MEETING
STATE OF CALIFORNIA
LANDS COMMISSION

SHERATON GRAND SACRAMENTO
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BOARD MEMBERS
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Mr. John Chiang, State Controller
Mr. Michael Genest, Director of Finance, represented by Mr. Tom Sheehy

STAFF
Mr. Paul Thayer, Executive Officer
Mr. Curtis Fossum, Chief Counsel
Mr. Dave Brown, Chief, Administrative Services Division
Mr. Mario De Bernardo, Legislative Liaison
Ms. Barbara Dugal, Chief, Land Management Division
Ms. Kimberly Lunetta, Executive Assistant

ATTORNEY GENERAL'S OFFICE
Mr. Michael Crow, Deputy Attorney General
Mr. Daniel Siegel, Deputy Attorney General

ALSO PRESENT
Mr. Mark Gunderson, representing Marc DeSautels, Heigh Ho, LLC
Ms. Ashley Hills
Ms. Janis Hills
Ms. Cheri Sugel
Mr. David Winkler
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CHAIRPERSON GARAMENDI: Good morning, everyone.

I'm John Garamendi, Lieutenant Governor. Joining me today is John Chiang, our Controller and Tom Sheehy, the Chief Deputy Director of the Department of Finance, and I'm calling this meeting of the State Lands Commission to order.

For the benefit of those in the audience, the State Lands Commission administers property interests owned by the People of the State of California, including its mineral interests. Today, we'll hear proposals concerning the leasing and management of these publicly owned properties and the interests therein.

The first item of business is the adoption of the minutes from the Commission's last meeting. Would one of my colleagues like to make a motion.

ACTING COMMISSIONER SHEEHY: Move approval.

COMMISSIONER CHIANG: Second.

CHAIRPERSON GARAMENDI: Without objection, so approved.

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

Mr. Thayer, may we have your report.

EXECUTIVE OFFICER THAYER: Good morning, Mr. Chair and Members of the Commission. I'd like to first
start off by introducing the representatives from the Attorney General's office who are here with us this morning. There are different faces than Joe Rusconi or Alan Hager. And on my far right is Dan Siegel and to his left is Mike Crow. Both of them have extensive experience in dealing with Public Trust matters. They're here because Joe couldn't make it this morning, but we're in good hands.

CHAIRPERSON GARAMENDI: Well, we'll cancel the meeting.

(Laughter.)

EXECUTIVE OFFICER THAYER: I then wanted to move on, as is our custom, during the EO Report and talk a little bit about progress on resolving some of the violations.

With respect to Jeanne Taylor, who owned the floating house in the Delta, as we previously mentioned, she has sold that house. And the one remaining thing that she needs to do is to shorten the size of her dock, which is over 100 feet long. And she is expected to begin the application process with the Corps of Engineers, where she needs to start, and the Central Valley Flood Protection Board, formerly the Rec Board. And we expect that -- we've written her a letter as recently as October 8th outlining this process to her.
The floating home that she used to own, as the Lieutenant Governor knows, it's not far from his house, it's still a problem. We continue to try and contact the person who now owns it. We're not sure if he's living on it or not. Our view is that if we're not able to resolve this by our next regular meeting that we're likely to bring a request for enforcement authorization to the Commission in December.

CHAIRPERSON GARAMENDI: If you'd like I could stop by tomorrow morning and drop of the enforcement notice.

(Laughter.)

CHAIRPERSON GARAMENDI: I drove by it today, and it's still where it shouldn't be.

EXECUTIVE OFFICER THAYER: There you go. Well, we'll call on you. We won't be shy.

CHAIRPERSON GARAMENDI: Yeah, let me know and I'll just drop it off one morning.

EXECUTIVE OFFICER THAYER: And then the other -- the next one is the Courtland docks. This is a very small marina owned by Shawn Berrigan and Diane House. There were a variety of different issues. The docks were in poor shape, and the house extended out over Public Trust Lands. Both those issues have been resolved. The only thing left is to have them post the appropriate bond.
As it turns out, the two of them have both now filed for bankruptcy. So we're not sure how this is going to turn out, but we're pursuing it. This is the sort of the thing we just need to keep dogging. And as we reported at the last meeting, in her papers for bankruptcy Diane House claimed that the boat there was her personal residence. And as the Commission knows, residential use of Public Trust Lands is prohibited. And her response when we raised this issue with her is that she was merely trying to come up with some mechanism to save her boat from being seized in bankruptcy.

We hold her she couldn't have it both ways. And we've notified the trustees in the bankruptcy proceeding that this can't be considered a personal residence.

With respect to John Asuncion, we're still working on the final complaint on that. We want to make sure we've gotten it right. Our surveyors have been out there before, but we've sent them out again. However, the improvements that he has on State property there are also a violation of BCDC requirements. There's no permit for them. And on October 29th, BCDC will consider an enforcement action of their own against him. So we're continuing to work on that.

And then finally, as I think I told the Commissioners individually, one of our counsel, Jennifer
Lucchesi, and I were down in Long Beach a week and a half ago, and managed to serve process for the Spirit of Sacramento. That's the ferry that's about two miles downstream from downtown Sacramento and is half sunk. I don't want to cast aspersions, but the AG's office had hired two different process servers who couldn't find this person. And so we went to Long Beach on this other matter and went down to his tour boat there and he was sitting there and he was served.

So at least that process will now move forward.

CHAIRPERSON GARAMENDI: That's kind of like the little red hen, I'll do it myself.

(Laughter.)

EXECUTIVE OFFICER THAYER: Right, exactly. I think Jennifer is going to open up a side business and be paid more than the State can.

CHAIRPERSON GARAMENDI: Did you get processing fees.

EXECUTIVE OFFICER THAYER: Right, exactly.

CHAIRPERSON GARAMENDI: Bill the Attorney General.

EXECUTIVE OFFICER THAYER: We should consider that. That's probably duties as assigned.

CHAIRPERSON GARAMENDI: Bill the Attorney General and get the processing fees and help your budget.
EXECUTIVE OFFICER THAYER: Save them from having to hire a third one.

And the final one that I wanted to point out was the Hulbert situation. This is the overbuilt dock. It was the boathouse that was built much larger than the Commission had authorized. We're proceeding on that in a legalistic sense. There's been depositions on both sides. The Hulbert side has now asked for production of a variety of documents and we have to respond next week. So I'm sure there will be a lot more steps to go, but this is moving along at a good pace, in terms of dealing with the litigation there.

CHAIRPERSON GARAMENDI: This is the one here in Sacramento?

EXECUTIVE OFFICER THAYER: It's just south, just south. And again he had overbuilt and put the kitchenette on top and the bathroom in there and that kind of thing. I think the structure was eight feet higher than we'd authorized.

So that concludes, unless there are any questions, an update on the violations.

CHAIRPERSON GARAMENDI: I do have a question. We were -- I don't think it was a violation. We were pursuing this issue at Tahoe of another boat -- the dock and boat house. I think that --
EXECUTIVE OFFICER THAYER: We'd had one earlier this year, and that was all successfully resolved at the last meeting. That they took down the second-story deck, and you'll recall they had that thing out there without a lease for decades. And they came in, and they applied for the lease. They removed the railing and steps that made it into a deck. And the Commission approved a lease for that. So that's been a success story.

The next matter that I wanted to discuss is that the Lieutenant Governor earlier this week or last week asked for an update on our attempts to get more auditors to look at whether or not we're getting all -- the State is getting all the revenues it deserves from the leases that we have.

The Commission had been directed -- well, several years ago, we received approval for a limited term additional auditor. Our auditors originally numbered seven and we're down to three now because of various cutbacks.

Back in, I think, 2007, we were authorized to hire a temporary auditor for two years. And the legislature, as part of that authorization, required the Commission to produce a report on how efficient these auditors were, what the gains were to the State in additional revenues from the auditing.
The report was issued in 2008. And I think you
have copies up there, and there are copies out on the
table if people in the audience want to see it. And
basically the report concluded that the auditors returned
over a million dollars a piece in additional revenues.
And that this additional auditor specifically could be
credited with over a million dollars for having that
additional auditor. It was new money that wouldn't have
been produced if we only had three auditors.

The Lieutenant Governor asked that we update
this. And so we've done that. And so we have a staff
presentation on that, which talks about going back and
looking at what's happened since that report has come out.
And Dave Brown will give the report on that.

CHAIRPERSON GARAMENDI: Tom, heads up.

ACTING COMMISSIONER SHEEHY: I'm hanging on every
word, Lieutenant Governor.

(Laughter.)
(Thereupon an overhead presentation was
Presented as follows.)

ADMINISTRATIVE SERVICES DIVISION CHIEF BROWN:
Good morning, Mr. Chair and Commissioners. My
name is Dave Brown. I'm the Chief of the Administrative
and Information Services Division for the Commission. And
I will be giving you an update on the Mineral and Audit
Land Program.

As Paul said, we presented to you on December 3rd, 2007 Commission meeting a report that was later submitted to the legislature.

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ADMINISTRATIVE SERVICES DIVISION CHIEF BROWN:

This update will include the current condition of the audit program, the contributions that the audit staff continues to make and the continuing need for additional auditors so we can audit leases that have not received adequate examination in the past and add potential and additional recoveries to the State.

Since 1997, the audit staff has been reduced to seven auditors -- from seven auditors and one support staff to three auditors and no support staff.

As a result, the projected audit frequency of the largest oil and gas leases is now about every seven to nine years. Such a frequency makes audits very difficult due to the availability of records and knowledgeable staff. Statute of limitation questions could also jeopardize some of those claims.

A reasonable frequency would be three to a five years. However, that would require at least two more auditors and preferably three. As oil prices continue to climb, and at the risk of loss State revenues will
continue to rise also.

As mentioned earlier, the Commission received and approved a report on the audit program to the Joint Legislative Budget Committee. That report demonstrated the value of a two year limited term position added in July 2006.

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ADMINISTRATIVE SERVICES DIVISION CHIEF BROWN:
The findings in that report included that the value of that additional auditor was approximately $1.6 million per year. The additional auditor did not diminish the recoveries on a per auditor basis. The audit findings not only resulted in a immediate recoveries, but also enhance the revenue flow in the future by correcting reporting errors.

A timely audit program has a positive effect on the conduct of other unaudited lessees as well. And as we saw in the Hanson sand recovery, it demonstrated the value of pursuing some of these unaudited leases.

The report further recommended that an additional three auditors be added to meet these statutory limitations. The current audit program conditions reveal that 50 percent of the audit time is on the Long Beach unit and Long Beach tidelands. And while this covers about 70 percent of the Commission's total revenues, it
leaves little time to audit other significant revenue producing leases.

Larger leases, such as Aera and DCOR in Huntington Beach, OXY in Seal Beach, and Venoco in Santa Barbara have an audit frequency of seven to nine years. In the prior fiscal year alone, these leases accounted for over $36 million in State revenues.

There is no time available to audit geothermal or mineral or dredging leases. And as we saw with Hanson sand, even these smaller leases can add up to significant losses if left unaudited. In the case of surface leases, such as commercial marinas, only the absolute worst offenders are pursued, due to time constraints.

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ADMINISTRATIVE SERVICES DIVISION CHIEF BROWN:

Even with the lower staffing levels -- next slide please.

Even with these lower staffing levels, Commission auditors continue to achieve significant recoveries. Last year, we averaged $1.4 million per auditor or a 10 to 1 return on investment. You've also been provided with a history of recoveries in the handout that was provided you over the past six fiscal years.

We believe we have demonstrated the value of additional auditors. To me, a reasonable level of
auditing that would result in a three- to five-year audit frequency, an additional three auditors would be required. The potential losses will only increase as oil prices rise.

In conclusion, we continue to emphasize and strongly believe that a higher level of staffing will provide increased benefits to the State, and those benefits will greatly outweigh the costs involved.

CHAIRPERSON GARAMENDI: Thank you very much for your report. This has been a long time concern of this commission. We recognize the difficult problems that the State has. However, I would ask my fellow Commissioners to approve a -- or to make a motion and then to approve a letter to be sent to the Governor and the Department of Finance and the appropriate legislative committees asking for an immediate authorization to hire temporary auditors, so that we can increase the revenue to the State of California.

It's rather obvious from this report that there are substantial revenues that can be achieved to help mitigate the current crisis that the State has -- fiscal crisis.

How many would you recommend we ask for?

ADMINISTRATIVE SERVICES DIVISION CHIEF BROWN: To begin with at least two.
CHAIRPERSON GARAMENDI: At least two.

ADMINISTRATIVE SERVICES DIVISION CHIEF BROWN: Um-hmm.

CHAIRPERSON GARAMENDI: What is the optimal number?

ADMINISTRATIVE SERVICES DIVISION CHIEF BROWN: Optimal, based on the schedule we provided, three plus a support position.

CHAIRPERSON GARAMENDI: And what is the approximate cost -- annual approximate cost for those three plus one or two support --

ADMINISTRATIVE SERVICES DIVISION CHIEF BROWN: About $460,000.

CHAIRPERSON GARAMENDI: And the potential return?

ADMINISTRATIVE SERVICES DIVISION CHIEF BROWN: Based on a per audit, maybe four and a half to five million.

CHAIRPERSON GARAMENDI: So it's 10 to 1?

ADMINISTRATIVE SERVICES DIVISION CHIEF BROWN: Um-hmm.

