

MEETING
STATE OF CALIFORNIA
STATE LANDS COMMISSION

STATE CAPITOL
ROOM 4202
SACRAMENTO, CALIFORNIA

MONDAY, SEPTEMBER 17, 2001

9:30 A.M.

JAMES F. PETERS, CSR, RPR
CERTIFIED SHORTHAND REPORTER
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APPEARANCES

COMMISSIONERS

Cruz M. Bustamante, Chairperson

B. Timothy Gage, Director of Finance, represented by
Annette Porini

Kathleen Connell, State Controller, also represented by
Cindy Aronberg

STAFF

Paul Thayer, Executive Officer

Jack Rump, Chief Counsel

Curtis Fossum, Senior Staff Counsel

Paul Mount

Jeff Planck

Jim Porter

Alan Scott

Lynda Smallwoos

Kirk Walker

ALSO PRESENT

Alan Hager, representing the Attorney General

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1 Chairman. Good morning Mr. Chair and members of the
2 Commission. I don't have that many items really to report
3 this morning. I would like to note that I think things
4 went fairly well on Tuesday with respect to our own staff.
5 As you were probably aware as with other state agencies,
6 we were directed by the Governor to send all nonessential
7 people home.

8 However, such with respect to our staff
9 concerning with oil operations, some of those remained at
10 work on Tuesday checking with the oil terminals and oil
11 platforms to make sure everything was proceeding
12 accordingly there.

13 I think there's -- we all like to learn from real
14 drills like this. And I think the one thing that we'll
15 probably do is put in some kind of voice message machine,
16 because our staff was a little uncertain when they went
17 home on Tuesday whether or not there were supposed to
18 report back on Wednesday. And so I think the one thing we
19 noted is that we needed some sort of central way of
20 conveying information to our staff, and we're going to
21 come up with some way to do that.

22 Other than that, I don't have anything else to
23 report on, other than also to announce the results of some
24 of the legislation that I know members were interested in.
25 There were three bills in particular that were taken up by

1 the Legislature and passed all three of them on Friday.
2 One was the cruise ship terminal of San Francisco, bill AB
3 1839 that's been sent to the Governor for signature. The
4 AB 93, which establishes an airport authority for San
5 Diego and transfers the airport operation from the
6 existing port to that authority, that also was passed by
7 the Legislature and sent to the Governor. And finally, AB
8 1, Senator Alpert's bill that would establish a Rigs to
9 Reefs program, was also passed by both the House and the
10 Senate to the Governor.

11 And that would conclude my report.

12 CHAIRPERSON BUSTAMANTE: Are there any items to
13 take off consent?

14 EXECUTIVE OFFICER THAYER: Yes, there's one item,
15 Item 17.

16 CHAIRPERSON BUSTAMANTE: And the reason?

17 EXECUTIVE OFFICER THAYER: Seventeen, that was an
18 item that the Coast Guard, which is the applicant, asked
19 us to take it off. So that will be heard at a future
20 meeting?

21 CHAIRPERSON BUSTAMANTE: Any others?

22 EXECUTIVE OFFICER THAYER: That's all that we
23 have at the moment. I believe there are some speaker
24 slips in for two of the items.

25 CHAIRPERSON BUSTAMANTE: Is there any members

1 that have any items to be taken off.

2 ACTING COMMISSIONER PORINI: I do have an item.
3 Item 65, the Department Finance just hasn't been able to
4 complete their work on that.

5 CHAIRPERSON BUSTAMANTE: Sixty-five. So there
6 will be Item number 17 and number 65.

7 EXECUTIVE OFFICER THAYER: Yes.

8 CHAIRPERSON BUSTAMANTE: Any other requests for
9 taking off consent. Would that be to be seen today or to
10 be postponed?

11 ACTING COMMISSIONER PORINI: If we could postpone
12 it to our next meeting.

13 CHAIRPERSON BUSTAMANTE: Okay, so 17 and 65 will
14 be postponed to the next meeting.

15 Motion on that?

16 EXECUTIVE OFFICER THAYER: The one other -- I
17 think there are two slips or several slips, speaker's
18 slips, indicating people who wanted to speak, and those
19 should probably be removed. I think they're on Items 82
20 and 84. I'm sorry, if that hasn't been.

21 CHAIRPERSON BUSTAMANTE: Eighty-two or 92?

22 EXECUTIVE OFFICER THAYER: Eighty-two.

23 CHAIRPERSON BUSTAMANTE: I don't show anything on
24 the speaker slips. I see 15, only if it's taken off
25 consent and that's the only one I have.

1 EXECUTIVE OFFICER THAYER: Then I might -- I've
2 spoken with the representative from Senator O'Connell's
3 office before we started the meeting and she indicated
4 that she and one other person wanted to speak. You might
5 ask if anybody in the audience would want to speak on any
6 of those items.

7 Yes, here we have 82 and 84.

8 CHAIRPERSON BUSTAMANTE: Okay, move that from the
9 consent to the regular calendar. Okay, the motion would
10 be moving 17 and 65 to postpone it and item 82 and 84 to
11 regular.

12 Could I have a motion?

13 ACTING COMMISSIONER ARONBERG: I have a question
14 on 65. Is there any reason for the postponement, the
15 Controller is quite anxious to get this item moving and
16 under way?

17 ACTING COMMISSIONER PORINI: Yes. As I stated
18 earlier, the Department of Finance just has not been
19 unable to complete our work on it and it requires both
20 Section 2267 in the BCP and just because of the end of the
21 legislative session we've been unable to complete that
22 work.

23 ACTING COMMISSIONER ARONBERG: Is there any time
24 line on when it might be done?

25 ACTING COMMISSIONER PORINI: Well, BCP's were

1 just due on Friday, so I believe we'd have our work
2 completed by our next meeting.

3 ACTING COMMISSIONER ARONBERG: Okay, thank you.

4 CHAIRPERSON BUSTAMANTE: Is there a motion?

5 ACTING COMMISSIONER PORINI: Move approval of the
6 consent calendars, with the exceptions of Items 17 and 65,
7 which will be deferred until our next meeting and Items 82
8 and 84, which we'll hear later in the morning on the
9 calendar.

10 CHAIRPERSON BUSTAMANTE: Is there a second?

11 ACTING COMMISSIONER ARONBERG: Second.

12 CHAIRPERSON BUSTAMANTE: Let the record show that
13 it passed unanimously.

14 Off to the regular calendar.

15 Item number 88, Consideration of Adoption of the
16 Policy on the Public Trust.

17 Mr. Thayer, we'll come back to 82 and 84?

18 EXECUTIVE OFFICER THAYER: Yes, sir.

19 CHAIRPERSON BUSTAMANTE: So I think the first
20 item on regular discussion scheduled is Item number 88?

21 EXECUTIVE OFFICER THAYER: Yes, Mr. Chair. This
22 is an item that was requested to be put on the calendar by
23 the Commission. The Commission wanted to review the
24 public trust doctrine, which is the primary common law
25 basis for many of the Commission's decisions and for us to

1 develop a policy that will express that doctrine and
2 provide guidance to the Commission, applicant's that come
3 before the Commission and local governments that
4 administer the grants of tide and submerged lands that
5 have been made by the Legislature.

6 The Commission staff has worked closely with the
7 Attorney General's office in developing this policy. That
8 policy is included as Exhibit A in this calendar item.
9 We've also worked with the Attorney General's office. In
10 fact, that office is primarily responsible for developing
11 the background paper, Exhibit B. I think Jack Rump will
12 continue the presentation. We have both Commission staff
13 and Attorney General's staff that would like to explain
14 that policy.

15 CHIEF COUNSEL RUMP: Yes. If you remember at
16 your last meeting, you asked staff and the Attorney
17 General's office to research further the importance of the
18 public trust, particularly the legal principles involved
19 in helping pull together the policy. Perhaps it would
20 state clearly what the Commission's goals and objectives
21 are and their respective roles.

22 We have with us today someone who has worked with
23 the Attorney General's office for many years, Jan Stevens,
24 and who has also written a lot of the articles and teaches
25 extensively on this subject. So perhaps the best way to

1 get started is to have Jan have a presentation so you have
2 a background. And certainly we'll be available to answer
3 questions that arise.

4 MR. STEVENS: Thank you, Governor and members,
5 January Stevens. I'm formally an Assistant Deputy
6 Attorney General and I had the pleasure of working with
7 this Commission for about ten years and struggling through
8 some of the labyrinthian intricacies of administering the
9 public trust, which, of course, is the Commission's
10 primary responsibility among the State agencies of
11 California.

12 The Commission is the trustee of the public trust
13 doctrine designated by the Legislature responsible for all
14 trust in the ungranted lands of the State, and for a
15 considerable fee, of supervision over the granted ones.

16 So I have appreciated the Commission's stalwart
17 efforts through the years. I think Mono Lake was a
18 particular example of the role that it had to play in
19 preserving California's waters, as well as many
20 developments on the coastline in southern and northern
21 California as well.

22 Since then, I've taught part time and done some
23 work for the Attorney General's office, and I appreciate
24 the chance to come back and talk about the trust in
25 general.

1 I think the two important things about the trust
2 that struck me through the years are that it's extremely
3 old and it's extremely amorphous. It's a common law
4 doctrine that really is based in Roman and Spanish
5 medieval law that was accepted in England in the middle
6 ages. And it's based on a --

7 CHAIRPERSON BUSTAMANTE: We're not going to go
8 back that far are we?

9 (Laughter.)

10 MR. STEVENS: I realize your time is limited.

11 (Laughter.)

12 CHAIRPERSON BUSTAMANTE: A few centuries.

13 (Laughter.)

14 MR. STEVENS: I would be happy to talk about
15 other drafters of the trust.

16 (Laughter.)

17 MR. STEVENS: -- but I understand you may have
18 some limitations here, and I appreciate it. And if you
19 finish before I do, please let me know.

20 (Laughter.)

21 CHAIRPERSON BUSTAMANTE: I think we have.

22 (Laughter.)

23 MR. STEVENS: Okay. Basically, I guess the two
24 things really that have struck me are that it is a
25 universally adopted doctrine, which is accepted in every

1 society. And that in California it's one that's also
2 rooted in and supported by both federal and State
3 constitutional provisions.

4 So it's something more than a mere common law
5 doctrine that can be altered as well by courts or the
6 Legislature. The second thing is that the Commission
7 really channels -- is channeled in administering the trust
8 by the legislation, which provide guidance to it, and
9 which the legislature has the power to adopt as the
10 ultimate arbiter of the public trust.

11 So, basically, it's a common law doctrine
12 described as antediluvian by some courts, but
13 nevertheless, one which still has considerable validity,
14 holding in effect that the tidelands and the submerged
15 lands of California are held in trust for the people of
16 the State for purposes of Commerce, navigation and
17 fisheries, and in more recent years, as the Supreme Court
18 has said, for purposes such as ecological preservation,
19 recreation and other appropriate water oriented uses.

20 So the public trust basically arose in the United
21 States as a limitation on alienation. The 19th Century
22 was a century in which the primary disposition of the
23 public lands was to be for privatization, something which
24 has been pushed several times later, but nevertheless was
25 the prevailing doctrine.

1 And tidelands, among other lands of the public,
2 were subject to purported dispositions in all sorts.
3 Probably the primary case was the Illinois Central Case,
4 in which the entire Chicago waterfront was conveyed by the
5 Legislature to the Illinois Central Railroad. The
6 Legislature had second thoughts and purported to revoke
7 the trust, and the US Supreme Court laid down a rule which
8 is applicable in California and has been implemented by
9 the Legislature as well as the Commission, and that is
10 that these waters are held in trust for the people so that
11 they may enjoy their navigation, carrying on commerce and
12 use them free from the interference of private parties.

13 And the language of the court and other courts in
14 dealing with this in the 19th Century is impressive, I
15 think, because it portrays a determination and an
16 indignation over purported abdications by the Legislature
17 of the people's rights in its public waters.

18 The earlier case in which Illinois Central was
19 based said that, "The State cannot consistently with
20 nature and the Constitution of a well ordered society make
21 such a direct and absolute grant. It would be a grievance
22 which could never be long born by a free people." And
23 this was 30 years after the revolution.

24 Justice Field in the Illinois Central case said,
25 "It is inconceivable that the Legislature could divest the

1 State of the control and management of the harbor and
2 invest it in a private corporation."

3 This is a subject of concern to the whole people
4 of the State. While certain improvements can be made in
5 the navigation and waters and commerce, docks, piers and
6 other purposes are appropriate for improvement under the
7 public trust doctrine. The parcels can't be disposed of
8 if there is any detriment to the public interest in the
9 land and the waters remaining.

10 So basically California entered the 20th Century
11 subject to the Illinois central rule and adopted it early
12 on. The California Legislature, like other legislatures,
13 was bent on disposing of the public lands and the
14 tidelands. And at the beginning of the century a
15 tidelands grant running the whole length of the State
16 essentially was challenged in People versus California
17 Fish Company, which held that the Legislature could not be
18 presumed to intended to convey title to all of the
19 tidelands without retaining a public trust over them.
20 This was simply inconceivable and possibly invalid.

21 This did not mean, as Justice Field had said in
22 Illinois Central, "That certain improvement can be made,"
23 that ports can be developed, that piers can be built, that
24 small parcels can be disposed of and freed of the trust if
25 it's done in furtherance of an overall plan for

1 improvement of public trust purposes.

2 In the 20th century, two things happened. One is
3 that the courts recognized that the trust extends beyond
4 commerce, and the principles of the 19th Century, commerce
5 navigation and fisheries, and it does extend to
6 environmental purposes and preservation. And these are
7 things to which the trust lands can be dedicated as well.

8 The second thing is that the concept of multiple
9 development was looked at and was approved. Perhaps, one
10 of the best examples really was in a Wisconsin case, in
11 which there was a plan for improving an entire lake by
12 filling part of it, building park lands, and at the same
13 time providing navigation in other areas. The Court
14 upheld this on the basis that public bodies were going to
15 retain control of the entire area. Even though the lake
16 was going to be diminished, it was a small parcel compared
17 with the whole portion of the Lake.

18 No one use of the lake was going to be greatly
19 impaired or destroyed, and that the Legislature could
20 probably determine that the public could enjoy lesser uses
21 of some things, such as waterskiing and swimming in favor
22 of other things as part of this overall improvement plan.

23 Now, in California, of course, the courts have
24 dealt with propriety of trust uses in a number of
25 different ways, and you still have some before you now

1 increasing complexity and greater sophistication.

2 But the Appellate courts have upheld developments
3 which encourage the public and provide for utilization of
4 the tidelands and the coast lands for trust-related
5 purposes, such as enjoying the water. The court has
6 upheld restaurants, parking lots and other commercial
7 developments of that sort, which draw the public to the
8 waterfront and provide convenience for the public in that
9 extent.

10 The Legislature or its designee, the Lands
11 Commission, does also have the ability to prioritize trust
12 uses. Obviously, there are some trust uses, such as
13 marinas, which may be incompatible with others, such as
14 nature watching areas. These are hard choices that have
15 to be made. The Supreme Court has held, for instance,
16 that a bridge, a highway bridge, could be built over an
17 navigable river even if it destroys navigation for a wide
18 variety of water craft, because this is simply the kind of
19 decision and prioritization that has to be made.

20 If there was any bright line, I think it is based
21 on the principle of inalienability that these lands cannot
22 be placed beyond the ability of future Legislatures or
23 Lands Commissions to deal with them in light of the
24 changing nature of trust needs.

25 The California court has also said in National

1 Audubon, that this is a continuing duty of supervision,
2 and, in essence, that trust lands are not subject to being
3 frozen into a particular type of a use, but that they can
4 be evaluated. And the purposes to which they can be put
5 can be changed by the Commission or by the Legislature to
6 suit additional needs.

7 The last thing, I guess, is the idea that the
8 Commission travels down a channel, which is established by
9 the Legislature. And legislative prioritization and
10 legislative guides are provided. For instance, the
11 exchange statute, Public Resources Code 6307 is basically
12 a reflection and a detailed implementation of what Justice
13 Field said in 1892 about the public trust nature of the
14 Chicago waterfront and Lake Michigan, that certain lands
15 can be exchanged if they meet the principles of equal
16 value and if other factors are provided.

17 Compensation is another factor, which appeared in
18 Illinois Central. If good faith improvements are
19 constructed on property and the State chooses to exercise
20 the trust to change the use of that property, compensation
21 may be appropriate, and the Legislature has determined by
22 statute in much greater detail what the circumstances are
23 for that kind of thing.

24 The Legislature has prioritized trusts in a
25 number of ways, Fish and Game Code 5937 is a great example

1 which the Court has implemented as saying that this means
2 water cannot be used in a manner so as to destroy or
3 impair the fisheries below dams.

4 The Legislature has established some commissions
5 and administrative bodies, which have been construed as
6 also implementing trust doctrines, the BCDC in San
7 Francisco Bay, to some extent the Coastal Commission
8 implements the trust. But basically the Lands Commission
9 is the body at which the buck stops. And it's the Lands
10 Commission determination of nongranted lands that
11 really -- to which the Legislature has delegated this kind
12 of function.

13 CHAIRPERSON BUSTAMANTE: As you mentioned the
14 Legislature can change, by statute, any of those
15 provisions.

16 MR. STEVENS: That's right.

17 CHAIRPERSON BUSTAMANTE: Except where it runs
18 into Constitutional conflicts.

19 CHAIRPERSON BUSTAMANTE: Except when it amounts
20 to an abdication of the trust over an entire body of water
21 or a purpose which conceivably is entirely inconsistent
22 with the trust. And this, I think, is based on several
23 constitutional principles. There's been a great debate
24 over --

25 CHAIRPERSON BUSTAMANTE: Maybe we can go through

1 just one or two of them.

2 MR. STEVENS: Okay. In California, Article 10,
3 Sections 3 and 4, which provide for the public's right to
4 access to the navigable waters and which can place
5 limitations on the extent to which these can be sold, even
6 if the trust remains upon it.

7 The gift clause is another constitutional
8 provision which has been invoked in a number of cases here
9 and elsewhere, say that basically the State cannot make a
10 gift of a valuable asset of this sort by making a grant,
11 which is irrevocable and beyond its control.

12 And under the Federal Constitution, the
13 admissions clause has been construed as placing this
14 limitation on the Legislature and perhaps even on State
15 Constitutional drafters on the basis that the State
16 promised, as a condition of its admission, to keep its
17 waters navigable forever free.

18 CHAIRPERSON BUSTAMANTE: Thank you.

19 Mr. Thayer.

20 EXECUTIVE OFFICER THAYER: This concludes staff's
21 presentation. Jan Stevens, as we've indicated, is a long
22 time scholar in this field and he has reviewed along with
23 other the Attorney General's -- Deputy Attorney General's
24 the draft policy that's before you for adoption.

25 We believe that that policy represents well the

1 overall goal and mission and responsibilities of the State
2 Lands Commission and we would recommend that you adopt it.

3 CHAIRPERSON BUSTAMANTE: Thank you. And thank
4 you, Jan. I think that you've laid out for the people who
5 are here and who are watching this the complexities of the
6 public trust. As we started getting into the issue last
7 meeting, it was clear that we needed to find some process
8 by which we can make determinations, so that the policy is
9 intact and that future Commissions would have something
10 for reference.

