER THAYER: Well, with respect to the sundeck, that was something of course that the Commission considered at length at several hearings several years ago and decided that decks were not consistent with Public Trust Doctrine because they in essence were a residential use rather than something associated with the water.

And so the Commission, at this point, is willing to grandfather in prior approvals before it had this policy discussion, but that it would not approve new ones. And that's the policy the staff has carried
out since then.

Since this project was never approved by the Commission previously, it's not considered to be grandfathered; the Commission never had a chance to review it. And so it's staff's position that for the Commission to approve this now for the first time and approve a deck would be inconsistent with the Commission's deliberations on this a couple years ago.

DEPUTY DIRECTOR OF FINANCE SHEEHY: I just have a follow-up question.

CHIEF COUNSEL FOSSUM: Yeah, couple --

DEPUTY DIRECTOR OF FINANCE SHEEHY: So this body formally adopted a policy several years ago that said it wasn't -- it was no longer going to approve any, I guess, sundeck facilities as part of a lease?

EXECUTIVE OFFICER THAYER: We did not bring a formal policy for approval, but instead indicated that staff had concerns over approval, discussed this with the Commission, and the Commission directed staff or indicated to staff that it did not believe that these decks were consistent with the Public Trust policy. And so in essence, we have been applying that policy since.

DEPUTY DIRECTOR OF FINANCE SHEEHY: I guess this is the one issue that this -- our -- I'm sorry,
sir, what was your name again?

MR. SIPOS: Richard Sipos.

DEPUTY DIRECTOR OF FINANCE SHEEHY: This is the one issue that Mr. Sipos has raised that I'm particularly, I guess, empathetic to in that if we don't have a formal policy, and there are other structures on the lake, I can well understand how the owners of this structure would feel that this was an arbitrary decision.

It's one thing to have, I guess, a discussion in committee, and I guess there's a record of it, a transcript; but if it's not a formal policy, you know, it seems like he's got a legitimate point with that particular issue, although I'm extremely concerned about other aspects of this that I'd like to follow up on. Curtis?

CHIEF COUNSEL FOSSUM: It is within the Commission's discretion to make those kinds of decisions; this is basically the staff's recommendation based upon prior direction.

But on a couple of other points, Mr. Sipos indicated that they had a permit from the Corps of Engineers. We had contacted both the Corps of Engineers and Tahoe Regional Planning Authority, and neither one of them have any permits on file for this.
project for either the dock or the deck or the four
buoys that they have out there.

CHAIR GARAMENDI: Does the -- sir, do you have
evidence of a permit issued by any agency for the
sundeck?

MR. SIPOS: I've got a quote to your letter as
soon as I can find -- and I just have the summary of
it.

On December 1, 1986, the Army Corps of
Engineers wrote to the contractor for the Richmond and
Naess families doing the renovation and stated, quote:

An individual Department of Army permit
is not required for Mr. Richmond's
proposed pier repair. The Department of
the Army has issued a nationwide permit
for the repair, rehabilitation, or
replacement of any previously
authorized, currently serviceable
structure, provided the work does not
deviate from the plans of the original
structure. The proposed repair may be
performed under the authority of this
nationwide permit provided the work
meets the conditions on the attached
information sheet.
So the work was done pursuant to a national permit issued by the Army Corps.

CHAIR GARAMENDI: And there were three caveats in that letter, sir. Do you have evidence that those caveats were met?

MR. SIPOS: I don't have the county building permits, but it's my understanding that that was obtained back when the pier was done.

CHAIR GARAMENDI: Let's move along here.

DEPUTY DIRECTOR OF FINANCE SHEEHY: I have a question. I just want to clarify something. Mr. Sipos, you had mentioned early in the beginning of your presentation that -- I guess the State first found out in 1969 that this structure was there, there was no lease.

There were discussions, negotiations that went back and forth between the State and the trustee of this property.

And then you said something about legislation was enacted. You said something about it was a state senator introduced legislation dealing with this issue?

MR. SIPOS: There was the issue about whether piers would be rent-free. And Mr. Richmond wrote a letter referencing that in support of his objection to the request to pay rent.
And I'll get the exact quote.

DEPUTY DIRECTOR OF FINANCE SHEEHY: That's okay. My question is: Was there actual -- was there an actual law enacted then that terminated the necessity for either you, Mr. Sipos, or Commission staff? Was there a law enacted that --

CHIEF COUNSEL FOSSUM: Commissioner Sheehy, yes, there was.

In fact, there was an Attorney General's opinion that came out, and the author of that Attorney General's opinion just happens to be here today, Alan Hagar.

That opinion says that under the existing law it would be a violation of the Constitution as a gift of public property to allow property owners to not be charged rent for one of these piers.

The response was the Legislature came up with a vehicle where they found that there was a public benefit by having these piers out there, in that if somebody in time of a crisis needed to land their boat somewhere they would be able to then bring their vessel up to one of these piers and get off at the property.

So that legislation did in fact pass; and since that time, the Commission has not been charging rent pursuant to that statement.
EXECUTIVE OFFICER THAYER: But the timing on that was that that passed in the middle of these negotiations. As a consequence, we revised a proposed lease to delete the rent. But this happened concurrently with these negotiations.

DEPUTY DIRECTOR OF FINANCE SHEEHY: Okay, I'm trying to understand. So this legislation passed that sunsetted the State's ability to collect rent?

EXECUTIVE OFFICER THAYER: On recreational piers.

DEPUTY DIRECTOR OF FINANCE SHEEHY: On recreational piers. And then that law changed again later?

EXECUTIVE OFFICER THAYER: No, no. It has -- it's still in effect. And so for all rec piers even today we are prohibited from charging rent.

DEPUTY DIRECTOR OF FINANCE SHEEHY: There's no rent.

MR. SIPOS: There's no rent.

CHIEF COUNSEL FOSSUM: And the rent is for properties that are single-family residences that -- and the facilities are for the docking of vessels, basically.

And so the dock -- that's why a -- any other kind of facility that's out there that's not associated
with the docking of vessels, we still charge rent. For example, if there was a deck.

DEPUTY DIRECTOR OF FINANCE SHEEHY: All right. So the dispute here with this particular trust, because I see there's a number of trustees here, wasn't about the rent, and it's all these other issues.

EXECUTIVE OFFICER THAYER: At the time in the late 70s, there was a dispute back in -- but that was all resolved.

DEPUTY DIRECTOR OF FINANCE SHEEHY: That was resolved. Okay. I guess I just wanted to make a couple comments and ask a couple of clarifying questions.

I'm really troubled that this has been bubbling around for -- well, that the State's known about it for 40 years. It just seems that -- you know, that's a really long time.

And I think, you know, from the perspective of the landowners, they feel like, you know, hey, they built this thing sometime between 1958 and 1961. They've had 50 years of its use without having the State meddling with it.

And I think -- you know, they've obviously hired a law firm to represent them here, and anything they can do to sort of prolong this, it's, you know,
it's really to their benefit. I'm just really troubled
that it's taken 40 years to get to this point.

And I find it really difficult to believe that
there was only one individual associated with this
property that knew about this. That just -- that, to
me, just seems to be very -- a lot to swallow.

Is there anything that we can do going forward
to prevent things like this being dragged out over
years and decades? Because it just seems like public
policy delayed is public policy not served. And this
has just gone on so long; it's very troubling.

EXECUTIVE OFFICER THAYER: We couldn't agree
more. And I think the Commission has seen over the
last couple of years more and more enforcement items
brought, and we're basically going back and looking in
the closets and trying to remedy these situations.

There are -- we don't have enough staff to
routinely go out there and patrol and determine whether
there are improvements out there that we don't know
about or don't have leases.

But we rely on other agencies like TRPA. In
fact, we're in discussions with TRPA about their new
shore zone ordinance to make sure that notification of
the State Lands Commission is part of the process.

But no matter, we obviously knew about this
from clear back in '68, '69. And it should have been
done more quickly, and it's kind of in the vein of
cleaning stuff up that we're here today.

DEPUTY DIRECTOR OF FINANCE SHEEHY: Okay.

Thank you, Mr. Thayer.

Thank you, Mr. Chairman.

CHAIR GARAMENDI: Do you have further
comments, sir?

MR. SIPOS: The only -- just two points.

One is, and I don't know if it was mentioned
in the initial record by staff, but the family
submitted a signed lease signed by every family member.
It just contained the changes that we had. This is not
an issue of the family being unwilling to sign a
reasonable lease.

The changes we requested are simply to make
the lease reasonable for lessees such as this family
which have been stewards of this property since 1928,
and this is not an issue of a family trying to prolong
or delay or refusing to sign. We have signed a lease
and submitted it.

It's in a dispute over certain narrow issues
where there is a legal disagreement. And the family
through me has also offered to meet with Commission
staff and use an independent neutral or to agree on a
stipulated set of facts to have an adjudication over
these legal issues of the reasonableness of some of
these terms. And the State Commission would have the
benefit of having essentially an approved lease and
would avoid these types of disputes in the future.

DEPUTY DIRECTOR OF FINANCE SHEEHY: Mr.
Chairman, it seems to me that the family's offer to get
a third party mediator involved would set a very
concerning precedent.

There is not a single provision in here that
we've discussed this morning that in fact is
precedent-setting. We've heard testimony from staff
that all of the -- in fact, all of the different
provisions that were either deleted or added to the
lease that was signed off on by the family are all
items that are standard practice with all State Lands
Commission leases, whether they're dealing with
structures on tidelands or whether they're dealing with
leases on issues of oil drilling off the state of
California or elsewhere.

So I would really be reluctant to see us enter
into any sort of process where we would entertain a
third party in this situation because we'd then be
setting a precedent for other landowners across the
state who have state tidelands issues.
If they don't like what our staff says in interpreting and following the law, they could simply say let's get a mediator and try to cut a different deal.

So I would be very concerned about that, Mr. Chairman.

CHAIR GARAMENDI: So would I.

Let me make a couple of points. First of all, there has been no dispute that this is State land and that this structure's on State land and a lease is required. That's been known for, as near as I could tell, forever.

Whether the State actually is enforcing that requirement, we can probably find plenty of instances where it did not, perhaps out of lack of knowledge that there was a structure on State lands that didn't have this.

Bottom line, a lease is required.

And if there is no lease here by this -- right away, then this is going to come down. This has gone on too long. The property owners have known for more than 40 years that a lease was required.

What I see here is a lot of lawyering going on to delay the imposition of a standard lease. Now that lease has changed over time, as one might expect. But
there is a lease requirement today, and it's been there
for some while.