CHAIRPERSON GARAMENDI: Well, if it's the will of the Commission, I would like our executive officer to prepare a letter, coupled with the report, and a request for three auditors, at least it would be temporary positions. I assume that going for a permanent position
would be -- perhaps, we should ask for permanent positions and settle for temporary.

    ADMINISTRATIVE SERVICES DIVISION CHIEF BROWN:
        Well, they'll be established temporary for the first year.

    CHAIRPERSON GARAMENDI: All right.

    ADMINISTRATIVE SERVICES DIVISION CHIEF BROWN: By procedure.

    CHAIRPERSON GARAMENDI: Well, then let's recommend perhaps two paragraphs, one a temporary one for the remainder of this year and then ask for the permanent positions beginning in the next budget year.

    ADMINISTRATIVE SERVICES DIVISION CHIEF BROWN:
        Very well.

    CHAIRPERSON GARAMENDI: Paul, could you comment on my suggestion and then the Commission can take this issue up?

    EXECUTIVE OFFICER THAYER: We'd be glad to do that. I think because this is a non-noticed item, we probably can't really go through the formal technicalities of a motion. If you wanted to do that, we'd have to bring it back. But certainly if it's the sense of the Commission that it -- if the Commission is asking me to do that as the Executive Officer, I'm happy to do that, and it would be done in that guise.
CHAIRPERSON GARAMENDI: Well, perhaps to expedite this and to not create uncomfortable positions amongst my members, I could ask you to do that as Chair of the Commission.

EXECUTIVE OFFICER THAYER: Certainly. And if there were no objections from the Commissioners, I would just go ahead and do that.

ACTING COMMISSIONER SHEEHY: Mr. Chairman, may I comment?

CHAIRPERSON GARAMENDI: Yes.

ACTING COMMISSIONER SHEEHY: I have -- in my role as a State Lands Commissioner, I have no objection at all. And in my role as, taking that hat off for a minute, as my role as Chief Deputy Director of the Department of Finance, we always welcome communication from State agencies and from government officials, elected officials on suggestions on how the State can execute its programs more efficiently and more effectively. So we'd be happy to receive that letter.

I would just note that I think that your staff, Mr. Thayer, already knows, which we have a timeline for our budget process. This particular request coming at this point doesn't -- won't dovetail in real nicely with that, but it doesn't mean that it couldn't be considered in the context of a spring letter in the May Revise.
After all, even if it was included in the Governor's budget in January, it wouldn't take effect until next summer. So I would urge you to consider that. And I would only add that I'm delighted to see that the Commission is still interested in getting more revenues out of oil. And if they'd like to discuss that further, I have some great ideas on how we can do that.

(Laughter.)

EXECUTIVE OFFICER THAYER: I understand.

CHAIRPERSON GARAMENDI: John.

COMMISSIONER CHIANG: I'm strongly supportive. The State continues to experience significant deterioration in our revenues. And we're going to have a prolonged bumpy bottom in California. So to not revisit the extended discussions about further cuts and increased taxes, I think the State needs to be far more efficient in identifying existing resources. And so I think this is the appropriate path to take.

EXECUTIVE OFFICER THAYER: Well, I'll make sure to get that letter together and get it off in the next week.

The only other small points that I wanted to make during the Executive Officer's report is to publicly acknowledge the request from LADWP to remove the moat and row project from consideration of the Commission at this
meeting. We received a fax letter on, I believe, on Tuesday from David Freeman, the acting manager, requesting this. And we generally accede to those requests. Ultimately, of course, any project applicant can withdraw an application if we don't want to accede to that request. So it always make sense to go ahead and do that and give them the additional time they've asked for.

The letter asks that the matter be reset for the next Commission meeting. And in that regard, I wanted to report, what I think you already know and certainly your staff's do, that we're scheduled to have two meetings over in -- or one meeting each in November and December. The first one November 16th in Sacramento will focus exclusively on the PG&E pipeline 406, 407. It's a gas pipeline just north of Sacramento, and it's a special meeting.

The next regularly scheduled meeting will be December 17th in San Diego. And I would propose to put the moat and row project on for that meeting for Commission consideration if that works out for L.A.

CHAIRPERSON GARAMENDI: Paul, excuse me, Tom and I were having a conversation on the previous item, the audit.

The Commission has the power and the authority to contract for services, do we not?
EXECUTIVE OFFICER THAYER: Yes, sir.

CHAIRPERSON GARAMENDI: Is it limited in a way that would preclude us from contracting with someone to audit these oil companies?

EXECUTIVE OFFICER THAYER: I would want to get back to you on that, because there's some union and labor contract issues here that we'd want to make sure we had that ability.

CHAIRPERSON GARAMENDI: Let me make a suggestion.

EXECUTIVE OFFICER THAYER: Sure.

CHAIRPERSON GARAMENDI: And Tom and I were talking about this just a moment ago. I'd like you to pursue the notion of a contract with either individuals or a company to audit the books of the oil and other of our leasees. And that the recoveries would be used to pay for their services. I think we want to be a little careful here about how to draft such a contract. It may be -- this is not uncommon, at least at the federal government level. But if you would look at that, and see if we can -- the problem here is one of going through the rigor of the hiring and permission from the normal State procedures.

But if there's someway for the Commission itself to contract with an auditor and to pay for that service, either as a, for example, a percentage of the recoveries...
or some other mechanism, it may be that we would expedite this.

ACTING COMMISSIONER SHEEHY: Mr. Chairman, may I comment?

CHAIRPERSON GARAMENDI: Yes, Tom.

ACTING COMMISSIONER SHEEHY: Of course, I agree with everything the Chairman just said. And I just would point out that this wouldn't -- the concept is not precedent-setting. There are private sector companies out there that specialize in government efficiency. That's not an oxymoron.

And the way they get compensated is through taking a percentage of the savings. And so they basically offer their services as a no cost, you know, no downside only upside.

Now, I've never heard of those firms working as auditors on State mineral and oil leases. So in that sense, it may be precedent setting, but the general concept, in terms of that type of contract and how they get compensated has been done in many states, including California, and including State government.

So I think it is certainly worth looking into. It may take some foot work and leg work in thinking a little bit outside the box, but that might be a way to get at this without having to go through what is clearly going
to be a very difficult legislative budget process considering the State of our finances.

CHAIRPERSON GARAMENDI: Paul, I want to pick up on your point about the union and State employees and the like. I would see this as a temporary process, and then next, either in -- I guess, it's going to have to be in the budget change proposal for next year, that we then bring these people -- we would then move to have permanent staff on board.

If you could pursue that and look at the options and the opportunities --

EXECUTIVE OFFICER THAYER: Sure.

CHAIRPERSON GARAMENDI: -- together with, you know, short-term immediate and then a longer term program.

EXECUTIVE OFFICER THAYER: And I will do that and I will get back to the Commission's offices either through Email or at the next Commission meeting.

CHAIRPERSON GARAMENDI: As appropriate.

Thank you very much.

EXECUTIVE OFFICER THAYER: Sure.

CHAIRPERSON GARAMENDI: Please continue on with your report.

EXECUTIVE OFFICER THAYER: Well, that essentially concludes the report. As I say, the next two Commission meetings are to deal with the PG&E pipeline, November 16th
in Sacramento. And then a general Commission meeting December 17th in San Diego.

And that concludes the Executive Officer's report.

CHAIRPERSON GARAMENDI: Very good.

Thank you very much, Paul.

The next order of business is the consent calendar. Paul, if you would give us the items that are to be included in this, and then the Commissioners, if you have -- if there's any that -- any of the Commissioners that would like to remove a consent item, it would be appropriate following your comments, and if there's anybody in the audience that would like to comment on any of this.

EXECUTIVE OFFICER THAYER: Calendar Item 22, we'd like to remove from the consent calendar and to have it heard at a succeeding Commission meeting.

And then calendar Item 27 we've received an opposition letter. We don't think that the person who wrote that is here today, but by our rules of only putting matters on consent where there's no opposition, we feel it appropriate to remove that. And what we propose to do is just -- we think the presentation can be brief. We'd also like to make a staff amendment to the recommendation as part of that presentation. We can get that out of the way.
right after the consent calendar is adopted.

CHAIRPERSON GARAMENDI: Very good. And there is
an individual in the audience that would like to comment
on that also, if it was removed, and it has been removed.
So Item 22 and 27 are removed?

EXECUTIVE OFFICER THAYER: Yes.

CHAIRPERSON GARAMENDI: Any others?

The consent calendar is before the Commission.
Do I have a motion?

COMMISSIONER CHIANG: Move the remainder.

ACTING COMMISSIONER SHEEHY: Second.

CHAIRPERSON GARAMENDI: We have a motion?

Any objection?

No objections. Unanimous vote on the consent
calendar.

Paul, if you'd like to take up Item 27.

EXECUTIVE OFFICER THAYER: Thank you. Item 27
involves a lease for a sea wall or an improvement to a sea
wall in Solano Beach. And Barbara Dugal, who's Chief of
the Land Management Division, will give the staff
presentation.

LAND MANAGEMENT DIVISION CHIEF DUGAL: Good
morning, Mr. Chairman and Commissioners. For the record,
my name is Barbara Dugal. And I am the Chief of the Land
Management Division. And calendar Item 27 involves
staff's recommendation for the issuance of a general lease protective structure use.

   It's for the construction repair of sea wall down in Solano Beach in San Diego county. The Commission first approved a lease for this sea wall back in 1994. At the same time, the Commission also approved a compromise title settlement agreement with the then upland property owner. However, that agreement was never executed by the parties.

   What we have before you today is again the issuance of a new lease, a ten-year lease for the sea wall. And Surfriders has submitted objections to the issuance of a lease based on basically two accounts. One is that they don't believe that there's a public benefit that's been derived here.

   And staff has looked at this, and based on our review, we believe that there is a minor public benefit that the public will be receiving, in that it will provide some stabilization of the bluff base. But we also realize that there is a major private benefit to the upland property owner.

   Another item in the Surfrider's Email as to asking for denial of the lease, is that they don't believe that the revenue should go to the State. That the revenue should be used to offset mitigation. And the Coastal Commission has secured funds for sand replenishment in the
amount of $15,000.

And so staff would recommend that you approve the lease that's before you today with the augmentation that Paul mentioned earlier. And that is that in the event that upon staff's review and review of the as-builts for the seawall, and upon staff's concurrence that if any portion of the sea wall as it's constructed is it not located on State lands, then the rent would be proportionately reduced based on that percentage.

However, if it's found, based on a review of those as-built drawings, that any of the sea wall is not covered under the lease, then the applicant would have to come in for an amendment to that lease to get that additional area under lease.

So is there's any questions?

CHAIRPERSON GARAMENDI: I think Mr. Winkler is here and would like to comment.

MR. WINKLER: Good morning, commissioners. My name is David Winkler. I'm the owner of the property that's requesting the land lease.

I had submitted to you a document that addresses the benefits of sea walls. And hopefully you got that, along with a card attached to it that looks something like this, that talks about the City of Solano Beach urging people to go nowhere near these bluffs. Five people have
been killed since 1995 in the north San Diego county area.

So we think there's a real safety issue and that sea walls help to eliminate that. There have been no deaths where sea walls have been built. The city of Solano Beach itself holds a life guard program in front of a sea wall, not where there are no sea walls.

So there's a real problem with the lack of safety and then the increase in safety at tremendous costs to homeowners, who will spend upwards of a half a million dollars for 50 feet of sea wall, which not only, granted, protects the property, but also ultimately protects city infrastructure, and all the utilities, roads, sidewalks, et cetera.

So we're saving the city that cost. The city's own analyst said that the city is getting a free ride on the homeowner's backs. And I think in the past, the city also has recognized increased revenues due to higher property taxes, as well as increased tourism, et cetera.

So considering that and that the homeowners are really not responsible for the lack of upland sand supply, we think there are a whole lot of public benefits. And I'm sort of glossing over this memo that I gave to you, but hopefully you'll introduce it in the record and consider all of the benefits, because I think they're substantial.
I would rather not build a sea wall, but my house is in jeopardy and the City of Solano Beach unanimously voted in favor of this, as did the Coastal Commission.

With respect to staff's recommendation, I completely support it. The only thing I would modify is whether the land area goes up or down. In order to save you the time of having to hear this again, is to just adjust the land lease rate on a pro rata basis. So if it's more square footage, which I don't think it will be, because I made a real effort to pull the sea wall back onto my property. And it appears that we've been able to eliminate 60 percent, which -- I'm sorry, 60 square feet, which is a significant percentage of the area to be occupied. It's minimal and again it's in a very hazardous area. So I'm happy to answer any questions, if I can.

CHAIRPERSON GARAMENDI: Tom.

ACTING COMMISSIONER SHEEHY: Quick question.

Thank you for coming to Sacramento today, Mr. Winkler. I don't understand this wave of opposition from the Surfriders. What is it they don't like about the sea wall? How does it affect their surfing?

MR. WINKLER: Well, to quote one of them, "I don't like sitting on my surf board and looking at sea walls."

ACTING COMMISSIONER SHEEHY: So this is a visual
issue for them? I mean, this doesn't impede their ability
to ride the waves in any way.

     MR. WINKLER: Not at all. And frankly, a lot of
money is spent to color and contour the walls, so that
they blend in quite well. And you would potentially be
hard pressed in some instances to tell the differences
between the natural bluff and the sea wall.