11 I think that the effort that's been made here, I
12 think, does that. I think it both talks about the
13 complexity as well as the need for balancing. It talks
14 about how you just cannot give away the public trust and
15 there are various specific items that can and cannot be
16 done within this doctrine. I appreciate the thoroughness
17 of the review.

18 I also wanted to say thank you to Long Beach for
19 allowing themselves to be the first. I apologize. And
20 yet I'm glad that we were able to have something that
21 prompted this activity. So sorry for being the first Long
22 Beach, but we, I believe, will now have a policy that will
23 guide future Commissions. Although there was a delay, I
24 think that we've been able to come to an appropriate
25 accommodation to ensure that all perspective clients in

1 the future understand exactly what we're dealing with and
2 clearly understand the legislative process now and we
3 hopefully will have an opportunity to be able to move
4 forward on these kind of activities in the future with an
5 understanding of what we can and cannot do.

6 Is there any comment by any of the Members?

7 Okay.

8 EXECUTIVE OFFICER THAYER: I think there are
9 several members in the audience that have submitted slips
10 that wish to speak on this matter.

11 CHAIRPERSON BUSTAMANTE: On Item 88?

12 On Item 88, I have Douglas Wong.

13 MR. WONG: Thank you very much, Lieutenant
14 Governor and Honorable Members of the Commission. Ladies
15 and gentlemen, good afternoon. My name is Douglas Wong.
16 I'm Executive Director of the Port of San Francisco. It
17 is truly an honor to be here this morning. On half of the
18 Port and the City and County of San Francisco, we'd like
19 to thank State Lands staff for their professionalism and
20 their due diligence in assisting San Francisco on trust
21 matters of statewide significance.

22 Paul Thayer, Dave Plummer, Blake Stevenson and
23 their staff have been instrumental in public trust matters
24 involving the Ferry Building, Pier 1, Mission Bay, leading
25 to significant enhancements of public access, ferry berths

1 and other trust assets in the city and county of San
2 Francisco.

3 We in San Francisco support the policy and we
4 look forward to a continuing and fruitful working
5 relationship with the Commission in carrying out our duty
6 as trustee/grantees. Thank you very much.

7 CHAIRPERSON BUSTAMANTE: Thank you.

8 We also have Norm Ryan.

9 MR. RYAN: Lieutenant Governor, Honorable Members
10 of the Commission, staff, and audience, my name is Norm
11 Ryan. I'm a resident of the City of Long Beach. I also
12 am a public finance banker, managing director for Morgan
13 Securities.

14 My understanding of the land uses tends to be
15 limited to CFD's, melo rooses, assessment districts,
16 things of that nature. One of the things that we've
17 encountered, that has caused a lot of headache in BCFDs in
18 the State of California is loose definitions.

19 In the proposal, on Item 88, they talk about an
20 exchange of equal or greater value, but they don't
21 necessarily define what that is. Language like that in
22 the past in regards to CFDs, assessments districts and so
23 on have allowed developers and local authorities to play
24 with the numbers.

25 I think that if you were to adopt this item, you

1 might want to consider an amendment to stipulate exactly
2 who determines what the value is. If you decide that
3 anybody petitioning you can hire their own appraiser,
4 let's say, then I would suggest that you then consider how
5 the regular private sector conducts their business. When
6 you're buying a piece of property, you don't rely on the
7 seller's appraisal of what the property is worth. You
8 won't go out and hire it yourself.

9 And is the value an appraisal, an assessment and
10 as-is bulk value. You know, using general terms, I think
11 will invite future headaches. If you weren't using more
12 specific and exact language, if not amended, then I would
13 recommend that you not adopt Item number 88.

14 Thank you.

15 CHAIRPERSON BUSTAMANTE: Paul, would you like to
16 talk about that.

17 EXECUTIVE OFFICER THAYER: Yes, sir. Thank you.
18 Two things. First, I think the policy replicates what's
19 in the statute, and the statute provides that standard
20 alone. Ultimately, the arbiter of that is the Lands
21 Commission. And, as I know you're aware, we have
22 independent appraisers on our staff, Registered
23 Appraisers, and we do not accept the appraisal of
24 applicant's without review and frequently conducting our
25 own appraisal. And we've done that on Queensway Bay, the

1 item that's coming up.

2 CHAIRPERSON BUSTAMANTE: What happens in a
3 situation where there's a very, very specific, very
4 complicated piece of property, do we bid out and get other
5 appraisals, do we seek out --

6 EXECUTIVE OFFICER THAYER: We have the expertise
7 on staff. This is of such great importance to the Lands
8 Commission and its worth, that we not accept cart blanch
9 the applicant's reputation of the value of the land. We
10 believe it's important, just as we have surveyors, we
11 didn't accept the boundary description that's certainly
12 made by applicants for these kinds of proposals. We have
13 professional staff that are registered and certified to
14 provide that independent expertise to the Commission.

15 CHAIRPERSON BUSTAMANTE: Thank you. Mayor
16 Beverly O'Neill.

17 LONG BEACH MAYOR O'NEILL: I'm speaking 89.

18 CHAIRPERSON BUSTAMANTE: Okay. Up at the top it
19 says 88. Thank you. Thank you, Mayor.

20 And Cantrell, do you wish to speak on 88?

21 MS. CANTRELL: Good morning, Commissioners. Ann
22 Cantrell, Long Beach, California. I thank you for this
23 report today, because there's been a lot of confusion
24 about what is allowed under the public trust doctrine.

25 There was one comment that was made by Mr.

1 Stevens, which I wanted to clarify. I think he indicated
2 that California Law, Article 10 says that you can't sell
3 the land even if the trust has been lifted; is that
4 correct?

5 EXECUTIVE OFFICER THAYER: He is in the back of
6 the room and can respond to that.

7 CHAIRPERSON BUSTAMANTE: Mr. Stevens. We'd
8 appreciate it if you could be here for this.

9 MR. STEVENS: I'm sorry. Yes.

10 MS. CANTRELL: Did you hear my question?

11 MR. STEVENS: Lands in which the trust has been
12 lifted, can they be sold?

13 MS. CANTRELL: Yes.

14 MR. STEVENS: I think they have been very often.
15 If the trust has been terminated, effectively all the
16 findings have been made by the Legislature, this is
17 something that my colleague, Mr. Hager and Mr. Rump as
18 well, I think could answer. And it's my understanding
19 that that indeed could be one of the purposes for lifting
20 the trust.

21 MS. CANTRELL: I'm sorry. What was it you said
22 about Article 10, I must have misunderstood you?

23 MR. STEVENS: Well, that imposes a general
24 prohibition on transfer of lands within a certain distance
25 from incorporated cities. And I think the Legislature has

1 also adopted a statute subsequent, which prohibits the
2 sale of all tidelands. So it's a little more complicated
3 than the initial question.

4 As an abstract matter, lands which are not
5 subject to the public trust can be sold by the State, if
6 the Legislature provides for their sale.

7 MS. CANTRELL: So after the trust is lifted, then
8 the lands can be sold?

9 MR. STEVENS: Yes, but they do have to meet the
10 limitations that are in Article 10 and presently in the
11 Public Resources Code.

12 MS. CANTRELL: Thank you very much.

13 MR. STEVENS: Not too many sales are going to
14 take place.

15 CHAIRPERSON BUSTAMANTE: Okay.

16 Don May.

17 MR. MAY: Thank you very much, Mr. Chairman and
18 Commissioners. My name is Don May representing California
19 Earth Corps. And I'm delighted to -- I think you should
20 be honored to have Mr. Stevens here as an eminent
21 authority. I certainly would not dare to question
22 anything he says.

23 However, looking at the Exhibit B that's before
24 you and particularly the Section 8, which is the matter of
25 concern before us today, one of the things that is missing

1 here is the criteria for exchanges of land. And one of
2 those, in fact, the major one is this needs to be done to
3 settle boundary and title disputes. And absent that, it
4 is very, very rare to have ever allowed an exchange of
5 land. So perhaps a little more there looking at that
6 criteria.

7 The other is that the exchange must be consistent
8 with the original purchases -- the original purposes of
9 the 1911 Trust agreements. That is to say, and from your
10 report, the very situation where the abandonment of public
11 trust is consistent with the purposes of trusts, Section
12 6307 authorizes the Commission to exchange land of equal
13 value of the best interests of the State for improvement
14 of navigation, aid in reclamation, flood control purposes,
15 enhanced configuration of shoreline for improvement of
16 water and upland, on navigable river sloughs, streams,
17 lakes, estuaries, streets so forth and will not
18 substantially refer to the right of navigation of fishing.

19 Those are the constraints underwhich you can
20 consider a swap of land. Further, and I think it's
21 important that the land --

22 CHAIRPERSON BUSTAMANTE: Wait a minute, is that
23 the issues that are being raised are not covered in the
24 policy?

25 MR. MAY: Those issues are not.

1 CHAIRPERSON BUSTAMANTE: Staff, are those issued
2 not being covered?

3 EXECUTIVE OFFICER THAYER: I think the policy
4 covers, generally, all aspects of the public trust
5 doctrine. We don't get into details about how we
6 implement all aspects of it.

7 That's absolutely correct, but there is a
8 discussion in the background paper, which specifically
9 mentions that Section 6307, which Mr. May refers.

10 CHAIRPERSON BUSTAMANTE: So the reference is to
11 the specificity in the policy as a generic statement.

12 EXECUTIVE OFFICER THAYER: That's right.

13 CHAIRPERSON BUSTAMANTE: But it's covered in the
14 background paper.

15 EXECUTIVE OFFICER THAYER: That's right.

16 CHAIRPERSON BUSTAMANTE: So it's not that it
17 wasn't thought of.

18 MR. MAY: Yes. For those very rare cases in
19 which boundary disputes and title disagreements arise, you
20 are going to have some very little -- in fact, the
21 Legislature has very little latitude in how it approaches
22 those.

23 The other thing which is not covered here is when
24 you do an exchange of land, the land which is exchanged,
25 which the State receives has to be available for public

1 trust uses and not constrained for something else.

2 And, in fact -- and it goes on to look at all of
3 the -- list all of those uses. I might just point out
4 that active recreation use is not amongst them. You may
5 not use exchanged lands for active recreation, a soccer
6 field is not a fishing area. So that with those
7 amendments to cover and define that area exactly, we would
8 be in full agreement with both Exhibit A and Exhibit B and
9 would urge your adoption.

10 Thank you.

11 EXECUTIVE OFFICER THAYER: On the latter point,
12 there is a distinction between kinds of recreational uses
13 that can occur on public trust lands. And the document
14 does make reference, not -- to this distinction not with
15 respect just to recreation, but generally in terms of
16 uses, that the uses cannot be strictly local in nature.

17 So, for example, if a building ballpark is one
18 where there's been some controversy and there's some
19 question about whether or not that's an appropriate use,
20 because it only serves the local population, it doesn't
21 serve statewide visitors that kind of thing.

22 So recreation is certainly an allowable use of
23 public trust lands, but there some restrictions as to the
24 types of recreation that can go on there.

25 CHAIRPERSON BUSTAMANTE: And how specific do we

1 have to have that in the policy?

2 EXECUTIVE OFFICER THAYER: I don't think we need
3 to go through each type of use that's allowable under the
4 public trust doctrine to describe exactly how it is.
5 Instead, we spoke more generally and said, number one,
6 recreation is an allowable use, but we also said that
7 strictly local uses are not allowable, and in combination
8 that addresses the issue that Mr. May raised.

9 He's quite correct in saying that not all
10 recreational uses are permitted.

11 CHAIRPERSON BUSTAMANTE: Thank you, sir.
12 Rod Chisessi.

13 MR. CHISESSI: I'm waiving on my request to speak
14 and reserving it for Item 89.

15 Thank you.

16 CHAIRPERSON BUSTAMANTE: All right. Don May.
17 That was just him, right.

18 Richard Dongell.

19 MR. DONGELL: Dongell, yes. Mr. Chairman, I'd
20 like to waive my time to speak on this item.

21 Thank you very much.

22 CHAIRPERSON BUSTAMANTE: Lester Denevan.

23 I was hoping for another waiver.

24 (Laughter.)

25 CHAIRPERSON BUSTAMANTE: Welcome.

1 MR. DENEVAN: Lester Denevan, City of Long Beach.
2 I was very interested to hear the statements by the Deputy
3 Attorney General of the State concerning the Commission as
4 trustees for the tidelands. And so it's really
5 interesting that a \$120 million project in Long Beach was
6 allowed to go forward without even notification of the
7 Lands Commission.

8 Now, this was only brought up two years ago by
9 myself. And I think as trustee, you should be having
10 oversight, at least of these larger projects.

11 The City has --

12 CHAIRPERSON BUSTAMANTE: Before we go on. We've
13 not had any notification of our discussions of this
14 project? I thought we've -- in the last several meetings
15 that we've raised this agenda item, I thought we've
16 noticed the meetings properly.

17 EXECUTIVE OFFICER THAYER: We, of course, have
18 been working on this for about a year and a half since Mr.
19 Denevan brought it to our attention.

20 CHAIRPERSON BUSTAMANTE: Hasn't Mr. Denevan
21 appeared before this body at least two or three times?

22 EXECUTIVE OFFICER THAYER: Yes, sir.

23 CHAIRPERSON BUSTAMANTE: So there has been prior
24 notice of this meeting of all of these activities of this
25 policy and this project.

1 MR. DENEVAN: For this project, you're addressing
2 I understand from your staff is the theaters and the book
3 store and Cost Plus. And I think that you have to look at
4 the entire project, which envelopes many, many acres of
5 the downtown shoreline. And that's necessary so you can
6 judge in total context of which is being developed on the
7 tidelands.

8 If the City moves forward with this project,
9 they're going to take a substantial portion of former
10 recreational space for commercial development, and you
11 should have some idea about the relationship of the
12 different projects. For example, also your Deputy
13 Attorney General --

14 CHAIRPERSON BUSTAMANTE: Mr. Denevan, are you
15 here to talk about the Queensway Bay Project?

16 MR. DENEVAN: Yes, but also I want to address the
17 question up and down the State of the question of say
18 there's a permitted use of hotels. And I've talked to Mr.
19 Fossum and he has said that it's a permitted use. I said,
20 well, say there's a beach up the coast, they wanted to
21 build a second hotel, a third hotel, a fourth hotel, they
22 can do it.

23 Finally, the recreational uses are crowded out.
24 I'd like you to imagine that you are trustees of the
25 Golden Gate Park in San Francisco. I think you would be

1 ready to go ahead and build two or three hotels in Golden
2 Gate Park. How about 8, 10, 20 or 40 plus a Cost Plus?
3 That will accomplish public access to show a park or to
4 Golden Gate Park.

5 CHAIRPERSON BUSTAMANTE: Mr. Denevan, I know that
6 you're a strong advocate on behalf of your community. I
7 would like, if we're going to be addressing this
8 particular policy, if you could address your concerns to
9 the policy itself. Is there a section in the policy
10 that -- or are you just disagreeing with the entire
11 policy?

12 MR. DENEVAN: I think it should be clarified what
13 your responsibilities are for these major projects which
14 have never been presented to you. There have been some in
15 the past, why not in cases like this, if you in deed are
16 the trustee. This should be necessary legislation that
17 you have authority and you don't have to sit back, and the
18 City will not even have the courtesy to notify you of
19 what's going on.

20 Thank you.

21 CHAIRPERSON BUSTAMANTE: Thank you, Mr. Denevan.
22 Is there any staff comment?

23 EXECUTIVE OFFICER THAYER: No. As we've
24 discussed before, the Legislature in granting these
25 tidelands under these circumstances to local governments

1 has set up different rules and in most cases they do not
2 require direct notification of us when the local
3 government is going forward with the project, because, in
4 fact, they're standing in our stead. They're like the
5 local State Lands Commission. It's their responsibility
6 to decide to pick between public trust uses.

7 We do receive notification frequently in the form
8 of CEQA consultation where we have an opportunity to find
9 out early on, and we've established now a free person
10 granted lands program for the last year or so, where we
11 try and work cooperatively so that things aren't being
12 done in a vacuum.

13 So the law does not give us the direct role.
14 Nonetheless, we see that in our general oversight role, we
15 want to continue to work with local government and, in
16 fact, share information early on, which I think is what
17 Mr. Denevan is urging.

18 CHAIRPERSON BUSTAMANTE: I think Mr. Denevan is
19 urging that anything that is happening on the land in
20 which we are responsible, we should be made aware of it
21 before it happens.

22 EXECUTIVE OFFICER THAYER: And the present law
23 does not -- the grant which transferred the property from
24 us -- or from the Lands Commission's jurisdiction to local
25 governments does not provide for that. It gives

1 independence to local governments to proceed.

2 CHAIRPERSON BUSTAMANTE: That's by statute?

3 EXECUTIVE OFFICER THAYER: That's by statute.

4 CHAIRPERSON BUSTAMANTE: All right. I guess
5 we'll have to run some legislation, Mr. Denevan.

6 (Laughter.)

7 Traci Wilson KleeKamp.

8 Did I do the last name okay?

9 MS. WILSON-KLEEKAMP: You did great. Traci
10 Wilson-KleeKamp. Good morning, how are you all?

11 I would like to continue on with what Mr. Denevan
12 was saying in terms of when you have a large project
13 that's going on, that's got a lot of -- that's been going
14 on maybe eight or ten years, a lot of obstacles come up,
15 the market changes and whatnot, and the uses or the
16 different elements of the project are changing, I think
17 that the public who's supposed to benefit from this
18 project should have someone that's providing some
19 oversight, since they are talking about public lands.

20 The other thing I'm concerned about, since I'm a
21 mom and I care about kids, and I care about open space and
22 recreation is that how do you decide that when there is a
23 local master plan established for recreation that the
24 State's public benefit supercedes the local city's
25 benefits for recreation.

1 In other words, how do you decide that the people
2 of California deserve to get passive recreation over a
3 part of town that has historically not had adequate
4 recreation, not had adequate open space, has poverty and
5 not a lively local economy, and they've been promised park
6 land and football fields and all that you, and you provide
7 a swap on a piece of property that they were promised was
8 going to be active recreation?

9 So I think that, again, there needs to be some
10 oversight in that, whose needs come first, the local area
11 or the State? And I think that's a little arbitrary, who
12 enforces it?

13 CHAIRPERSON BUSTAMANTE: Well, as far as the swap
14 is concerned, it was on a piece of property that its value
15 had diminished substantially as a result of the project.
16 The swap was for a piece of property that was furthest
17 away and would not have been, had any kind of site
18 activity, would not have been open space. It's on the
19 second floor of a facility.

20 And what we did was that we swapped a piece of
21 property that was of minimal value for a piece of property
22 that we believe is of extensive value for the State, both
23 locally and for all the citizens of the State of
24 California.

25 In addition, we were able to direct over \$600,000

1 toward the rehabing of a marsh land and a wetland area
2 that we believe also enhanced open space for the State of
3 California.

4 MS. WILSON-KLEEKAMP: Well, I have a few
5 questions you. Number one, I thought that that grant for
6 the \$600,000 had expired in 1997?