And if this family isn't willing to sign that lease, then that structure is history. It's coming out. I want to make that very clear.

We do not allow trespass on State lands, and at the moment this is a trespass.

Now if you want to go to court on that, fine. You can go to court. Or you can sign the lease as presented and as is standard procedure.

There is an open question as to the sundeck, and I think that needs to be resolved. Whether it existed before or not is an open question, at least from what I've heard here today.

And I would expect the owners of this currently trespassing dock, boathouse, and sundeck to present satisfactory information that the sundeck and related staircases and railings are in fact permitted and existed and that they could therefore come under the grandfathering clause which is standard procedure in the basin.

So if you want to do more lawyering, we'll see you in court, and we expect to win.

If you want this thing permitted, then the lease as presented and as standard procedure in the
Tahoe basin is what's before you. And I would advise the family that they better be careful here because this Commission is quite clear that we're going to protect State interests, State property, and we're not going to have leases -- we're not going to have trespass.

Now, we have an action before us. And the proposal before us is to authorize the Attorney General and the staff of the Commission to proceed to remove the trespass.

DEPUTY DIRECTOR OF FINANCE SHEEHY:

Mr. Chairman, I would move approval of the staff recommendation on item number 39.

DEPUTY STATE CONTROLLER MANDEL: Second.

CHAIR GARAMENDI: Second.

DEPUTY STATE CONTROLLER MANDEL: I'll second.

CHAIR GARAMENDI: We have a motion before us. And without objection, it's unanimous.

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

CHAIR GARAMENDI: Now we're going to take a break from the normal processes. I notice that Anne has arrived and is patiently waiting in the back of the room.

Anne, could you come up for a moment? Have a
seat there if you like, Anne.

For those of you in the audience who are not familiar with Anne, you would -- well, you just haven't been around. Anybody that's been around the State Lands Commission for a number of years -- and we're not going to go into exactly how many years, unless Anne wants to pick that up -- would know that Anne sat next to the Chair, either on the right or the left depending on the mood, for many, many years representing the Department of Finance.

Tom now has that pleasure of filling in, and you're doing a good job, though you're not quite there yet.

(Laughter)

DEPUTY DIRECTOR OF FINANCE SHEEHY: Difficult shoes to fill, Mr. Chairman.

CHAIR GARAMENDI: Indeed. Indeed they are, and I know that I benefited from her wisdom as I learned my -- you mentored me, and I appreciate that, Anne.

We really -- we miss you, although Tom's doing okay, he's coming along.

(Laughter)

CHAIR GARAMENDI: Nonetheless, we miss you.

And I know that CalSTRS is very, very well-represented
by you and that you're doing good work there,
protecting all the teachers, retired and soon-to-be
retired teachers in the state.

But we do miss you here, and we want you to
know how much we value the years that you've spent
here. Any of my Commissioners would like to comment
here; and then Paul, I think you have some comments.

DEPUTY DIRECTOR OF FINANCE SHEEHY: I really
can't add anything more to what the Lieutenant Governor
has said, and I hold you in the highest esteem.

I'm honored to have been appointed by the
Governor to replace you. And everybody that I meet,
they talk about you, and I say yes, I know, I'm not
Anne, I'm so sorry for you.

But I'm thrilled for you, and really value and
admire all of your service and especially on this body.

DEPUTY STATE CONTROLLER MANDEL: And Anne, I
personally have seen you on a few of my tax things, and
I'm here today for State Controller John Chiang and
actually also in replacement today for Cindy Aronberg
who I know you've worked with for years.

And they both have been consistent, tremendous
professionalism on this Board and the other places.
You're a great person. Cindy was sad that we were here
in Sacramento instead of Los Angeles; she's not
travelling right now.

But you're just a great, committed public servant, and the Controller will see you on STRS, and I hope to see you there.

EXECUTIVE OFFICER THAYER: And I want to just, with the Chair's permission, add my own comment that it's like most things that are worthwhile with both pleasure and pain today.

The pleasure is to have you back at a Commission meeting, and the pleasure is that you've gotten such a wonderful job that caused you to move away from us.

And the pain is that we miss you and wish you were still with us.

And again, no criticism intended of Tom at all. We appreciate his help as well.

And I want to talk about two things. The first is the subject matter for which there was a lot of controversy, but I recall vividly that you and I shared a certain aspect of it, and that was the LNG review where we went down and went to one of the workshops that was held on this in Malibu.

And people were coming out of the doors. The police were there. There were people getting up and screaming, including the mayor of Malibu. You couldn't
quite understand an elected official could kind of carry on the way he did.

But it was an amazing experience, Anne. And I kind of pretended that we weren't from the State Lands Commission, hid in the back while this was going on. While Dwight and the rest of the Commission staff did a great job up there managing all that.

But Anne was personally interested enough that she not only went to that workshop, but on a trip back to DC visited one of the LNG terminals that's in operation back there or has been in operation back there.

She obviously took her job very seriously, and I think the role that she played on the Commission showed that.

I would call her the great expediter because the Commission would be in some debate about something or other or there would be some angst with a project applicant or opponent. And she was just very good at crystallizing a particular issue through a particular question or observation that really was fundamental in moving the Commission forward.

She didn't necessarily -- she wasn't out there pounding the table, we should do this or that. She had her own views. But she wanted to make sure the
Commission did a good job.

And so these kinds of approaches that she took to her work of trying to move the Commission forward so that what it decided made sense and properly considered all the information before it.

So I really appreciate that, and I wanted to thank you for that.

We do have a plaque, and before we go up there to present it -- I think we should do it up there on the podium -- I did want to read it while I have a microphone. And it says that:

Anne Sheehan, Chief Deputy Director of the Department of Finance, California State Lands Commission, 2005 to 2008 -- there are the years -- in recognition of your service on the Commission to the people of California and your stewardship of the state's Public Trust resources, presented by the Commission and staff.

CHAIR GARAMENDI: Anne, do you want to make a comment before you --

MS. SHEEHAN: Sure.

CHAIR GARAMENDI: Would you like to sit back in your old seat?
MS. SHEEHAN: I'll come up there.

CHAIR GARAMENDI: Come on up here, Anne.

Let's get a photograph first.

MS. SHEEHAN: I want to thank the staff and my fellow former commissioners, my colleagues up here.

It was a wonderful experience on the State Lands Commission, and the whole concept of the Public Trust and what we, the Commissioners, are entrusted to protect on behalf of the people of California was -- and Paul, you're right -- a responsibility we took very seriously.

I so enjoyed my years on the Lands Commission. As Tom knows, in that job, many times you spend a lot of time on the financial issues, the Authority, the treasurer's office, the controller.

And the issues that we struggled with here, not only were they a change from those issues, but they really, in terms of sort of the tangible evidence of what the work that we were doing on the Commission, you could really see.

And while we didn't always agree, I think the spirit that we all took our jobs so seriously and the responsibility of the work of this Commission really was so important.
So I enjoyed it very much. I accept this plaque, and I will say I miss you all. People ask about, you know, how the new job is and I do love it out there. But I do miss the issues and the people for the about four years I spent in the job that Tom now has.

And this, I have to say, was one of my most favorite of all the 82 boards that we all serve on. (Laughter)

MS. SHEEHAN: I do remember fondly the LNG project, how many hours we spent in -- I think we started at nine in the morning and finished almost midnight in terms of that. I think that was the record.

But we sat and listened to all of the input in terms of that. So that was one my fondest memories of sitting on this Commission.

But I thank you all for the work that you do and the Commissioners for the work that they do, and I thank you for this.

CHAIR GARAMENDI: And Anne, we thank you.

(Applause)

CHAIR GARAMENDI: Anne, thank you so very much. And thank you for your four years of work and your leadership and for mentoring me, and I guess Tom,
along the way.

We're going to go back to the schedule now.

The next item on the schedule is Item 40.

This is consideration of an action by the Commission involving unpermitted docking facility at Alviso Slough. Staff presentation, please.

EXECUTIVE OFFICER THAYER: Thank you, Mr. Chair. Presenting the staff recommendation on this is Mary Hays from the Land Management Division.

PUBLIC LAND MANAGER HAYS: Good morning, Mr. Chairman and members of the Commission. My name is Mary Hays and I'm a Public Land Manager in the Land Management Division of the Commission. I'll be presenting information on the calendar item number 40.

The action before you involves Blue Whale Sailing School, Incorporated and its various docking facilities and boats that have been placed and currently occupy State-owned land in the Simonds Canal and Alviso Slough without a lease.

It's the staff's understanding that the Blue Whale Sailing School purchased two upland parcels adjacent to Simonds Canal and Alviso Slough in June of 2000.

An additional upland parcel is situated between those owned by the Blue Whale Sailing School...
and is also adjacent to the canal and Alviso Slough.

The county assessor's records indicate that parcel is owned by the Santa Clara Valley Water District. A significant portion of the Blue Whale operations is also located waterward of this parcel.

The Commissioners have an aerial photograph in your packet showing the location of the parcel to the waterway, and it's also shown on the screen.

As you can see, the yellow-shaded parcels are those owned by Blue Whale Sailing School, and the one in between is the water district parcel.

This exhibit was prepared by the boundary staff of the Commission, and the red line indicates the approximate boundary of the townsite of Alviso based on the 1862 survey and map which were conducted pursuant to the legislation conveying the townsite from the State to the town of Alviso.

The Blue Whale Sailing School docking facilities and boats are shown waterward of the red line.

I'll briefly explain the events that brought this action before the Commission.

Staff first became aware that the Blue Whale Sailing School was docking sailboats in Simonds Canal and Alviso Slough while on a site inspection in Alviso.
in 2003.

Between 2003 and 2007, staff sent letters and had numerous conversations with Blue Whale representatives advising them that the Blue Whale Sailing School was occupying State-owned lands without authorization and that a lease was required to continue their operations.

In October of 2007, Blue Whale Sailing School submitted an incomplete application for a lease. That application was deemed incomplete because it lacked adequate information to process the application and did not include the statutory processing fees and minimum expense deposit.

Between November of 2007 and March of 2008, staff sent several letters requesting the information and fees necessary to continue processing the application.

Blue Whale did not respond.

Between March and July of 2008, staff sent Blue Whale Sailing School three more letters informing them that the application had been effectively withdrawn due to the lack of response and giving the Blue Whale Sailing School several additional opportunities to work with Commission staff to bring the facilities under lease in order to avoid staff
making a recommendation to the Commission to institute a trespass and ejectment action.

