

TELEPHONIC MEETING
STATE OF CALIFORNIA
LANDS COMMISSION

CALIFORNIA STATE LANDS COMMISSION
100 HOWE AVENUE
SUITE 100 SOUTH
SACRAMENTO, CALIFORNIA

MONDAY, MARCH 2, 2009

10:00 A.M.

TIFFANY KRAFT, CSR, RPR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 12277

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

BOARD MEMBERS

Mr. John Garamendi, Lieutenant Governor, Chairperson

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

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

STAFF

Ms. Kimberly Lunetta, Executive Assistant

Mr. Paul Thayer, Executive Officer

ALSO PRESENT

Mr. Bruce Hayman, Dana Point

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C 02 ECOSYSTEMS MANAGEMENT ASSOCIATES, INC. (APPLICANT): Consider approval of a Non-Exclusive Geological Survey Permit on tide and submerged lands under the jurisdiction of the California State Lands Commission. (W 6005.119) (A & S: Statewide) (Negotiator: R. Greenwood) Agenda Item MS Word Adobe Acrobat Exhibit A MS Word Adobe Acrobat	
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1 PROCEEDINGS

2 CHAIRPERSON GARAMENDI: I think we're ready to
3 roll here.

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

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

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

11 CHAIRPERSON GARAMENDI: Thank you, Cindy.

12 And representing the Department of Finance?

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

15 CHAIRPERSON GARAMENDI: Hey, Thomas.

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

18 ACTING BOARD MEMBER SHEEHEY: Absolutely.

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

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

23 Tom, Cindy, I know you've read all these things.
24 Do you have comments?

25 ACTING BOARD MEMBER SHEEHEY: Lieutenant

1 Governor, they look like they're in order to me. And I
2 would be happy to move approval of those minutes.

3 ACTING BOARD MEMBER ARONBERG: I would second.
4 Cindy Aronberg seconds.

5 CHAIRPERSON GARAMENDI: Thank you.
6 And the roll call on that.
7 Cindy?

8 ACTING BOARD MEMBER ARONBERG: Aye.

9 CHAIRPERSON GARAMENDI: Tom?

10 ACTING BOARD MEMBER SHEEHEY: Aye.

11 CHAIRPERSON GARAMENDI: The chair?
12 Aye.

13 Done.

14 Mr. Thayer, your report.

15 EXECUTIVE OFFICER THAYER: Thank you, Lieutenant
16 Governor.

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

21 Mario, are you there at the State Lands
22 Commission?

23 EXECUTIVE ASSISTANT LUNETTA: We will get him,
24 Paul.

25 EXECUTIVE OFFICER THAYER: We'll make him

1 available.

2 The Commission at its last meeting approved
3 Commission positions and sponsorship of some pieces of
4 legislation. The bill introduction deadline was this last
5 Friday, and I think we wanted Mario to give a quick update
6 on what that is. Maybe we can --

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

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

11 CHAIRPERSON GARAMENDI: We have a consent
12 calendar. It's been published. There are two items on
13 the consent calendar.

14 Do either of my colleagues want to remove either
15 of those two items from the consent calendar?

16 ACTING BOARD MEMBER ARONBERG: This is Cindy.

17 I do have a question on the AT&A item. And if
18 that necessitates removing it from the consent calendar,
19 I'm sorry.

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

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

25 If not, then let's get that one out of the way

1 with a motion.

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

4 This is Tom Sheehey.

5 ACTING BOARD MEMBER ARONBERG: Aronberg seconds.

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

8 Roll call.

9 Cindy?

10 ACTING BOARD MEMBER ARONBERG: Aye.

11 CHAIRPERSON GARAMENDI: Tom?

12 ACTING BOARD MEMBER SHEEHEY: Aye.

13 CHAIRPERSON GARAMENDI: Chair?

14 Aye.

15 That one is approved.

16 Now, Cindy, your question on AT&T

17 ACTING BOARD MEMBER ARONBERG: I do.

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

25 Was there any success in figuring that out?

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

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

22 CHAIRPERSON GARAMENDI: Do you have another
23 question, Cindy?

24 ACTING BOARD MEMBER ARONBERG: No. One quick
25 follow-up on the bond. And the bond is something that

1 regardless of the status of the company will stay in
2 place, regardless of the financial status of the company;
3 is that right?