7 CHAIRPERSON BUSTAMANTE: We have established
8 that.

9 MS. WILSON-KLEEKAMP: And the other part I didn't
10 understand is how do you determine that the parcels that
11 are on Queensway Bay, which I think you're talking about,
12 in terms of value, are less valuable than the parcels that
13 you're supposedly swapping? And what does that have to do
14 with the fact that there was a master plan for recreation
15 or there was promised active recreation?

16 In other words, I understand you're saying --

17 CHAIRPERSON BUSTAMANTE: We're just dealing with
18 our part. And in our part --

19 MS. WILSON-KLEEKAMP: I'm just saying that you're
20 arbitrarily deciding that that recreational use is not
21 necessary. And I'm asking what is your definition, your
22 criteria for deciding that you guys don't need active
23 recreational area?

24 CHAIRPERSON BUSTAMANTE: It must be an assessed
25 value of the properties to just find out to make sure that

1 the value of the property that we were giving up versus
2 what we were taking control of. In other words, that
3 was -- not taking control of, but being put into the
4 public trust was of more value than just in terms of
5 dollars.

6 And then the size of the property is substantial.
7 If you were to see a map, you would see the substantial
8 nature of the properties that we're talking about, versus
9 that area which is up against a roadway, is the furthest
10 point away from the water, is substantially more like open
11 space and more potentially a recreation than that very
12 small piece of property could have been.

13 We're not talking about the entire Queensway Bay
14 project. We're talking about that piece that we swapped,
15 which is a very small piece.

16 MS. WILSON-KLEEKAMP: I can't tell what the
17 difference is between the piece you're swapping and the
18 parcel -- the pieces that are all surrounding it. They're
19 all the same to me.

20 CHAIRPERSON BUSTAMANTE: We can provide that
21 information to you after the meeting.

22 MS. WILSON-KLEEKAMP: Well, as far as I'm
23 concerned, the tidelands are priceless pieces of land, so
24 I'm also not understanding how you determine what their
25 value is. They're not supposed to be purchased and you --

1 the City is using their own appraiser, I don't understand
2 how you come up on the valuation.

3 CHAIRPERSON BUSTAMANTE: We did our own. But you
4 can also talk in the next item, if you're opposed to it.

5 MS. WILSON-KLEEKAMP: Okay, thank you.

6 CHAIRPERSON BUSTAMANTE: Christopher Johnson.

7 MR. JOHNSON: Thank you. I choose to waive my
8 comments.

9 CHAIRPERSON BUSTAMANTE: Bry Laurie Myown.

10 Did I say that correctly?

11 MS. MYOWN: Yes, thank you.

12 Thank you, Lieutenant Governor. I don't mind you
13 using Long Beach as an example at all. I'm grateful for
14 the opportunity to have the public trust explained to us.
15 I have never heard of it until quite recently.

16 And, like Mr. May, I believe I urge adoption of
17 this item. Because I think it has been so differently
18 interpreted than I would interpret it on behalf of Item
19 89, I do have a couple of questions.

20 In a mixed-use development, in Exhibit B, there
21 is some language about any permanent structure serving the
22 public's rights of access to the beach and not serving
23 financial -- and not providing financial incentives to
24 make the rest of the project work. And I apologize if I'm
25 mixing up items here, it's really hard to distinguish the

1 two agenda items.

2 But if the purpose of an exchange is to exchange
3 out uses that you had determined would not serve the
4 public trust and yet what remains in is all of the capital
5 improvements and parking structure that the City intends
6 to sell bonds to build, it seems to me there would have to
7 be some sort of pro rata, some commensurate reduction in
8 the parking, roadways, et cetera, because they are now
9 really serving those uses that you have determined were
10 not serving the public trust.

11 CHAIRPERSON BUSTAMANTE: I think those are issues
12 for the next item.

13 MS. MYOWN: Okay. Another question is, again
14 because of Item 89 since the land that you want to bring
15 back in is immediately adjacent to the port and by a
16 freeway, which we all know probably needs to be improved
17 and enlarged, is a transportation use that serves the port
18 a use to which that land could be put in the future under
19 a public trust doctrine, would that be a public trust use?

20 And if not, would such a freeway improvement on
21 what is now being planned as park space be an issue where
22 State or federal legislation would trump the public trust
23 use?

24 CHAIRPERSON BUSTAMANTE: Again, I believe that
25 those are issues on the next item. This item is regarding

1 the overall policy. Have you had a chance to take a look
2 at the policy?

3 MS. MYOWN: Yes, I have read both and my question
4 is in this policy statement. It is not clear to me if
5 public transportation uses that serves the Port would be
6 within the aegis of this policy statement?

7 CHAIRPERSON BUSTAMANTE: Paul.

8 EXECUTIVE OFFICER THAYER: In general -- I'm
9 going to ask for some backstopping from the attorneys. In
10 general, my understanding is the facilities that assist
11 the Port in conducting commerce, which is one of the
12 public trusts uses, would be consistent with the trust.
13 And as Jan Stevens indicated in his own presentation and
14 at least one circumstance, a bridge was found to be
15 consistent with the trust even though it interfered with
16 other trust uses. It was a case of prioritization as to
17 which particular trust use was most important in that
18 environment.

19 And the policy, which we presented to you for
20 your adoption, recognizes that, that there are sometimes
21 hard choices to be made, and if the Commission had both
22 some flexibility and some ability to choose between
23 mutually exclusive uses.

24 MS. MYOWN: So regardless of the currently stated
25 use of that land that's discussed in Item 89, the

1 Commission could prioritize in the future a freeway
2 improvement there that would serve the Port would be an
3 allowed use; is that correct?

4 EXECUTIVE OFFICER THAYER: Well, the first entity
5 that would review a new use there would be the City. The
6 City will have a long-term lease from us and in all
7 likelihood legislation will be enacted to transfer the
8 property newly coming into the trust to the City for its
9 management, just as the legislature has done with all of
10 the other tide and submerged lands in the State.

11 CHAIRPERSON BUSTAMANTE: Mr. Hager.

12 ASSISTANT ATTORNEY GENERAL HAGER: Yes. The
13 comment that I would like to make that the decision as to
14 which of several proper trust uses in this case is left to
15 the trust grantee, which is the City of Long Beach.

16 MS. MYOWN: Thank you very much.

17 CHAIRPERSON BUSTAMANTE: I have two others here,
18 but it looks like they scratched it out and replaced it
19 with 89, so I'm going to assume that we're done.

20 Is there someone?

21 Yes, ma'am please come up. State your name for
22 the record.

23 MS. MANN: My name is Diana Mann, and I promise
24 to be real quick.

25 I'm going to borrow this for one second. I have

1 a couple of quick questions. While you're talking about
2 public access, does that mean paid public access or free
3 public access?

4 EXECUTIVE OFFICER THAYER: I think Ms. Mann is
5 referring to, Jan, your comments about public access and,
6 you know, Article 10 of the Constitution. Is there any
7 distinction between free or paid public access?

8 MR. STEVENS: No, I don't think so really.

9 MS. MANN: Okay, I think that needs to be kind of
10 clarified. And then I'd like to address your values. You
11 talk about the land value purchased and you have those
12 going out there and measuring it and determining what it
13 is. If you're a little kid, and you -- what kind of
14 values do you have? And if you don't have the resources
15 to play in a park and the park disappears and it's not
16 available to you, then you're talking about the value of
17 that land to the community.

18 And I think that there's a big discrepancy in
19 your value system, if you don't value open space and park
20 land and our valuable resource.

21 Add I'd like to hold this up, if you can see
22 this. Okay, one of the things that Mr. Stevens said was
23 that your responsibility for public trust is ongoing.
24 Well, if it's ongoing, what's this going to be like in
25 another 50 years? This is a mess. I don't want to punish

1 you. I don't want to punish the -- what's the saying that
2 you punish the sons for the sins of the father.

3 But we've got a real serious problem here,
4 because what happened and what's missing out of Mr.
5 Stevens' report is the fact that we have a responsibility
6 to protect our natural resources. And that as far as
7 California is concerned our wetlands are diminished beyond
8 that land. You all know that. Our wildlife is diminished
9 and sick and ill. And we have an obligation to protect
10 that.

11 And one development after the other going into
12 the action of destruction is not protecting our tidelands.
13 So if you continue -- as you continue, we're going to be
14 deeper and deeper in trouble. And I think that there has
15 to be some sort of a provisions in there to protect
16 resources for the future children's children.

17 And then just very quickly, I'd like to mention
18 that it says that, "The Constitution is a policy of
19 conservation and protection of the state lands and waters
20 for the benefit of all citizens recognizing that the
21 State's wetlands, estuaries and beaches are apart of its
22 common heritage." Okay, we lost ours.

23 And there's another little thing I'd like to
24 read. This is -- and I'm not an attorney, I'm just a kid
25 on the block that is real concerned about our environment.

1 And I tell you what, going through the trust -- the public
2 trust doctrine wasn't a fun thing, but I did extract some
3 information out there that says that we're missing the
4 boat.

5 It says here, "The State's Constitution has
6 recognition of public rights with the respect to the shore
7 and other natural resources is not self-executing, but
8 must be carried into effect by legislation," which you had
9 mentioned before.

10 So where are we with this? I mean, you know,
11 with the future, does the Legislature decide every time a
12 city makes a super stupid decision about their waterfront
13 properties, what is it that the public does?

14 Anybody got an answer to that?

15 CHAIRPERSON BUSTAMANTE: I think you have to deal
16 with the Legislature. When they make a change in the
17 actions or in the authority or in the parameters of the
18 public trust, they have that ability to do so to a certain
19 extent. Anything else beyond that, I guess the people
20 have to either go to court or deal with their legislators.

21 MS. MANN: You know, that's not fair, you know.

22 CHAIRPERSON BUSTAMANTE: It's the system.

23 MS. MANN: What's your job? I mean your job is
24 to implement all this stuff, you know. And if it's the
25 public, every time we turn around, do you know how many

1 cases that the citizens of Long Beach has against -- the
2 City of Long Beach is taking our parks. You know, it's
3 over and over and over again. And, you know, we don't
4 have the financial resources. And I Chair an organization
5 called Ecolink. We're a coalition of environmental
6 organizations and we're linked to citizens all up and down
7 our coast. And we're all trying our damndest to protect
8 our coast, and we can't afford one litigation after
9 another. I mean come on you guys, you're not helping us
10 out a bit.

11 CHAIRPERSON BUSTAMANTE: I think within the
12 parameters of the responsibilities that we have, I think
13 that to go from the very beginning of your comments, you
14 said that we don't understand the difference between a
15 value that's been placed on a dollar value and that of a
16 child. I'd say you're wrong. If you were to look at what
17 we did within the parameters -- I understand you --

18 MS. MANN: What's this? What's this, do you
19 value your --

20 CHAIRPERSON BUSTAMANTE: We have enhanced that.

21 MS. MANN: Enhanced it by whose standards?

22 CHAIRPERSON BUSTAMANTE: I think by any objective
23 standard if you were to look at it and you were to see how
24 much space we put into open space -- if you were to see --

25 MS. MANN: Okay, don't go there, don't go there,

1 because we're going to talk about that in 89, right?

2 (Laughter.)

3 MS. MANN: So we don't want to go there right
4 now.

5 CHAIRPERSON BUSTAMANTE: So then let's --

6 MS. MANN: Right now we're talking about the big
7 picture and what your job is and what your responsibility
8 is and what this is. This is federal law that says you
9 have to protect this land.

10 CHAIRPERSON BUSTAMANTE: Have you read the
11 policy, our policy?

12 MS. MANN: I couldn't open it up in my --

13 CHAIRPERSON BUSTAMANTE: It's a very short
14 document, and I would recommend that you read it and you
15 listen to the total explanation of what just took place a
16 few moments ago with respect to the entire --

17 MS. MANN: I heard Mr. Stevens.

18 CHAIRPERSON BUSTAMANTE: You heard Mr. Stevens.
19 If you were to look at the policy, and if you could find
20 discrepancies within our policy and that explanation, we
21 are open to changing that, but you're not giving us any.
22 I understand the passion, and I hear what you're saying,
23 but if you have a change in the policy that we have, I'd
24 be open to reviewing that, to discussing it, to changing
25 it, but you're not giving us anything at this point.

1 MS. MANN: I asked you about the protection of
2 wildlife, estuaries and how about air quality, could you
3 protect the air quality?

4 CHAIRPERSON BUSTAMANTE: I believe all these
5 issues are addressed in the policy.

6 MS. MANN: In the policy. Honest to God cross
7 your heart it's in there, so I can count on you to protect
8 it.

9 CHAIRPERSON BUSTAMANTE: Yes, ma'am.

10 MS. MANN: Thank you.

11 Anyone else?

12 Seeing none, any other comments from staff?

13 EXECUTIVE OFFICER THAYER: No, sir.

14 CHAIRPERSON BUSTAMANTE: Mr. Stevens, any other
15 comments?

16 MR. STEVENS: No, thank you, Governor. I think
17 the two documents here are very thoughtful,
18 well-considered and well done, and they really cover the
19 basis that were addressed by the speakers here along with
20 existing law.

21 CHAIRPERSON BUSTAMANTE: Thank you. Any comments
22 from the Commissioners?

23 Any questions, concerns?

24 Is there a motion?

25 ACTING COMMISSIONER PORINI: Move approval of the

1 policy before us.

2 CHAIRPERSON BUSTAMANTE: Is there a second?

3 ACTING COMMISSIONER ARONBERG: Second.

4 CHAIRPERSON BUSTAMANTE: Showing a first and a
5 second, a motion and a second, let's show that the motion
6 passed unanimously.

7 We move on to Item Number 89. Why don't we --
8 the Controller has asked us to hold off on Item number 89
9 until she arrives. She'll be here in a moment. And so if
10 we could go onto the next item, we will come back to 89.

11 EXECUTIVE OFFICER THAYER: Yes. Lieutenant
12 Governor, Item 90 will be heard at a future meeting at the
13 request of the General Services Administration. This has
14 to do with the Downey Facility.

15 CHAIRPERSON BUSTAMANTE: Number 90 is off,
16 postponed.

17 EXECUTIVE OFFICER THAYER: Number 91 is in the
18 same situation. The Port of San Diego has asked us to
19 hear that at a future meeting.

20 CHAIRPERSON BUSTAMANTE: Postponed, so numbers 90
21 and 91 are postponed to a future meeting.

22 EXECUTIVE OFFICER THAYER: Item 92, Consideration
23 of a report entitled the, "Shoreline Protective
24 Structures..." It includes a recommended staff policy --
25 excuse me, Commission policy. And Alan Scott from the

1 Land Management Division will make the presentation on
2 this.

3 MR. SCOTT: Good morning, Mr. Chairman and
4 Members of the Commission. I'm Alan Scott, a regional
5 manager of the Commission's Land Management Division. I'm
6 here to present information on calendar Item number 92,
7 which is the item concerning shoreline protective
8 structures.

9 At the Commission's meeting of November 27th,
10 2000, members of the public and Commissioners expressed
11 concerns regarding the practices of the Commission in
12 issuing leases for protective structures as a means of
13 controlling shoreline erosion.

14 The Commission asked staff to investigate and
15 report back on whether it was appropriate to continue
16 issuing Coastal Protective Structural leases that did not
17 require monetary rent. Also, questions were asked about
18 the impact of continued construction of protective
19 structures on the shore.

20 I'd like to mention two recent events that
21 emphasized the statewide importance and timeliness of the
22 Commission's concern. Earlier this year, the State
23 Department of Boating and Waterways announced awards of
24 \$10 million in grant monies allocated to the nine -- in
25 the 2000/2001 State budget, which was distributed to

1 cities and counties throughout the State to implement sand
2 nourishment projects and shore zone related studies.

3 Also, the State Resources Agency on March the 29th, 2001
4 released its draft policy on coastal erosion planning and
5 response and background material.

6 After receiving input from the public at seven
7 public meetings held throughout the State, the draft
8 policy is being revised to reflect comments received at
9 those meetings. The proposed new policy will guide and
10 coordinate the activities of the various State Resources
11 Agencies with jurisdiction over projects that affect
12 coastal erosion, planning and response.

13 Staff has prepared a background report and it is
14 before you today. The report was prepared in April of
15 this year and copies have been distributed to more than
16 100 interested parties. The report has also been made
17 available on the Commission's web site.

18 In preparing this report, staff utilized existing
19 scientific research and published works dealing with
20 shoreline erosion processes and the physical impact of
21 shoreline erosion of the con -- on shoreline erosion of
22 the construction of protective structures.

23 The report identifies three methods used to
24 control shoreline erosion, protective structures,
25 generally of concrete or rock construction, beach

1 enhancement usually sand replenishment projects and
2 land-use planning, sometimes referred to as plant and
3 treat.

4 The report provides information to the Commission
5 that indicates the most common type of shoreline
6 protective structure is a seawall or rock revetment
7 constructed to protect adjacent private property. The
8 report provides information on the other alternatives to
9 hard protective structures and assesses their impacts to
10 the shoreline.

11 Staff analysis of the beach enhancement and
12 land-use planning alternatives shows that a greater degree
13 of government involvement is required because of the
14 substantial cost of these types of projects, and because
15 these projects will, of necessity, occupy large areas
16 covering multiple ownership.

17 Some dispute exists in the scientific community
18 as to how seawalls and other hard structures impact the
19 erosion process along the coast. However, there appears
20 to be general agreement that soft structure solutions
21 primarily sand replenishment projects, are the preferred
22 method of shoreline protection, having a lesser impact on
23 natural shoreline processes.

24 The calendar item which is presented in this
25 report also discusses the Commission's concern regarding

1 what consideration is appropriate for the use of public
2 property occupied by structures that are for the
3 protection of private property. The past practices of the
4 Commission has generally been to issue loses for coastal
5 protective structures to both private parties and public
6 agencies in consideration of the public benefit including
7 public health and safety.

8 Public benefit is a consideration for a lease --
9 as a consideration for a lease is provided for in the
10 Commission's regulations as an alternative to the payment
11 of monetary rent. Staff processes coastal protective
12 structural leases on a case-by-case basis in order to
13 determine what consideration is appropriate considering
14 the specific circumstances of the proposed project and in
15 accordance with the Commission's existing regulations.

16 In the past, staff has usually recommended that
17 rent not be charged for private shoreline protective
18 structures because of the potential public benefit they
19 provide. The additional protection they provide to
20 existing public structures, such as adjacent roads, public
21 access ways and utilities at no cost to the public is one
22 of those benefits in evaluating it.

23 In this calendar item, staff provides several
24 recommendations for consideration by the Commission.
25 Adoption of these recommendations would require the

1 imposition of rent where public benefit from coastal
2 private shoreline protective structures could not be
3 demonstrated. Adoption of these recommendations would
4 cause staff to look more carefully at whether a shoreline
5 protective structure was actually more intended to benefit
6 private development.

7 The recommended actions also would direct staff
8 to continue to work cooperatively with other agencies,
9 work with applicants to encourage projects that will not
10 occupy public property, promote the use of soft structure
11 solutions where feasible and continue to mitigate adverse
12 impacts to the public trusts.