To date, staff has had no direct response to these letters.

In December of 2008, the Blue Whale Sailing School sent an e-mail to staff requesting a lease for several areas of land lying within Simonds Canal, Alviso Slough, and the Guadalupe River, which included areas occupied by the Blue Whale Sailing School and areas to the south which are under lease by the Commission to the South Bay Yacht Club.

However, no application was received from Blue Whale.

Staff responded to the December e-mail via a letter in February of 2009 with a final request to Blue Whale Sailing School to submit an application for the lands directly adjacent to the Blue Whale Sailing School occupied by the docking facilities and boats with a deadline of March 1st, 2009 to comply.

The Blue Whale Sailing School has not responded to date.

On April 6th of this week, staff performed a site visit in the area, and the Blue Whale Sailing School docking facilities have been expanded further into Simonds Canal and Alviso Slough from staff's

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previous site visit in March of 2008.

I will now show you several photographs taken on April 6th of the present docking facilities on State-owned lands. These photos are also in your packet.

This is showing -- we'll just go through these pretty quickly. This is some floating docks that are within Simonds Canal and Alviso Slough.

This is looking south. You see most of the -- some of the upland and adjacent levee.

Similar picture showing the levee.

This is looking down from the top of the levee.

There is a gangway and series of -- I believe there is four, four floats.

CHAIR GARAMENDI: Excuse me. Just a question. Could you back up to that previous one? Is that fill material on the State land?

PUBLIC LAND MANAGER HAYS: A portion of that we believe is on State lands, and it is fill, yeah.

CHAIR GARAMENDI: If it's on State lands, it's also on wetlands. I'll just ask a question of the applicants when the time comes.

PUBLIC LAND MANAGER HAYS: This is in Alviso.

It's the Catherine Street Dock area that was placed
many years ago. But there has been additional fill placed on it.

CHIEF COUNSEL FOSSUM: Some of the fill predates Mr. Asuncion's acquisition of the adjacent properties, but he's occupying it at present.

PUBLIC LAND MANAGER HAYS: Next slide.

And this shows down at the toe of the levee, the area where there's been weed removal.

Next slide.

This is looking north from the top of the levee.

Next slide.

Just a larger photo there.

Next slide.

In conclusion, because no response has been received from the Blue Whale Sailing School to our latest request, and after many years and attempts to bring the Blue Whale Sailing School under lease, staff is recommending that the Commission:

One, ratify staff's determination that the structures placed on State-owned sovereign lands by the Blue Whale Sailing School, Incorporated are in trespass on State lands located in Simonds Canal and Alviso Slough;
And two, authorize Commission staff and the Office of the Attorney General to take all steps necessary, including litigation, to eject the Blue Whale Sailing School, Incorporated from the state's property; to remove all docking facilities and other improvements from State-owned lands in Simonds Canal and Alviso Slough; to require restoration of State-owned lands at these locations to their condition prior to placement of the structures to the Commission's satisfaction; and finally, to recover the Commission's damages and costs.

Staff is available to answer any of your questions. In addition, we have a representative from the San Francisco Bay Conservation and Development Commission.

If you have any permitting questions, we have a representative here to answer those.

This concludes my presentation. Thank you.
CHAIR GARAMENDI: Tom, you had a question of staff?

DEPUTY DIRECTOR OF FINANCE SHEEHY: Thank you, Mr. Chairman.

Now, this is not a residential structure; there would be rent collected here, correct?

EXECUTIVE OFFICER THAYER: Yes, there would.

DEPUTY DIRECTOR OF FINANCE SHEEHY: And so therefore, we're -- it looks like we're compelled to take legal action. Are we going to be able to go after all the back rent back to 2003?

EXECUTIVE OFFICER THAYER: I think so.

DEPUTY DIRECTOR OF FINANCE SHEEHY: Five years plus interest, and recover our costs and so on and so forth.

And is the Blue Whale Sailing School still in business?

EXECUTIVE OFFICER THAYER: Yes.

DEPUTY DIRECTOR OF FINANCE SHEEHY: Okay.

Thank you.

CHAIR GARAMENDI: Very good.

There are a couple of people that would like to speak on this issue. I believe there is -- well, I cannot make out the writing, but apparently there is somebody out there that would like to represent the

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Blue Whale Sailing School.

Would you please come forward?

EXECUTIVE OFFICER THAYER: This is Mr. John Asuncion, who has appeared before the Commission before.

MR. ASUNCION: Yes, good morning, Commission. And I'm John Asuncion, Blue Whale Sailing School.

CHAIR GARAMENDI: And you're the owner?

MR. ASUNCION: I'm the president and founder of the foundation.

We purchased this piece of property from Kay Bell, Bell Marine. And when we went through our title search and documents they represented that we had tidal land.

And what we found out -- we've not had a chance to find Mr. Bell for some years now. And we have a law firm that represents us on that matter. And that's Rocky Ortega.

And Rocky couldn't be here today, Mr. Ortega, because he has a court case. But what the Commission has stated on this map, and it says on our deed -- if I could walk over to that map.

CHAIR GARAMENDI: Sure.

MR. ASUNCION: You can see there is an imaginary line here.
DEPUTY DIRECTOR OF FINANCE SHEEHY: I'm sorry, Mr. Chair -- may I? I want to see what Mr. Asuncion is showing us, but it's blocked by the desk so I'm going to come around here.

CHIEF COUNSEL FOSSUM: Very faint. The line that he's referring to is very faint on the depiction on the photograph. It's basically what the assessor shows as the parcel out there.

CHAIR GARAMENDI: Very good.

MR. ASUNCION: Okay. And this is number 19 and 20. There is two lots. The foundation -- we purchased the property. That's what we purchased. And we purchased this piece of property. And we have an easement up our driveway.

The Catherine Street Dock was purchased -- actually, was built by Mr. Bean. Mr. Bean told -- sold it to Mr. Bell and then Mr. Bell represented himself and sold it to us, and we have the commerce rights for the Catherine Street Landing.

All of this landing was built by Mr. Bean.

And then there was a lawsuit with the City, and the City in turn lost in that lawsuit, and Mr. Bean had the title rights of that.

So when we purchased this property, we were again told that we had the rights to the commerce and
everything else.

We did not put in the concrete. That was there. We have photographs and documentation. All these pilings were put in before we got there.

The particular docks that we have -- this particular boat here, it's a 42-foot sports trawler, was abandoned by the South Bay Yacht Club. It sat on our property. And then this last year we removed it at no cost to the State because it was a public nuisance.

The property that is under -- you know, the State is complaining on now is we're using this property. We're using the property to use our floating docks, number one, is to go out into the Bay -- I have photographs and documents -- that we move these docks around and pick up the garbage that we have been picking up since the year 2000.

We're up to 71 tons of garbage that we removed from the Bay at no cost to the taxpayers of California.

The State Lands Commission, this office, is correct that we didn't respond to this letter -- the last letter. And there's a reason because of that.

I was attacked and beaten on July 29 of 2008, by my neighbors, the South Bay Yacht Club, because I blew the whistle on them. I was left for dead right here on the school's property, and the man that
attacked me was Michael O'Keefe.

We have a lawsuit pending with him. I'm still under doctor's care. I can remember things at times, and my speech goes away and it comes back. That's no excuse for not responding to the State.

Our attorney, Rocky Ortega, that's representing us at this time is in a large court case, and he couldn't come today. But I reassure the Commission that we will apply for a lease to come into compliance.

I set the precedence of going after the South Bay Yacht Club, and I knew that I would put my neck out to get it chopped off because nobody was doing their job to look at my neighbors. You know, they are the ones that threw the first stone, and this has just been a knock-down, drag-out with this lawsuit we have pending.

And I'm glad I'm here in front of the Commission. And it took the Commission, Mr. Paul Thayer's office, almost five years to finally get a survey -- their survey office out there to do the survey. We asked for that.

I was working with Mr. Plummer, I haven't seen David Plummer for some years since he retired. And he's here in the audience. He worked for State Lands.
He visited our site and worked with us. I've worked with Allen Brooks of BCDC, telling him the cleanups we're going to do. The fill that everybody might accuse me of filling is not my fill. That's the Santa Clara Valley Water District's when they did the restoration on the levee.

So, you know, there's some really big strong allegations here, and I feel it's unjust.

But bottom line is, now the State has come forward and had it surveyed, and we can apply for a lease.

CHAIR GARAMENDI: Thank you for that.

Does BCDC want to comment here?

MS. KLEIN: Good morning, Commissioners. My name is Adrienne Klein; I'm the chief of enforcement for the San Francisco Bay Conservation and Development Commission.

If you have questions of us, I'm happy to answer them; otherwise, I can give you a general comment on the status of our investigation.

CHAIR GARAMENDI: Why don't you tell us about your investigation.

MS. KLEIN: I will go ahead and do that.

The -- a BCDC permit is required under the McAteer-Petris Act to place fill or extract materials
with a value of $20 or more and to undertake a substantial change in use of any land or water within our jurisdiction.

The Commission's jurisdiction comprises the tidal portion of the San Francisco Bay, including Alviso Slough, and -- excuse me, up to the limit of marsh vegetation, below five feet above mean sea level, and the shore and land which is a section of land adjacent to and upland of the Bay for a width of a hundred feet.

The staff believes that Mr. Asuncion has placed gravel, compost, five boat docks, a gangway, a gate, and other materials in our jurisdiction; that this work requires a permit; and that no permit has been obtained.

And we are conducting investigations, and we will bring the matter to our commission for remedial action.

DEPUTY DIRECTOR OF FINANCE SHEEHY: Thank you. So this question would be addressed to you, or I can ask the Commission staff. I mean, so there is a dispute here as to whether or not the Blue Whale Sailing School has engaged in adding fill? I mean, isn't there some sort of definitive way that that could be determined? I mean, we have
satellite photography of these parcels prior to 2003, and we've got -- Can't we -- I mean, isn't this a rather straightforward matter to determine whether or not fill has been added since Mr. Asuncion was there?

CHIEF COUNSEL FOSSUM: Yes, Mr. Sheehy. I think that what I indicated earlier was that there has been fill in the past, prior to Mr. Asuncion's acquisition in the area.

But that there has been -- we have testimony or evidence from a number of witnesses and photographic evidence to indicate that he has added additional material since his acquisition.

EXECUTIVE OFFICER THAYER: And while that's a significant issue and one that we'll follow up on, there is little dispute about the docks that have been located there. And that's really at the heart of our concern, that these docks are there with no lease and have been there for several years.