     ACTING COMMISSIONER SHEEHY: Thank you.

     CHAIRPERSON GARAMENDI: Paul.

     EXECUTIVE OFFICER THAYER: There are other issues
that are raised when this goes to the Coastal Commission
and elsewhere. And one of them is -- in general, this
project obviously does not extend very far out onto the
beach at all. It has a very small impact on Public Trust
Lands.

     But that's not always the case with some of the
sea walls. And I think the Surfriders believe that if
Public Trust Land, which is used by surfers and other
members of the public recreating is used to protect
private property, then there's a loss. And so they
question very closely projects like this, because of that
impact to the public.

     The other element and --

     ACTING COMMISSIONER SHEEHY: Yeah, but Mr.

Thayer, wouldn't the push-back on that be if there's a
collapse of one of these bluffs and there's members of the public nearby they're going to get killed.

EXECUTIVE OFFICER THAYER: Certainly.

ACTING COMMISSIONER SHEEHY: And to the extent that this helps prevent that, that adds to the Public Trust value of the State tidelands.

EXECUTIVE OFFICER THAYER: Right. And certainly staff agrees with that, to the extent that we were recommending a lease rate, which is reduced by a third because of that public benefit. So I'm not trying to represent what I'm saying as just being the staff's position, but when you asked what the issues were that were raised more generally, there's the impact generally from sea walls on the public use of the beaches.

And the other one, which Mr. Winkler actually raised in his letter is that there's at least some contribution to the beach. He alleges that it's five percent -- some studies say more, some say less -- from the sand that would come from these bluffs. So in a natural condition, if you didn't put a sea wall in there, they occasionally collapse. Sometimes they get people.

But the point is you're interfering with the natural process in reducing the size of the beach by preventing that from happening. Now, there's again good public policy reasons for doing that, in terms of saving
lives. And there's also, of course, a private benefit because people's houses are saved by doing that.

But it has an impact on the amount of sand that's on the beach. So those are kind of the two issues that I've heard and probably Mr. Winkler has heard a lot of too.

MR. WINKLER: If you don't mind, I'd like to just respond quickly. All people that built sea walls have to pay a sand mitigation fee the replenishes the amount of sand that is held back. Most oceanographers estimate that the bluffs supply two to five percent of the sand needed for a healthy beach.

So with current erosion as well as deprivation of upland sources and global warming, which may cause sea level rise, most predict that without substantial replenishment and retention of sand, that there will be no beach. It's unfortunate, but at least we're contributing to a fund that will result in significant sand replenishment projects.

So I don't think there's any loss of use. And actually one of these deaths happened 30 feet out from the face of the bluff. And when you consider the relatively small footprint of a sea wall, you're actually causing a significant net increase in the amount of usable beach. So I would argue it's the complete opposite. And, in
fact, my memo encourages not to charge any rent. But that
said, I'm happy to pay the amount that the staff's
recommending subject to that pro rata adjustment for the
actual footprint.

EXECUTIVE OFFICER THAYER: And in response to Mr.
Winkler's suggestion, yes, I think this makes sense. Why
don't we just say the staff's recommendation would be that
if further surveys, especially in the as-built condition,
which was the actual occupation of our land show a
decrease down to zero, or an increase of up to twice the
size, that we will accommodate that through a pro rata
change in the rent. I'd say if the increase were more
than 100 percent, then maybe we'd want to bring it back.

Staff would normally say this should come back to
the Commission. It's up to you to decide these things.
But because we're only starting with a base of 120 square
feet, we're talking about a fairly small amount and I
think it would be better to handle it administratively.

ACTING COMMISSIONER SHEEHY: Mr. Chairman, may I
make a motion?

Is it an appropriate time for a motion?

CHAIRPERSON GARAMENDI: Let me just ask a
question. The Coastal Commission has approved this
project?

EXECUTIVE OFFICER THAYER: Yes, sir, it has, and
imposed the sand mitigation fee that Mr. Winkler references.

CHAIRPERSON GARAMENDI: Okay. Then we have a modification to the original proposal for the lease. Paul, could you just quickly review the modifications, and then we'll take the motion.

EXECUTIVE OFFICER THAYER: Certainly. The original lease contemplates renting 120 square feet of Public Trust Lands for the sea wall at a cost of $900 a year. The amendment would say that this would -- the amount of the rent would be reduced on a pro rata basis based on a final survey agreed to by staff, which shows an increase or decrease of the amount of square feet that are occupied by the sea wall with a sidebar that if that increases more than 120 -- an additional 120 square feet that it would be brought back to the Commission.

CHAIRPERSON GARAMENDI: Tom, do you have a motion?

ACTING COMMISSIONER SHEEHY: I would move approval of the staff recommendation on Item number 27 as amended by Mr. Thayer.

CHAIRPERSON GARAMENDI: Do we have a second?

COMMISSIONER CHIANG: Second.

CHAIRPERSON GARAMENDI: We have a motion and a second. Without objection, it will be unanimous.
So done.

MR. WINKLER: Thank you.

CHAIRPERSON GARAMENDI: Moving along here, Paul.

EXECUTIVE OFFICER THAYER: This bring us to the regular Calendar. And the first item up is Item 59. This is a report by our legislative liaison, Mario De Bernardo, who will talk about the results of this last legislative session and recommend that the Commission sponsor three new pieces of legislation.

LEGISLATIVE LIAISON De BERNARDO: Good morning, Mr. Chair, Commissioners. My name is Mario De Bernardo, as Mr. Thayer stated. I have a three slide presentation, and I'll try to keep this quick.

(Thereupon an overhead presentation was Presented as follows.)

LEGISLATIVE LIAISON De BERNARDO: So as stated the first part of my presentation, I will give a quick status update on some of the bills that staff has followed this year and then I will present legislative proposals for the upcoming legislative year.

As you can see, the first four items, as indicated by the third column, are four bills that the Commission voted to sponsor last January. The first bill, AB 248, is regarding ballast water. It allows the Commission to collect information on treatment systems on
vessels just in time for the first implementation date of
our ballast water discharge schedule that begins January
1st.

And that bill was signed by the Governor
recently. And it also gives the Commission the authority
to, but through the rule-making process, request
additional information from vessel operators, so that we
don't have to go through the legislative process again,
when we need additional information.

The Pacific Merchant Shipping Association was
helpful in supporting this bill and sending a letter to
the Governor.

Unfortunately, the next two bills were vetoed.
SB 459 was regarding abandoned vessels. It was going to
give the Commission the authority to administratively
address the problem with abandoned vessels, trespassing
vessels, and trespassing buoys. It was vetoed. I could
go into the speculation as to why it was vetoed. The veto
message cites hidden implementation costs.

We think that there is a way to fund this sort of
administrative action through ship salvors, TRPA is a
potential source, federal funding. So we may pursue this
in the future, but there's no plans immediately.

AB 368 was a bill that would have required
lessees to quitclaim their oil and gas or mineral leases
after reclamation was completed and approved by the Commission. Currently, the statute states that a lessee can quitclaim their lease at any time. And currently, we have two situations where lessees have quitclaimed their leases before reclamation, and as the reclamation period progresses were unable to do anything with this land and they're not paying rent or carrying insurance, as far as I know. And it was vetoed as well, two weeks ago.

The fourth bill there is --

CHAIRPERSON GARAMENDI: What was the veto message?

LEGISLATIVE LIAISON De BERNARDO: The veto message was that it wasn't -- there was no indication that this was a widespread problem.

So the fourth bill is a --

CHAIRPERSON GARAMENDI: Excuse me?

LEGISLATIVE LIAISON De BERNARDO: Yes.

CHAIRPERSON GARAMENDI: Does the State have to accept a quitclaim?

I've got three lawyers down there.

CHIEF COUNSEL FOSSUM: That's certainly the position that the mineral lessees take. There is a significant question in that regard. They have not been paying rent. These few individuals who have mining operations have not been paying rent since then. That's
why we felt that it was appropriate to make it clear in the legislation, that until they left -- had reclaimed the premises and left the property, that they were still under lease. But there is an argument to be made that they are in holdover status and that is an argument.

LEGISLATIVE LIAISON De BERNARDO: The statute expressly states that a lessee can quitclaim at any time. And that language is reflected in their leases.

CHIEF COUNSEL FOSSUM: And so their legal position is that their responsibility ceased at that point.

CHAIRPERSON GARAMENDI: If there is contamination, the responsibility remains even though the ownership may have changed, correct?

CHIEF COUNSEL FOSSUM: Under certain laws, that's absolutely right. But the Commission can also be, as a property owner, be held liable for activities that take place on its property. So there's problems associated with that.

CHAIRPERSON GARAMENDI: Thank you.

EXECUTIVE OFFICER THAYER: The other thing that we'd like to look into is whether or not in new leases we can expressly contract to waive that provision of the law, that the lessee would be required to do that for new leases. So we're going to look into different remedies
that we have into this.

CHAIRPERSON GARAMENDI: I would urge that the Commission staff to continue to pursue this issue and enter into discussions with the Governor's office to try to sort this thing out, because there seems to be a gray area here that could leave some liability for the State and somebody could walk away from obligations that they had.

CHIEF COUNSEL FOSSUM: The Commission has expressly rejected taking quitclaim deeds in other circumstances where there were toxics, from the federal government, for example at Honey Lake. But here, where there's an expressed provision that says they can quitclaim at any time, that was our dilemma, I guess, if -- under those circumstances.

CHAIRPERSON GARAMENDI: Are we writing leases that allow people to walk away with obligations unfulfilled?

LEGISLATIVE LIAISON De BERNARDO: There are laws under SMARA. And I can't remember at this time what the acronym stands for. And the Department of Conservation has regulations that require reclamation and abandonment. The problem in these cases is that rents not being paid while they continue to occupy the land, and then there's not liability insurance for -- in case of a personal
injury, so the State could become liable.

CHAIRPERSON GARAMENDI: I understand that. I'm just suggesting that we not write new leases, that allow folks to walk away with unpaid or unfulfilled obligations.

EXECUTIVE OFFICER THAYER: Generally, our leases require that they return the premises to, you know, the original condition. But again, we're looking at putting in provisions that will more expressly address the problem we're talking about today, absolutely.

CHAIRPERSON GARAMENDI: Okay.

John.

COMMISSIONER CHIANG: Do you know, what's the loss to the State for the payments that aren't being made? How many instances do we have over what period of time, the frequency?

LEGISLATIVE LIAISON De BERNARDO: There are two current leases, one in Lake County and one in southern California. And we're talking about tens of thousands of dollars, if the lease were to continue during the reclamation process on an annual basis. So nothing major, but this money is -- most of these lessees are on school lands. This money would go to the Teachers Retirement Fund. CalSTRS has supported this bill. So we're looking at not a ton of money, but tens of thousands.

EXECUTIVE OFFICER THAYER: I think the issue in
terms of revenue generally is that we charge both rent and royalty rate. So the rents are fairly low, because the property is off in the middle of nowhere and doesn't have that high an appraised value, but then we get a percentage of the royalty. So the actual income while the operation is under way is sometimes significant, but it drops once that production ceases.

COMMISSIONER CHIANG: And then how many of these properties -- and I use this term very loosely -- are protected under the statute from quitclaiming or allowing them to quitclaim.

I'm worried about the exposure.

EXECUTIVE OFFICER THAYER: I think we'd have to go back and find out how many leases we have. It might be all of the existing leases. But this is a legal matter and before I answer conclusively, I'd like to discuss this among staff and get back to you.

COMMISSIONER CHIANG: Thank you.

CHAIRPERSON GARAMENDI: Please continue.

LEGISLATIVE LIAISON De BERNARDO: Thank you.

And I'll add that there's an omnibus bill that just passed in special session, which includes item number 4, which is a technical flaw in the code that prevents the Commission from obtaining land patents from the Bureau of Land Management in certain circumstances. So the bill
received unanimous support and we feel like that it's a legal issue and it should be signed.

Then the bottom three rows are bills that I'm bringing to your attention, because you guys will have heard these items in previous meetings or you will hear about them in the future. The Candlestick Hunters Point Bill was signed by the Governor. It authorizes a land exchange that the Commission -- subject to the Commission's approval in the next, I think the timeline is, two or three years. You guys will probably be presented a land exchange proposal for the San Francisco Candlestick Hunters Point area.

ACTING COMMISSIONER SHEEHY: I'm sorry, Mr. Chairman, may I ask a follow-up question?

CHAIRPERSON GARAMENDI: Sure.

ACTING COMMISSIONER SHEEHY: I don't understand, Mr. De Bernardo, what exactly did SB 792 do?

LEGISLATIVE LIAISON De BERNARDO: So the San Francisco Redevelopment Agency is the sponsor behind this bill, and they have a redevelopment project for the Candlestick Hunters Point area. There is sovereign land in that area that is all over the place and mixed or adjacent to private land. And as part of the redevelopment project, they've proposed an exchange to help implement their redevelopment project.
ACTING COMMISSIONER SHEEHY: So this bill effectuated that exchange?

LEGISLATIVE LIAISON De BERNARDO: It authorizes the exchange. There's a proposed map the Commission has to ultimately --

ACTING COMMISSIONER SHEEHY: The Commission has to ultimately act on it, but it authorizes the exchange.

EXECUTIVE OFFICER THAYER: Correct.