13 This concludes my presentation and I'll remain
14 available for questions.

15 CHAIRPERSON BUSTAMANTE: Thank you. Any
16 questions by any of the Members?

17 The idea of this or the justice of this came
18 because as a manager of tidelands and of certain public
19 trust lands, we are allowing certain kinds of activity to
20 take place. We are permitting those activities to take
21 place.

22 And in the permitting of those activities, we are
23 incurring costs as a State. And those costs, in many
24 cases, are not being received by those who are benefiting
25 directly from them. As I heard your report, I heard that

1 there was various activities, various kinds of solutions.
2 My guess is that that would depend, in part, not only on
3 the kinds of structures but also the kinds of geology and
4 the other kinds of factors of the actual property itself,
5 and the experiences that we've had in the past in terms of
6 whether we had to, in fact, provide some kind of sand
7 replenishment or other kinds of activities.

8 So our experiences, and although it would be nice
9 to be able to have a policy that just generically said
10 this is what we're going to do each and every time, the
11 geography, the experiences, the kinds of facilities will
12 all require interpretation by staff and will require some
13 sense of what the community benefit is versus private
14 benefit.

15 I've had a chance to look at the policy. It
16 appears that you cover those points, and it seems to me
17 that what we are attempting to do is trying to be more
18 effective managers of that coast land. So I appreciate
19 the presentation.

20 Is there any other comments by your staff or
21 members?

22 I'm looking for a motion. Is there a motion?

23 ACTING COMMISSIONER PORINI: Move approval.

24 EXECUTIVE OFFICER THAYER: Mr. Chairman, we have
25 two requests to speak, I believe, on this.

1 CHAIRPERSON BUSTAMANTE: I'm sorry. On item
2 number 92?

3 EXECUTIVE OFFICER THAYER: Yes, sir.

4 CHAIRPERSON BUSTAMANTE: I missed it. Do you
5 have those names there.

6 EXECUTIVE OFFICER THAYER: Let me bring this up
7 to you.

8 Bob Trettin. Is there a Bob Trettin here?

9 MR. TRETTIN: Yes.

10 CHAIRPERSON BUSTAMANTE: Would you like to speak
11 on this item, sir?

12 MR. TRETTIN: Yes, I would.

13 CHAIRPERSON BUSTAMANTE: And Walt Crampton,
14 you're on deck.

15 MR. TRETTIN: Good morning, Honorable Lieutenant
16 Governor and Members of the Commission. My name is Bob
17 Trettin, and I am a planning consultant representing more
18 than 400 coastal bluff top home owners in San Diego
19 county.

20 Before I start my presentation, I'd also like to
21 compliment the staff on the report they prepared in April.
22 I thought it was one of the most concise reports, because
23 sometimes these things can run hundreds of pages, but it
24 was one of the most concise encapsulations of the history
25 of sand loss on our beaches and the various activities

1 that are ongoing currently to restore sand to the beaches
2 and on coastal bluff protection structures and when
3 they're needed.

4 During the past decade, I've had the opportunity
5 to obtain approximately 50 local and State permits for
6 single-family homeowners who needed to provide coastal
7 bluff protection adjacent to their properties. During the
8 same period of time, I've witnessed more than a dozen
9 properties in a foreclosure, as homeowners without the
10 financial means to protect their property were forced to
11 leave it. And many other instances, particularly among
12 retired seniors, those who have the equity to qualify for
13 loans sufficient to cover the exorbitant cost of coastal
14 bluff protection certainly didn't have the means to pay
15 the loans off.

16 So they fixed it and then they sold their homes,
17 and left an area that many of them have lived in for
18 decades, neighbors, churches, other local involvements,
19 but they didn't have a choice.

20 Your staff has outlined, quite well, I think, the
21 reason behind identifying coastal bluff protection in most
22 cases as a public benefit.

23 The scenarios I've just outlined speak to how
24 difficult it already is for many homeowners to protect the
25 bluffs and the significant consequences that can occur

1 both for public safety and from a financial standpoint if
2 protection isn't provided.

3 Last year, a young woman on the Encinitas Beach
4 died tragically as a segment of the bluff failed in
5 seconds. There was virtually no warning and there was not
6 time for her to jump up and move to safety. Coastal bluff
7 protection dramatically increases the safety of those that
8 are using our public beaches.

9 The private provision of coastal bluff protection
10 also dramatically reduces the financial impact on the
11 general fund of local jurisdictions. The City of
12 Encinitas has already funded such protection of public
13 access points, and at least in one case at a point where a
14 public street terminates at the coastal bluff. This is to
15 protect the street and utility lines and so forth.

16 In a number of instances, where I've represented
17 home owners, had they not be given coastal bluff
18 protection permits, with the resulting failure that would
19 have taken their house, would have extended to Neptune
20 Avenue, which is the coastal street along Encinitas.

21 No city, even with State or federal assistance,
22 could easily assume the financial burden of protecting
23 public infrastructure by constructing a bluff protection
24 along miles of shoreline. While protecting their homes,
25 bluff top property owners provide an enormous public

1 benefit, that shouldn't be discouraged or discounted.

2 On behalf of all those who own homes, I would
3 urge you to retain your present lease policy, reviewing
4 carefully in areas where there might need to be a rent
5 assessed, where there isn't a public benefit, I can
6 certainly understand.

7 But in most cases where you have coastal access
8 roads and utilities immediately adjacent to coastal access
9 homes, the City would be building this and it would be
10 required regardless. As the bluffs are failing in natural
11 as your staff report indicates, some one is going to have
12 to build a seawall, and it's going to be for public safety
13 and it's going to be for private infrastructure.

14 So, in my opinion, I would hope that you would
15 consider Alternative 1 as the best ongoing continuing
16 solution with the instruction that your staff continue to
17 bring those items forward or identify those items where
18 they cannot perceive a public benefit.

19 Thank you very much.

20 CHAIRPERSON BUSTAMANTE: Thank you.

21 My understanding is that in this, Paul, that this
22 is an affirmation not only of what you said, but also it's
23 an effort to try to identify those that we have not
24 focused on and to make sure that we are in the process of
25 dealing with not only protecting our own public resources,

1 but making sure that future developments have, in the case
2 where it's purely a private development, and has benefit
3 only to the private sector, that we, in fact, do have some
4 kind of lease or we have some kind of cost whenever we
5 provide certain services to those developments; isn't that
6 correct?

7 EXECUTIVE OFFICER THAYER: I think the Chair has
8 appropriately summarized what we're getting at here. And
9 particularly in your earlier comments, some of the
10 situations that the past speakers spoke of would have to
11 be reviewed carefully. And as you indicated, each
12 shoreline protective device situation is unique. And much
13 of the public trust requires judgment on the part of the
14 Commission and its staff to decide when to charge rent,
15 when to reduce that rent.

16 And, of course, we want to make clear that
17 nothing in what we're proposing would prohibit the
18 Commission from, in fact, approving a shoreline protective
19 device, so that private development, public development
20 would be protected. We're merely talking about whether or
21 not, as you indicated, private use of public land should
22 involve compensation to the public.

23 So I think all of the factors that the gentleman
24 raised would be considered in developing a staff
25 recommendation to bring to the Commission.

1 CHAIRPERSON BUSTAMANTE: Mr. Crampton.

2 MR. CRAMPTON: Good morning, Lieutenant Governor
3 and Members of the Commission. My name is Walter
4 Crampton. I'm a geotechnical coastal engineer practicing
5 in San Diego and more or less I'm also before you this
6 morning representing 930 bluff top home owners in Solano
7 Beach. I've worked with your staff on numerous occasions
8 over the years. And, although, they have maintained a
9 lower profile than the Coastal Commission staff, I have
10 always been very impressed with their dedication to
11 protecting the interest of State's sovereign tidelands.

12 I've read the staff report on the protective
13 structures and it plans to be a well balanced overview of
14 the complex project. And I commend your staff on that
15 report.

16 I come to speak before you this morning really
17 because I'm genuinely troubled over the recent fairly
18 aggressive posture that the Surf Riders Foundation has
19 taken with regard to seawalls. They would have you
20 believe that by not allowing seawalls, the sandy beaches
21 that once existed along the southern California shoreline
22 would return. They want it to return to the natural
23 conditions and they want you to make it so.

24 As a coastal engineer I unequivocally guarantee
25 to you that along the California shoreline where you have

1 millions of people today living within the now urban
2 coastal watershed extending up the coastal ranges at times
3 50 miles landward out to the coast, that they have
4 eliminated that possibility.

5 That is unless you renourish beaches and replace
6 what the many dams, flood control facilities and other
7 actions that manifest has affected within this urban
8 watershed. In the ocean side today there's a 30 million
9 cubic yard deficit. And yet in San Diego alone sand
10 mining in the last 60 years has removed over 100 million
11 cubic yards of sand that was originally destined for this
12 State's beaches.

13 The bluff top property owners did not contribute
14 to the problem that exists in northern San Diego county
15 today. Yes, in retrospect, their homes could have been
16 set further back from the bluff tops to forestall the
17 problems that exist, but even if they have, you would
18 still have no sandy beaches today, you would still have
19 these major coastal bluff failures, the beach going public
20 would still be at risk, and other bluff top group
21 improvements would eventually become imperiled, requiring
22 you still to do something in the future.

23 As your staff report stated, approximately 80
24 percent of the California coast lives within 30 miles of
25 the coastline. And of those 80 percent, myself included,

1 we have contributed to what is today a totally urbanized
2 coastal watershed. We, as a society, have done much to
3 the California coast, presumably for the benefit of the
4 many, but to the detriment of the coastline itself.

5 We cannot go back to the natural conditions that
6 existed a century ago, even though a few have you believe
7 we could. There are three general responses to coastal
8 erosion; retreat from the shore, armor the coast, or
9 nourish the beaches. The choice of a response strategy
10 will, or at least should, depend upon a number of factors
11 including socioeconomic and environmental conditions.

12 The retreat option is the preferred option for
13 undeveloped or sparsely developed areas. For highly
14 developed areas, such as virtually all of southern
15 California, the abandonment option is not politically
16 realistic or economically viable.

17 The value of this beachfront property often
18 approaches several hundred million dollars per mile of
19 coastline. And beach nourishment provides protective
20 beaches and is an economic boon for tourism. However,
21 seawalls are still often needed to back the beach when
22 insufficient beach is available to provide that service.

23 The Surf Riders Foundation for some reason today
24 wants to eliminate all seawalls. More surprisingly is
25 their lack of interest in supporting beach restoration

1 efforts. Their mantra is more one of let's get back to
2 nature. But the conflicting societal interest, presumably
3 for the benefit of this State, has really neglected our
4 shoreline.

5 Private citizens and municipalities alike are
6 increasingly finding it necessary to protect their
7 properties than protect both private and public
8 improvements, many of which are critical to well-being of
9 this coastal State. The State Lands Commission has
10 jurisdiction over the State's sovereign tidelands, and the
11 Commission has an interest in protecting those -- this
12 resource and for that I commend you.

13 Having practiced coastal engineering in San Diego
14 and in southern California for over 30 years, I'd like to
15 make a few observations. That to begin with when I
16 studied at Scripps Institute 30 years ago, my professor,
17 Dr. Inman was concerned and wrote about at the time
18 societal impacts in the urbanizing coastal watershed that
19 they remove sand from what was now the literal cell, and
20 they were removing sand from the beaches and saying that
21 it was really the lost of sand due to upland development
22 that created the need for seawalls. Seawalls did not
23 cause a loss of sand. It's real the form.

24 When you hear people like Orrin Pilton on the
25 east coast a geology professor from Duke University, when

1 he speaks about the serious problems of seawalls on the
2 eastern seaboard. And the Surf Riders like to quote Dr.
3 Pilton because they like what he has to say. But please
4 remember that the east coast is very different from the
5 west coast. They have a trailing edge coastline. We have
6 a leading edge coastline. They have literally miles of
7 shallow lands that can, in fact, experience considerable
8 erosion. We do not. We have coastal bluffs. They do
9 not. Our bluffs are fairly resistant to erosion. Their
10 coastline erodes quite a bit.

11 In California, since the 1940's, our total
12 urbanization has completely eliminated a source of sand
13 that we, in the past, have benefited from. When you deal
14 with these seawalls that are now being constructed, the
15 Coastal Commission and the Corps of Engineers is currently
16 charging a sand mitigation fee. As a coastal engineer, I
17 support that sand mitigation fee. And for a 50-foot wide
18 bluff top property, it amounts to about \$20,000. There
19 are already significant fees paid for the rights for
20 private homeowners and public entities to protect their
21 properties. There are significant fees already being
22 paid.

23 And lastly, I'd like to point out that when you
24 speak to the State Lands jurisdiction, if additional fees
25 were paid and additional impediments were made, there

1 would be significant disputes over that ambulatory line
2 that finds the State's jurisdiction. It happens to be the
3 mean high tideland or 2.01 foot. But the reality is that
4 today with the current policy, many consultants, myself
5 included, we're very happy to work with the State and not
6 dispute the jurisdiction, but to merely agree to the
7 leases because they are not adjudicating the boundary,
8 they're merely agreeing to work together.

9 It is in this spirit of cooperation that the
10 private interests and public interests are best worded. I
11 would propose to you that coastal property owners who are
12 spending literally millions of dollars to protect their
13 property are providing a much bigger benefit to the State
14 of California than The Surf Riders Foundation who is
15 actively today opposed to something that I believe is
16 inherently very good for California.

17 I would strongly encourage you not to provide
18 additional impediments to coastal protection.

19 Thank you, very much.

20 CHAIRPERSON BUSTAMANTE: Staff, Alternatives 2
21 and 3, would any of that which is in the recommended
22 policies prohibit in our determination of a sand
23 replenishment case, for example, that it is not the
24 construction or the private development on that spot above
25 the cliffs, but rather a different locale that is, say, up

1 on either north or south of that facility that is causing
2 the problems of sand replenishment?

3 Would there be anything to prohibit from all the
4 different complexities that were just expressed by the
5 speaker to be taken into account when staff is making an
6 assessment?

7 EXECUTIVE OFFICER THAYER: Not at all. And, in
8 fact, I think we would agree with much of what the witness
9 stated, except that there is at least some evidence that
10 seawalls themselves cause a further diminution of the sand
11 at the beach, but our studies indicate that, in fact, the
12 loss of sand from sand mining or dams, the other causes he
13 mentioned, in fact, would probably be the primary cause of
14 loss of sand.

15 But nonetheless, we're not -- the staff policy
16 more deals with impacts where we can show them and
17 charging rent where it can be shown that the private
18 property owners, using public land to protect private
19 property.

20 So to some extent the causes of erosion are
21 important with respect to deciding whether or not any
22 mitigation needs to be done, but aren't significant with
23 respect to deciding whether or not to charge rent.

24 CHAIRPERSON BUSTAMANTE: Is the onus on staff or
25 is the onus on the property owners to show that there has

1 been some kind of a problem that must be dealt with by the
2 State, and therefore we must then charge additional fees?

3 EXECUTIVE OFFICER THAYER: The Coastal Commission
4 charges its fee to anybody who is putting in shoreline
5 protective devices. I think in northern San Diego county,
6 I may have the boundaries of that not entirely correct,
7 but they use that money to purchase additional sand or
8 take other measures to improve the beaches that kind of a
9 thing.

10 With our own mitigation measures, I think it's up
11 to staff to determine, in fact, what the impacts to the
12 public trust uses are, and we're experts in that. With
13 respect to rent, the hard decision will be the one that
14 the applicant -- or the speaker referred to which is
15 determining where the boundary line is.

16 But where we can show that public land is being
17 occupied by this project of primarily private benefit,
18 then the new policy would have us look more closely at
19 that issue in determining whether or not rent should be
20 charged.

21 Often the nexus for this becomes when they seek a
22 Coastal Commission permit. And the Coastal Commission has
23 a policy you have to demonstrate that you own the property
24 or you have a right to use the property where your project
25 is going to be located. And they frequently turn to us

1 for advice as to where the boundary line is.

2 CHAIRPERSON BUSTAMANTE: Madam Controller.

3 COMMISSIONER CONNELL: Yes, I apologize for
4 coming in late. Let me just share with the audience, I
5 sit on a number of boards, and we had a very important
6 retirement board, which, in fact, is still going on right
7 now. You can imagine with the market activity this
8 morning, we are deeply concerned about the -- in fact, the
9 pension funds of many of you as well as local governments.
10 And so I apologize for my extended delay.

11 This issue is of great importance, I think, to
12 the Commission. And I appreciate your delaying it till I
13 got here. I thought that all of your staff
14 recommendations were worthy of serious consideration, and
15 I would be prepared to adopt a number of them this morning
16 quite honestly.

17 I guess, I'm somewhere in between the surf rider
18 groups and the groups that represent the private
19 homeowners here. I do think that we need to do additional
20 work to determine the impact that deals with loss of sand
21 on the beach.

22 On the other hand, I don't think that's our
23 primary role here as the Lands Commission. But I did like
24 your idea -- I'd like you to speak to your staff
25 recommendation, I believe it was number 6, Paul, about

1 establishing a special fund to deposit the impact fees and
2 allocate those funds to make improvements. I thought that
3 was important.

4 I also think number 5 is important pertaining to
5 consultants who identify the impacts that are occurring,
6 the loss of beach use, et cetera. I think that would be
7 very helpful, and I'd like you to speak specifically to
8 both of those.

9 EXECUTIVE OFFICER THAYER: Early on when we were
10 working on this project, we looked very closely at how we
11 could best mitigate impacts that might come from shoreline
12 protective devices. In many cases, some of those impacts
13 are already addressed by other agencies, Fish And Game,
14 for example, usually requires through CEQA that habitat
15 impacts be addressed. The Coastal Commission already has
16 a mitigation fee for sand supply in at least one part of
17 the State.

18 But we also talked to several different
19 researchers, one in San Diego, I'm trying to think,
20 perhaps, UC Irvine for the other one, to determine what
21 kind of study could be done to attach a monetary value to
22 public trust impacts, because that would be the simplest
23 thing to do. A lot of these projects are small enough.
24 It's sort of difficult to require a new stairway or
25 something like that.

1 And, basically, we were informed that the kind of
2 study that would stand up in court in terms of
3 establishing a nexus between impacts and an amount of
4 money paid would probably cost in excess of a million
5 dollars. And that's --

6 COMMISSIONER CONNELL: The study would?

7 EXECUTIVE OFFICER THAYER: The study would.

8 COMMISSIONER CONNELL: Well, I can see the
9 Department of Finance would frown on that. I can't even
10 get the Bologna Study out.

11 EXECUTIVE OFFICER THAYER: And the problem is
12 that it's very hard to give an evaluation to what is it
13 worth when some member of the public can't use the beach
14 at sunset because there's a shoreline protective device
15 there or, you know, during high tides the beach is
16 narrower this kind of thing. It's just very difficult to
17 value that.

18 The other situation is the one that the Chair
19 described, which is that physically the coastline looks so
20 different in so many different parts of the State, so you
21 couldn't do just one study and say oh, along this beach
22 we'll do this. Well, that might be valid for that beach,
23 but it wouldn't be valid for any others. So although we
24 went down that road pretty far in terms of trying to find
25 out someday that we could establish a mitigation fee like

1 the Coastal Commission has for sand, a much more
2 identifiable cost, I should say. It's very much easier to
3 define how much sand is going to be lost and what the cost
4 is to replace it, we ended up deciding we could not
5 legally, defensively come up with a mitigation fee that
6 the Commission could impose and be able to --

7 COMMISSIONER CONNELL: You know, I would move the
8 staff recommendation, but I would like to have a timetable
9 on it, Mr. Chair, because I think we need to move fast on
10 this issue. We're sitting here without a policy. I think
11 it would be helpful to do that and complete the EIR on a
12 timetable, and then get the shell mounds out. So I would
13 like to -- aren't we on 93?