DEPUTY DIRECTOR OF FINANCE SHEEHY: I'm going to just repeat what I said before. I mean, this has been an ongoing issue for over five years.

And it's great to hear Mr. Asuncion say he now agrees that we need to get this taken care of. But I would just say again, this is one of those issues that can't drag on and on and on.
And this facility is there without a lease, on State property, and we either need to get it leased or we need to get rid of it.

EXECUTIVE OFFICER THAYER: I agree.
CHAIR GARAMENDI: Thank you very much for your testimony which I didn't hear.

(Laughter)
CHAIR GARAMENDI: Thank you.
Mr. Asuncion, any further comment?
MR. ASUNCION: Yes. The material that was brought in -- I'm going to have to backtrack here.

When Mr. Bean built the facility, the Catherine Street Dock, and then it was signed over to Mr. Bell, Bell Marine, and when we purchased it, the subleasers that Mr. Bell leased his property to did some dredging, did some alterations of the size of the levee. Okay.

That wasn't us. Okay.
And Mr. Bell paid a fine. He reassured us when we purchased it, showed us documents that he paid over a $6,000 fine to BCDC.

And I said now, when we take over this facility -- it was a dump site, okay? Derelict boats, over 30 boats, safes, cars, everything else. I worked with the office of Fish and Game, Lieutenant Fox out of...
the Carmel office, and I had Allen Brooks of BCDC.

He says, you can remove this concrete that's been dumped there years past before I ever came along. He says you only can do it by hand.

So brought my crew in, we cleaned it out, hauled it away. Took us about five years to clean the site up. And you can see how clean and pristine the site is now.

This picture, a dump site. That everybody dumped their boats, dumped their cars. There was no gate down at the private driveway and everybody drove up to the landing and just dumped it.

So I stepped up to the plate -- I'm not trying to, you know, make any excuses here, anything like this. I am here to take any punishment I need to take. You know, I've taken a lot of punishment in the last couple of years, but that's here or there.

The most important thing is we are the stewards of the South Bay of cleaning up 71 tons of garbage out of the Bay at no cost to the State. And we're the caretakers.

And I feel -- and I shared with the Office of State Lands and sent them an e-mail just before the first of the year. I want to sign a lease. And we want to come into compliance, but on the properties
that we want to lease.

I'm not going to take a piece of property that is in blight condition and a public nuisance. And these properties that we want to lease, and now out in front of the Catherine Street Landing, it's beautiful. It's clean, it's neat, it's pristine. And we serve the general public.

Because there was no public access next door at the South Bay Yacht Club, so we provided public access.

And I have stated that to this office before. The State -- you know, to all the major universities in the South Bay, the general public, at no cost.

This last December and January, we had two of the largest construction companies use our site and that was PG&E and Underground Construction to refit all the pilings out in the Bay that carries the electrical lines and towers. Okay.

We supplied the expertise to mark the channel for them, and they were kind enough to make a small donation of $1,800 and paid for the garbage that we hauled away. And then they stepped up to the plate again and provided Dumpsters for us and cranes.

So, you know, I feel the most important thing is, you know, we will come in compliance.
But again, it's taken the Office of State Lands to get their survey company -- took them five years to get down there. Because I want to know exactly what I'm getting. I don't ever want to get in a position like I've gotten myself into now when we purchased the property from Bell Marine and we have legal action against him because he didn't disclose all the problems.

Adrienne Klein, the first week that I ever met this young lady, she stated to me: Mr. Asuncion, you should not buy this piece of property. And she was correct.

But as, same token, we bought it. I thought that I was doing something good for the community and for the general public as a whole.

Thank you for your time.

CHAIR GARAMENDI: Let's see if we can move this one along. You certainly have cleaned it up, there's no doubt.

We also know of your work to the -- in the neighborhood and the efforts that you've made there. You've been before this Commission to talk about the problems that existed with your neighbor. And we appreciate that.

I'm of a mind to say, let's get -- you want
this lease?

MR. ASUNCION: Yes.

CHAIR GARAMENDI: We want this lease. I don’t know that there are issues that would prevent us from completing a lease with you. If there are, we should hear of those issues.

If there -- it seems to me what I’m hearing here is, we want you to get your lease, you want to have a lease. If there is some problem in that, then we need to know about it.

With regard to the ownership, you may have an issue with the title company, and you may want to pursue that.

MR. ASUNCION: We're doing that.

CHAIR GARAMENDI: I suspect so.

DEPUTY DIRECTOR OF FINANCE SHEEHY: Question of staff. Pursuant to your -- I agree with the Lieutenant Governor, and I'd just like to know from Mr. Thayer or Mr. Fossum: What is a reasonable amount of time going forward from today in order for Mr. Asuncio and Blue Whale Sailing School and the State Lands Commission to execute a lease and put this matter behind us? What's a reasonable period of time?

EXECUTIVE OFFICER THAYER: I would --

DEPUTY DIRECTOR OF FINANCE SHEEHY: 30 days,
60 days, 90 days? I mean, what is it, Paul?

EXECUTIVE OFFICER THAYER: Mr. Asuncion needs to apply for a lease and provide us with the funds. We would process it as quickly as possible.

I'm not sure if we could get it back before the Commission on June 1st; but if he would get it to us next week, we'd make every effort to do that. And if not, we'd have it at the following meeting.

DEPUTY DIRECTOR OF FINANCE SHEEHY:

Mr. Chairman, I would respectfully request that we notice this item for the June 1st meeting.

And Mr. Asuncion, if you haven't applied then, you know, and we haven't gotten this taken care of by then, that gives you seven weeks. Seems like a reasonable amount of time. Then I would like to take further action on this item at that time, Mr. Chairman.

CHAIR GARAMENDI: Thank you. Before we take that proposal up, I notice we do have one additional witness. Tom Martinez, State Government Affairs, Santa Clara Valley Water District. Tom, do you want to make a presentation?

MR. MARTINEZ: Presentation, maybe not.

Lieutenant Governor, members of the State Lands Commission, thank you for your time.

I didn't have a presentation. I just thought
a few comments, and I wasn't going to speak until I
heard that the Santa Clara Valley Water District has
filled in the Bay. And I thought, I should come and
clarify that.

I don't know of any instances where we have
done that. As a matter of fact, we have, as the water
district representing Silicon Valley, its residents,
we've put a lot of our time and effort and money into
cleaning up this area as well as providing clean water
to -- and I should say flooding protection to the
residents.

I appreciate you hearing this item. I was
encouraged. I thought you would act on this item in
another way, but I can understand how you might want to
put this off and give Mr. Asuncion and Blue Whale
Sailing School an opportunity to correct matters that
have been unresolved for a number of, I guess, months,
years in time.

So I guess I will await to see how these
matters are resolved. And if you have any questions of
me or the water district --

CHAIR GARAMENDI: Does the water district have
problems with this site? Looks like you're going to
the adjacent land owner.

MR. MARTINEZ: We are. We are attempting
to -- we provide flood protection to this location. My
concerns weren't necessarily with Mr. Asuncion or Blue
Whale Sailing School. I mean, you can see there is a
boat dock there. I won't speak to some of those items;
I think it's probably out of my peripheral
responsibilities.

I think that your staff has provided enough
information as to the Blue Whale Sailing School and its
activities. I will try to refrain from involving
myself in that.

CHAIR GARAMENDI: Fair enough. Tom's proposal
is before us, and that is that this matter be put over
to the next meeting. We'll take it up at that time if
it's okay with the Commission.

We would expect in the intervening nearly two
months that an application for a permit -- lease
permit -- be applied and that that be an application
worthy of acceptance. Okay.

CHIEF COUNSEL FOSSUM: Mr. Chairman, for
clarification, we get lots of applications that are
incomplete.

Mr. Asuncion in fact, I believe, did submit an
application at one time without any filing fee or
processing fee, and so I think it should be clear on
the record that the application should contain all the
necessary items and be able to be deemed complete
within that period of time.

DEPUTY DIRECTOR OF FINANCE SHEEHY: And I'd
just like to say if, it's okay with you, Mr. Chairman,
that I -- Mr. Asuncion, I think you'll find our State
Lands Commission staff is very helpful, and if you have
any questions about how to get all the proper
information on that application and what the various
fees are, if there's any question about that, I'm sure
you can get that from them, and we'd certainly like to
see a completed application with the appropriate fees
filed by June 1st.

MR. ASUNCION: Thank you.

CHAIR GARAMENDI: Thank you very much. And
that will be --

MR. ASUNCION: Could I say one more thing.

CHAIR GARAMENDI: Just a second. We have a
question?

DEPUTY STATE CONTROLLER MANDEL: And that's --
I take it, then, that would be consistent with the
Staff effort to get this land in compliance?

EXECUTIVE OFFICER THAYER: Right. We would --

DEPUTY STATE CONTROLLER MANDEL: That's to
address the situation that's consistent with where you
guys are.
EXECUTIVE OFFICER THAYER: Exactly. On all these enforcement issues there's two choices. Either the applicant or the person with the improvements comes into compliance, or they should be ejected. And so if there's something --

DEPUTY STATE CONTROLLER MANDEL: And I'm just saying it looked like it was going to be ejecting because he was --

EXECUTIVE OFFICER THAYER: Right.

DEPUTY STATE CONTROLLER MANDEL: -- refusing or it wasn't moving forward toward the other --

EXECUTIVE OFFICER THAYER: Right.

DEPUTY STATE CONTROLLER MANDEL: -- option.

EXECUTIVE OFFICER THAYER: There's nothing inconsistent with the Public Trust Doctrine and nothing that we see that would make these docks something that we'd recommend denial to the Commission on.

CHAIR GARAMENDI: So we need a lease. Very good. Final comments, sir?

MR. ASUNCION: Yes, thank you.

The gentleman from the Santa Clara Valley Water District made a few statements about flood control. I have to make one statement that's the rebuttal of what he's done and what the water district has done over the years has allowed the South Bay Yacht
Club to squat on their property, pollute it, and pollute my property, and discharge all that material into the Bay and all our volunteers -- I'm not trying to get into hearsay or that say, but that needs to be brought across because the Santa Clara Valley Water District has failed me personally and the taxpayers of the South Bay, and we have hundreds and hundreds of volunteers that do their job. They do a certain part, but they have nothing on the Alviso Slough.

CHAIR GARAMENDI: I appreciate that. That's in the record, so you guys can take it up in Santa Clara County. You know what we need from this Commission.