ACTING COMMISSIONER SHEEHY: It tees it up for this body to review it and approve it, is that the idea?

EXECUTIVE OFFICER THAYER: Correct.

LEGISLATIVE LIAISON De BERNARDO: Yes.

And we've had legal staff, such as Jennifer Lucchesi, has worked very hard on this particular bill.

EXECUTIVE OFFICER THAYER: We've been extensively involved to make sure that when the project comes to you, that it would be one that we could recommend approval on. But ultimately our belief is we would oppose this legislation if it didn't leave final discretion to the Lands Commission on disposal of State tidelands.

CHAIRPERSON GARAMENDI: Is the Commission staff working with the redevelopment agency as they proceed to swap pieces of land around to gain, I suppose, a contiguous parcel for their development?

EXECUTIVE OFFICER THAYER: That's right. There
are mutually beneficial goals here. The property there is extremely disjunct. In some places, the blocks have been sold off, but the Public Trust still applies to the streets in front of them. And so from a land-use perspective, we done have any real way to use that Public Trust land. And the same thing affects the developer, where they're trying to consolidate some blocks, there's some Public Trust Lands right in the middle of where they're trying to put a building.

So it benefits all of us to move all of our property as close to the shore as possible, contribute to a shoreline park or something like that, and eliminate the property that's inland and then similarly we gain the stuff that's closest to the property. So definitely this is being driven by the developer, but we also see it as an opportunity for us.

CHAIRPERSON GARAMENDI: Yeah, I would just really urge Paul, that you and your staff, engage early and as often as necessary so that our interests, the public's interests are brought in early in the process rather than waiting until the end and then trying to sort it out at that point.

EXECUTIVE OFFICER THAYER: We've probably been working on this for three or three, maybe even four years at this point. And there's some tough battles sometimes,
in terms of negotiations about assuring that we get equal value preserved for the State and the Public Trust Lands.

CHAIRPERSON GARAMENDI: Thank you.

CHIEF COUNSEL FOSSUM: I just want to add that the Department of Parks and Recreation is a big player in this project as well, and in addition to your own counsel's representation and the Attorney General's is also involved.

CHAIRPERSON GARAMENDI: Well, we've had an example here in Sacramento, where if you hang tough, you can win.

Thank you.

LEGISLATIVE LIAISON De BERNARDO: The second to last item is the fee on plastic bags, which if you recall in June 1st, the Commission passed a resolution supporting these two bills and the general concept of imposing fees on plastic bags to prevent plastic bag pollution. It's still in committee. It's a two-year bill.

And then the last one, I know public comment in the past, especially in San Diego, has brought up the concern of the Children's Pool Beach in La Jolla. A bill was passed and signed by the Governor that allows the city of San Diego to make the ultimate decision as to what happens to that beach.

ACTING COMMISSIONER SHEEHY: I'm sorry. May I
ask. What did SB 428 finally do, it punted -- it
essentially punted to the city?

LEGISLATIVE LIAISON De BERNARDO: Right, the
original --

ACTING COMMISSIONER SHEEHY: It said do
whatever -- you solve it.

LEGISLATIVE LIAISON De BERNARDO: Right. The
original statute in the 1930s had a specific use for that
beach.

ACTING COMMISSIONER SHEEHY: For children.

LEGISLATIVE LIAISON: For children.

ACTING COMMISSIONER SHEEHY: And then we came
back and we said well, it can be for children or for
seals.

LEGISLATIVE LIAISON De BERNARDO: Well, we, as a
Commission, remained neutral on the bill. We felt that --

ACTING COMMISSIONER SHEEHY: But the State's
position now is that we have punted the issue, is that
right?

LEGISLATIVE LIAISON De BERNARDO: We left it up
to the locals to decide.

ACTING COMMISSIONER SHEEHY: Okay. I just wanted
to make sure I understood that one.

CHAIRPERSON GARAMENDI: Would you like the
responsibility?
ACTING COMMISSIONER SHEEHY: No.

(Laughter.)

LEGISLATIVE LIAISON De BERNARDO: So that's it for the 2009 legislative update.

The next slide, please.

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LEGISLATIVE LIAISON De BERNARDO: There are three proposals that have been noticed for this meeting, that I will ask for your sponsorship at the end of the presentation.

The first legislative proposal has to do with the trespass issue that we deal with so frequently. It would give the Commission the administrative authority to administratively impose penalties against persons who construct, maintain, own, use, possess, unauthorized structures or facilities on State lands.

The proposal is modeled after similar statutes that the State of New York, Texas, Washington, Oregon, and the California Department of Transportation have against people who encroach on to State lands. And I'm currently in talks with Department of Parks and Rec and Fish and Game because they're also interested in the idea. And so I ask for your sponsorship of this particular legislative proposal.

The second legislative proposal has to do with
audits. That was talked about quite a bit earlier. It would create a legislative mandate for the Commission to conduct full audits.

    ACTING COMMISSIONER SHEEHY: Thank you, Mr. Chairman.

    Mr. De Bernardo, I have a suggestion on the legislation as you craft it. In line with the Chairman's comments earlier, you may want to craft the bill where it explicitly says that the costs associated with the auditors shall not be paid out of the general fund, but somehow recovered -- well, it's -- yeah, you know, recovered through the audit proceeds or something.

    In other words, put some language in there that would put into law, make it clear, what we'd like to try to achieve. Because my sense is, is that if you introduce a bill asking for staff that otherwise it be general funded, you'll never get the bill out of the first house, okay.

    If you want to follow up with me, I'd be happy to work with you on that. But I think if you look for some sort of reimbursement funding mechanism, that you'd stand a better chance of actually getting that bill through the process.

    LEGISLATIVE LIAISON De BERNARDO: I appreciate the suggestion. I can talk to you after the meeting.
And then the third legislative proposal is the--
deals with our Land Bank Fund. We have monies donated
into the Land Bank Fund to provide for management and
improvement of our Trust Lands.

It's not expressly stated that the moneys donated
into this fund can be used to provide access to these
Public Trust Lands, which do improve these Trust Lands,
and this would be--it could be considered a technical
amendment to the Land Bank Fund, so that we could use the
monies to provide things, such as wheel chair access or
driveways or trails to Public Trust Lands.

So I would ask, unless there's any particular
proposal here, that there isn't unanimous consent on, that
I guess group all three proposals into one motion for
sponsorship.

ACTING COMMISSIONER SHEEHY: What does the Land
Bank Proposal do?

LEGISLATIVE LIAISON De BERNARDO: We have a Land
Bank Fund in which we receive donations for management
improvement of Trust Lands. And it is not expressly
provided in the statute for the Trust Fund--or for the
Land Bank Trust Fund that that money could be used to
provide access to Trust Lands. And so this would
expressly--

EXECUTIVE OFFICER THAYER: The specific need
arises -- generally, this money goes into the fund for a particular purpose. And the fund was originally established to allow for when there are land exchanges where the public is not getting full value for the land that is coming out of the trust in exchange for what's coming in, the person proposing the exchange can put in the deficit. And then we spend that money to buy replacement of Public Trust Lands.

So that money going in is for that very expressed purpose. And we would not want this legislation to undercut that purpose. But we also occasionally get money in there. And the one that comes to mind are what's called the NRDAs, Natural Resource Damage Assessments, that occur after oil spills.

And different State agencies participate in that process. Fish and Game generally is responsible for taking a portion of the money and using it for biological impacts from an oil spill. Often our part of that process involves taking money for impacts to public access to Public Trust Lands.

And so the money that we get out of those oil spill funds is generally used for public access purposes. But there's no authorization in the fund right now that technically allows us to put that money in the fund and then spend it for public access. So it's generally to
deal with that.

The intent, and in fact the reality, will be that the intent is not to take money that's been put in that fund for other purposes and divert it to public access. It's just to allow money that comes in for that purpose to be spent for that purpose.

CHAIRPERSON GARAMENDI: In drafting the legislation, it seems to me that you want to keep the two sources of money separated.

EXECUTIVE OFFICER THAYER: Correct. Correct. And there needs to be some language that basically says -- and this is poorly worded -- but something to the effect of "Monies put into the fund for public access improvements may be spent for public access."

CHAIRPERSON GARAMENDI: Okay, further discussion on this?

I don't know if we need a motion or just the acquiescence of the Commission?

EXECUTIVE OFFICER THAYER: I think because we're asking the Commission to sponsor these, that staff would be more comfortable --

ACTING COMMISSIONER SHEEHY: Mr. Chairman, I would move approval of the staff recommendation on this item.

COMMISSIONER CHIANG: Second.
CHAIRPERSON GARAMENDI: Without objection, it will be a unanimous vote.

LEGISLATIVE LIAISON De BERNARDO: Thank you Commissioners.

CHAIRPERSON GARAMENDI: Unanimous on the motion. Thank you.

Okay. Paul, where are we going next?

EXECUTIVE OFFICER THAYER: Well, as we previously indicated, the next item, Item 60, has been delayed until the December meeting.

Item 61 is our final matter and this involves the exercise of the Public Trust easement in an area on North Lake Tahoe. And Curtis Fossum, our Chief Counsel, will make the presentation.

(Thereupon an overhead presentation was Presented as follows.)

CHIEF COUNSEL FOSSUM: Chairman Garamendi.

CHAIRPERSON GARAMENDI: Before you start, Curtis, we have a couple of comments from the public on this issue. And we'll take those following your presentation.

CHIEF COUNSEL FOSSUM: Very good.

Chairman Garamendi, Commissioners Chiang and Sheehy, Item 61 requests the Commission to take certain action involving an approximate two-acre area in the bed of Lake Tahoe lying between the ordinary high and low
water marks just west of the boundary separating the State of Nevada and California on the north shore.

The proposed Commission action is to consider and determine the public's needs ands use of the lands subject to the Public Trust and authorize the removal of a metal fence located within the shore zone and to compensate the property owner for its value if it's determined to be a lawful improvement.

As outlined in the staff report, the Commission exercises its authority and responsibility and makes determinations involving Public Trust property of the State whenever it takes action involving those interests. Today, already you've exercised those rights involving property interests to the State along the Pacific coast from San Diego Bay and Batiquitos Lagoon in the south to Humboldt Bay and the Eel River in the north. You've also taken approval -- you've also taken action approving projects involving public property rights within four separate waterways in the Delta. And finally, approved uses at Owens and Donner Lake and, of course, Lake Tahoe.

In both San Diego Bay and San Francisco Bay, the property rights managed by the Commission involved only the mineral estate not the fee title.

In the present proposed action, the State's
property rights involved also do not include the fee title
interest, but are an easement held by the State as an
incident of its sovereignty in trust for the Public.

When the Commission takes action involving the
State's property rights, it's not acting as a governmental
agency exercising regulatory authority, such as the
California Coastal Commission, rather it acts as a
property owner managing the public's property interests
like the Department of Parks and Recreation.

On five prior occasions beginning in 1975, the
Commission has acted to protect the public's property
rights by formally exercising the State's retained
easement involving sovereign Public Trust Lands, in which
the fee interest had been conveyed into private ownership.

The details of those actions involving protection
to the Public Trust needs and uses involving thousands of
acres are in the staff report and I will not repeat them
here.

Those exercises of the State's retained easement
rights were in response to concerns raised by members of
the public and organizations, which sought to protect
areas where the State has conveyed into private ownership
portions of the bed of a navigable waterway. In each
instance, it was determined that there were threats that
would impact the public's trust needs and uses of those
lands and that formal action by the Commission was necessary to protect the public's interest in the property.

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CHIEF COUNSEL FOSSUM: As early as 534 AD, Roman emperor Justinian in setting forth the foundations of western law, stated that by the law of nature these things are in common to mankind, the air, running water, the sea and consequently the shores of the sea.

The common law of England long acknowledged the unique character of sovereign lands and the separation of the jus privatum of the King's private property right he could convey to his lords from the jus publicum which was reserved for public use.

Many state and federal courts in the United States have also described the significant limits on a State as trustee of the public's interest. No clearer statement can be made than that of the United States Supreme Court in 1892 regarding Lake Michigan.

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CHIEF COUNSEL FOSSUM: The State's title to its tideland is a title held in trust for the people of the states, so that citizens may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing free from obstruction or interference from private
Likewise, the California Supreme Court has made clear that when the State or its local trustee holding ownership of the easement takes an action in furtherance of Public Trust needs, the servient privately owned fee interest must give way, and such action does not result in a taking of private property rights.

In 1913, the Supreme Court in the California Fish case involving San Pedro made that action. In 1936, in the Newcomb case, involving Newport Bay, a similar action, and in 1971 the Marks decision involving Tomales Bay followed by the 1980 decision in the Berkeley case involving San Francisco Bay.

In each one of these instances, the private underlying fee interest had been conveyed by the State into private ownership and the public's easement was exercised in a way and the court made clear that that was within the authority of the State to do so.

All of those are of the bifurcated nature of the title of shorelands and the limitations on the private property interests.

In 1981, the California Supreme court in State of California versus Superior Court of Lake County (Lyon) -- known as the Lyon case -- held that shorezone area between high and low water on inland tidal waterways had been
State owned upon admission to the Union in 1850. The federal law clearly is in accord and patents of land from the United States do not convey title below the high water mark.