14 I'm sorry, we're on 92. I'm confused again. I
15 still want the staff recommendation on 92, my apology.

16 CHAIRPERSON BUSTAMANTE: That would be
17 Alternatives number 2 and 3, I believe?

18 EXECUTIVE OFFICER THAYER: Yes. And to
19 summarize, that would require us to look much more
20 carefully at whether or not rent should be charged where a
21 shoreline protective device is on public property and it's
22 primarily benefiting private development.

23 And the second part of that recommendation is
24 that we look to see if there are unmitigated impacts to
25 public trust uses.

1 And the third part of it was to continue our work
2 with the Coastal Commission and a more cooperative work to
3 look to actually locate these seawalls inland of our
4 public trust lands.

5 CHAIRPERSON BUSTAMANTE: I received a request to
6 speak by one other member of the audience Don May, and
7 then we'll go to a motion.

8 MR. MAY: My name is Don May for California Earth
9 Corps. I'll be extremely brief, Mr. Chairman, but our
10 corporate attorney, Charles Post, who is also one of the
11 co-founders of the Surf Riders Foundation, has been in
12 substantial discussion with your staff about the
13 implications of the public trust doctrine to protecting
14 sand.

15 And in view of the former discussion about the
16 public trust doctrine, it's extremely important. And I'm
17 also one of Dr. Pilton's students. And I shouldn't -- I
18 respect him enormously. He's the leading proponent of
19 processes along the coast.

20 But you will find his arguments every bit as
21 supportive of -- critical of structures and whatnot along
22 the coast, as your witness presented.

23 So I certainly concur with all the statements of
24 Mr. Thayer and -- except that I do believe that you need
25 to find there is a nexus between sand borings and do

1 divert sand offshore. And if you can, in fact, make a
2 financial connection, and I think it's incumbent under the
3 public trust doctrine that this Commission pursue that
4 vigorously.

5 Thank you very much.

6 CHAIRPERSON BUSTAMANTE: Thank you, Mr. May.

7 A motion has been made, alternatives two and
8 three.

9 Is there a second?

10 ACTING COMMISSIONER PORINI: I'll second.

11 CHAIRPERSON BUSTAMANTE: Seeing as there is a
12 motion and a second, let the record show that the motion
13 has passed unanimously.

14 Go back to Item 89, which we passed over earlier,
15 Controller, so that you might be able to come back.

16 COMMISSIONER CONNELL: Thank you, and I
17 appreciate that.

18 CHAIRPERSON BUSTAMANTE: There has been a request
19 for a brief break. Let's have a break for five minutes
20 and then we'll take up Item number 89.

21 (Thereupon a recess was taken.)

22 EXECUTIVE OFFICER THAYER: If people could find
23 their seats, we're about ready to get going again.

24 CHAIRPERSON BUSTAMANTE: This is Item number 89,
25 which has had tremendous discussion at a previous meeting.

1 And we have 12 requests to speak, and so I am going to
2 limit each person. I would hope that they would do it
3 voluntarily, but in most cases people get to a point where
4 they cannot always say everything that we want to say, and
5 you know, there are certain limits. So I'm going to ask
6 if there is a group of people who either are for or
7 against and that would like to either aggregate their
8 comments into one individual or a couple of people, we
9 might be able to work out something where they could make
10 a longer statement, but if not -- do I see any volunteers
11 to aggregate?

12 If not, then what we're going to do is we're
13 going to limit everybody to three minutes in order to be
14 able to speak. Even at three minutes, it's going to be
15 past noon before just the speakers end up completing. And
16 I'm going to ask staff to go ahead and start and we will
17 begin with, when the speaking comes up so that you're
18 in -- you understand where you're going to be at Ann,
19 Cantrell, Rod Chisessi, and Lester Denevan. Those will be
20 the first three members who will speak and then we will
21 announce the others following that.

22 Staff, your report, please.

23 EXECUTIVE OFFICER THAYER: Thank you, Mr.
24 Chairman. I'll be making the staff presentation on this
25 item.

1 The Commission is already fairly aware of the
2 proposed project here Queensway Bay. We've heard comments
3 from the public as well as some presentations that were
4 made at the last meeting.

5 At that last meeting, as requested by Long Beach
6 citizens, the Commission reviewed this project. The
7 Commission has expressed doubts about the consistency of
8 some elements of the project with the public trust
9 doctrine in terms of the legislative grant. These uses
10 included the movie theaters, a health spa, a Cost Plus
11 Imports and a bookstore.

12 The Commission directed staff to work with the
13 City to try to develop alternatives that would address
14 this issue. I'd like to review what we have done since
15 that last meeting and then the proposal that's before you
16 today. Since that meeting, Commission and City staff
17 reviewed several alternatives to resolve the issue of
18 Queensway Bay. Two principle options emerged, the City
19 could eliminate from the project the uses that could be
20 inconsistent with the public trust or the Commission could
21 approve the land exchange they would lift the public trust
22 from the sites of the questionable uses and impose it on
23 other lands suitable for trust use.

24 The City reviewed its marketing and financial
25 feasibility study for the project, and determined that it

1 could not support the first option. In the City's view,
2 the questionable uses were a vital part of the project and
3 helped make other trust uses, like the aquarium viable.

4 Commission staff reviewed the legal requirements
5 for lifting the trust from the sites of questionable uses
6 which would be required for an exchange. Because of the
7 distance of the sites from the waterfront, the fact that
8 they were caught off from the water by Shoreline Drive and
9 the fact that the sites have been unused for over 20 years
10 led staff to believe that these parcels were not
11 acceptable for public trust uses, the primary test for
12 lifting the trust.

13 After that initial go round, the staffs of the
14 two agencies then agreed to pursue the land exchange
15 option and look for sites to exchange for the Queensway
16 Bay parcels designated in these public trust lands.

17 The City owned lands along the Los Angeles River
18 seemed the most appropriate for the exchange. For past
19 few years all levels of government have focused on
20 developing habitat and recreational areas along the river.
21 Two years ago, the Legislature recognized the statewide
22 values of the restored river by establishing the San
23 Gabriel and Lower Los Angeles Rivers and Mountains
24 Conservancy.

25 The State Coastal Conservancy and the Southern

1 California Wetlands Recovery Project have made grants to
2 purchase and restore lands along the liver. This July
3 Congresswoman Hilda Solic proposed legislation to study
4 making this area into a national park.

5 The river itself is not public trust land,
6 because it was sold during the California Spanish era.
7 However, it obtains trust values and these multi-level
8 efforts are highly consistent with and promote the public
9 trust.

10 After considering several different combinations
11 of parcels and rejecting one because of evaluation
12 problems, the Commission and City staff settled on parcels
13 that are in the proposal before you. They are shown in
14 Exhibit A in the staff report and in a larger scale map
15 over to the Commission's left.

16 This map is poorly put up on the screen here for
17 the audience, but what we're looking at are exchanging
18 parcels at Queensway Bay here outlined in red. And I
19 think it shows up more clearly in your binder. For
20 parcels along the river up here one between or actually
21 two between northbound and southbound lanes of Shoreline
22 Drive and then on either side of Shoemaker Bridge up here.

23 These parcels along the LA River seemed
24 particularly appropriate for public trust designation.
25 The Coastal Conservancy has already sponsored a study to

1 evaluate whether these parcels could be restored as
2 wetlands. There's a regional bike path that runs along
3 The LA River, right along the levee here. The adjacent
4 Shoemaker parcels have a potential to be recreationally
5 developed to complement that bike path.

6 The Shoreline Drive parcel, the one between the
7 north and southbound lanes up there is already landscaped,
8 but is presently cut off from public access. Again,
9 actually either the Shoemaker parcels or the adjacent
10 Cesar Chavez Park, which is just to the right, just to the
11 east right in there, would complement either are for
12 recreation, open space or habitat purposes.

13 In spite of the public trust value of the Los
14 Angeles River parcels, they could not be exchanged for the
15 Queensway Bay parcels, unless the Commission can make all
16 of the findings required by law. The trust value of the
17 Los Angeles River parcels, we believe, that test has been
18 met, but however the river parcels also must be at least
19 equal to our exceed in value the Queensway Bay parcels in
20 which the trust would be lifted.

21 To make that necessary determination or to gather
22 the evidence for it, our boundary determination officers
23 and appraisers had to evaluate the condition of dozens of
24 lots that comprise each of the river parcels. Again,
25 we're looking at specific parcels. However, there are

1 many, many lots within those. And we had to view the
2 title and the deeds for each of those to ensure that there
3 weren't any liens or encumbrances that diminished the
4 value of those lots.

5 On a square footage basis, there's no doubt that
6 the Queensway Bay parcels down here are worth more money
7 than each square foot up there.

8 The appraisers also deducted \$1.3 million because
9 this parcel right in here is cutoff from public access and
10 that's the amount of money that was determined was going
11 to be necessary to put up pedestrian access or other
12 public access into that area. So we wanted to diminish
13 the valuation of that parcel to reflect its street value
14 for public trust purposes.

15 Given all these factors provide the necessary
16 value to balance the Queensway Bay parcels about ten acres
17 of land were included in the river parcels, so more than
18 three times the amount of land that's being given up at
19 Queensway Bay.

20 We've determined after appraising these two
21 different sets of parcels that the parcels that will come
22 into the public trust exceed the value of the Queensway
23 Bay parcels by over a half a million dollars. The
24 Commission staff was also concerned, of course, about
25 potential toxic contamination of the river parcels. This

1 whole area has been urban for some period of time in, and
2 a variety uses have gone on. It's not in the best
3 interests of the State to accept these parcels in the
4 State ownership and just in terms of the liability.

5 A level one toxic review was conducted and did
6 not generally uncover potential contamination. One area
7 was mentioned as a former site of a gas station and that's
8 kind of down in the southern portion here of the shoreline
9 drive parcel.

10 This area was excluded from the exchange, so that
11 we wouldn't have to worry about that. In addition, the
12 terms of the exchange agreement require that the City will
13 indemnify the State for any contamination that is later
14 uncovered.

15 In conclusion, we believe this exchange is a good
16 deal for the State and a good deal for the State's public.
17 It lifts the trusts from long, vacant unused lands that
18 have been isolated from the water. It attaches the trust
19 to parcels along and near the Los Angeles River. These
20 parcels have public trust value and a potential for
21 contributing to the regional State and national effort to
22 restore the LA River.

23 They exceed the monetary value of the Queensway
24 Bay sites, where the trust will be lifted. However, I
25 should know note that as presently constituted, this

1 agreement would not go forward if the developer backed
2 out. However, this in any event this would be a good
3 exchange for the State.

4 As an ancillary matter, I need to also point out
5 that we're aware that the Commissioners at the last
6 meeting expressed an interest in promoting the Los
7 Cerritos wetlands acquisition and restoration. The City
8 has submitted by letter to assisting that effort in
9 whatever way possible.

10 A picture of that wetlands, by the way, is shown
11 right here. Some of that area is pretty good wetlands
12 right now, but a big area is still in oil production and
13 will take significant restoration to perform as good
14 wetlands, again.

15 We've also discussed with the Wildlife
16 Conservation Board the State agency that's taking the lead
17 on this project, the Los Cerritos project, of contributing
18 the \$605,000 that's presently in the Cap Wealth Fund which
19 was placed there as a result of a land exchange in Long
20 Beach, previously approved by the Commission.

21 We've received a memo from the Conservancy's
22 Board Executive Director welcoming our participation and
23 we will bring this allocation of funds to the Commission
24 for approval at a later meeting.

25 This concludes our staff presentation. We

1 recommend the Commission approve the motion discussed in
2 the back of the staff report. I'd be happy to answer any
3 questions we also have with us today the appraiser that
4 worked on this project particular questions about that.
5 And Curtis Fossum, the attorney, worked on the legal side
6 of it here as well.

7 CHAIRPERSON BUSTAMANTE: Thank you, Paul. I know
8 that in the initial presentation of this, I was very
9 concerned about whether or not we could meet the public
10 trust in moving something forward. And I know that in
11 trying to configure this, this deal that there had to be
12 some methods so that the public trust would be benefited
13 in a major way.

14 If I'm hearing you right, based on the previous
15 information on the public trust, that the City of Long
16 Beach moves forward on a project that because it is
17 operating within the parameters of the public trust,
18 that's the first thing.

19 The second thing is that it was voted upon on a 6
20 to 1 vote by the council there. And it is bringing to us
21 a project in which we were looking to enhance the public
22 trust in a swap of a very small piece of property that we
23 believe would diminish from the kind of project that was
24 being suggested.

25 And therefore, we had properties that were

1 diminished, although they were in the public trust, they
2 were diminished and we were looking to enhance the public
3 trust in some type of a swap of some type. Meeting all
4 the requirements, you said that we have increased the
5 public trust, not only in terms of land size by three
6 times, also by a \$500,000 net asset value, as well as the
7 earmarking of \$605,000 specifically for the Los Cerritos
8 wetlands.

9 And my understanding is that that last piece the
10 audubon society has expressed support for that portion of
11 this activity; is that correct?

12 EXECUTIVE OFFICER THAYER: I understand that
13 they're very interested in the Los Cerritos project going
14 forward.

15 CHAIRPERSON BUSTAMANTE: I believe we have a
16 letter on file.

17 And what we are trying to ensure is that we are
18 not setting a precedent with regard to a public trust
19 doctrine by just swapping out land whenever it is
20 convenient, but that in this particular case, it made some
21 real sense in trying to ensure that the public trust along
22 with the appraisal that you completed, that diminished the
23 property value by just over a million dollars in order to
24 be able to get public access. All of those factors, along
25 with the potential pollution of those areas were all taken

1 into account on this particular property.

2 EXECUTIVE OFFICER THAYER: That's correct. We
3 have done -- this is not a precedent. We've done these
4 exchanges in other circumstances. The Commission may
5 recall that we did one in San Diego involving a BF
6 Goodrich property. And doing it created an opportunity
7 for the Port with a larger parcel, a more concise parcel
8 to enhance public trust uses there.

9 We're likely to do it in the future. It's
10 something that the Commission does, I'd say, once or twice
11 a year on average. We, of course, have to look for
12 opportunities like this where they present themselves,
13 because this land is controlled by the local government.
14 Even though, we feel that a swap like this is in the best
15 public interest, we can't do it unilaterally unless the
16 City has something like a development proposal as this
17 one, where we have the opportunity to lift the trust in
18 exchange for better public trust value.

19 CHAIRPERSON BUSTAMANTE: Now, in the event that
20 the City and the developer does not move forward on their
21 project, does that then mean the \$605,000 would not go
22 toward the mitigation?

23 EXECUTIVE OFFICER THAYER: That's within the
24 discretion of the Chair -- or, excuse me, within the
25 discretion of the Commission to decide how to spend that

1 money. And, of course, we could spend it in Los Cerritos
2 should it choose to do so.

3 CHAIRPERSON BUSTAMANTE: Okay. What about the
4 exchange of the property?

5 EXECUTIVE OFFICER THAYER: The exchange of
6 property, again, it's up to the Commission as to how we
7 want to structure this. The discussions with the City so
8 far have been along the lines that if this development
9 does not go forward, then the exchange will not occur.

10 However, it's within the discretion of the
11 Commission to require a more absolute agreement, such that
12 if the Commission believes that this is a good deal for
13 the public trust and for the State of California, it could
14 approve this with a requirement that there be a binding
15 agreement on both the City and the Commission.

16 CHAIRPERSON BUSTAMANTE: What would be the reason
17 not to do that, I mean, from our perspective?

18 EXECUTIVE OFFICER THAYER: The only reason might
19 be that once -- if a different developer comes in with
20 different plans, we may need to do an additional exchange.
21 However, if we're able to obtain terms similar to this
22 one, that wouldn't be bad for the State either, in that
23 this particular agreement has been set up in a way that it
24 does not rely on this development to make --

25 CHAIRPERSON BUSTAMANTE: Well, \$605,000, I think,

1 you know, has to come under the jurisdiction of the
2 Commission. It is under the jurisdiction of the
3 Commission.

4 EXECUTIVE OFFICER THAYER: Yes.

5 CHAIRPERSON BUSTAMANTE: Why don't we hear
6 from -- unless there's questions by members?

7 ACTING COMMISSIONER PORINI: At some point, I
8 would like to hear the appraiser walk through that
9 process.

10 CHAIRPERSON BUSTAMANTE: Do you want to do that
11 now?

12 ACTING COMMISSIONER PORINI: Sure.

13 MR. PORTER: Good afternoon. Jim Porter. I'm a
14 staff appraiser with the Lands Commission.

15 CHAIRPERSON BUSTAMANTE: We're requesting a quick
16 run through.

17 MR. PORTER: Sure. I was asked to provide an
18 appraisal of the fee simple value of the market value of
19 the property in question.

20 I did that by applying traditional appraisal
21 methods on the sales comparison approach. I went out and
22 searched for market data of recent sales transactions of
23 similar properties in the market area. I made a
24 determination of the highest and best use. And after
25 assembling all my market data, looked at the range of

1 values, I selected the best available comparable property
2 for each property in question, and concluded an estimate
3 of value.

4 And that's kind of the quick and easy answer for
5 you. If you'd like something more specific.

6 CHAIRPERSON BUSTAMANTE: Do you want more detail?

7 ACTING COMMISSIONER PORINI: No, I think that's
8 fine. Thank you.

9 CHAIRPERSON BUSTAMANTE: We'll start with the
10 speakers. Again, we need to limit ourselves in order to
11 be able to allow everybody to be able to speak on this
12 issue. Ann Cantrell, Rod Chisessi and Lester Denevan.
13 Please, all three come up. You can speak one after the
14 other.

15 MS. CANTRELL: Good morning. Ann Cantrell. And
16 I'd like to address your attention to Exhibit A, which is
17 also up here. Parcel 1 and 2, which has been referred to
18 as Los Angeles River property is what I refer to as the
19 freeway median property, because the freeway off ramps and
20 on-ramps run on each side of this.

21 There is no public access to this land. That was
22 why in the appraiser's evaluation they subtracted
23 \$1,305,000 from the value of it.

24 In talking to Mr. Thayer, I was told, well, the
25 City could put in a bridge across or the freeway could be

1 moved. I'll pause for laughter here.

2 A letter from our city engineer, Mr. Shikata,
3 indicates that neither one of those options could be done
4 for a million dollars, and he suggested putting in a
5 signal here so that people could cross across the freeway
6 and get to this land, which is being referred to as part
7 of Cesar Chavez Park.

8 It has been included as part of Cesar Chavez Park
9 in the City recreation rage, but there has not been any
10 access to it. There is still not going to be any access
11 to it. To have any value for recreation and access for
12 the public of California to get there, I think you should
13 wait until there is some access before considering this as
14 a swap.