We thank you very much, and we'll expect to have this back before us the next meeting. Very good.

Item 41. Paul?

EXECUTIVE OFFICER THAYER: Item 41 has to do with finding -- proposing that the Commission find the Carone Petroleum Company in default of its two oil and gas leases.

The presentation will be made by Greg Scott, who is Chief of our Mineral Resources Management Division.

MINERAL RESOURCES CHIEF SCOTT: Good morning, Mr. Chair and Commissioners. My name is Greg Scott,
and I'm the Division Chief of the Commission's Mineral Resources Management Division.

I'm presenting calendar item 41 this morning, which is to consider finding Carone Petroleum Corporation in default of its two state oil and gas leases, PRC 7911 and PRC 4000, located offshore Carpinteria in Santa Barbara County.

As an overview, I'm reporting to the Commission this morning that State lessee Carone Petroleum Corporation has not complied with the lease terms in pursuing the redevelopment of the two State oil and gas leases because of their continual delays and lack of reasonable diligence, and staff therefore recommends that the Commission make the determination that Carone be found in default of the lease, and which can only be cured by complying with the specific requirements within 90 days.

This slide is a site map showing the location of the subject leases, shown here in yellow.

The leases consist of a combined area of about 1745 acres, and they lie off the coast near the city of Carpinteria offshore approximately two miles out to the three-mile State jurisdiction.

The area was originally developed between 1966 and 1992 by Chevron, using two offshore platforms that
were located on lease 7911.

These platforms have since been removed, and Carone took the assignment after the removal of the platforms. The State leases were intended to be redeveloped by Carone using extended reach drilling from nearby federal Platform Hogan.

Jeff, could I have that slide back, the map? Platform Hogan lies just outside the State boundary in federal waters. And Pacific Operators is the operator of that particular platform, and they are also the operator for Carone.

The leases were originally issued to Chevron and Arco in 1964. As I already mentioned, the leases were developed from two offshore platforms named Hope and Heidi.

Production ceased in 1992, and the wells were abandoned and the platforms removed.

On October 28, 1996, the State Lands Commission approved the assignments of lease PRC 4000 and a portion of the lease PRC 3150, renamed to lease 7911, to Carone Petroleum, and those lease assignments consisted of the subsurface only. There was no surface use allowed.

The assignment approval was executed by Carone and the State. And as a condition of the assignment,
Carone was required to submit a lease development plan within two years and then begin drilling within three years.

As required by all State oil and gas leases, the lessee is to use all reasonable diligence in the development of the lease.

There were delays initially during the development plan process. The lease development plan was required to be submitted by Carone by November 1st, 1998. A number of time extensions were requested by Carone and were granted by staff, and the development plan was finally submitted in October of 1999.

The plan was then deemed complete in February 2001 after submittal of the necessary supplemental information.

During that period, however, staff had to warn Carone that we may need to rescind the application if it did not submit the necessary information needed to deem the application complete.

Following staff's acceptance of the complete application, a delay was experienced in receiving funding from Carone which caused the start of the EIR to be stalled until March of 1992.

And after a succession of EIR suspensions, the administrative draft was completed in June of 2005.
Further work to complete the EIR was not done primarily due to the lack of funding -- lack of necessary funding by Carone. And that funding was needed to complete some structure evaluation of Platform Hogan.

Since that time, Carone has also incurred delays in pursuing their application with the federal Minerals Management Service agency to use the offshore platform to develop state leases.

To restart the CEQA process, and because of the amount of time that has elapsed, a new Notice of Preparation and Statement of Interest will be required which will result in a rewrite of the EIR.

Staff estimates the cost to complete the EIR to be approximately $330,000 for the EIR and a similar amount to cover staff costs. Carone has been informed of that amount.

As part of the State's review, a structural evaluation of the federal platform was necessary to verify that it is capable to withstand the loads of the development as well as any seismic or storm forces.

This process was very time-consuming and incurred delays having to do with -- some of which having to do with paying for staff time and for paying the engineering consultants during the review process.
The results of the evaluation are necessary for the EIR process to determine whether additional structural work will be required on the platform. These delays have also added to the time of the EIR process.

In addition to the structural analysis required by the State, the MMS has also required its own structural analysis to include an engineering requalification of the platform. While the MMS has requested this work to be done for the past several years, Carone has just recently begun the process.

The MMS had informed Carone early on of their requirements and the need of a development plan in order to receive MMS approval. In March 2005, Carone finally submitted the original State development plan to the MMS. In subsequent correspondence, the MMS had requested supplemental information to be able to formally process the application. Carone has not responded to the MMS with this additional information.

Carone also applied for a right of use and easement permit in January of 2008. That, too, was not submitted in conformance with the MMS's requirements,
and the MMS informed Carone of additional information that was required to complete the application. As of yet, Carone has not responded to that request.

In September of 2008, Commission staff notified Carone by letter that if Carone did not comply with three essential conditions by December 15, 2008 the staff would recommend finding in default. And the three conditions were that Carone would execute and fund the reimbursable agreement in the amount of $650,000 to complete the EIR and for the additional -- and for the associated staff time. In addition, Carone would initiate a structural requalification of platform Hogan with that work to begin by April of 2009. And thirdly, Carone would reinitiate the processing for obtaining a right of use and easement from the MMS by responding to their -- to the MMS's March 2008 request for additional information. Carone responded back to our September letter on January 20th, 2009, over a month after our deadline for the three conditions had lapsed. In their letter to staff, Carone stated that it would not -- it could not make a definite funding commitment because of its lack of financial backing at
the present time.

Carone requested more time to make the funding commitment but would only do so when oil prices stabilized.

In our view, this further demonstrates the lack of reasonable diligence on Carone's part in pursuing this project.

Carone did offer a deposit of $50,000 to restart the EIR, but that would be delivered only when oil prices reached and held $60 per barrel for three consecutive months, and that has not happened.

They also offered to complete the structural requalification. They did not offer any completion dates.

And they did offer to reinitiate the right of use and easement process with the MMS, but we are not aware that any of that has been resumed.

On February 5th, 2009, because of the inaction by Carone to the staff September 2008 letter, Commission staff notified Carone that it would recommend to the Commission that it find Carone in default of its lease obligations.

In addition to Carone's inability to satisfy the September letter conditions, the default is based on noncompliance with lease terms, specifically
paragraph 1 of the lease, which requires reasonable
diligence to commence and carry out operations to
restore production.

In addition, Carone has shown lack of
diligence in completing the EIR, a lack of diligence in
completing the structural evaluation, and a lack of
diligence in obtaining a federal approval for drilling
on Platform Hogan.

The recommendation by staff, therefore, is to
find Carone in default of the terms and conditions of
the lease because of their failure to comply with the
lease terms previously stated.

The lease does provide for a 90-day period to
allow the lessee to cure the default. Failing that,
however, the lease will be forfeit, and Carone will
have to file a quitclaim.

If the Commission does find Carone in default,
staff recommends that the Commission require, at a
minimum, for Carone to cure the default by fully
complying with the three demands stated in the
December 30, 2008 letter which again are:

To execute and fully fund the reimbursable
agreement in the amount of $650,000;

To provide documentation demonstrating that it
is pursuing the requalification of Platform Hogan;
And finally, reinitiate and pursue approval from the MMS to develop the State lease for Platform Hogan.

And staff recommends that these conditions be completed within the 90-day period.

That concludes my presentation.

CHAIR GARAMENDI: Thank you very much.

I think it's now appropriate to hear from Carone and hear what they have to say, and then we'll proceed as the Commission may desire. I believe that there are at least two of you -- three of you from Carone.

MR. KIRBY: Three of us. Yes, three.

CHAIR GARAMENDI: So if the others would like to come forward, we'll just take you in the order. Please introduce yourself, Mr. Cappel, and we can go.

MR. KIRBY: Good morning, Lieutenant Governor Garamendi, Members of the Commission. My name is Steve Kirby; I'm outside counsel for the lessee, Carone Petroleum. My offices are in Santa Barbara County.

As I understand staff's position, this matter concerns the lessee's obligation to proceed with reasonable diligence to restore production to these leases.

We also understand that it is Carone's failure...
to comply with the requirements in staff's September 30
letter that constitutes the default that has been
alleged.

There is a demand -- a proposed demand for
performance of three items that may be accomplished
within the next 90 days. Without conceding that this
is a proper demand for performance under the lease, we
wish to provide you with additional information on
Carone's efforts to comply.

California law defines reasonable diligence in
relative terms. Conclusions about compliance with this
standard are to be drawn from the relevant facts and
circumstances of each case.

And in this case, relevant facts include the
nature and complexity of the permit process, the
structural infrastructure that's required for the
operation, the availability of financing, the price of
crude oil and natural gas.

The offshore nature of this project
necessarily adds a tremendous amount of complexity to
the equation.

And I think you may agree with me that by its
very nature the process of trying to secure production
of oil and gas from State tide and submerged lands
tends to move with glacial speed.
And two examples that come readily to mind are the efforts to increase production from the South Ellwood field off Goleta, where the effort has been ongoing for about 20 years.

A little further up the coast, some of us have been working on the Tranquillion Ridge project for more than ten years.

It's true that each of those projects involves a different statutory exception to the California Sanctuary Act. However, Carone's situation is relatively unique as well in that it involves the drilling in State lands under an existing lease from a federal platform in OCS waters.

It's -- in summation, it's Carone's position that the company has proceeded with reasonable diligence when all of the relevant facts and circumstances are considered.

The two speakers that will follow me will briefly explain what has been accomplished to date and what they believe can be accomplished within the next three months. Thank you.

CHAIR GARAMENDI: I appreciate that. And for you and the remaining two speakers from Carone, focus on the past, appropriate. And if the Commission decides to move that there's a default, what potential
do you have to cure the default in the next 90 days?

So if you could speak to that issue, along

with whatever you'd like to talk about as to why you've

not succeeded thus far.

MR. KIRBY: The two gentlemen behind me will

do just that.

CHAIR GARAMENDI: Very good. Thank you.

MR. COOMBS: I have some handouts. Hello. My

name is Steve Coombs. And I'm a consultant to Carone

Petroleum, and I'm an officer of the operating company,

Pacific Operators, who operates the adjacent Platform

Hogan in federal waters.

What I want to do today is provide a little

bit of additional background information that provides

some details and about the timeline and the process in

which we've gone through to move forward on the

permitting for redevelopment of the State leases in

State waters.