However, the court ruled against the State's assertion of fee ownership to the high water mark, and held that they would interpret the Civil Code section 830 enacted in the 1870s to give the State's fee interest to adjacent owners of land. The court also held that the legislative enactment of the Code section did not divest, extinguish or abandon the public's interest in the shorezone, and that, "The same incidents of the trust applicable to tidelands also applied to non-tidal navigable waters, and that the public's interest is not confined to the water, but extends to the bed of the water." That's a very important concept.

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CHIEF COUNSEL FOSSUM: Likewise, in the Supreme Court's earlier decisions involving tidelands conveyed into private ownership, the court made clear that a fundamental principal of California property law is that the State's trust obligations and public rights involving its waterways may not be blithely extinguished. These rights include, but are not limited to navigation, commerce, fishing and recreational uses. The Supreme
Court decisions of Lyon and Fogerty along with their precedents, all clearly enunciate the authority of the State when acting to protect the public's interest in Public Trust Lands that have been conveyed into private ownership.

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CHIEF COUNSEL FOSSUM: Following the U.S. Supreme Court's denial of certiorari, involving the Lyon and Fogerty decisions, the Commission on December 17th, 1981, unanimously approved a calendar item, number 20, relating to the court's decision. A copy of that is on your screen as to what the Commission's action involved.

It included directing staff to send this notice to all waterfront property owners with leases, applications for leases or proposed projects within the easement informing them of the result of the court's decisions, and how the Commission intended to implement those decisions.

The court's decisions and the Commission's notice also made abundantly clear that the State has the obligation to compensate the owners of the underlying fee when the State exercises its authority over the easement to remove a lawful improvement.

With that background on the last 1,500 years of jurisprudence, what's the action before the Commission?
CHIEF COUNSEL FOSSUM: The subject property involves an area commonly referred to as Buck's Beach or Speedboat Beach, and is one of Lake Tahoe's most scenic locales, with sandy beaches and dramatic boulder outcroppings.

CHIEF COUNSEL FOSSUM: The area is well known for its sandy bottom and is a popular swimming spot.

CHIEF COUNSEL FOSSUM: The shorezone area includes approximately two acres and 1,100 lineal feet of land on the north side of Lake Tahoe between Brockway and Kings beach to the west and the Nevada border on the east. The upland involves seven parcels of land as depicted on Exhibit A and on this slide, hopefully.

Do we have the slide that shows the map?

If not, it is --

CHAIRPERSON GARAMENDI: There's a map. Back up a bit.

CHIEF COUNSEL FOSSUM: There we go. On this map you can see the border of the State of Nevada on the right and the extent of the beach and the exercise that the Commission is being asked to take on the left. There are several -- proceed on that.
The upland involves seven parcels of land as depicted, and Mr. and Mrs. McNeil own the two parcels immediately adjacent to the state line, Mr. Marc DeSautels as trustee of the DeSautels 2000 Trust owns the two lots west of and adjacent to the McNeils as well as the next parcel to the west, which is held in the name of Heigh Ho, LLC.

West of the Heigh Ho property is a dedicated public street, Harbor Avenue, which is owned by Placer County and west of Harbor Avenue is a parcel owned by 9898 Lake, LLC.

The Beach involving this parcel, the last parcel mentioned, has been utilized by the public without incidents or conflicts with the upland owners being reported to our office. We are informed by the Placer County Assessors' Office that at the locale none of the property owners is being assessed or paying taxes for land within the shorezone below the assessor's depiction of the approximate high water mark that was on the slide that we just saw.

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CHIEF COUNSEL FOSSUM: The North Lake Tahoe Public Utility District manages the street parcel for Placer county. This is the street, the end of the street.

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CHIEF COUNSEL FOSSUM: The North Tahoe Public
Utility District has posted a sign on the entrance to the
public access way that cites Placer County ordinances
prohibiting littering, dogs and other pets or pests,
depending on your predilection, glass containers,
alcoholic beverages and fires on the beach, limiting the
hours of public use to day use only between 6 a.m. and 10
p.m. Harbor Avenue provides access also via a stairway to
the lake.

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CHIEF COUNSEL FOSSUM: An investigation in the
early 1970s by Commission staff included information that
a realtor, who would had been in the area since the 1940s,
stated the area had always been a public area, that the
public had spread east and west of Harbor Avenue, that
residents had chased members of the public off the beach
at times, and had posted an armed guard.

The investigation notes concluded that further
consideration and study clarifying the public rights to
the beach could prevent future conflicts, and that there
appears to be no problems arising from the use of the
beach by the public at the present time.

This is before -- this investigation was taking
place before the Commission took the position of high
water on the lake.
CHIEF COUNSEL FOSSUM: Here's a photo of a wooden fence that previously existed in the shorezone along Harbor Avenue in the 1980s. Staff has been informed by members of the Hills family, which previously owned all of the waterfront property beyond the fence to the border with Nevada, that they would periodically attempt to keep the people off the beach prior to the Supreme Court's decision in Fogerty.

Staff was also informed that following the decision, the Hills family abided by the Supreme Court's decision and no longer excluded the public and that when the DeSautels acquired the lands adjacent to the fence in 1989, they were informed of the public's rights in the shorezone. In 1997 and 1998, the DeSautels replaced the wooden fence with a metal one that you'll see on this slide.

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CHIEF COUNSEL FOSSUM: Staff is informed that no county permit was required for the new fence and that a TRPA, which is Tahoe Regional Planning Authority, enforcement action was resolved by the TRPA staff member grandfathering the structure based on the existence of the prior wooden fence that had been in existence prior to TRPA's creation. The documentation of that is Exhibit J.
in your calendar item.

Information from the Department of Fish and Game and the U.S. Army Corps of Engineers is that the new fence required a permit from those agencies when constructed and that they are unable to locate any application, file, or permit for the fence. Although the metal fence was constructed after the Fogerty decisions in 1981 and 1986, the Commission staff was not made aware of it until after it was constructed in 1997 or '98.

As stated in the calendar item and included as Exhibits H and I, the staff in '98 and again this year requested the DeSautels to remove the fence.

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CHIEF COUNSEL FOSSUM: On warm sunny days on the beach, westerly of the metal fence separating Harbor Avenue and the Heigh Ho, LLC property, staff has observed many members of the public enjoying the lake and the beach easement area, while relatively few members of the public venture beyond the fence with its "Subject to the control of owner" signs --

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CHIEF COUNSEL FOSSUM: -- on the fence and the, "No trespassing" signs --

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CHIEF COUNSEL FOSSUM: -- that were placed on the
beach area in front of Heigh Ho and the DeSautels property.

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CHIEF COUNSEL FOSSUM: For more than 10 years the Commission staff has -- and let me point out that those private property signs there have been removed after our letter. The ones on the fence remain.

For more than 10 years, the Commission staff has received periodic reports and complaints from members of the public of their being prevented access to those portions of the bed of the lake easterly of the metal fence.

Beginning this summer, the number of complaints increased. These complaints have included claims by significant numbers of public users of harassment and intimidation by property owners or their agents resulting from the public's attempts to access the public easement area between the fence and the Nevada boundary.

Specifically, the public has reported being confronted by individuals, including private security guards who assert the beach is private and who, in some instances, have threatened them with arrest for trespass if they do not leave the beach.

Some of these complaints are included in your packet along with other Emails and letters submitted,
including those from the property owners' representatives, all of which will be made part of the public record.

There have been complaints made of verbal harassment, use of aggressive dogs, photographing of individuals, including small children, at close proximity, in purported attempts to drive them off the beach. In past years, owners have made calls to the Placer County Sheriff's office in an attempt to have the public removed from the beach or cited for trespass.

The deputies have declined to do so when informed that the public has a right to be on the beach below the high water line. The elevation of 6228.75 was established by the Court of Appeal in Fogerty II in 1986.

Commission staff has made several contacts with Placer County staff and met and discussed the situation there earlier this month. The members included representatives of the County Counsel's office, county Sheriff's office and their property management division.

The Sheriff's office representative indicated that there had been no crimes reported on the beach this year. He also indicated that in past years cable TV wire had been strung on a pier there with warnings about electrocution. Apparently, in one instance sand was kicked in the face of someone lying on the beach to intimidate them resulting in litigation.
And finally, these acts stopped after the Sheriff's Department prevailed on the homeowners to have these actions curtailed. The Sheriff's office representative also indicated the belief that removal of this fence would reduce a lot of the issues.

The portion of the metal fence within the Public Trust easement area extends waterward approximately 41.7 feet.

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CHIEF COUNSEL FOSSUM: Your surveyors were up there a few weeks ago to locate the elevation of 6228.75, which is the distant person holding the white pole there. And, of course, the end of the fence is there. That's how we were measuring it.

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CHIEF COUNSEL FOSSUM: During times of high water at the lake, the fence acts as a complete barrier to navigation by kayak, canoe, raft, and other shallow water craft, and other forms of passage, swimming, wading, walking along the shorezone of the lake and the beach, and also interferes with fishing and other shorezone recreational activities. That prior slide was an important one, because although the public obviously would have trouble walking around the fence right now. Clearly, this fence also, at high water, interferes with other
rights of the public.

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CHIEF COUNSEL FOSSUM: As was previously stated, the Commission in its prior formal trust exercises took action due to evidence indicating a threat to Public Trust needs and uses of lands held in private ownership that were subject to the easement retained by the State and under the Commission's jurisdiction, as is this area.

The Commission and its staff have both taken prior actions seeking to remove fences or other obstructions limiting public use on waterways throughout the State. Other fences at Lake Tahoe, placed below high water have been removed from the shorezone at the request of the Commission and also by action taken by the United States Army Corps of Engineers and by local government.

As a result of investigating new complaints from the public this year, staff determined that in addition to problems associated with the interference of public use of the easement, the lessees of two of the Commission's leases in the area were in breach of their leases.

When we wrote those property owners notifying them of the violations, we were contacted by them. And in one instance with the McNeils, they removed the barriers to public access that were put underneath the pier. We subsequently heard from members of the public that they
did that for about a day and then they placed them back. When contacting the Heigh Ho and DeSautels, they had an application before us. They have amended their application. And on Item number 50 today, you approved a new lease for two buoys that they conveyed to themselves, holding title as Heigh Ho. So that has been resolved. And their counsel have informed us that those no trespassing signs that were on the beach have been removed from their property.

It's important to note I believe, at this point, that the lease with the McNeils that allows them to use the State's property for their pier also has a specific contractual obligation that they not -- that quote, "That they not impair the Public Trust area by storing or placing any items below elevation 6228.5."

So in addition to the public's trust rights that exist on the property, they've also agreed to not place or store anything on the -- that would impair public access rights.

I want to also point out that -- and you'll see in the last slide not now, but in the last slide that we will show you, that whereas the DeSautels had placed their no trespassing signs very close to the water, the evidence is that the McNeils' property has placed no trespassing signs, but they're very close to the high water mark. And
therefore, although we can't verify their location yet, they may not be improper signs.

On August 25th, a staff letter to the DeSautels once again informed them of the Public Trust easement and asked them to remove the metal fence. The letter referred to complaints from members of the public, informed them that the signs needed to removed, and they complied with that.

However they have not complied -- we received a letter from their attorney saying that they would not remove the fence at that time. Subsequent to that, we did have a meeting -- excuse me, following the meeting with the DeSautels, we did receive a letter from their counsel saying they're willing to take the fence off there subjects to certain conditions.

At the meeting with the DeSautels on September 2nd, they referred to a number of events that they allege have occurred on the beach, stating they consider the matter to be one of health, safety, and protection of private property. They said that there had been drunken parties; the property had been used as a public toilet; acts of trespass, theft, vandalism, nudity, lewdness by members of the public.

They also stated that results from their numerous requests for action by the Placer County Sheriff's office
didn't resolve their concerns. This is one of the main reasons we met with the County after that, and went over their -- went over the calls that had been made on this beach for the last three years to see how much concern there was on these.

As I mentioned earlier, the Sheriff's office representative who had been there working in this area for 16 years said there had been no criminal activity complaints in the last year.

When we met with the Placer County staff representatives, we went over some of the issues with them as to enforcement of time, place, and manner restrictions on the beach. We encouraged them to enforce reasonable health and safety ordinances to protect not only the private property owner's rights, but the public's use of the beach as well. And one of the recommendations that the Commission staff is putting before the Commission is to direct the staff to, in fact, work with the county to make sure that those ordinances are properly adopted and enforced.

We also had offered to the McNeils to meet with them early in September, the first week of September. However, their counsel had scheduled a meeting with us that was to take place yesterday. It's been rescheduled to take place next week.
The Commission staff also contacted the TRPA staff regarding the posting of signs for public and private areas. The TRPA staff indicated that they would not even be necessary to obtain a permit from them for the private property owners to place small no trespassing signs above the high water mark. And staff informed the property owners that we had no objection to them placing fences or other barriers to protect their property above 6228.75 on their private property where the easement does not exist.

Specifically, a letter that we received on September 16th from the DeSautels attorney informed staff that quote, "We have begun the process of opening dialogue with the most likely stakeholders and agencies with authority to see our concerns can be addressed..."

He informed us that the no trespassing signs had been removed, but made no commitment to either stop the confrontation with public beach goers or to remove the fence.