15 The portion immediately to the north of that,
16 which is wetlands, possibly, this is not going to be
17 wetlands, because there's no access to water, but the one
18 north of that can be perhaps restored wetlands. We're
19 getting a study done to see if it can be wetlands. Both
20 of these areas are already city owned property. We can
21 already make them public park or wetlands, assuming, of
22 course, that the little strip along that wetlands, which
23 belongs to the railroad, which keeps access to the water,
24 from happening, if we get the land from the railroad, then
25 perhaps we can restore this wetlands.

1 I'd also like to address the Queensway Bay parcel
2 north of Shoreline. You'll notice that there in red on
3 your map, Exhibit A, are the only portions of this 14
4 acres that are going to be swapped. The reason for that
5 swap was because those are where they want to put
6 nonpublic trust uses, the movie theatre, the day spa, et
7 cetera.

8 If this is indeed worthless land, no longer
9 tidelands, no longer tidelands use, then the whole 14
10 acres is not tidelands or usable tidelands, and you should
11 be swapping the whole 14 acres not spot zoning this.

12 Today Mr. Stevens said that the buck stops here
13 at the State Lands Commission. You shouldn't wait till
14 the Legislature decides whether this should go through or
15 not. This is your determination. And you were concerned
16 in April about this being a precedent setting issue. This
17 is going to make it even more precedent setting. If you
18 allow a swap like this in Long Beach, every city up and
19 down the coast that wants to put some nonpublic trust --
20 some nonpublic trust use to their tidelands will look for
21 a land swap.

22 Thank you.

23 CHAIRPERSON BUSTAMANTE: Thank you.

24 COMMISSIONER CONNELL: Can I ask a question as
25 he's moving forward. Let's review again how we're going

1 to get access to this site.

2 EXECUTIVE OFFICER THAYER: This site may very
3 well require -- we expect it to require some kind of
4 improvement for access to the are, a pedestrian bridge,
5 another off lane along north or southbound Shoreline
6 Drive, but that's why we diminished the value of it.

7 COMMISSIONER CONNELL: Yeah. Well, where are we
8 going to get the money to grant the access. I'd hate to
9 own property that no one can get access to.

10 EXECUTIVE OFFICER THAYER: It would be up to the
11 City at that point to decide whether or not they wanted to
12 improve it. Just as it is right now, they have this piece
13 of land, which they're not using for public use. It's
14 landscape only. But again in terms of it's value to the
15 public trust, we diminished it to reflect the cost of
16 those improvements, so that we're not giving the total
17 market value in recognition of this property.

18 COMMISSIONER CONNELL: So this then has shifted
19 from our responsibility to theirs, is what you're saying?

20 EXECUTIVE OFFICER THAYER: Well, it's like any
21 other piece of tidelands where it's up to the local
22 government to decide the best way to improve it. And it
23 would be up to the City to decide how they wanted to make
24 the improvements to use this. In the same way that the
25 other tidelands --

1 COMMISSIONER CONNELL: What would it most
2 naturally be used for?

3 EXECUTIVE OFFICER THAYER: It could be used for a
4 park with that Shoreline connection. Actually, the
5 existing Cesar Chavez Park runs along one of those
6 northbound lanes. And what they've done is they've put a
7 small berm in there, and a bridge -- not a bridge, and a
8 fence to prevent safety problems with users of Cesar
9 Chavez. They probably have to do the same thing with this
10 strip here.

11 COMMISSIONER CONNELL: Thank you.

12 MR. CHISESSI: Lieutenant Governor and Members of
13 the Commissioner my name is Rod Chisessi. I represent the
14 developer who is working on the commercial portion of
15 Queensway Bay.

16 I want to speak just to one point there. A
17 discussion came up a moment ago about whether or not this
18 item would be escrowed, if you will, pending the
19 developer's completion of the project. So I wanted you to
20 be able to hear from the developer and tell you where we
21 are in terms of moving forward with this project. We've
22 been working with the City here now for about three years
23 on this project, and we've master planned the commercial
24 project that's in keeping with the City's master plan for
25 this particular portion of the overall Queensway Bay

1 project.

2 We are, in terms of planning, we have selected
3 our contractor. We have drawn working drawings with our
4 architect, which are now probably 80 percent of those
5 plans have been in the City for quite some time being plan
6 checked. I'm coming up on needing only five percent,
7 20,000 square feet to meet my preleasing requirements to
8 secure my financing both my equity and my debt.

9 And I assure you that with your assistance today,
10 that we will be probably moving forward with this project
11 sometime in December. In fact, I think we'll take a
12 precursor step here later on this month to move a major
13 sewer line that's currently on the site over where it
14 needs to be in the street right of way, that will allow us
15 to even further accelerate the project.

16 So we're poised and ready to go. I just wanted
17 to give you that assurance, if you had any question about
18 the developer's efforts.

19 CHAIRPERSON BUSTAMANTE: Okay, thank you.

20 MR. CHISESSI: Thank you very much.

21 CHAIRPERSON BUSTAMANTE: Mr. Denevan.

22 MR. DENEVAN: Lester Denevan, resident of Long
23 Beach. You might recall at your meeting of April 24th
24 this year that the Coastal -- or the Lands Commission
25 staff stated that there was no public investment in this

1 project. However, in 1964 the Lands Commission approved
2 \$10 million to create this site, that's 113 acres. The
3 \$10 million perhaps would be worth \$50 million today.

4 So the plan was approved and there were
5 conditions attached by the Lands Commission, quote, "To be
6 subject to the conditions, however, that the work
7 conformed to essential details to the plans and background
8 material heretofore submitted."

9 I refer you to Minute Item number 27 of October
10 22, 1964. I've passed this around. I believe you have
11 copies of my letter. There's a map. There's a photograph
12 and there is also a copy of the minutes of the Lands
13 Commission meeting of 1964.

14 Now, the Lands Commission has jurisdiction over
15 this project, but not only that, the Lands Commission has
16 conditions which are attached, and it is your
17 responsibility to see that those conditions are carried
18 out.

19 So I want the staff to reply to this question of,
20 and the Commission itself, do you have authority to
21 enforce your own conditions.

22 Going on, very gratefully, to the matter of the
23 change in the plans, since 1995, at which time there was
24 an Environmental Impact Report, that the plan has changed
25 in substantial ways.

1 For example, the lot coverage has been increased,
2 the events park was to have had 12 acres; if you go out
3 there, you'll find four acres; Shoreline Park, the EIR
4 called for 36 acres they've provided 23 acres. So the
5 Lands Commission should be looking at this entire project
6 Today requested of maybe three parcels, you should be
7 looking at the entire project in total context.

8 So what I'm recommended is that you defer this
9 project until the City can prepare a new EIR, until the
10 City can present a plan to you of the total project and
11 the total plan, so you can see everything in context.

12 And then I think that we deserve to abide by the
13 CEQA, the California Environmental Quality Act. I have a
14 list of 18 major changes in the project and I can
15 authenticate all my statements. I'll leave this for your
16 staff and members of the Commission, please.

17 Thank you.

18 CHAIRPERSON BUSTAMANTE: Thank you.

19 Richard Dungell, Christopher Johnson.

20 MR. JOHNSON: I'm Christopher Johnson I'm
21 waiving my time.

22 MR. DUNGELL: Mr. Chairman, this is Rick Dungell.
23 We represent the legal counsel to the developer. And in
24 the interests of moving things along we will pass along
25 our time to the City of Long Beach. However, we'd reserve

1 a small portion of our time if needed at the end.

2 Thank you.

3 CHAIRPERSON BUSTAMANTE: Thank you.

4 Norm Ryan.

5 MR. RYAN: Lieutenant Governor, Commission
6 Members, staff and audience, my name is Norm Ryan. I'm a
7 resident of Long Beach. I also make my living in the
8 public finance sector. I got a really nifty degree from
9 UCLA.

10 COMMISSIONER CONNELL: We all appreciate that as
11 alumni.

12 (Laughter.)

13 MR. RYAN: I just want to sort of warn you that
14 if you affect any promises and those promises have been
15 made, part and parcel to any assessment of the land that
16 you're about to get or the land that you're about to give
17 away, the City, as a resident, has made tons of promises
18 to us and has no problem with breaking them.

19 To you, they'll take a different form. They will
20 most likely say gosh, you know, funds are scarce and we
21 really had planned on doing this, but you know how it is.
22 This is what you can expect.

23 If you go forward and accept this swap, I would
24 think that you, you know, maybe aiding and abetting fraud
25 is a strong word, so maybe aiding and abetting pretend, is

1 pretend that the aquarium and this project, as you said,
2 they were complementary, will create the synergy that will
3 attract 90 million people to that facility.

4 It is pretend to stand in the middle of a median
5 and say well, this is worth the oceanview property that
6 we're about to swap out. From a resident of Long Beach,
7 it's almost pretend to say that that some of the property
8 won't be expanded for freeway usage or port usage, won't,
9 in fact, happen and you have traded out a recreational
10 plan for basically industrial purposes.

11 The appraisal seems to me the ultimate pretend.
12 We have had to scratch and beg for every piece of
13 information that we've gotten. I've had to rely on the
14 appraisals done RP Lauren and Associates for the City.
15 And if there are other appraisals that were going on, it
16 would have been nice if the public could have had that so
17 that could be part of our argument and our testimony to
18 you.

19 But if the staff is concurring with RP Lauren and
20 Associates appraisal, then I love the way that they arrive
21 at the \$16 million figure.

22 CHAIRPERSON BUSTAMANTE: Of course, since you
23 asked that question is staff agreeing with the appraisal?

24 EXECUTIVE OFFICER THAYER: Absolutely not. And
25 our staff appraisal came up with different figures,

1 particularly for the Queensway Bay parcel, and valued it
2 more highly than the City did. As a result of the surplus
3 that we've identified, over half a million dollars, it's
4 less than a surplus that the City came up with. So we, in
5 essence, sharpened our pencils and decided that the values
6 were not what the City had represented.

7 MR. RYAN: It is unfortunate that the we were not
8 allowed to scrutinize that as we were the City's report.
9 And I'd love to, to be able to find out how, for instance,
10 if they have done -- if they used the same residual value
11 formulas that this appraiser used in figuring \$175 per
12 square foot. And then said well, this is what it costs,
13 that should build it, plus the profit margin. What's left
14 must be, you know, the \$16 million value for whatever 15,
15 or 20 or whatever you came up with.

16 I would suggest and make a recommendation to you
17 that the best way of doing the comp on this property is to
18 look at the adjacent piece of property that the City is
19 already trying to bond. There's currently a \$43 million
20 bond of authorization for the 75,000 square feet. Now, if
21 you use the same formulation that these people did, on
22 residual value, you come up with \$586 per square, so --
23 yeah, about \$570 a square foot.

24 But now the documents say a substantial portion
25 of that money will be used for that. Okay, let's say it's

1 half. That still comes up to \$286 a square foot as
2 opposed to the \$175 that they started out with.

3 You know, clearly a substantial increase over 16
4 million. In this case, put it somewhere in the
5 neighborhood of 24 or 25. I don't know if your appraisal
6 concurs with that number, but I'm just simply giving an
7 alternate method, using the City's same logic.

8 I am strongly opposed to this project. The
9 biggest promise to us that would not use one dime of
10 taxpayer dollars, and now we are committed to a million
11 and a half a year, for what I consider to be a fiasco. I
12 live in Long Beach. I'm almost getting used to the
13 fiascoes. And if this going to be your first one,
14 welcome.

15 CHAIRPERSON BUSTAMANTE: Any comments?

16 COMMISSIONER CONNELL: I have a couple questions
17 here. This land raises the issue again of the appraisal.
18 And the appraisal techniques. Is there a reason why we
19 didn't do residual value and why we did the alternative
20 approach that we did on the appraisal?

21 EXECUTIVE OFFICER THAYER: Let me ask Jim Porter
22 to respond to that.

23 MR. PORTER: First of all, the property in
24 question is a vacant parcel. And under it's highest and
25 best use, it could be used for a number of different

1 possible developments. I felt that the sales comparison
2 approach using other sales of vacant land was preferable
3 in this case. And actually most of my valuation was based
4 on the sale of a parcel a block away that sold for under
5 \$20 a foot just in 1999.

6 COMMISSIONER CONNELL: But that had access.

7 MR. PORTER: No, I thought we were talking about
8 the Queensway Bay Project.

9 COMMISSIONER CONNELL: No, I'm talking about
10 ours.

11 MR. PORTER: Then, in that case I have no idea.

12 EXECUTIVE OFFICER THAYER: Well, just explain the
13 process you used for evaluating the --

14 COMMISSIONER CONNELL: Didn't you just tell us
15 you valued the Los Angeles River parcel?

16 MR. PORTER: Yes, using a sales comparison
17 approach, looking at other sales of vacant land similar
18 zoning and similar past use.

19 COMMISSIONER CONNELL: Yes. But the point is
20 they had access.

21 MR. PORTER: In this case, actually, it turned
22 out we, I think, Mr. Thayer mentioned we were getting a
23 lot of information as this process was going along and a
24 lot of things came in during the end of the project. And
25 it turns out that we do actually have access to along the

1 southern part of the median property for quite a distance
2 there on the part --

3 COMMISSIONER CONNELL: Can you show us exactly
4 where this access is existing because we're getting
5 contradictory statements here.

6 MR. PORTER: This parcel right here from
7 approximately 3rd Street down has the ability to have
8 access, public access now. This is a city owned property,
9 and there are no restrictions along there to the best of
10 my knowledge.

11 COMMISSIONER CONNELL: You mean, it has the
12 ability, does that mean that there's a barrier there?

13 MR. PORTER: Well, there's a curb but there's no
14 deeded restrictions, so there's no reason why there
15 couldn't be a legal access there. That's my
16 understanding.

17 EXECUTIVE OFFICER THAYER: Whereas there are
18 CalTrans restrictions for access from the other portions
19 of the north and south Shoreline Drive right?

20 MR. PORTER: Well, I think CalTrans' authority
21 stop here at the bridge, but I believe that there are
22 deeded restrictions along this way.

23 COMMISSIONER CONNELL: Does the freeway -- can
24 you use your pointer to show us where the freeway travel
25 is, where does the free way go?

1 MR. PORTER: It comes down here down the bridge
2 and the southbound runs right along there. This is the
3 northbound lane here.

4 SENIOR STAFF COUNSEL FOSSUM: This is southbound.

5 COMMISSIONER CONNELL: So is this the property
6 completely surrounded by freeways?

7 MR. PORTER: Well, both of those are limited
8 access multi-lane thoroughfares.

9 COMMISSIONER CONNELL: Well, I guess my question
10 here is, if I may approach the map here, this property
11 here has a freeway going down here. Does it have a
12 freeway also that goes all the way down here or does it
13 end?

14 MR. PORTER: It's a ramp that goes over it.

15 SENIOR STAFF COUNSEL FOSSUM: These ramps are the
16 onramps these are the offramps of the freeway.

17 COMMISSIONER CONNELL: Right. And this onramp
18 here how high up is that onramp.

19 MR. PORTER: It's at street grade there. It does
20 start to change as moves down.

21 SENIOR STAFF COUNSEL FOSSUM: It elevates up in
22 this area and this one comes down here.

23 COMMISSIONER CONNELL: So how are we getting
24 access to our property?

25 SENIOR STAFF COUNSEL FOSSUM: There is legal

1 access.

2 MR. PORTER: There is legal access right along
3 that street.

4 COMMISSIONER CONNELL: Well, I understand
5 legally. I'm trying to figure out structurally how does
6 somebody walk from wherever in the community to our
7 property.

8 EXECUTIVE OFFICER THAYER: There would be two
9 ways to do it, one what be to build an offramp is the
10 wrong word, but really a turning lane, because you can
11 stands at Cesar Chavez park, which you can see --

12 SENIOR STAFF COUNSEL FOSSUM: This is from here
13 to here.

14 EXECUTIVE OFFICER THAYER: -- right there, and
15 you can right across the lanes there, the two lanes, and
16 see into this divider, so there's no geographic separation
17 in elevation.

18 COMMISSIONER CONNELL: No, I'm asking the
19 question. I'm a pedestrian --

20 SENIOR STAFF COUNSEL FOSSUM: Right now you
21 can't.

22 COMMISSIONER CONNELL: -- and I am standing here
23 or here, how do I get across to this land?

24 EXECUTIVE OFFICER THAYER: You cannot get across
25 it now. The only way to get across is to either build the

1 pedestrian bridge, which we're talking about, which is why
2 the \$1.3 million reduction was made or to construct -- to
3 drive there and construct an offramp -- not an offramp but
4 a turning lane on the northbound -- no, the other one on
5 the other side.

6 SENIOR STAFF COUNSEL FOSSUM: Well, vehicles can
7 turn in there right now. There is probably a non legal
8 city -- probably city vehicles go out and maintain this
9 area come in and drive in this way right here.

10 EXECUTIVE OFFICER THAYER: But all of these would
11 have to be improved before the public could use that
12 property.

13 COMMISSIONER CONNELL: But if we to use say a
14 soccer field or little league field or Pop Warner fields
15 or whatever we would tend to use this for, which obviously
16 we have needs for all of these things in a growing urban
17 area or whatever else might be used, my question is how do
18 people safely access the site and where do they park, you
19 know -- I mean there's no point in our getting land that
20 we cannot use ever. I'm trying to answer this question in
21 my own mind today.

22 EXECUTIVE OFFICER THAYER: Yes.

23 CHAIRPERSON BUSTAMANTE: Well, there is access
24 but there is no improvements?

25 EXECUTIVE OFFICER THAYER: That's correct.

1 There's legal access, but there aren't any improvements,
2 that the Controller has identified, would be necessary for
3 intensive public use here, absolutely. And that's why we
4 made the deduction on the valuation.

5 COMMISSIONER CONNELL: So we have legal access,
6 but that doesn't help me as a citizen of Long Beach or as
7 a potential user of the site. I mean, I'm not looking at
8 a piece of paper. I'm trying to get over to that piece of
9 land, I need to know how I do that.

10 Now, we've had this situation in southern
11 California, and explaining the Bologna Wetlands, so I'm
12 particularly attuned to this issue. And if there is a
13 barrier that exists there now, then we need to surmount
14 that barrier or we have to channel underneath it or we
15 have to do something to get people to use that site
16 eventually.

17 EXECUTIVE OFFICER THAYER: Absolutely.

18 COMMISSIONER CONNELL: You know, I know am
19 supportive of what Long Beach, as a city wants to do, but
20 on the other hand, I do not wish to accept, as a trade
21 property that we cannot get to. So I need to have an
22 understanding today that we are going to be accepting a
23 piece of property that accessed, not legally, but
24 physically. And I need to have a sense of what it costs
25 to access that side and who's going to pay for that.

1 I mean, we're in the middle of a phenomenal
2 retrenchment of our financial resources here at the State.
3 And I am very concerned that we not think that we are
4 going to step forward and do this, because as I'm sure
5 Annette will tell you, we are watching every one of our
6 financial resources for very carefully at this point.

7 So I would like to have this site used soon. I
8 mean if we're going to take is an exchange for the other
9 property, then we should have some way of either giving it
10 to a nonprofit group or a public trust or someone and they
11 need to be able to know what the cost will be of accessing
12 it.

