

~ MINUTES ~
CALIFORNIA STATE LANDS COMMISSION
MEETING OF OCTOBER 22, 2009

SHERATON GRAND SACRAMENTO
1320 J STREET
SACRAMENTO, CALIFORNIA 95814

APPEARANCES

COMMISSIONERS PRESENT

John Garamendi, Lt. Governor, Chair
John Chiang, Controller
Tom Sheehy, Chief Deputy Director for Policy, Department of Finance,
represented Michael C. Genest, Director, Department of Finance

STAFF MEMBERS IN ATTENDANCE

Paul Thayer, Executive Officer
Curtis Fossum, Chief Counsel

REPRESENTING THE OFFICE OF THE ATTORNEY GENERAL

Mike Crow, Deputy Attorney General
Daniel Siegel, Deputy Attorney General

NOTE: *A list of individuals making statements before the Commission and the entities they represent, along with the Executive Officer's Report, are included in a complete transcript of the proceedings, which is on file in the Sacramento offices of the Commission and posted on the Commission's website at www.slc.ca.gov. Also included on the website is the voting record of the meeting with the staff report for each agenda item linked to the respective consent or regular item number.*

**RECORD OF ACTION TAKEN BY THE
CALIFORNIA STATE LANDS COMMISSION
MEETING OF OCTOBER 22, 2009**

Lieutenant Governor John Garamendi, Chair, called the meeting of the California State Lands Commission to order at 10:06 A.M. at the Sheraton Grand Sacramento Hotel, Magnolia Room, 1320 J Street, Sacramento, California 95814. Also present were Commissioner John Chiang and Commissioner Alternate Tom Sheehy.

The Minutes of the August 11, 2009 meeting were approved as presented by a vote of 3-0

EXECUTIVE OFFICER'S REPORT

Executive Officer Paul Thayer provided a summary of the status of enforcement actions regarding trespasses and lease violations. The Commission was also informed of certain agenda items that had been postponed from consideration and that are to be brought before the Commission in November and December. David Brown, Chief of the Administrative and Information Services Division made a presentation updating the Commission on the Financial Audit Program. The Chair asked that a letter be sent to the Governor, the Department of Finance and appropriate legislative committees requesting authorization to hire three additional auditors.

CONSENT CALENDAR

Consent item C22 was removed from the agenda and not considered. Consent item 27 was moved to the Regular Calendar. Consent items C01-C21, C23-C26, and C28-C58 were approved as presented.

REGULAR CALENDAR

(The items below appear in the order that they were heard and voted on.)

ITEM 27: The item was removed from the Consent Agenda. Barbara Dugal, Chief of the Land Management Division made a staff presentation detailing the proposed project and lease. Staff also proposed amending its recommendation to reduce the rent to be paid if turned out less of the seawall was constructed on State lands than was proposed. The Commissioners were provided an email letter that was received from the Surfriders organization objecting to the issuance of a lease. The email was made part of the record and a copy is on file in the Commission's office. The applicant, Mr. David Winkler also submitted written material to the Commission that was made a part of the record and is on file in the Commission's office. Mr. Winkler also provided oral testimony in which he stated that the seawall had public safety benefits and that he believed that no rent should be charged for the lease, but nevertheless he agreed to the rent. A suggestion was made by Mr. Winkler recommending a modification to the lease

to allow for rent adjustment if the seawall, as built, was smaller than the proposed footprint, as staff was recommending, but also adjusted upwards if the footprint increased. Staff suggested providing for reduction in rent or increase in rent depending on the footprint, up to 120 square feet, more or less than the proposed plans. Any increase beyond 120 square feet would require additional Commission approval. The Commission approved the staff recommendation, as amended, by a vote of 3-0.

ITEM 59: A staff presentation was made by Legislative Liaison Mario De Bernardo regarding actions taken by the Legislature and Governor in 2009 on bills sponsored, supported or affecting the Commission. Also presented was a request for sponsorship of proposed bills for the 2010 Legislative Session. The Commission approved the staff's recommendation of sponsorship as presented by a 3-0 vote.

ITEM 60: The item was removed from the agenda and not considered.

ITEM 61: A staff presentation was made by Chief Counsel Curtis Fossum describing the shorezone area at Bucks Beach on Lake Tahoe where the Commission had received numerous complaints regarding interference with the public's recreational use of the shorezone below the ordinary high water mark of the lake. The complaints focused on a metal fence that extended 47+ feet below high water into the lake bed and efforts by upland property owners to chase the public off the beach. Background information relating to actions taken by the Legislature in the 1870s as well as over 100 years of United States Supreme Court and California Supreme Court decisions regarding the State's obligation to protect the public's rights were described to clarify the action staff was recommending that the Commission take. The proposed action included: 1) a determination by the Commission that navigation, fishing, and other water oriented recreational uses such as bathing, swimming and open space were the appropriate needs and uses of the public within the public trust easement between high and low water; 2) a determination that except for the metal fence, the existing improvements did not constitute a substantial interference with the public's trust needs and uses; 3) removal of the metal fence, and if it is determined to be a lawful improvement, provision of just and fair compensation for the improvement to the owner of the property; and 4) adoption of a resolution to be recorded setting forth the Commission's findings. The Commission was also provided written comments from members of the public and several law firms that were made a part of the record and are on file in the Commission's office. Public testimony included an attorney representing one of the property owners, and three members of the public. Following the testimony Lt. Governor Garamendi made a motion to include two additional actions to be taken by staff. The first action was to deliver a letter to the upland property owners clearly stating the rights of the public in the shorezone and second that a restraining order be sought that would prevent harassment or other interference with those rights. The item was approved as amended by a 2-0 vote. (The Department of Finance representative abstained)

The Commission meeting public session was adjourned at 12:22 P.M.

**PUBLIC ADDRESSING THE FOLLOWING CALENDAR ITEMS
CALIFORNIA STATE LANDS COMMISSION MEETING**

OCTOBER 22, 2009

(The items below appear in the order of the printed agenda not in the order that they were heard and voted on.)

CONSENT ITEM 27 – SEAWALL IN SOLANA BEACH

David Winkler, representing self

REGULAR ITEM 61 – BUCK’S BEACH AT LAKE TAHOE

- Ashley Hills, representing self
- Janis Hills, representing self
- Mark H. Gunderson, Attorney, representing Marc DeSautels and Heigh Ho, LLC
- Cheri Sugal, representing self

PUBLIC COMMENT PERIOD

No Speakers

CLOSED SESSION

None