Nearly a month later from a new attorney representing the DeSautels, they did offer to remove the fence quote, "if reasonable protections for their private property are agreed upon." Approval of the proposed Commission's action does not preclude this from happening, and, in fact, directs staff to work towards this goal with
Following the Lyon and Fogerty decisions by the Supreme Court in 1981 and 1986, certain lake front property owners sought to have the United States Supreme Court take those cases. The Supreme Court declined. Staff of the Commission and the Attorney General believe the property law of California has been well settled as well as that in many other states that follow the common law precedence of England, regarding the retained property rights of the public held in trust by the sovereign states involving lands below high water.

Commission staff believes the interference with the right of the public to access the Public Trust easement area in question has reached a critical point, and that it is appropriate to take all action necessary to enforce that right.

Therefore, it requests the Commission make a finding that the fence is inconsistent with the public's needs and use of the trust easement below high water at the subject property, and authorize the Commission to take all steps necessary to remove the fence or cause it to be removed, and to compensate the owners of the fee interest in the property where the fence is located for the value of the fence, if it's determined to be a lawful improvement, as required by Public Resources Code Section
6312 and case law.

One issue that has arisen is whether the fence is actually located on the Heigh Ho property or built on Placer County land.

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CHIEF COUNSEL FOSSUM: From this slide, you can see this is from the Placer County Sheriff's -- or excuse me, surveyors who, in a recent survey, determined at least initially that the fence is constructed on their right of way and not on the adjacent property. Our surveyors, when they went up there to check on the elevations of high water at the stairway also believed that the monuments indicated on the property boundary up there are on the opposite side of the fence from the County's property and that this fence is, in fact, encroaching on county.

However, that will need to be -- before any compensation or that issue is resolved, there will probably be further surveys taking place.

It's the Commission staff's position that if the owner of the fee title lands on which the metal fence is located can document that they've obtained a Corps permit for the fence, or that no permit is required, the Commission must tender just and fair compensation for the lawful improvement when it's removed. Staff therefore requests the Commission authorize funds not to exceed
$10,000 without additional Commission approval, be available for those costs of removal and tendered to the rightful owner should it be determined the fence is a lawful improvement.

   Because this may be on county property and because there is no apparent Corps permit, at least none has been shown to us, it may be that the Commission won't have to spend any money on this.

   The proposed Commission findings and authorization also include a resolution to be recorded in the Placer County Recorder's office documenting the Commission's actions. The proposed actions will identify the public's Trust needs and appropriate uses, and determine that the existing improvements constructed on the beach by the property owners, have not been determined to be a significant interference with the trust needs, and therefore may remain, with the exception of the metal fence that blocks both navigation, access, and other recreational use of the lands and its bed below high water.

   Finally, the proposed action authorizes the Commission to take all steps necessary -- Commission staff to take all steps necessary or appropriate to implement the Commission's action, including appearance on behalf of the Commission in any litigation respecting the action.
taken by the Commission.

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CHIEF COUNSEL FOSSUM: The unanimous decision of the Supreme Court in the 1971 Marks versus Whitney decision made it clear that State action is not necessary to determine what Public Trust rights exist within the property of privately owned shorezone easement. Those rights already exist, and include the right to fish, hunt, bathe, swim, to use for boating and general recreational purposes, the navigable waters of the State and to use the bottom of the navigable waters for anchoring, standing, or other purposes.

The court described instead the authority of the trustees -- instead the authority of the trustee of these rights, here delegated to the Commission by Public Resources Code Section 6301, to modify or extinguish those rights.

In that it states that it's a political a question within the wisdom and power of the legislature acting within the scope of its duties as trustee to determine whether Public Trust uses should be modified or extinguished and to take the necessary steps to free them from such burden.

In the absence of State and federal action, the court may not bar members of the public from lawfully
asserting or exercising Public Trust rights on these
privately owned tidelands.

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CHIEF COUNSEL FOSSUM: Again, the Supreme Court in Fogerty stated, "We emphasize, as we did in Lyon, that these plaintiffs may use the shorezone for any purposes which are not incompatible with the Public Trust. Land owners who previously constructed docks, piers, and other structures in the shorezone may continue to use these facilities, unless the State determines, in accordance with applicable law, that the continued existence is inconsistent with the reasonable needs of the Trust. In that event, both statute and case law require the plaintiffs be compensated for the improvements they have constructed in the shorezone."

How is a determination to be made as to whether a particular use or purpose by the owners of the fee interest in the shorezone is compatible or incompatible with the reasonable needs of the trust, unless the State's trustee of that interest makes such a finding?

That's precisely why the Commission is being asked to have the purpresture of the fence abated and the public's exercise of their existing rights protected from interference. It will now be clear that the use of the shorezone to the exclusion of the public is an
incompatible use. That the existing improvements placed
by the owners of the fee interest are not incompatible
with the reasonable needs of the Trust, except for the
metal fence. And that the landowners may continue to use
the shorezone for any purpose or use not incompatible with
the public's Trust rights.

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CHIEF COUNSEL FOSSUM: Nothing precludes
subsequent action by the Commission at a future date
regarding this determination.

In the last couple days we've received
correspondence from several interested parties. It
appears there's some confusion regarding the shorthand
terminology used by the Commission since 1975 of quote
"formal exercise of the Trust," unquote. And the fact
that this is the first occasion involving non-tidal Trust
property, in which it's acted.

As pointed out in the staff report and my
presentation, the Commission today has exercised its Trust
responsibility in scores of approval and has done so in
tens of thousands of times previously, including thousands
of times on inland non-tidal waterways. The terminology
of quote "formal exercise of the Trust," unquote
specifically refers to the five, after today, six times
that rather than in response to an applicant requesting
use of State property, it is in response to public
concerns of threats or interference with the public's
rights and interests in certain limited and defined areas.

In each instance, the underlying fee interest had
been conveyed into private ownership in the 19th century,
but remains subject to the Public's Trust easement. The
Commission held a public hearing and acted to protect the
public's property rights by identifying the public's needs
and appropriate uses of the easement and by formally
exercising the State's authority to protect the easement.

Unlike the five prior Acts of the Commission
exercising that right in the subject action, the
Commission is not determining that no further improvements
by the property owner are allowed, but rather that the
public's needs are in the existing improvements except for
the -- excuse me -- but rather that the public needs are
that the existing improvements, except for the fence, do
not interfere with the public's needs of access and
recreation and nothing in this action prevents the
property owners from using the shorezone for any purpose
not incompatible with the identified Public Trust uses.

Commission is not acting as a regulatory agency
in exercising the public's property rights. It's acting
in its capacity as a property owner and manager of those
rights. As pointed out in the several referenced Supreme
Court cases, the public's rights of use already exist. It is the Commission's determining what, if any, action by the owners of the underlying fee interfere with those rights and which do not. That is the action the Commission is being asked to take.

Some concerns have also been expressed that the Commission's action will create a cloud on title. The Supreme court has made clear, the state's property interest, or what some refer to as a cloud on title has existing on the property since September 9th, 1850, when we became a state. All the Commission's action does today is express the trustee of the state's easement's determination of what does and does not interfere with the existing easement and the rights of the public.

Staff of the Commission respectfully submits Calendar Item 61 with a recommendation for Commission approval.

CHAIRPERSON GARAMENDI: Mr. Fossum, thank you very much for a very extensive review of history going back 1,500 years.

(Laughter.)

CHAIRPERSON GARAMENDI: And the more recent circumstances there at Lake Tahoe.

I would like now to hear -- Tom.

ACTING COMMISSIONER SHEEHY: Can I say a couple
quick questions of Mr. Fossum.

   CHAIRPERSON GARAMENDI: Sure.
   
   ACTING COMMISSIONER SKEEEHY: Thank you, Mr. Fossum.
   
   Does the Public Trust Doctrine make any distinction between salt water and fresh water?
   
   CHIEF COUNSEL FOSSUM: No. The Lyon case made it very clear that the same principles that apply to the tidelands that were in the prior litigation cases going back to 1913, I believe, in the Cal Fish case all the way up to 1971 in Tomales Bay, in the Marks case, and in 1980 a in Berkeley. In each of those instances, the State had actually sold property into private ownership and received compensation for that.
   
   In the Lyon and Fogerty case, the Supreme Court actually ruled that the legislature had given up title in 1872 to the low water mark, so nobody -- the federal government when they conveyed away property only conveyed it to the high water mark. The State owned the rest. But because of this action taken by the legislature in the 1870s, and finally resolved by the Lyon court, the State was arguing that the State still owned to high water. But the court ruled, no, you've treated this as a low water boundary for such a long time, we're going to confirm that the fee title to the property was conveyed by that...
statute, but the legislature had never taken any action to
divest the State of its public rights in the water.

And so they basically said those same interests
that apply on the case in the tidelands, such as the Marks
case, applied equally to the property on non-tidal
waterways. So between high and low water, the rights are
the same.

ACTING COMMISSIONER SHEEHY: Okay. How is the
high and low water mark determined and is there legitimate
differences in opinion over how it's determined?

CHIEF COUNSEL FOSSUM: There certainly was. Just
as in the Fogerty case, the State of California took a
position it was high water. We also took the position in
those cases that the high water mark was 6229.1, which is
the high water for purposes of both TRPA's jurisdiction as
well as the Corps of Engineers. They believe that's the
high water.

However, in litigating the boundary in the Court
of Appeal in 1986, the court actually made it a lower
elevation, based upon a prescriptive theory. And that is
the dam at Lake Tahoe, which has been there well over a
hundred years, had created a new condition to the lake.
And that because California law provides for a
prescriptive right to attach an easement, in fact, to
attach to property by use for a period of five years, they
took a look at all the elevations the lake had been at
since the dam was put on --

    ACTING COMMISSIONER SHEEHY: I'm sorry, this dam
holds the lake back from the Truckee river, is that it?

    CHIEF COUNSEL FOSSUM: Yes.

    And what they looked at was any five year period
of prescription, and they took the lowest elevation that
the lake had been during that continuous five years of
high waters. And so that's where they got the 6228.75.
So we lost a little bit there, but that was the ruling
that the Court of Appeal made. And that was also appealed
by some of the property owners of the lake, as was Fogerty
I. This is referred to Fogerty II.

    And neither instance did the Commission -- excuse
me, did the Court, the Supreme Court of the United States,
take cert on that. There are some arguments that have
been put forward based on some of the briefs submitted on
behalf of the Commission by the Attorney General's office
saying that it wasn't right.

    You know, it's the same arguments they're making
that this didn't exist until the court made the rulings.
But the courts rulings was, in fact, that this right had
existed since 1850 on the property.

    ACTING COMMISSIONER SHEEHY: And my last
question, Mr. Chairman. Mr. Fossum, how do we know what
the high and low water marks were on September 9th, 1850?

    CHIEF COUNSEL FOSSUM: We don't. And that's the point the Court made that it's really not important to know exactly where they were at that point in time.

    The law applying to waterbodies is that those elevations can change from time to time by natural occurrences certainly, and, in some instances, by artificial occurrences.

    So what we've got in California is -- and there's some instances -- it's very common that people refer to where was the last natural location of this, because in some instances people fill, they'll put out a groin, they'll do something to change that waterbody. And it can be that the natural position prior to that will, in fact, have some impact on where the boundary is.

    But in other instances, artificial changes will not change the boundary or will change the boundary. So, for example, there's a specific code section that deals with accretions, that says that the accretions have to be from a natural condition for them to go to the upland owner. Artificial accretions stay part of the state's ownership.

    And the court again in 1986, the Court of Appeal, found that based upon some other prior cases in California dealing with artificial waterways that the public's rights
attach to that area. They did not say that the State owned that in 1850. That element between high and low -- or, excuse me, above the natural high to the artificial high, they said that the public by its use of the property, between high and low for that five-year period, and by the property owner's acquiescence to that could not now claim that the easement hadn't attached to it.

ACTING COMMISSIONER SHEEHY: Thank you.

CHAIRPERSON GARAMENDI: I think it's time to hear from witnesses. Let's hear from the public on this issue. We have, let's see, I think three people that would like to testify.

Mark Gunderson, attorney representing the Heigh Ho, LLC. Janis Hills homeowner, and Ashley Hills, a homeowner. And then there's Cheri Sugel, representing herself.

Mr. Gunderson.

MR. GUNDERSON: Good morning. I'm Mark Gunderson representing the DeSautels, the DeSautels Trust and Heigh Ho, LLC.

As I have indicated to Mr. Fossum in my most recent correspondence, this is really a question of not listening to anecdotal evidence, which you've heard a lot of this morning, but rather the balance between the
public's rights and the rights of the private property owners that exist in this location.

As you can see from the indications of the record, this beach is very heavily used. And the use is focused on traversing the property by Harbor Avenue down to the beach, and it's heavily used by members of the public. It is not only heavily used by members of the public, but it is heavily abused by members of the public.

Placer county has not regulated the use of this beach. They have not regulated time, use, and manner of this beach, even though there may be regulations that exist. Placer county is unclear of the extent or the manner of its jurisdiction and has not exercised its jurisdiction to take care of the public nuisance that is created on this beach.

This fence that you have seen did not come into existence 10 years ago. This fence did not come into existence 20 years ago. It came into existence in the thirties. And this fence has existed for a substantial period of time. And it is has existed so that the DeSautels and its predecessors in interest could demarcate their property from other property that exists that belong to the county. That's why it's there.

We understand that does create some degree of an impediment. But it has not created an impediment until
very recently when the State has decided to exercise its jurisdiction. The concern that the DeSautels have and the DeSautels family have is that without regulation this beach is abused and the Public Trust is not benefited by that adverse use, which flows now upstream or uphill from the high water mark onto the DeSautels property.