The -- this process starts back in, really, in

the early 1990s; and at that point, we had a discussion

with the State Lands staff, wherein they described a

situation that seemed reserves from State waters would

be stranded by the removal of platforms Hope and Heidi,

the Chevron platforms. And in fact, that did happen as

Mr. Scott described in his presentation.
From 1993 to 1997, working in conjunction with
the State Lands staff and the three oil companies,
Carone did obtain an assignment of those State leases.

One of the things that we also accomplished
during that time period was a technical study to look
at the viability of redeveloping those reserves from
the adjacent federal platforms.

And we had a joint study that both the MMS,
Carone Petroleum, and State Lands and the Department of
Energy were involved in where we did a fairly massive
technical study during the period of 1993 to 1997.

All of that provided the underpinnings in
which to -- for us to be able to move forward on a
project. In other words, we were determining the
viability of the project.

During 1997, we were working with both MMS and
State Lands staff to really provide or develop a
framework for how we move forward on permitting this
project.

It was rather unique at that time because
there had never been a situation where State reserves
were developed from an adjacent federal platform. And
so it isn't just a clear-cut path, and there has
been -- as you'll see going through this, there has
been a lot of evolving or evolution to the process as
we've moved forward.

During 1998 to 2000, the operator was focused on a federal lease redrill program from platform Hogan. That program was executed in the fourth quarter of '98. The price of oil had dropped in December of 1998 to $8 a barrel for those offshore reserves and it -- and the bank, or the company lost its financial backing during that time, and it was admittedly a devastating period from 1998 to 2000 recovering from that.

In 2001, Carone did submit an application for the development of -- a plan of development to the State Lands. Actually submitted in 2000; it was deemed complete in 2001. And from that point, the EIR process or the CEQA process was initiated.

At that time -- it's important to note, at that time both Carone and CSLC believed that the structural analysis that had been priorly -- been accomplished prior to that point was sufficient.

CHAIR GARAMENDI: Excuse me.

MR. COOMBS: Sorry.

CHAIR GARAMENDI: While you were going on, I flipped to the back page.

MR. COOMBS: Okay.
CHAIR GARAMENDI: In flipping to the back page, we may get to the solution. But I think what I'd like to do here is to have put in this record the comments which basically are in this document, if that's okay with you, without the oral comment and go to the back page and then if necessary go back and pick up pieces along the way in the intervening years.

The back page -- the last page, unnumbered, says 2009 go forward plan.

Why don't we talk about that for a little while; and then if we need to, we can go back and pick up the information that you are submitting in written form of why there are these delays and the hurdles that you've undertaken.

So let's talk about going forward for a while, if that's okay with you.

MR. COOMBS: The last two slides were actually going to be presented by Mr. Cappel, if I could let him step in for that then?

CHAIR GARAMENDI: As you like. Please.

MR. CAPPEL: Thank you. Lieutenant Governor, Members of the Commission, my name is Charles Cappel. I am not here in capacity as an attorney representing these folks. Or a consultant.

I am the Chief Executive Officer of Carone...
Petroleum. I'm the guy with the bull's eye, and I feel it.

CHAIR GARAMENDI: You're standing in the right place.

MR. CAPPEL: Indeed, I am, sir. Indeed I am.

So. Delighted to follow your suggestion, Lieutenant Governor, and go directly to the back page, because we mean what we say there.

Very simply, this is a short list of what we are confident we can achieve within the next 90 days.

Number one, to initiate the MMS platform verification for Platform Hogan. That's this seismic requalification, this very complex seismic requalification, certification.

In fact, that work has already begun in that the official platform verification application was -- which nominates the CVA, the certified verification agent, the outside agent who looks at the work that in fact has already been done, and who follows on with his inquisition of all the engineers involved, and in the end blesses it or not or has it revised or more work done or not.

And we expect, because of our experience with precisely this same CVA with respect to our other federal platform, Platform Houchin, that was recently...
and successfully concluded between Thanksgiving and Christmas this last year, that we have every reason to believe, now that he's been through that process, this one is a slam-dunk.

We all know where we're going. We all know what the criteria are. And we are fully confident in our ability within the next 90 days that this shall be done.

Number two --

CHAIR GARAMENDI: Excuse me. I want to be quite clear here.

MR. CAPPEL: Yes.

CHAIR GARAMENDI: There are apparently two things that are to be done. One is the initiation, and the second is the completion thereof.

MR. CAPPEL: The initiation has already been done.

CHAIR GARAMENDI: All right. And you believe in the next 90 days the verification process will be complete?

MR. CAPPEL: I have every hope that it will.

You understand, please, that we're dealing -- if this were simply a straightforward matter of us working with the California State Lands Commission, we've worked with these people enough in the past we'd have...
confidence that I could make that representation to
you.

But we've got the wild card here; we've got
the MMS. And I don't know what additional questions
they may interject out of left field over the next 90
days. And that's the only caveat I would put.

CHAIR GARAMENDI: Okay. Let's move on to your
next.

MR. CAPPEL: Number two requires a resubmittal
of the MMS Right of Use and Easement application.

We have submitted, I think yesterday, to your
staff a letter from our consultant Simon Poulter of
Padre Associates. The thrust of that letter -- I only
had a chance to look at it briefly -- was that he
expects to have this work completed by July the 1st.

And then finally, of course, is the big one.

CHAIR GARAMENDI: Money.

MR. CAPPEL: Yeah. We are finalizing -- yeah.

Mr. Scott made reference to a comment in a
letter that I had submitted to the office begging
indulgence, asking for more time, pleading, as close as
I could get to my hands and knees, saying the oil price
as well as the rest of the world's economy has just
fallen apart for all of us.

We need more time. Our bankers have just
fled, because they don't know how they're going to keep their doors open tomorrow. Can you work with us?

And I understand he could not. I made, in the course of that letter, reference to a sort of a criteria, a number of criteria, $60 a barrel sort of number for a period of time.

Well, I wrote it that way sort of for the layman. Most of us will hear $60 a barrel for a period of weeks or months, and we understand what that means.

But really, what I meant to say, which is much more complex, and I thought too tedious to put before you, was what do the guys who buy and sell in the futures contracts use as their rule of thumb?

And right now, I'm telling you, and oversimplifying it again, that threshold in futures terms has been met.

So now our bank's back at the table, and we are finalizing the negotiation of the document that we began before the most recent train wreck, and we have every belief that that deal will be done and concluded well this side of 90 days, and we will be able to write you a check for the money.

CHAIR GARAMENDI: Show us the money? Is that it?

MR. CAPPEL: Yes, sir.
CHAIR GARAMENDI: I think there was a movie about that.

MR. CAPPEL: There was a movie about it.

CHAIR GARAMENDI: Just a question.

MR. CAPPEL: Yes.

CHAIR GARAMENDI: Do you want this lease?

MR. CAPPEL: You bet we do. Oh, you bet we do. And our lenders do too.

CHAIR GARAMENDI: All right. The issue before the Commission is to issue a default now and give you time to cure.

MR. CAPPEL: Yes, sir.

CHAIR GARAMENDI: Or give you some time and then default and time to cure. I sense a certain impatience among the staff.

MR. CAPPEL: As do I, sir.

CHAIR GARAMENDI: Your sensitivity is accurate. They are impatient. This has gone on far too long. And whatever the reasons may be, financial, oil prices, et cetera, nonetheless, we expect our lessees to be diligent and timely.

MR. CAPPEL: You're entitled to that.

CHAIR GARAMENDI: And you have not. My assessment -- you don't need to admit to that at this point -- but my assessment is that you've not been
diligent and that you've allowed things to slide for reasons that are perhaps in your interest appropriate, but not in ours.

So the question for us, it seems to me, is to give you some time and then if appropriate issue a default, or to issue a default today and give you 90 days together or else we get a quitclaim.

I'd like to -- my sense of where this is, is our next meeting is June?

EXECUTIVE OFFICER THAYER: June 1st.

CHAIR GARAMENDI: And my sense is that it's two months. That we could give you two months. If you don't show us the money, then you've got 90 days and a quitclaim at the end of it for us. That's how I see this thing.

DEPUTY DIRECTOR OF FINANCE SHEEHY: Mr. Chairman, I would propose to move that we put this action on this item over to the June 1st meeting in order to accomplish the timeline that you just laid out.

CHAIR GARAMENDI: I'd like to have staff comment before we move on this.

EXECUTIVE OFFICER THAYER: All of these options are obviously at the Commission's discretion in terms of which way it wants to go forward, and I think
the Commission wants to resolve this quickly this morning.

I think we should be clear about what what's going to be done here.

The letter from Padre that they referred to in number two here doesn't really do anything at all. It just means they've hired some consultant to help them to do what they should have done already. That's all they've accomplished so far on this.

I think that the recommittal to the MMS should be complete. They applied to the MMS four years ago for an RUE, were told within a month or two by MMS what additional information was necessary to make it complete, and have not submitted anything in four years.

Now, this requires discretion on the part of MMS, but if we're not giving them a drop-dead date in terms of a default that by June 1st we'll have an opportunity to review whether or not they've complied with MMS, whether they've provided, using a good-faith effort --

CHAIR GARAMENDI: You used a word here: That is a complete application --

EXECUTIVE OFFICER THAYER: Yes.

CHAIR GARAMENDI: -- with MMS.
Let's talk about a complete application to MMS. Your point, Mr. Thayer, is I think right on.

Let's not be vague. If we intend to pull the trigger, that is the default trigger, then we need to be very specific as to what would initiate that.

EXECUTIVE OFFICER THAYER: Correct.

CHAIR GARAMENDI: So let's talk about the application.

MR. COOMBS: I just want to add one point of clarity. That the right of use and easement application was initially submitted to the MMS in 2008; it wasn't four years ago.

There is -- has been a question for some time with the MMS of whether we needed to create a modified development plan with the federal government or whether that was even necessary or not.

And in 2008, they determined we just needed to submit a right of use and easement application, which we did.

And it is in fact correct, they did respond back and say here's the deficiencies, and we have not responded back to that deficiency list.

We do -- we have retained a consultant to help us do that, and that is what the Padre letter is that's being referred to.
CHAIR GARAMENDI: And we have a specific set of actions. That is, that you will by next June, two months out, respond to each specific action or each specific deficiency that MMS has cited. If you don't, then you're going to get a default. All right? Is that specific enough?

MR. CAPPEL: I think I understand. I guess the only question I have that I need your help on: We can respond to each of those three. We're absolutely confident we can do that and have begun doing so.

But are you saying that we are required to have each of them completed by June -- the June meeting?