13 So that's the question that I'm asking, where is
14 it likely to gain access -- well, if you're talking about
15 a pedestrian bridge then where do those people park? I
16 mean, they have to park somewhere if they're leaving their
17 cars on the other side to get over the pedestrian bridge
18 and then that limits the use.

19 I mean, a pedestrian bridge as we found out in
20 the Bologna wetlands, which we found out recently in Santa
21 Monica, limits the use of the land on the other side,
22 because, you know, you can't bring certain things over
23 with you.

24 CHAIRPERSON BUSTAMANTE: Is there soccer fields
25 or baseball fields or anything on the property Queensway

1 Bay Project?

2 EXECUTIVE OFFICER THAYER: No. They are
3 undeveloped at this point. They're very analogous to, you
4 know, the bare naked public trust lands that are conveyed
5 to local entities, and then it's up to those entities to
6 plan and construct these improvements. There would
7 probably have to be restrooms in the long run put into
8 this strip. There are a variety of things that would need
9 to be done.

10 COMMISSIONER CONNELL: Have you talked to well, I
11 guess, the City of Long Beach Mayor can address this, you
12 know, about their willingness to make a commitment of some
13 kind of resources so that we can get this developed?

14 EXECUTIVE OFFICER THAYER: We have not talked to
15 them, because again the ultimate plan for this would have
16 to be develop, once it's public trust lands. There are
17 also State resources that the southern California Wetlands
18 Restoration Project has made grants of, I think, about \$2
19 million for restoration acquisition, a little bit further
20 to the north here. The City has already obtained, I think
21 it's \$300,000 for the wetlands study that is referred to
22 by one of the other previous witnesses.

23 There are a variety of resources that could be
24 brought into play, much as they are for Los Cerritos right
25 now, where, again --

1 COMMISSIONER CONNELL: Well, when we get there,
2 I'm sure they're going to be talking. I am concerned that
3 we not have a gift of -- or an exchange of land here that
4 whoever sits on this Commission five years from now is
5 confronted with the fact that it hasn't -- we still don't
6 have access, and it's still not being used.

7 I mean, it's imperative we to use this -- I used
8 the soccer and little league and football analogies
9 largely because there's such a limited amount of space in
10 any community for those. But a wetlands is another use.
11 I mean I'm not trying to define what the use is. It's not
12 my role to do that. But I am concerned that we have some
13 advocacy here from the Board about a timetable for making
14 this site available for public use.

15 CHAIRPERSON BUSTAMANTE: Why don't we bring the
16 City up. Mayor, why don't you and then Deputy City
17 Attorney or whoever you believe will help.

18 LONG BEACH MAYOR O'NEILL: May I make my
19 presentation and then the City Manager and then we can
20 answer some of the questions that have been raised.

21 CHAIRPERSON BUSTAMANTE: Sure.

22 LONG BEACH MAYOR O'NEILL: Lieutenant Governor,
23 Commissioners, thank you very much for the opportunity to
24 appear before you again on this issue. After the last
25 State Lands meeting -- I'm Beverly O'Neill, Mayor of the

1 City of Long Beach.

2 After the State Lands meeting on April 24th, some
3 of the Commissioners expressed concern about some of the
4 uses proposed for Queensway Bay Project. The City Manager
5 and I met with Lieutenant Governor Bustamante to get some
6 guidance on the objectives of the City and how the
7 concerns of the Commissioners might be reconciled.

8 We received valuable direction and the Lieutenant
9 Governor was very helpful in arranging a follow-up session
10 with his staff and that of the Commission staff.

11 There has been a long and complex negotiating
12 process since that time. However, the fact is that our
13 two staffs were able to come up with a final agreement on
14 the terms of this transaction. And I must say we're very
15 grateful to Paul Thayer and his staff who have worked long
16 and diligently to get us to this point and I know that the
17 Long Beach project has been very time consuming.

18 I was also happen to note that the Commission's
19 own staff report provides a historical background when in
20 1992 the City started a major citizens planning process to
21 create the Queensway Bay Development Plan. At that time,
22 the Mayor and the City Council appointed 23 citizens as
23 representatives from all areas of the City to work on this
24 development plan.

25 Your staff report goes on to describe a planning

1 effort that from my experience was the most sustained and
2 broad based an inclusive of any development proposal that
3 we have formulated in the City of Long Beach.

4 Today's elements of the Queensway Bay Plan
5 development are fully consistent with the objectives of
6 that plan approved in 1994. After a series of delays, we
7 were advised last week that the developer is scheduling a
8 groundbreaking on this long overdue project. Your
9 authorization of this exchange will effectively remove the
10 last remaining impediment to long awaited groundbreaking
11 and I request your support of this transaction.

12 And I'd like to just end by saying we work with
13 the State Lands Commission on many issues. Because we are
14 a coastal city, we have a very active California port, and
15 we have Department of Oil properties.

16 And so I value highly the cordial and productive
17 working relationship that the City has enjoyed with this
18 Commission and staff during my time of office. And I
19 believe that the action before you provides testimony to
20 the strength of that relationship.

21 And I do appreciate your stewardship in being
22 thorough in making sure that we have followed all of the
23 requirements required by the State Lands Commission.
24 There have been many issues brought up and questions about
25 access, and I think they are included in the City

1 Manager's report, and then we would like to have any
2 questions that you might have.

3 LONG BEACH CITY MANAGER TABOADA: March Chairman,
4 Lieutenant Governor, Members of the Commission Henry
5 Toboada. I'm the City's City Manager. And I'll forego my
6 presentation, because I think that the issues before us
7 are of more importance than simply restating what was
8 already on the record.

9 I thought, though, that the staff report on the
10 public trust doctrine was very instructive for all of us,
11 and I commend your leadership in bringing that forward,
12 because I think that ambiguity needs to be dealt with and
13 we certainly will value that doctrine as a guideline for
14 us in the future.

15 With regard to access, it is an important issue
16 and it's one that we've struggled with as a city with how
17 we would utilize that particular park land effectively.
18 And when we were planning Cesar Chavez park that was one
19 of the issues that we were confronted with.

20 And while it is, in fact, as you will note, the
21 means to which access to the 710 freeway. The 710 freeway
22 doesn't start till right there. That's where the State's
23 freeway system terminates.

24 Everything here along both sides of Cesar Chavez
25 Park is really city owned streets that can be signalized,

1 if necessary, for providing access. We don't think that's
2 the superior option, but it's one that we can certainly
3 take a look at.

4 Also, when we were planning Queensway Bay and the
5 aquarium project, for instance, we noticed that if you
6 passed by this that you wouldn't be able to get back on
7 and turn around until you were up the Pacific Coast
8 Highway. We built right here a turnaround, right here,
9 just south of the parcel in question and we can examine
10 that. And there is access, believe it or not, underneath
11 here to that particular parcel, if we could, you know,
12 when we get ready to start to develop that.

13 With regard to the City Engineer and our Public
14 Works Director's report on what it would cost to provide
15 access with an overpass or something of that sort, and
16 that a million dollars was not a feasible number, that was
17 with regard to the automobile traffic not pedestrian
18 and/or bike trails.

19 As your staff will advise you, this land here,
20 because of its new State trust designation, will really be
21 limited in use as to what type of recreation will be
22 available there. And things like Little League and soccer
23 fields and volley ball courts and those kind of things are
24 not right now considered acceptable uses on that parcel.

25 The uses that are deemed to be acceptable by your

1 staff on that parcel are things like picnic benches, bike
2 trails and paths Of recreation uses.

3 Commissioner Connell brings up a good point about
4 where people would park. With a pedestrian overpass from
5 Cesar Chavez across to there, with a bike trail that would
6 connect along the bike trail system long the LA River,
7 certainly that would be one way to access that parcel for
8 passive recreation.

9 There is also sufficient parking at Chavez's Park
10 and it's just a short walk across an overhead and an
11 overpass could be constructed.

12 With regard to the City's commitment to that
13 structure, we have always contemplated that that parcel of
14 land that is now basically bound by what we call city
15 streets, that we would have to deal with that. And so as
16 I suggested either with the turnaround or the use of a
17 pedestrian bike trail bridge, which we would fund, not at
18 the State's obligation, but certainly as the city's
19 obligation as part of our capital program, we commit to
20 you that that is, in fact, part of our workplan and that
21 we would commit to do that in a reasonable time period.

22 I stand ready to answer any other questions that
23 you may have about this project.

24 COMMISSIONER CONNELL: Yes. I have a number of
25 questions. First, I'd like to go back to the comment of

1 the uses and the restraint on the uses. Paul, can you
2 comment on that.

3 EXECUTIVE OFFICER THAYER: Yes. This is the
4 boundary between different recreational uses that I
5 discussed earlier with respect to what's allowed on public
6 trust lands and what's not. And, basically, this revolves
7 around the principle that public trust lands are supposed
8 to be used for greater than local import, so they provide
9 visitor serving facilities or the types of facilities that
10 would be used by people coming from other parts of the
11 State or other parts of the region.

12 So there is some problem with having recreational
13 facilities that serves strictly a municipal use. They're
14 not considered to be the same as a municipal park. This
15 has broader implications. And so the exact uses usually
16 require a lot of discussion and makes changes from place
17 to place, but that's the issues.

18 COMMISSIONER CONNELL: By why would anyone want
19 to sit there and have a picnic. What is the view from
20 that location?

21 MS. CANTRELL: The freeway.

22 COMMISSIONER CONNELL: Pardon me?

23 MS. CANTRELL: The freeway.

24 LONG BEACH CITY MANAGER TOBOADA: Commissioner
25 again, I state that while it may look like a freeway,

1 there wasn't --

2 (Laughter.)

3 LONG BEACH CITY MANAGER TOBOADA: I'll excuse my
4 colleagues from Long Beach. There was a real
5 consideration right here as to how people would access
6 onto the two sides of the park that are now divided by a
7 street that becomes an onramp up here to the 710 Freeway.

8 We constructed a signal and we now have a
9 signalized intersection that connects this part of the
10 park with this part of the park. So it is something that
11 is not the most ideal situation, but it's one that works
12 well, both sides of the park are equally used and people
13 travel back and forth safely from one end to the other.

14 We envision that this would be the third part of
15 the park that would be similarly configured, either
16 through a signalized intersection, through an overpass,
17 even a tunnel, perhaps, that's another issue -- aspect
18 that we haven't considered or, as I pointed out, before a
19 turnaround like we have here, could be constructed up here
20 as well.

21 COMMISSIONER CONNELL: Well, and I appreciate
22 that. There are really three issues in any land use
23 decision, the one is value, the other is access and the
24 third, of course, is use.

25 Now we've established value. Our appraiser has

1 done that for us.

2 LONG BEACH CITY MANAGER TOBOADA: And it's been
3 discounted for that condition.

4 COMMISSIONER CONNELL: Right. So we are now on
5 access and use. And it seems to me that we ought to hear
6 some sense of timing of the City's willingness to put
7 forth whatever you're going to do to grant access to the
8 site, whether it's a tunnel, as you've just expressed,
9 whether it's a bridge, whether it's signaling your local
10 streets. And, I mean, this is not -- you know, I'm really
11 not in a position to define what you may chose do that.
12 That's your local option.

13 My question is, are there resources, are they
14 identified clearly in your budget? If we were to go back
15 to Long Beach and hold a Commission meeting, would we find
16 that the residents of Long Beach feel that there has been
17 adequate consideration of eventually being able to
18 transform this property, which will now be available to
19 you for greater public use. That's my question.

20 LONG BEACH CITY MANAGER TOBOADA: It's part of
21 our planning for the overall development of the entire
22 area and we don't have specific capital projects to
23 develop much of it. We don't have specific funding to
24 acquire some of the property that we're looking to acquire
25 up in this area and along in here, but certainly that is

1 part of our workplan and something that we're committed to
2 as a city.

3 If you need that kind of guarantee, I can't give
4 you that, because I'm not empowered by my City Council to
5 do that. But certainly they have seriously looked at it
6 in the development of Cesar Chavez Park, that eventually
7 it would be a much larger facility than is currently there
8 now. And it would make no sense to leave this property
9 isolated and not part of the total complex.

10 CHAIRPERSON BUSTAMANTE: Could you describe for
11 the Commission what this property is now?

12 LONG BEACH CITY MANAGER TOBOADA: That particular
13 property?

14 CHAIRPERSON BUSTAMANTE: Queensway Bay Project
15 area. No, the Queensway Project.

16 LONG BEACH CITY MANAGER TOBOADA: The Queensway
17 Bay Project area right now is a parking lot, that is used
18 by the --

19 CHAIRPERSON BUSTAMANTE: Is it a grassy parking
20 lot, is it a dirt parking lot?

21 LONG BEACH CITY MANAGER TOBOADA: It is asphalt,
22 sir.

23 CHAIRPERSON BUSTAMANTE: It's an asphalt parking
24 lot.

25 LONG BEACH CITY MANAGER TOBOADA: That's correct.

1 CHAIRPERSON BUSTAMANTE: How many acres?

2 LONG BEACH CITY MANAGER TOBOADA: Approximately
3 14 acres at this location, and eight acres at this
4 location.

5 CHAIRPERSON BUSTAMANTE: So the area that we're
6 talking about on the other side of that large roadway --

7 LONG BEACH CITY MANAGER TOBOADA: Six lane
8 freeway.

9 CHAIRPERSON BUSTAMANTE: Well, it's a six-lane
10 road. And it's on the other side of the water area, is
11 the area that we're talking about?

12 LONG BEACH CITY MANAGER TOBOADA: That's correct,
13 sir.

14 CHAIRPERSON BUSTAMANTE: And this is a paved
15 parking lot.

16 LONG BEACH CITY MANAGER TOBOADA: That's correct.

17 CHAIRPERSON BUSTAMANTE: So if you were sitting
18 there, you would see that six-lane road?

19 LONG BEACH CITY MANAGER TOBOADA: And other
20 structures.

21 CHAIRPERSON BUSTAMANTE: Okay. So we're talking
22 about, you said, 14 acres?

23 LONG BEACH CITY MANAGER TOBOADA: I believe
24 that's the size of that parcel.

25 CHAIRPERSON BUSTAMANTE: So 14 acres of asphalt

1 parking, is what we're talking about, right?

2 LONG BEACH CITY MANAGER TOBOADA: That's correct.

3 CHAIRPERSON BUSTAMANTE: Any other questions?

4 COMMISSIONER CONNELL: So going back to the
5 budget. The budget has a capital budget. And your
6 municipal budget has a capital budget category, right?

7 LONG BEACH CITY MANAGER TOBOADA: That's correct.

8 COMMISSIONER CONNELL: And in that capital budget
9 category, you have road improvements, et cetera. Do you
10 have a Parks and Recreation component of the capital
11 budget that specifically says Cesar Chavez Park and
12 expansion at some point?

13 LONG BEACH CITY MANAGER TOBOADA: We have capital
14 projects for Cesar Chavez Park, yes, but not any that deal
15 with the issue that's being raised here today.

16 COMMISSIONER CONNELL: Thank you.

17 CHAIRPERSON BUSTAMANTE: Any questions?

18 ACTING COMMISSIONER PORINI: No.

19 CHAIRPERSON BUSTAMANTE: Okay, thank you. Please
20 be available for any other questions.

21 Diana, is this Marin?

22 MS. MANN: Mann.

23 Again, I'll try not be argumentative or cranky,
24 but there's some things in that I think you need to know.
25 First of all, I think that since the dinosaurs were

1 babies, human beings are tribal and we work that way in
2 communities, and we elect and we work with our tribal
3 leaders.

4 And what's happened throughout the ages is that
5 our tribal leaders have a tendency to make decisions based
6 upon what's good for the tribal leaders and not for the
7 tribe. And I think that this is a good example of what's
8 happening here, is that, for instance, in the 1980's the
9 citizens of Long Beach passed an ordinance that the
10 Queensway Bay be an open space park. That is already park
11 land that we are giving up for a shopping center.

12 Okay. So now if you look, I don't have that
13 little thingy, but if you look across the street --

14 COMMISSIONER CONNELL: He'll assist you.

15 MS. MANN: There is a park right there. Right
16 around in here, those buildings are going to be taken
17 down. There's going to be a school there. And the school
18 does not have -- they didn't plan enough park land for the
19 kids to play. So what we're doing they're doing is
20 they're talking away Cesar Chavez -- part of the park over
21 here, and that's going to be sectioned off, and it's going
22 to be not available to the public during school hours.

23 So if you look at this whole area, you look at
24 this area, there's not a lot of open space, there's not a
25 lot of park land, there's not a lot of recreation area for

1 kids, so what's happened is that we're losing our park
2 land in Queensway Bay. We're losing our park land at
3 Cesar Chavez Park, because of the situation I just
4 described. And now we're getting park land over here,
5 which we're losing the recreational value.

6 So what I'm trying to tell you is that this may
7 be a good swap for the State Lands, maybe, maybe not, and
8 it obviously is a good swap for the developer, and the
9 tribal -- the folks that we've elected as City officials,
10 but for the public at large this is not what we wanted.
11 This is not a good deal.

12 I also wanted to tell that you in the 1980s the
13 citizens passed an initiative. Now, I think when an
14 initiative is passed doesn't it have to be changed by an
15 initiative. So we've got something -- we have that to
16 look for.

17 I wanted --

18 COMMISSIONER CONNELL: What did the initiative
19 do?

20 MS. MANN: Pardon me?

21 COMMISSIONER CONNELL: When did the initiative
22 do?

23 MS. MANN: It established that as a park land.

24 COMMISSIONER CONNELL: Which is the park land.

25 MS. MANN: The Queensway Bay.

1 Okay. And the Mayor spoke about the Citizens
2 Advisory Board in 1982. Lester Denevan was on that
3 advisory board, and it was not unanimous. It was very
4 contentious. So I just wanted to let you know that that
5 was kind of an issue there.

6 And as far as the responsible time period that
7 you were mentioning about this public access, I would, if
8 you're going to pass this today, I think it would be
9 really helpful if you had specific a timeframe, because
10 we've been led down the roads of path and it continues to
11 get nowhere.

12 So I just wanted to mention all those things.
13 And also the fact that, if all this is all going to
14 happen, then I still think we need an EIR.

15 Okay, thank you very much.

16 CHAIRPERSON BUSTAMANTE: Thank you.

17 Don May and Bry Laurie Myown.

18 COMMISSIONER CONNELL: Paul, may I ask a
19 question. Would it be easier to create a recreational
20 area with visitor access in Queensway Bay area or in the
21 proposed swap area?

22 EXECUTIVE OFFICER THAYER: I guess that's hard to
23 answer. Certainly, there's better access to the parking
24 area that the Lieutenant Governor identified as being the
25 parking area right now. But in terms of having other

1 water-based amenities, as the public trust document
2 generally favors, the remoteness of the Queensway Bay
3 parcel is even further way from what's shown as a swimming
4 lagoon. And that's no longer a swimming lagoon, but in
5 the old plan that's what it was going to be.