They have people trespassing on their property on a regular basis. They have people misusing their property on a regular basis. And there is no management or use by the Placer county officials to maintain this easement in a manner which is compatible with adjacent and private property uses.

That is why there should be a negotiated resolution with all of the stakeholders that are involved, including State Lands, Placer County and the landowners. But it is precipitous to act and take this action today until that process has been taken to its logical conclusion. And we would suggest that this matter be tabled until those discussions have been had and the appropriate resolution reached among the parties.

CHAIRPERSON GARAMENDI: If I might ask you a question. Do you disagree with the position of staff that the fence creates a barrier to public access to the easement -- the area that is under the easement, that is the distance between the high water mark and the lake
itself? Is the fence a barrier?

MR. GUNDERSON: It is an impediment, but it is not a barrier. People have certainly gone around it. They've gone over it. They've certainly found numerous ways to not use this, in fact, as a barrier.

CHAIRPERSON GARAMENDI: Therefore what purpose does the fence serve?

MR. GUNDERSON: I'm sorry?

CHAIRPERSON GARAMENDI: Therefore what purpose does the fence serve?

MR. GUNDERSON: The only thing that the DeSautels have done is try to indicate where their property line is versus the adjacent commercial or public property next door.

CHAIRPERSON GARAMENDI: Then you do not argue the right of the public to access on that area between the high water mark and the lake itself?

MR. GUNDERSON: Oh, I think that's well set in law. I wouldn't be so precipitous to argue that.

CHAIRPERSON GARAMENDI: Then your argument is principally one about the rights of the property owner above the high water mark to safety and trespass?

MR. GUNDERSON: Well, or as to the low water mark, because the property that underlies the Public Trust property is owned by the private property interests.
CHAIRPERSON GARAMENDI: But you're not arguing that the public has a right to recreate on it -- to pass along and to recreate on that land?

MR. GUNDERSON: We're not. But what we are saying is that there ought to be a balance between that use and the use of the underlying owner of the property.

CHAIRPERSON GARAMENDI: Okay. And that is a law enforcement issue having to do with the conduct of the public.

MR. GUNDERSON: Well, that's a policing issue. It's a police enforcement action, because. The State doesn't exercise its rights to police the Public Trust property, someone must. The county has not and will not, because it has stated to me, on a number of occasions, it doesn't know where its jurisdiction starts or ends and has been reluctant to apply these regulations on the Public Trust property.

CHAIRPERSON GARAMENDI: Well, this Commission can therefore resolve that issue by the proposed action.

MR. GUNDERSON: I'm not so sure that they can, because the Placer county Sheriff's Department is a different governmental agency.

CHAIRPERSON GARAMENDI: Well, at least -- I think your argument was that the Placer County Sheriff's Department sees ambiguity. It would seem to me that by
re -- by our action, forcing the removal of the fence and asserting the rights of the public to pass and to use, that creates clarity. And then the Sheriff can respond to that by at least no longer arguing ambiguity.

MR. GUNDERSON: I don't think that's the issue. The issue is not the fence. It's whether or not Placer County wishes to exercise jurisdiction on the Public Trust property, which it has been reluctant to do.

CHAIRPERSON GARAMENDI: Mr. Fossum, is there --

CHIEF COUNSEL FOSSUM: Mr. Chairman, obviously staff doesn't blithely go into these kind of things. We take it very seriously about the concerns of the private property owners there as well. And so that's why, as I indicated in the staff report, that we met with Placer County and discussed with them the situation and indicated that -- and they did indicate that they had confusion in the past, because they did not know where the high water mark was.

We indicated to the property owners in the meetings we had so far, and in correspondence, that we would be willing to use the State Lands Commission staff to go out and actually locate that high water mark so that there would be clarity on that, and that they could then put their signs legally keeping the public off their private property where no easement existed.
The county was very positive about that, because they would like to be able to enforce the laws out there and know what is private and what is public. So they supported that. They supported taking the fence down. They supported having a survey that would indicate where the high water mark was. And the Commission, if it approves this action, is directing the staff to work with the County to adopt appropriate protections for that area.

So I think that will help resolve all of these issues. And I even heard from a former property owner in the area who said by removing this fence, it will take the pressure off the property owner to the west who has a substantial number of people using the beach in front of their property. And that there's -- and if you remember the math, there's a significant area of beach that very few members of the public dare go on, because of the harassment.

So it will actually spread out the use that's there. Because there's limited parking in this area, the most use by this area is by neighbors, frankly, people in the neighborhood who just want to go down to the beach and enjoy that. It is close to Cal Neva. People can walk down there I've been told, a five minute walk or so.

And so it would be open to all the public, but there's very little parking. And so the fact is that it's
quite unlikely that hoards of people would be going down there.

The other thing I wanted to point out is that El Dorado County, not at Lake Tahoe, but on a river in California, sought to, because of the complaints of property owners about trespass, very similar to these of nudity and using a toilet on their private property, all kinds of issues, leaving trash behind, sexual activity, sought to shut down part of the American River within their jurisdiction to rafting.

This Commission along with the Department of Boating and Waterways and the Attorney General's office took the county to court and says you can arrest people for violating the law, you cannot prevent the public from using this area.

And so we think that it would be precipitous to not have appropriate regulations in the area. We're going to work with the county and encourage them to look at the issues. They've already posted the signs at the top of the access way there. And we'll certainly work with them. They've placed trash cans in the area so the public can put trash in the area, properly dispose of that. And we certainly don't want the public to go down there and violate the law there any more than we would have them violate it anywhere else.
CHAIRPERSON GARAMENDI: Having said all of that, the responsibility of this Commission is to assure the rights of the public. With regard to law enforcement, while we are certainly encouraging the appropriate enforcement of any existing law, that responsibility resides with others. And therefore, our particular responsibility here is to make sure that the rights of the public to traverse and to use are maintained.

It appears as though the staff has offered to provide, at no charge to the property owners, a valuable service of surveying and locating the precise location of the high water mark, at which point the property owners can do what they want to do from that point on, or that point upward.

Now, we have two more witnesses, if we might.

MR. GUNDERSON: Thank you for your time.

CHAIRPERSON GARAMENDI: Thank you.

We have the Hills, Janis Hills and Ashley Hills.

MS. JANIS HILLS: I'm Janice Hills. My family has owned that property in the past, well, since the thirties. It was sold at one time the Blixeth, the McNeil property, and he sold it to the Carol McNeil and Bob McNeil.

The DeSautels property was sold directly from my father-in-law back in 1989, I believe he said today.
I've lived at 150 Harbor and Brockway for close to 40 years. I lived there 365 days. My children were raised going to the beach there. We have a tremendous interest in using that beach for our neighborhood and families.

And we have found it, in the last 10 or 11 years, increasingly more difficult to access that beach. We have been met with armed guards, police harassment, people harassing you, photographing you. Not just a video camera on a pier, but people actually following you around the beach for hours, just so that you have the worst time possible and you will not come back.

My daughter Ashley Hills, who is here today, is 27, received a scholarship from Sierra Nevada College. I wrote a letter of thank you to the Board members there for giving her this scholarship. Unbeknownst to me, Bob and Carol McNeil were on the Board. I received a letter of threat -- which I have at home and I haven't given to anybody here, but I will make it available -- that my daughter's behavior on their beach is going to cost her her college career.

My daughter went in to see the president of Sierra Nevada College, Ben Solomon, and had a four-hour meeting and discussion to save her scholarship, because of my daughter accessing the property that we've always used
for beach.

She was met with caretakers screaming and yelling at her, kicking sand in people's faces. That's not unusual. It's getting worse. This year she came up to me after being on the beach in August crying, telling me that they were going to arrest her for -- I said, "For what?"

She said for trespassing on the beach.

Well, I mean, it's just one thing after another. A few years ago, the Payes and DeSautels hired two African-American football players to collect $4 apiece from people coming down to the beach at the entrance. My ex-husband was mortified because people were starting to cut through the property to get down to the beach. We asked them what they were doing. They said well, why should we pay $4 to come here. And it was told to them by Marc DeSautels that you litter and that's what I'm going to charge you.

Well, that didn't fly, because there were going to be fights. And my ex-husband told them that -- those two guys they should really leave, that they have no business there.

So that's just one thing, and it's another thing and another thing. And I am in favor of removing the fence. Marc DeSautels has placed a sign and it has not been removed by TRPA, although they've asked him many
times to do it, that the right to pass is permission of subject of owner.

Well, people staying at the Cal Neva for a day or two get turned away constantly, because they read that sign and they're law abiding citizens and they leave, but they're misled. And I go down there and I tell people, "Oh, no, you have the right to sit there." And they look at me and they say, "Well, I don't want to get arrested."

Well, I started making an appearance every single day in August to check out this. They put up three signs that were metal. You've seen them there. The orange ones with the rebar in a five gallon drum cemented, three of these signs.

One of them met you right at the end of this fence. And I want to tell you about this metal fence. They brought it out to a rock-out cropping that is almost impossible if you're carrying a child or a towel or an umbrella or a raft or anything to maneuver through.

There are -- and I believe they've placed these rocks there on purpose. There's some foot traffic that you can make there, but I think those rocks are there now. And there was a sign there. And a young man who was about 20 who refused to give me his name just screaming and yelling at people from a sitting position way up to where I would say the high water mark is, which is on their land
property, not the beach. "Hey, you, get out of here.
"Hey, you, get out of here."

Well, I called my ex-husband when my daughter came back, because we are going to support our family members. And I told him to go down there and find out what was happening. He went down there and explained who he was, Rubin Hills, IV, and the guy just berated him all over the place. Told him if he didn't leave, he was calling the police. And my ex-husband said I will wait to talk to the police, because we know most of the police in the area. We've lived there long enough.

Well, they never came. He sat there for an hour and a half. And the next day, I went down there and I sat down, and I was told that I had to leave as well.

I find that this fence is a psychological and a physical barrier to all the people that enjoy that beach that should. And I believe that in today's technology with video cameras and all the people that Marc DeSautels and the McNeils hire, there's no threat of any property damage.

I'd like to ask the McNeil's and the DeSautels for any insurance claims that they've had from damage that has been done to them. And I assure you they can't produce any.

There are no pictures. There's no reason to
believe that there is nudity or naked things going on. It's just -- there's too much security there. There's three people that work for Marc DeSautels watching you at all times. There's a security guard that I believe is a Placer county off-duty Sheriff that walks that pier like he's walking the gangplank in San Quentin telling people you're being televised. You're being televised. We're watching you.

    Nobody wants to go and have interaction with these people. They just want to go down to the beach and go swimming. That has become impossible. My daughter comes home in tears shaking every time she goes to there. This girl is 27 years old. We've never done anything to anybody down there. And I would say with all the security, show me one example, show me some police reports, show me something. It's all a bunch of bologna just to keep this a private, exclusive, lake-front property that they want.

    And the people are all turned away to sit on Mark Payes' property. And he's here today. He didn't have a card to speak, but I bet if you asked him, he has really no complaints, except for the fact that he has the overload of people there. There's no property damage to him. He has a caretaker that lives off-site as Marc DeSautels that has one that lives on site, and so do the
So I think they've villainized and demonized the public without any proof at all. And that I think it's getting to a ridiculous level of confrontation with the public.

And as a homeowner there, I'm afraid to go down there. It's not a pleasant experience. It's a beautiful piece of property. It's nice for people to go swimming, and it's very popular.

But I will say that they have no security issues in 2009 with all of the -- you know, you could put a video camera up and you can be anywhere in the world and be watching your property. So there's no -- there's nothing to substantiate any of these claims, except for the fact they want it exclusively to themselves. And I will tell you I will not stand for anyone harassing or berating my children at whatever age. I just won't allow it.

And I just ask you and tell you how grateful I am for the investigation that you've done and for the Commission to go ahead and remove this fence, and also the debris from the previous fence. And it's in the pictures that you had today. You really can't see it, but there's cement pilings with sheared off timbers that if you fell on it, you would be killed. And they're just sitting right around loosely and have been.
And I could say in the 40 years that I've lived there, I think there's one person that I saw being taken out of there, and he had jumped off the rocks in the water by himself. So there's no safety issue. There's just no evidence.

So I just want to tell you that my ex-husband couldn't be here today because he works, but he is in support of removing of that fence.

Thank you.

CHAIRPERSON GARAMENDI: Thank you very much.

Ashley.

MS. ASHLEY HILLS: Hi. My name is Ashley Hills. I'm 27 years old. I've lived in the Speedboat Beach neighborhood my entire life.

I am in support of the Commission's decision for removal of the fence at Speedboat Beach. I agree with the staff and also with Placer County Sheriff that the removal of the fence would greatly solve the problems that arise at Speedboat Beach.

The fence is a substantial physical as well as psychological barrier to the public's rights to access and enjoy the Public Trust, which is already theirs.

The fence also enables the lake-front homeowners to continually harass and intimidate the public on a minute-by-minute basis. I, myself, have suffered severe
emotional distress as a result of this intimidation and harassment. My scholarship and education opportunities have been threatened during my undergraduate work by these homeowners, merely for exercising my rights to use and enjoy the Public Trust easement.

These homeowners and this fence make what should and can be an enjoyable experience a horrific one.