And here's the reason I ask that, and this is emblematic of what's going on in this whole thing. We walked in here this morning and met one of the staff members, had a cordial conversation, and she indicated, oh, by the way, I just got a letter yesterday -- she just got a letter yesterday from the regional head of the MMS just putting us, State Lands, on notice that the MMS still hasn't decided how to exercise its discretion as to whether or not we shall be required to file a -- prepare and file a revised federal development plan.

Now, this is what's been happening all along.
And, you know, I know it's frustrated your staff. It's frustrated us too.

And I don't have a big enough gun to shoot my way out of this one. So I guess --

CHAIR GARAMENDI: I can understand how you get caught in the middle here. There are -- there's going to be a value -- a judgment made by us as to the fullness of your application, all right?

MR. CAPPEL: Understood.

CHAIR GARAMENDI: And let me just tell you: We have very, very tough correctors around here. You think your third-grade teacher was tough on a math exam; we are even tougher.

MR. CAPPEL: I went to Catholic school.

CHAIR GARAMENDI: I want a full fullness --

MR. CAPPEL: Yes, sir.

CHAIR GARAMENDI: -- to the application. And no games. Completed.

If MMS is unsure what it's going to do, and I suspect they'll have a representative or at least a way of hearing what we have to say, they ought to get their work done too.

Mr. Salazar is going to be in San Francisco next Thursday. I will be speaking to him. And if there's any questions, I'll bring this issue up with
his and his deputy who is a very close friend.

Okay. Thank you.

DEPUTY STATE CONTROLLER MANDEL: What's the effect of putting it -- I guess they want to put it to June as opposed to declaring a default now.

CHIEF COUNSEL FOSSUM: In effect, it will give them an additional two months, presumably, to comply.

One of the options the Commission has, I think, is to actually find a default now and have an update in June as to what kind of progress is being made on curing the default.

Another option, one of the things the Lieutenant Governor mentioned, was he wanted to see the money. Are we giving them five months for that, or are we going to give them till the next June meeting for that?

So I think there is a number of issues for the purposes of the minutes of this meeting that we should make absolutely clear.

MR. COOMBS: Could I just clarify one point? The key is, between now and June, we've accomplished already -- or will easily accomplish -- two of the three items.

The one item that you don't have right now is the money, okay. But the other two items, we have
initiated the platform verification process on Hogan. We have done that with an official submittal.

We've also -- we also have a high degree of confidence that we can respond to the RUE deficiencies and make a final application to the MMS within that same time frame. So from the company's point of view, we have confidence we can respond to the deficiencies even prior to the June meeting.

CHAIR GARAMENDI: Well, that would be to your benefit to do so, and to do so fully and completely, meeting the requirements of MMS as well as our own department.

If MMS is unsure of whether it's night or day, then we'll have to deal with that in our discretion as to your fullness of application, as well as MMS's uncertainty about whether it's night or day. So we'll deal with that.

But what I'm telling you right now is: You're going to get a default unless you are really on top of this game and can show us that you've done everything you possibly can to meet all of the requirements to get this lease underway.

MR. CAPPEL: We understand, sir.

CHAIR GARAMENDI: And show us the money.

MR. CAPPEL: Yes. We understand that as well,
sir.

CHAIR GARAMENDI: Very good.

Paul? Be providing us with the clarity, provide the Commission and the applicant with the clarity that you would like to see.

EXECUTIVE OFFICER THAYER: I think the Lieutenant Governor has done a lot to bring that about.

I would say in terms of the verification process, number one, we haven't talked about much.

It's interesting in their letter of January 20th, they committed to having the complete results from that being done within the first quarter of 2009. So that was a commitment they made January of this year.

It's still not done. And I would presume we want to see something like more than just initiating the platform verification.

What were you alluding to in this paragraph in your own letter?

MR. COOMBS: My slides actually addressed this point rather specifically. But the point with the Platform Hogan analysis is we made a submittal in 2006 and then a further submittal in 2007.

We actually have completed the analysis, the structural and seismic analysis, for Platform Hogan.

In -- there was a rather circular process that was
going on between the MMS, the State Lands, and the oil company wherein none of the consultants, meaning the third-party folks, could agree as to what were the deficiencies? Did they agree with the results of our analysis? So on and so forth.

What finally occurred in 2008 is a recognition by both the MMS and the State Lands staff that we would -- that all parties would agree with the outcome of a certified verification agent.

And that is in fact what we employed on our adjacent Platform Houchin and was successful.

What we're talking about here is the actual number crunching has been done. What now has to happen with the CVA process is that Certified Verification Agent has to step in and agree or disagree with our analysis.

If he disagrees, he will ask for clarification and additional work to be done. We specifically, on -- two days ago made the official application and nominated the CVA for that process.

So the point I'm making to you is, the work's done. Now we just need to get the CVA to verify that work is done. It --

EXECUTIVE OFFICER THAYER: But isn't that what you committed in this letter to have done within the
first quarter of this year?

MR. COOMBS: Yes. And we've been working toward it.

EXECUTIVE OFFICER THAYER: It's not done yet. And so I would add that to the list of what needs to be done by June 1st, is that would be completed.

MR. COOMBS: Okay, that -- that's fine. The point is, I am not or this company is not in control of a process in which we are seeking federal approval.

The State Lands has agreed, the staff has agreed, to abide by the process wherein the CVA recommends approval or disapproval or asks for additional work. I can't control the outcome of that.

EXECUTIVE OFFICER THAYER: In this letter, you seemed to indicate you could do it.

Anyway, I would advocate that the Commission, in the strong language you've been using, recommend that you reach that result.

And obviously, we'll grade the results come June 1st and see whether, if there is a delay, whether it's MMS's fault or whether it's the company's.

And when you look at these commitments that were made just this past January, all of which were supposed to be done by April 1st -- almost none of them

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have been done.

So their own proposal they haven't complied with, let alone the staff. So --

CHAIR GARAMENDI: We understand that.

And I would ask that at the June meeting, if the CVA is not completed, that the CVA contractor appear and be prepared to explain to us why it's not completed, what the issues might be.

And I will pursue a question as to why, why.

And if it's your fault, you get the default.

MR. CAPPEL: Understood.

CHAIR GARAMENDI: Okay. Next question, Paul.

EXECUTIVE OFFICER THAYER: I think that's most of them.

So we want to see the money.

We want the RUE to be complete -- RUE application to be complete. And if they've responded comprehensively to the other requests that MMS had made, to make that RUE complete when they first applied.

And with respect to the platform verification, that they've obtained the results from the independent agency or entity.

CHAIR GARAMENDI: All right, thank you.

There was a question of the Environmental
Impact Report; how does that figure into this?

EXECUTIVE OFFICER THAYER: Well, that's the money, that's number 3, that they would provide the money to go forward.

A lot of the delays along the way have been because they said, stop work; we don't want to pay for any more work right now.

CHAIR GARAMENDI: I -- yes?

DEPUTY ATTORNEY GENERAL RUSCONI: Before you proceed, I would advise that should you take the course of giving them more time that you make sure you put on the record that you are not waiving or otherwise forgiving any defaults that could have happened in the past. That they are not starting over.

This is -- you're not waiving any of your rights that you have that's happened for failures that happened in the past.

CHAIR GARAMENDI: If it's clear from the record, both written and oral, presented here today that there are a series of lapses in the application and the necessity of the applicant, lessee, to get this completed.

We accept and understand those, and we do not waive those in any way.

And by putting this over in no way is meant to
jeopardize the position of the State should we decide that there is a -- should we take action on the default at our next meeting.

Does that cover it, sir?

MR. CAPPEL: So stipulated.

DEPUTY ATTORNEY GENERAL RUSCONI: Yes.

CHAIR GARAMENDI: Thank you. That's noted.

Very good.

MR. CAPPEL: Thank you.

CHAIR GARAMENDI: That will be the action.

We'll see you in June.

EXECUTIVE OFFICER THAYER: Thank you.

CHAIR GARAMENDI: Next?

EXECUTIVE OFFICER THAYER: The next item, I believe, is a resolution. Yes.

This is a resolution proposed by the Controller's Office for adoption by the Commission to oppose the new oil leasing proposed in Department of Interior's new five-year OCS leasing program.

Mario De Bernardo will make that presentation.

LEGISLATIVE LIAISON, STAFF COUNSEL DE BERNARDO: Good morning, Commissioners. I can go into an explanation if you'd like me to.

The MMS has posted on the Federal Registry for comment a draft five-year OCS leasing program for 2010
and 2015. The plan proposes 31 OCS lease sales, three
which are off the California coast.

This resolution opposes this plan, as well as
encouraging the federal government to move forward on
its renewable energy developments, which may include
offshore wave and wind energy.

And this resolution will be submitted as a
comment as soon as you guys approve it.

CHAIR GARAMENDI: Tom has a question.

DEPUTY DIRECTOR OF FINANCE SHEEHY: I'm not
sure -- I'm just looking at this. I apologize; Mr.
Thayer knows I was travelling out of state all of this
week and was out of commission the last half of last
week, so I didn't get a chance to read this resolution.

Tell me again, Mr. De Bernardo, the policy
statement that we're making here?

LEGISLATIVE LIAISON, STAFF COUNSEL DE
BERNARDO: This policy statement, or this resolution,
opposes the MMS draft five-year plan, which includes
three lease sales off the coast of California.

DEPUTY DIRECTOR OF FINANCE SHEEHY: And we're
opposing it why?

LEGISLATIVE LIAISON, STAFF COUNSEL DE
BERNARDO: Well --

EXECUTIVE OFFICER THAYER: Because --
DEPUTY STATE CONTROLLER MANDEL: It's my understanding that this is consistent with prior --
EXECUTIVE OFFICER THAYER: Yes.
DEPUTY STATE CONTROLLER MANDEL: Is that correct --
EXECUTIVE OFFICER THAYER: Yes.
DEPUTY STATE CONTROLLER MANDEL: Of the State Lands.
EXECUTIVE OFFICER THAYER: That's correct.
And it's the same offshore oil proposal, I believe, that Mike Chrisman went to represent the administration in DC and testified against.
It's a proposal for three new lease areas, one off of southern California, I believe the Huntington Beach area, one off the Santa Barbara area, and one off northern California.
It would -- this lease sale would in essence ask oil companies to bid on new leases for offshore oil development. We haven't had one of these in like -- I can't remember the last time, 10 or 15 years, because they've all been subject to the two federal moratoriums, the Congressional one and the Presidential one.
CHAIR GARAMENDI: This resolution is consistent with past resolutions with, I think, one
addition, and that is the promotion of renewables, which I think was not in the previous resolutions.