4 EXECUTIVE OFFICER THAYER: Yeah.

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

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

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

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

17 CHAIRPERSON GARAMENDI: Cindy?

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

21 CHAIRPERSON GARAMENDI: Okay. My office?

22 All right. The issue is before us.

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

25 ACTING BOARD MEMBER SHEEHEY: Yes, Mr. Lieutenant

1 Governor, I would move approval of this item as amended.

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

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

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

8 Roll call.

9 Cindy?

10 ACTING BOARD MEMBER ARONBERG: Aye

11 CHAIRPERSON GARAMENDI: Tom?

12 ACTING BOARD MEMBER SHEEHEY: Aye.

13 CHAIRPERSON GARAMENDI: Chair?

14 Aye.

15 That's approved.

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

18 Anybody here at the Capitol office?

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

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

24 ACTING BOARD MEMBER ARONBERG: I do have one
25 speaker card here in the Los Angeles location, Mr. Bruce

1 Hayman who would like to speak about the boaters for Dana
2 Point Harbor.

3 CHAIRPERSON GARAMENDI: Very good.

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

6 CHAIRPERSON GARAMENDI: Yes. Go ahead, Bruce.

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

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

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

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

24 "Said lands shall be used by said county, and
25 its successors, only for the establishment,

1 improvement, and conduct of a harbor and for the
2 construction, maintenance, and operation thereon
3 of whaves, docks, piers, slips, quays, and other
4 utilities, structures, facilities, and appliances
5 necessary or convenient for the promotion and
6 accommodation of commerce and navigation and for
7 recreational use, public park, parking, highway,
8 playground, and businesses incidental thereto."

9 What we have is an issue with the current
10 proposal that's coming before the Coastal Commission next
11 month is that it's actually expanding things by about
12 50 percent, and those are the things that are incidental
13 thereto. And in order to -- since Dana Point Harbor is a
14 very constrained area, they're having to remove a lot of
15 harbor functions and a lot of harbor capacity in order to
16 create space for these incidentals.

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

1 unlike a harbor.

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

4 CHAIRPERSON GARAMENDI: Paul.

5 EXECUTIVE OFFICER THAYER: Thank you, Chairman.

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

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

18 And it was the conclusion of staff that that
19 grant subjects management of these granted lands to the
20 same restrictions and requirements that are generally
21 required of other grantees and of the Commission pursuant
22 to the public document. So there's no exclusion of uses
23 unique to Dana Point from that grant. And the full
24 panoply of public trust can occur. And that includes the
25 incidental ones that Mr. Hayman was referring to anywhere

1 from a hotel, to a restaurant, a bar, that kind of thing
2 are all permissible.

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

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

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

19 So we did send a letter back to Mr. Hayman
20 describing all of this and copies to the Commissioners'
21 offices. So our recommendation at this point is to not
22 get involved with this item before the Coastal Commission.
23 Of course, we couldn't take that action now anyway since
24 this is in public comment and it hasn't been noticed. But
25 we would not recommend doing that.

1 Of course, we'll continue to track this. And in
2 fact, as a result of Mr. Hayman's interest, we've gone out
3 there and inspected the operation of Dana Point. And we
4 found two uses we don't think are consistent with the
5 trust. And we've advised -- one was a perfumery, and one
6 was a store that was selling a lot of shoes.

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

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

12 I think it's clear at this point.

13 Questions, Cindy, on your side?

14 ACTING BOARD MEMBER ARONBERG: Anyone here have
15 any questions?

16 No questions.

17 CHAIRPERSON GARAMENDI: Tom?

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

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

22 CHAIRPERSON GARAMENDI: That he was.

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

25 EXECUTIVE OFFICER THAYER: I was out there.

1 CHAIRPERSON GARAMENDI: All right. Any further
2 public comment? Okay. That concludes the public comment.

3 And I think that concludes the public portion of
4 this meeting. So if the public would exit the location.
5 I guess Los Angeles is the only place where there is a
6 public member around. We now go into a closed session.

7 (Thereupon the California State Lands Commission
8 recessed into closed session at 10:14 a.m.)

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1 CERTIFICATE OF REPORTER

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

5 That I am a disinterested person herein; that the
6 foregoing hearing was reported in shorthand by me,
7 Tiffany C. Kraft, a Certified Shorthand Reporter of the
8 State of California, and thereafter transcribed into
9 typewriting.

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

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

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