I thank you again for considering the welfare of the public's right to use what is ours by removing the fence at Speedboat Beach. And thank you for such a thorough investigation of this matter.

CHAIRPERSON GARAMENDI: I believe that completes the testimony from the public.

I'm sorry, please.

My apologies. I slipped that to the bottom.

Please introduce yourself and proceed.

MS. SUGEL: My name is Cheri Sugel. And I am a resident of the neighborhood where Speedboat Beach is located. And I've frequented that beach for many years. Thank you for allowing me to comment on this very important issue.

I agree with the Commission's recommendation and the recommendation of the Placer County Sheriff that the fence should be removed. The fence is both a physical and a psychological barrier to the public's free exercise of
its right to access the Public Trust at Speedboat Beach. While the DeSautels and the McNeils have always hired guards to harass and intimidate the public from using the public beach, it has never been so bad as it was last summer. And I wanted to comment on this in relation to -- how it relates to the fence.

Last summer, I was harassed every time I went to the beach beginning on July 3rd, and was threatened with citations on more than one occasion, simply for sitting on the beach, sometimes even while just walking in the water.

On July 3rd, I witnessed Ms. DeSautels yelling at a group of people recreating on the beach I quote, "This is my beach," quote, "Get off my beach", pointing to the signs on the fence reading quote, "Right to pass by permission and subject to control of owner."

All of these actions on behalf of the homeowners have caused me, my friends, my neighbors emotional distress. And many of the threats that I have encountered were made in front of work colleagues, friends, and neighbors.

On August 16th I walked up to my neighbor on the beach who was engaged in a long discussion with Deputy Allen from the Placer County Sheriff's Department. The deputy was threatening to issue him a citation if he did not leave the beach. The deputy explained to us that he
was following orders to issue a citizens arrest on behalf of the property owner, again, pointing to the fence as the division between the public and private property lines.

When I offered my help to the deputy in showing him where the high water mark was, he responded to me that he was just following orders from his superior at the time to issue these citations. Myself and my neighbor agreed to leave the beach that day.

I've also obtained a copy of a cease and desist letter that was issued by the attorney of Mr. And Mrs. McNeil to one of the local kayak rental companies in Kings Beach, claiming that his clients quote, "Own down to elevation 6223." That his clients quote "Acknowledge the rights of the public to recreate in the waters of Lake Tahoe," and quote, "Acknowledge the Public Trust Doctrine is applicable to the lands submerged under the waters of Lake Tahoe."

The letter further demands that the kayak shop owner cease and desist aiding and abetting trespassers and direct his clients to public beaches that are maintained and have public toilet facilities.

This kind of intimidation threatens not only the public, but also our local economy in Lake Tahoe at a time when many local businesses are struggling to survive.

It is my understanding that an exhaustive review
of past complaints filed with the Placer County Sheriff over the last five years have revealed that there have been no complaints of public drunkenness, lewdness, nudity, et cetera at Speedboat Beach, contrary to the DeSautels and the McNeils repeated assertions, not one.

And as you can see in the pictures, this is a very beautiful beach that the people of Lake Tahoe really love and enjoy and take care of, and have acted as stewards of this beach for many, many generations. And I can even tell you that one of my friends who was cleaning up the beach was harassed by the DeSautels guards and told that they needed to leave the beach.

Finally, I just want to summarize by saying while I agree that the fence should be removed, I also believe that there needs to be continued monitoring and enforcement of the public's access to Speedboat Beach. I think that the homeowners have shown that they will use various forms of harassment and intimidation to limit access to the beach, including hiring security guards, video cameras, bull horns to scare people off the beach. And I believe that the letters from the State Lands Commission and the removal of the intimidating no trespass signs, corresponded with the end of the summer.

So while it appeared that the landowners were complying with what was in the State Lands Commission's
request, that actually the homeowners were just simply no
longer interested in limiting access to the beach, because
people are only using the beach in the summertime.

And that it is imperative, you know, that there
also be signs showing where the approximate high water
line is, so that the public is really informed of what
their rights are, and which parts of the beach that
they're able to use.

I feel that the fence should be removed
immediately this winter while the lake is at almost its
record low water level, so that the removal can be
completed with minimal disturbance of the lakebed and the
environment. And I would add to the record that the
property owners should not be compensated for their
outrageous attempt to steal public property for private
gain. In fact, they should probably be fined.

And thank you for allowing me to comment on this
very critically important matter.

CHAIRPERSON GARAMENDI: Thank you very much. I
believe that completes the public testimony.

We have before us the proposed action by the --
proposed by the staff. But before we get to that, there
are two things that I would like to add to this
discussion.

First of all, I would ask that the Commission
staff working with the Attorney General deliver to the
property owners, the upland property owners, a letter
clearly stating the right of the public to pass and to
recreate on the beach below the high water mark.

And secondly, I would ask that the staff working
with the Attorney General seek a restraining order against
the property owners, the upland property owners,
prohibiting them from any harassment of the public who are
lawfully exercising the public's right to access and
recreate on the land below the high water mark.

I would ask that that be part of our proposed --
of the action taken here today. The action of the
property owners, the upland property owners, is
reprehensible. It is clearly contrary to the rights of
the public. And it is the -- as I see it, the
responsibility of this State Lands Commission to make
certain that the rights of the public to use the public
land or easements that are on private land to use that to
the fullest extent allowed by either the law or the Trust
doctrine.

Mr. Fossum, Mr. Thayer, would you comment on my
two proposals.

CHIEF COUNSEL FOSSUM: We're certainly prepared
to work with the Attorney General and communicate with the
property owners there. We will also look into the
appropriateness of issuing a restraining order at this
time. I think we want to talk to the attorneys
representing the property owners whether their clients
will intend to abide by the action of the Commission and
the existing law and rights there.

And I think that the suggestion of obtaining a
restraining order is certainly something that we were
looking at should the property owners take action
following the Commission's action, that isn't consistent
with that.

EXECUTIVE OFFICER THAYER: But to interrupt, you
know, I'm taking from the Chair's approach something
different maybe than Mr. Fossum, which is that it's
something that should be addressed now, and that we'll
work with the AG's office to do that.

CHAIRPERSON GARAMENDI: Well, let me make it
clear. It's the view of this Chairman of this Commission
that there's considerable evidence presented at this
hearing and in other documentation, that the rights of the
public are being abridged and that harassment is taking
place.

And therefore, I think it is appropriate to seek
a restraining order based upon past action during this
past summer, so that next summer, it does not occur. And
should it occur, appropriate action by the court in
contempt of that restraining order could take place.

I want to lay the law down here. I want to be very, very clear about protecting the rights of the public. And if they don't get it, then they can take it up with the judge who issues the restraining order. I think there's plenty of evidence on the record that such an order is appropriate. And I want that fence out of there of now.

Okay, we have a proposed action as modified by my two suggestions.

John.

COMMISSIONER CHIANG: Can you give me a historical backdrop as to any good-faith action taken by the property owners to work this out with the public? As the Lieutenant Governor just has alluded I find the evidence overwhelming that the landowners have taken action to deny access, in fact, the commentary offered today, to intimidate individuals which I find, as John pointed out, reprehensible, I would add offensive, to people who have a legal and legitimate right to use those properties.

And so just not to be entirely swayed by this, right, I'm trying to find fairness and balance in the record, and I haven't seen it.

So if you are aware of circumstances where the
landowner has tried to work this out properly, you know, I'd like to hear it.

CHIEF COUNSEL FOSSUM: Well, let just say in trying to be fair to the property owners as well, I did point out that the signs on the McNeil property appear to be much higher than the ones that the DeSautels put, the no trespassing signs. They appear to be -- if there has been actions, taken by them below those signs chasing people off the beach, which it certainly sounds like, based on the testimony, that's different. But the signs themselves appear to be close, and we would certainly be willing to work with them to make sure that they are aware of the exact location of that high water mark.

They have on a couple of occasions removed some of the things that were blocking public access underneath the pier, the McNeils did. We have had testimony again today that they probably did that because the season was over. We've had to tell them more than once in that regard.

There has been extensive comments made about activities by both of the property owners or their employees about this harassment. There's no doubt about that, based upon the correspondence we've received. We have had some witnesses by staff seeing the guards go down on the beach and basically people leaving after talking to
them and so forth.

I think what we -- staff is prepared to follow the Commission's direction. We certainly want to communicate with the counsel for the property owners there to see if we can't do things -- make agreements with them that they will abide by the Commission's actions here, but we are prepared to follow any direction that the Commission gives us.

COMMISSIONER CHIANG: Yeah. I'm particularly disturbed to see that there's harassment without an offense, without certainly provocation, that's that additional step.

But to assert right to that land to the exclusion of others is undeniably the, you know, the worst offense to the use of these lands.

CHAIRPERSON GARAMENDI: Let me add a couple of points to this.

My suggestion and modification of the action proposed by staff is to seek a restraining order. That requires a court hearing, and would certainly give the opportunity to the Hills and anybody else that feels offended to appear before the court, to state their case and their experiences and for the property owners to counter, if they choose to do so.

But I think it is essential that we lay down a
clear -- that we lay down the law, and we make it clear, that in the coming season, in 2010 what is expected, what is lawful, and what actions cannot take place.

I think there's a long history here of the upland property owners trying to force the public off the beach, and apparently with some success, including a fence and including the actions that were stated in testimony given today.

So I want to move forward. I'm very serious about this. I want to move forward. I want to see this before a court, proper jurisdiction, and let the court decide whether it's appropriate to have a restraining order. And then if there's some other modification, an agreement, short of a restraining order, then let the court decide that. But we have to be very, very clear here, because this isn't just about Tahoe. This is about the entire State of California. We have a thousand miles of coastline. And there have been numerous attempts over the years for private upland property owners to prevent the passage of the public along that coast. We have thousands of miles of rivers, and we need to be very, very clear about the Public Trust.

This is a beautiful document that was produced by the State Lands Commission. It's worth nothing, unless we're willing to make it clear that this is, in fact, the
right of the public and it will be enforced against those who attempt to abridge it.

So that's where I'm coming from on this. And I'd like to see, A, first, a letter delivered as quick as possible to the property owners stating the position of the public and the rights of the public, and follow it up very quickly thereafter by a restraining order against the property owners for actions that would prevent the public from full enjoyment of their rights.

So, John, if you'd like to take the Chair here, I'll make that motion.

Yes, Tom.

ACTING COMMISSIONER SHEEHY: Mr. Chairman, I want to just make one comment. I'd like to echo some of the comments of my fellow Commissioners today. I'm shocked and very disturbed over the testimony that I've heard today about the harassment going on at this beach and the tactics being used. Assuming, it's true, and I have no reason to believe that it's not, assuming it's true. I find that those actions just completely unacceptable and reprehensible. So I'm very sympathetic to that. And I think that the public's use of the sovereign lands needs to be clearly delineated and protected.

That said, there is significant correspondence that I received just today dated October 21st from several
different attorneys representing both parties. I have not
had the chance to fully digest everything in there. And
so while I am generally supportive of the staff
recommendation and the comments of my colleagues on this
body, I would be more comfortable voting on this at our
next meeting, after I've had a chance to digest it more.

I realize that is not going to satisfy the Chair,
and so I have no objection at all, Mr. Chairman, to you
proceeding, but I will abstain today.

CHAIRPERSON GARAMENDI: Well, then let me pass
the gavel to you, and if you'll --

ACTING COMMISSIONER SHEEHY: Mr. Chairman, did
you have a motion you'd like to make.

CHAIRPERSON GARAMENDI: I do. I want to move the
staff report and amend it with two points. One is for the
staff, together with the Attorney General, to deliver to
the upland property owners a letter clearly stating the
rights of the public. And secondly, to work with the
Attorney General to seek a restraining order against any
harassment or any action that would prevent the public to
fully enjoying its rights.

ACTING COMMISSIONER SHEEHY: Is there a second to
that motion?

COMMISSIONER CHIANG: I second.

ACTING COMMISSIONER SHEEHY: We have a motion and
a second.

All in favor say aye?

(Ayes.)

ACTING COMMISSIONER SHEEHY: Those abstaining?
Let the record showing Mr. Sheehy is abstaining.
None opposed.
That motion carries.
Thank you, Mr. Chairman. The gavel is back in your hand.

CHAIRPERSON GARAMENDI: Thank you very much, Tom.
Mr. Thayer, what other business is before the Commission

EXECUTIVE OFFICER THAYER: That concludes all of the agenda, and we have no closed session items.

CHAIRPERSON GARAMENDI: Okay. We're going to move to a closed session -- no closed session. Then the work of the Commission is done. I want to thank the staff for the extraordinary work that they've done now and in the past. It's been a pleasure working with you thus far.

Thank you so very, very, very much.

EXECUTIVE OFFICER THAYER: And let me say the same is true for working with the Lieutenant Governor. And don't want to do any jinxing, so we won't say anything further, but nonetheless it's been a pleasure.

CHAIRPERSON GARAMENDI: Thank you very much.
We're adjourned.

(Thereupon the California State Lands Commission meeting adjourned at 12:22 p.m.)
CERTIFICATE OF REPORTER

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing California State Lands Commission meeting was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California;

That the said proceedings was taken before me, in shorthand writing, and was thereafter transcribed, under my direction, by computer-assisted transcription.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of November, 2009.

---------------------------------------------
JAMES F. PETERS, CSR, RPR
Certified Shorthand Reporter
License No. 10063