EXECUTIVE OFFICER THAYER: It wasn't in most of them. There were one or two where we made reference --

LEGISLATIVE LIAISON, STAFF COUNSEL DE BERNARDO: And the resolution actually cites that there have been eight similar resolutions since 2001.

CHAIR GARAMENDI: And with regard to renewables, it does not speak, as I read it, I guess is the question -- doesn't speak to the issue of wave, wind, offshore?

LEGISLATIVE LIAISON, STAFF COUNSEL DE BERNARDO: It mentions that it may be part of a future plan by the federal government. It encourages the development which may -- of renewable energy in the future -- which may include these.

DEPUTY STATE CONTROLLER MANDEL: Offshore wind and wave?

DEPUTY DIRECTOR OF FINANCE SHEEHY: I have question, Mr. Chairman.

CHAIR GARAMENDI: Please, go ahead.

DEPUTY DIRECTOR OF FINANCE SHEEHY: Mr. De
Bernardo, is this draft proposed five-year plan --
first of all, it's a draft, right? We don't have a
final plan, do we?

LEGISLATIVE LIAISON, STAFF COUNSEL DE
BERNARDO: Right. The public comment period is now
open for that.

DEPUTY DIRECTOR OF FINANCE SHEEHY: For the
draft. This would be part of the public comments.

LEGISLATIVE LIAISON, STAFF COUNSEL DE
BERNARDO: Exactly.

DEPUTY DIRECTOR OF FINANCE SHEEHY: Okay.

Now, is this a proposal that's been put together by the
new Obama Administration, or is it a holdover from the
Bush Administration?

LEGISLATIVE LIAISON, STAFF COUNSEL DE
BERNARDO: It's a little bit, I think, of a hybrid, but
mostly influenced by the Obama Administration.

DEPUTY DIRECTOR OF FINANCE SHEEHY: I guess I
would be reluctant, not having more information, so
early on in the Obama Administration to take such a
strong stand against a new proposal that they're
making.

So while I won't vote against this resolution
today, I want to give the Obama Administration a chance
to make their case, and I just think it might be
premature for us to second-guess the new administration.

So if there's a vote on this matter today, Mr. Chairman, I want to give my benefit of the doubt to the Obama Administration. I'm going to withhold a vote on this one way or the other because I think the new administration deserves every consideration for the new energy policy.

CHAIR GARAMENDI: As always, Tom, you're most gracious, and I'm sure that it's appreciated in Washington and will be appreciated by the Secretary. Just looking at that specific "whereas" -- well, I think, whatever they are actually proposing, we are in a position, and we should be in a position to state our view from the State.

And my view is that these three areas, the Santa Maria, Santa Barbara/Ventura, and Oceanside/Capistrano basins, should not be subject to new drilling.

And therefore, insofar as this resolution accomplishes that with the resolved -- two of the resolveds here, one of which says:

Resolved by the State Lands Commission that it opposes the US Department of Interior MMS draft proposed five-year
Outer Continental Shelf oil and gas leasing program 2010-2015.
And further resolved, it requests the federal government to prohibit new offshore oil and gas leasing off the coast of California, continue to move forward with renewable energy development.

Those are the two actions -- two of the three. The third is to distribute this to every conceivable place we could make it land -- that I am in strong support of these two action resolved -- the two action items here, the two resolvs. And therefore, I would like to see us adopt this resolution and have it presented to Mr. Salazar, Secretary Salazar, at the hearing next Thursday in San Francisco.

I intend to appear at that hearing. I would like to have this resolution in hand at that point when I appear and make a statement with regard to my position and make the State Lands Commission position, and I'll present this resolution.

DEPUTY DIRECTOR OF FINANCE SHEEHY: And then when you talk with Mr. Salazar, be sure to let him know that one of your colleagues wanted to give them more time before we acted on this, Lieutenant Governor. But
I'm sure you'll be very gracious in your comments to the Secretary.

CHAIR GARAMENDI: I'll do everything I can to see the Secretary does not step into an oil pool in California.

(Laughter)

DEPUTY DIRECTOR OF FINANCE SHEEHY: Very good.

DEPUTY STATE CONTROLLER MANDEL: I move adoption on the resolution.

CHAIR GARAMENDI: I will second it and I count two votes in support of the resolution.

DEPUTY DIRECTOR OF FINANCE SHEEHY: And one in abstention.

CHAIR GARAMENDI: So moved.

Mr. Thayer?

EXECUTIVE OFFICER THAYER: We have one more regular calendar item before we go into closed session, and Mario will also make this presentation.

LEGISLATIVE LIAISON, STAFF COUNSEL DE BERNARDO: Calendar item number 43 is an attempt for staff to get a piece of the stimulus pie, federal stimulus pie.

CHAIR GARAMENDI: Get in line.

(Laughter)
BERNARDO: The federal government, through the stimulus bill that was passed a few months ago, or last month, authorized NOAA to distribute money through a coastal and marine habitat restoration project grant program. We have -- and this grant program is focusing on shovel-ready projects.

We have a shovel-ready project that involves beach hazards in Santa Barbara and Ventura County, so we are applying for over a million dollars of stimulus money to remove these beach hazards in Santa Barbara and Ventura County.

The application was due on April 6th, so staff went ahead and submitted the application. One of the -- what is encouraged in the application is support letters from government entities, and we got -- we collected different support letters from city, county, state and federal entities.

We would like to be able to state that the State Lands Commission itself supports this application and submit a letter stating as such.

DEPUTY DIRECTOR OF FINANCE SHEEHY: Question of the staff, Mr. Chairman. Is it possible to use any of these funds in any way where we can connect the dots to some of our other state tidelands cleanup activities that we've discussed here?
EXECUTIVE OFFICER THAYER: Commissioner Sheehy is alluding to a conversation he and I had a couple weeks ago when we talked about this, as to whether or not we could work on some of the same abandoned vessels or other hazards that I know other Members of the Commission are also concerned about.

The trouble that we found was that we had to be able to nominate projects with the shovel-ready requirement, and that we had to demonstrate that we could proceed within 90 days. And we couldn't do that for these other projects.

On these beach hazards, we've actually gone to the Coastal Commission, the Corps of Engineers, that kind of thing and gotten our permits.

I think we've got a contractor who either has been on board and is being renewed or we're getting a new one recycled.

So when we -- I mean, from our perspective, we'd be glad to use it for the purposes you're talking about, but we don't think we qualify.

DEPUTY DIRECTOR OF FINANCE SHEEHY: The reason why the other projects can't be shovel-ready in 90 days is because they've got to go through specified legal procedures before the work can be done?

EXECUTIVE OFFICER THAYER: We have to go to
the Corps, the Regional Water Quality Control Board,
that kind of thing.

LEGISLATIVE LIAISON, STAFF COUNSEL DE BERNARDO: The application also expressly prohibits
funding to projects that need court orders. And with
abandoned vessels, we would need to go to court to
obtain title, and et cetera.

CHAIR GARAMENDI: I'm not satisfied with this.
I understand where you -- what you have done,
and it's certainly appropriate.

I would be very, very surprised if there is
not a round two and a round three. And I would like to
see -- I would want to see the staff identify -- we've
had two abandoned vessel issues come before us in the
last three hours, and I think we can probably quickly
find out through a court that they are abandoned, there
is no owner, or there is an owner, or whatever.

There are also projects in the Sacramento/San
Joaquin Delta and the Bay for the removal of other
kinds of hazards, not abandoned vessels. Snags.

There is one out here on the American River,
an old ancient weir that is clearly a hazard.

So I would like to see staff proceed in an
expeditious manner to identify additional projects,
some along the coast, similar to what is before us
today, and others that may be in lakes or rivers that
we may know of that we could prepare and have prepared
for the round two or three of the money flowing from
these state -- federal agencies, NOAA or others.

EXECUTIVE OFFICER THAYER: Certainly, we'll do
that.

CHAIR GARAMENDI: I suspect there be an
opportunity, and we should take advantage of it.

DEPUTY DIRECTOR OF FINANCE SHEEHY: With those
comments, Mr. Chairman, are you asking -- would you
like a motion on this item today?

CHAIR GARAMENDI: Yes.

DEPUTY DIRECTOR OF FINANCE SHEEHY: I would
move approval of the staff recommendation on item
number 43, and would also encourage the staff to look
at the other project opportunities that the Chair of
the Commission has requested you do.

DEPUTY STATE CONTROLLER MANDEL: Second.

CHAIR GARAMENDI: Without objection, that will
be the motion and the approval.

Next item?

EXECUTIVE OFFICER THAYER: That concludes the
regular session. We do have the closed session.

CHAIR GARAMENDI: Yes. We do have one more
item before we go to closed session.
This will be the last day that Brian Bugsch will be able to assist me. He's done so with exceptional skill and talent over the last -- almost a little more than two years now.

Because of the need for higher priorities, we are significantly diminishing the staff at the Lieutenant Governor's Office, and Brian is now moving back to the Department of Insurance where I'm sure he will perform yeoman's service as he has in working with me.

So Brian, is -- we thank you, Brian, thank you for your work. You've been exceptional.

EXECUTIVE OFFICER THAYER: If the chair would allow me to, I would like to add my own comments, because I don't imagine I talk to him more than you do, but I sometimes feel like it's close to that. Because we do -- there might be a week or two here or there that go by without any comments between or discussion between he and I, but generally we're talking frequently and trying to figure out the best thing to do, and what does the Lieutenant Governor want next and that kind of thing.

(Laughter)

EXECUTIVE OFFICER THAYER: It's all out of an attempt to make the process go more smoothly before the

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State Lands Commission's conversations, of course, I have with all the offices.

And Brian has just been wonderful in terms of trying to figure out answers, ways to get things done. And I've appreciated his help, and I hope I have been helpful to him.

CHAIR GARAMENDI: I will try to find one among the four remaining staff to talk to you.

EXECUTIVE OFFICER THAYER: Great.

CHAIR GARAMENDI: Okay. I think we've concluded that.

We're now going to move to the executive session.

* * *

(Thereupon the CALIFORNIA STATE LANDS COMMISSION meeting adjourned to closed session at 12:16 p.m.)
CERTIFICATE OF REPORTER

I, LINDA KAY RIGEL, 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, Linda Kay Rigel, 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 May 18, 2009.

LINDA KAY RIGEL, CSR
Certified Shorthand Reporter
License No. 13196