6 Then the new parcels are going to come into the
7 trust from the LA River.

8 COMMISSIONER CONNELL: What's a swimming lagoon?

9 SENIOR STAFF COUNSEL FOSSUM: That was in the 1960
10 plan.

11 EXECUTIVE OFFICER THAYER: I'm sorry, this was
12 the old plan here and that's been now traded in for a more
13 boat oriented lagoon right here, but I mean the basic
14 point would be that this property is much closer to the LA
15 River bike path that kind of thing, and so there's more of
16 an opportunity to relate this to the water than this
17 parcel here.

18 So in terms of -- absolutely, in terms of
19 recreation areas, there may be some advantages in doing
20 this from a municipal perspective, but from a public trust
21 perspective, and the necessity of having some connecting
22 to water, we think this has the better opportunities
23 there.

24 MR. MAY: Yes, Mr. Chair, again, Commissioners.
25 Done May with the California Earth Corps. I have to take

1 just a second to comment about the swimming lagoon, which
2 is part of the park that Long Beach has had. When we put
3 in the Queen Mary, we had to do mitigation for the taking
4 of soft bottom habitat there, and that went next door.

5 And then it turned out there was going to be a
6 boat motel there, so the mitigation moved across to the
7 other way, where it turns out there was going to be a
8 Hyatt Hotel, so the mitigation moved over to Sleep Lagoon,
9 but that had to be modified for the Queensway Bay, so it
10 went to the swimming lagoon you see there. And then as
11 long as that changed again now, we have gone from the 40
12 odd acres we were supposed to get to five acres, which is
13 over here in the corner.

14 This is what's happened to us as we hit these
15 parcels that are swapped around, around, around and around
16 and the public never gets the use.

17 We have that situation here, again. What you
18 have before you is not only outside the criteria in the
19 statutes and case law, it's a spectacularly bad deal for
20 both the state and for the citizens of Long Beach. We
21 should point out why that is.

22 We did point out back in 1992 and '93 when this
23 was first considered that there was a problem with the
24 uses intended, that they were outside public trust
25 doctrine, particularly it seems they already looked at the

1 Disney Sea who was going to do a similar kind of thing and
2 ran into the similar kind of problems and Disney Sea did
3 not go forward, and it was pointed out back then that they
4 were going down that same road.

5 So this is not knew. This has been discussed by
6 the City for a long time.

7 COMMISSIONER CONNELL: Where was the Disney
8 project?

9 MR. MAY: The Disney project was looked as part
10 of Pikes Project and across the wetlands on the other side
11 of the river.

12 It's really a travesty to try an excise out the
13 footprints of the offending uses from sovereign land,
14 while developing the sounding tidelands in the legitimate
15 public trust uses. It's insulting to all of us to declare
16 inland public park, already protected, already funded for
17 restoration with State funds as tideland uses and insist
18 that some kind of public benefit has occurred.

19 It's impermissible to exchange tidelands status
20 to a land dedicated to nonpublic trust use, and here, let
21 me point out, that the intended use for that as an
22 adjunct, in fact, it's already been counted as the acreage
23 in Cesar Chavez Park is for school yard, soccer, active
24 sports, things not public trust uses.

25 You can't do a swap to land that's already

1 planned for nonpublic trust uses. You're precluding the
2 very benefit that the State's is supposed to gain. There
3 is no benefit here. If you did, in fact, the things that
4 would allow equal access to that median strip, you block
5 access to the rest of it.

6 Take another look here, if you move from the west
7 side, move the freeway over to the east side, as was once
8 considered, the only way you can put the onramp is through
9 off of Shamika Bridge right down through the 6th Street
10 parcel. Take your choice. Do you want to put a public --
11 use the 6th Street parcel or do you want to use the median
12 strip. You can't use both.

13 I would also like to point out that fundamentally
14 land swaps require legislative approval. That is the
15 reason that you have Public Resources Code 6307. It
16 points out only in rare cases may public trust be
17 terminated and only where it's consistent with the
18 purposes and needs of the original 1911 trust.

19 What are those? You just heard them. Best
20 interests of the State for improvement of navigation? No.
21 Aid in reclamation? No. Flood control protection? No.
22 Enhancing the configuration of the shoreline for
23 improvement of water? No. Navigable river, sloughs,
24 streams, straits? None of those. Will it substantially
25 interfere or just straighten out a problem with

1 interfering the right of navigation of fishing? No.

2 You also can only use land swaps when it solves a
3 title or boundary dispute. There's no title or boundary
4 dispute here. What you have is a dispute with the
5 developer that wants to use a nontrust land. The
6 precedent next door with the old pipe property where the
7 \$605,000 came from that, in fact, was a small parcel where
8 you, in fact, had a boundary problem that was resolved by
9 that swap.

10 That's why \$605,000 for .18 acres set the price
11 of this land, do the math, 3.3 million back in 1992. That
12 means you've understated the value of the Queensway Bay
13 project by a factor of ten. At the same time you
14 overestimated the value of the other hands.

15 You talk about Los Cerritos, we're heavily
16 involved in Los Cerritos. And up and down the coast we've
17 been involved in a lot of land purchases. Never has a
18 conservancy or trust to the public land or any of the
19 conservancies coastal conservancy agency or any other
20 agencies had to pay more than \$34,000, with the exception
21 of the one parcel down at San Diego, where Edison paid
22 \$70,000, but that's because they saved seven and a half
23 million by using the lands as a lay down area.

24 All other parcels we've paid way less than
25 \$34,000. You're paying too much.

1 Parcels are not Of equal value. They're not of
2 equal access. It's a parking lot there now, right. It's
3 also -- it was supposed to be back in '93 when we all
4 agreed on what this was going to be for. I should have
5 brought up the beautiful picture that was on the EIR
6 showing pedestrians strolling along the shoreline, a
7 pedestrian oriented area, lots of picnic area, no uses
8 which were not, with the exception of the theatre. There
9 was a delightful place, a project that has substantially
10 changed all the way along.

11 Long Beach indeed, more than any other California
12 city, has lost we've lost 99 percent of our tidelands.
13 Had originally had over 5,000 acres of trust lands,
14 submerged lands salt water tidelands in Long Beach. We
15 have 65 acres left. We're looking to lose more.

16 The acreage we're talking about over at Los
17 Cerritos, by the way, is funded by \$13 million we got from
18 you folks from the State. Thank you very much. We
19 greatly appreciate it and matching funds we obtained
20 elsewhere, including \$1.8 million that came from
21 California Earth Corps. \$605,000 is not needed over
22 there. As matter of fact, the Trust For Public Land, the
23 Wild Life Conservation Corps is the one that's involved
24 now in the purchases. We can certainly use it, but
25 already those funds are earmarked.

1 There is no overriding State benefit here. There
2 certainly is an overriding State benefit in Queensway Bay
3 project itself, but the parcels you're talking about
4 trading for are ones that the Coastal Conservancy, we've
5 been very involved in 6th Street looking for restoring
6 land up and down the LA River, as the San Diego River.
7 Those are commendable, wonderful, but they're already
8 funded. The representatives of the Coastal Conservancy is
9 here to talk about the CH2MHill grant.

10 CH2MHill has not yet determined, that's the
11 purpose of the grant is to figure out what the best use of
12 that land is. They are looking at wetlands, right, but
13 preliminary comments indicate that they're a little
14 pessimistic about that.

15 One of our folks, David Sundstrom did a study of
16 what was supposed to go on that 6th -- what would best go
17 on that 6th Street parcel and we got shot down on that.
18 The same problems still remain. It's a very problematic
19 area, not only the containment issue, the Union Pacific
20 property and others. It just doesn't make sense to go
21 forward on the 6th Street parcel until all these problems
22 have been resolved.

23 It's very premature.

24 CHAIRPERSON BUSTAMANTE: Mr. May, would you sum
25 up.

1 MR. MAY: I'll summarize. The Project, as you
2 point out, is subject to CEQA. It requires an
3 Environmental Impact Report for the same reason it
4 requires legislative approval, because you haven't met all
5 of those criteria.

6 You have the letter from our attorney regarding
7 that. I won't go into that. Do please look at the letter
8 from Jane Brown. It goes into all the CEQA violations
9 that are proposed by this.

10 That's the reason that you do an EIR is to
11 provide the reliable, factual data that form the basis of
12 good public decisions. You don't have that data before
13 you now. I would strongly urge that you require an EIR be
14 performed now to come into conformance with CEQA. That
15 will provide the information you need to make a good
16 decision.

17 Thank you very much for your attention.

18 CHAIRPERSON BUSTAMANTE: Thank you. Mr. May. I
19 know that I allowed you to speak much longer than three
20 minutes, but I thought you were making very a thorough
21 presentation and I didn't want to interrupt it. You did
22 raise some issues I'd like to have staff respond to. The
23 legislative approval. Does this require legislative
24 approval?

25 EXECUTIVE OFFICER THAYER: No, it does not. The

1 Legislature enacted Section 6307 that delegated to the
2 Lands Commission the authority to do this.

3 CHAIRPERSON BUSTAMANTE: On the 1980 initiative,
4 what part does that play in this process.

5 EXECUTIVE OFFICER THAYER: I think Mary Cow from
6 our staff might now. Was that the proposition for
7 funding?

8 MR. MAY: Yes. If I could --

9 CHAIRPERSON BUSTAMANTE: That's the one by the
10 city, within the City of Long Beach?

11 MR. MAY: Yes, and it funded fill along with the
12 Water Conservation Act.

13 COMMISSIONER CONNELL: What did the initiative
14 say?

15 MR. MAY: I didn't bring a copy of it. It's on
16 the back of your workplan. And if you look at Exhibit 9
17 of the workshop, it has a copy of that initiative.

18 EXECUTIVE OFFICER THAYER: It's my impression
19 that was mostly an initiative to establish funding for the
20 fill and the project down there, but I believe it also
21 made reference to all of the uses that were permitted by
22 the legislative grants, which are broad and include these,
23 but.

24 Mr. McCabe do you have a copy of that?

25 LONG BEACH DEPUTY CITY ATTORNEY McCABE: No, I

1 don't have one with me. You are correct --

2 CHAIRPERSON BUSTAMANTE: Why don't you come up to
3 the microphone please.

4 LONG BEACH DEPUTY CITY ATTORNEY McCABE: My name
5 is Jim McCabe, Deputy City Attorney, for the City of Long
6 Beach. The initiative that's being spoken of was an
7 initiative to use, as I recall, oil money for the purpose
8 of filling land, which you would then become tidelands.

9 They were references made to restrictions to
10 which it could be put, in the sense that it would be
11 tidelands. It would be put to tidelands purposes not
12 necessarily parks.

13 CHAIRPERSON BUSTAMANTE: So the initiative was to
14 use oil money for the fill.

15 LONG BEACH DEPUTY CITY ATTORNEY McCABE: That's
16 correct.

17 CHAIRPERSON BUSTAMANTE: There's nothing that
18 prescribed this to be used for any particular purpose?

19 LONG BEACH DEPUTY CITY ATTORNEY McCABE: Nothing
20 at all, other than, of course, when it hadn't been filled
21 over tidelands would thereafter be subject to the
22 tidelands restrictions and the tidelands uses.

23 CHAIRPERSON BUSTAMANTE: I see. There was one
24 other issue, Paul. And that is that the way that Mr. May
25 described this, that not meeting the various requirements

1 as he began to enumerate each and every one so that it did
2 not meet that requirement. Is there a concern that we
3 could withstand any kind of a lawsuit on our decision
4 here?

5 EXECUTIVE OFFICER THAYER: We've heard for the
6 last month that there -- longer than that, I think, that
7 some of the opponents to the project are threatening
8 litigation should the Commission approve this exchange.
9 And so we brought in the Attorney General's Office to
10 consult them with whether or not this project met the
11 exchange requirements in 6307, as well as equally
12 important requirements established in court, in case law,
13 and also looked at the CEQA issue.

14 And it's our belief that what we're recommending
15 to the Commission could withstand that action.

16 CHAIRPERSON BUSTAMANTE: Why don't we hear from
17 the Attorney General's Office.

18 ASSISTANT ATTORNEY GENERAL HAGER: We would agree
19 that we believe that it is within the statutory provisions
20 authorizing an exchange. As to the CEQA matter, we
21 believe it comes within the purview of section 21,080.11
22 of the Public Resources Code, which is CEQA, which grants
23 and an exemption for these exchanges in matters. And that
24 it's been the consistent practice of the Commission for
25 any type of exchange like this to be -- to use that

1 exemption and that has not been challenged in the past.

2 COMMISSIONER CONNELL: I had a question, if I
3 may.

4 CHAIRPERSON BUSTAMANTE: Please.

5 COMMISSIONER CONNELL: To follow-up on your
6 questions which I think are right on point.

7 Paul, which of the basis for swaps mentioned by
8 Mr. May, you listed a number of them, does staff believe
9 we should be acting under today? I'd like to clarify
10 that. I mean, if we are anticipating legal action against
11 the Commission, I'd like to make sure we understand under
12 what basis we're taking this action.

13 EXECUTIVE OFFICER THAYER: There are several
14 different standards. The first and most important one is
15 whether or not the land that is presently subject to the
16 public trust should have the trust lifted. It's a very
17 serious action. And for that, the test is generally
18 whether it's usable or susceptible for use for public
19 trust purposes.

20 And we believe that because it's cutoff from the
21 water, it's separated as well by what's in essence a
22 continuation of Shoreline Drive and that it's been unused
23 for 20 years that it meets that requirement.

24 Then there are the broader requirements in terms
25 of making a swap and lifting the trust, and they include

1 likes that the fill had to have been part of a broader
2 plan for improving navigation or there are a couple of
3 other criteria that are mentioned there.

4 We think the original fill here with its intent
5 to establish the basins here meets that requirement. That
6 it basically was establishing different kinds of public
7 trusts use that could only occur if you enclose, what at
8 one point, was going to be considered the swimming lagoon
9 and now is used more broadly for boating.

10 It can't interfere with navigation or fishing.
11 The lands that are going to be brought into the trust have
12 to be susceptible to trust uses. Those are some of the --
13 Curtis, did you want to add anything?

14 SENIOR STAFF COUNSEL FOSSUM: Well, I do. I
15 wanted to clarify one matter. They talked about the 1980
16 initiative. There was a 1960 initiative by the City,
17 which talked about the fill that did take place subsequent
18 to that.

19 This was the City's plan in 1960 which showed the
20 swimming lagoon, that Paul referred to earlier. The
21 changes have been significant since that 1960 master plan
22 that the City adopted. They had a senior center down here
23 in this area, and the rest of this area back here was
24 actually proposed for private development, the whole
25 Queensway area. Apparently, they were not aware of its

1 tidelands; trust status at the time back in 1960.

2 When the Commission approved the fill in 1964 for
3 the ten plus million dollars, it was this area below a
4 line in this area that was being approved by the
5 Commission. And I think Mr. Denevan has referred to this
6 in many instances both in writing and here today that the
7 Commission had approved this fill, and therefore any
8 subsequent action the Commission would have to approve.

9 Well, in fact, the fill did not involve the area
10 of the Queensway Bay. That had been filled back in the
11 1950s and earlier as part of the development to the east.

12 So this has really been an area that's been
13 filled for probably over 40 years. The uses of it have
14 been almost nonexistent in the last 25 or so years. There
15 are a lot of uses that it could be proposed for, but it
16 has sat vacant. And as to the findings the Commission
17 needs to make under Section 6307 and the provisions that
18 the Supreme Court has set forth in there, they're all set
19 forth I think clearly in the staff report. And as Paul
20 pointed out, these areas were filled a long time ago as
21 part of flood control, harbor improvement and development,
22 that the findings that are -- I mean, those findings are
23 relatively simple.

24 There will be no impact on navigation or fishing
25 by transfer of these parcels out of the trust. And the

1 harbor is the primary thing that the Supreme Court and the
2 other courts in California have sought to protect when
3 there's an attempted conveyance out of the trust, is
4 waterfront or property that is necessary for those water
5 dependent uses.

6 What we have is a piece of property that's behind
7 this six-lane road an cut off about 550 feet at its
8 nearest point, from the water's in the way there.

9 CHAIRPERSON BUSTAMANTE: The parcels that are
10 outlined in read, does that mean that those were -- that
11 fill that took place in the 40s or 50s as you mentioned?

12 SENIOR STAFF COUNSEL FOSSUM: Yes. This area --

13 CHAIRPERSON BUSTAMANTE: Is that still subject to
14 all the public trust land?

15 SENIOR STAFF COUNSEL FOSSUM: Absolutely. The
16 Legislature in 1964 set this little blue line you can see
17 up here as the boundary between the City and the State,
18 because there was ongoing controversy at the time between
19 the City and the State as to where the boundary was.

20 However, prior to that, this area had been
21 litigated between the City and an upland property owner in
22 this area. And they had actually lost more.

23 So when the City redesigned its seaside road,
24 they cut off some tidelands and that's what initiated the
25 1991 swap that we are involved in that -- where the State

1 acquired this piece of property and gave us this property.

2 CHAIRPERSON BUSTAMANTE: So the purpose of the
3 distinction between where those upland wet areas are and
4 below that is to show that the initiative did the fill
5 below?

6 SENIOR STAFF COUNSEL FOSSUM: That's correct.

7 MR. DENEVAN: May I respond?

8 CHAIRPERSON BUSTAMANTE: Mr. Denevan.

9 MR. DENEVAN: Thank you, Mr. Chairman. Yes,
10 there was an initiative in 1960 concerning the expenditure
11 of tideland funds. And then in 1964, this went before the
12 State Lands Commission. Now, what they did in 1960 --
13 well, first they had the initiative and then the
14 initiative set forth the uses for this landfill area.

15 And the Lands Commission set conditions. In
16 other words, it was a conditioned permit by the Lands
17 Commission and it set forth a number of details. Now,
18 this was to be basically an original elongated park and a
19 few another other uses.

20 And so the site was created with public monies
21 and the entire site should be subject to your review.

22 CHAIRPERSON BUSTAMANTE: They've said it's under
23 public trust lands.

24 MR. DENEVAN: Yes.

25 CHAIRPERSON BUSTAMANTE: The entire area.

1 MR. DENEVAN: Yes. So we have a number of other
2 uses. In fact, there are planned the LCP provides for
3 hotels in the same area, and a number of others that are
4 not before you today in this current project, but there
5 are a number of uses.

6 And I think that, for example, the shoreline park
7 is subject to four acres to be taken for commercial
8 development. Now, you have the map in my packet that I
9 sent out to you. Certainly, that and some of the other
10 landfill is subject to those conditions.

11 And even if you only focus on those four acres,
12 it would be very worthwhile to look at your conditions as
13 established in your -- in the minutes that is set forth in
14 your files. And I think it's completely untrue to say
15 that this site is not -- the current project is not in
16 this area of landfill.

17 Thank you.

18 CHAIRPERSON BUSTAMANTE: Thank you, sir.

19 We have two other speakers. Bry Laurie Myown,
20 Traci Wilson KleeKamp.

21 MS. MYOWN: Thank you Lieutenant Governor and
22 Madam Controller. Most of the items that I'm actually
23 going to advocate on behalf of our -- continue my
24 correspondence to you dated September 14th.

25 I'd like to think of myself, probably, as much of

1 an environmentalist as I'm sure everyone in this room
2 does, but it's not my area of expertise, and I really
3 appreciate all the education the public trust law you've
4 provided.

5 I work more in the area of protecting urban
6 neighborhoods. And in that realm, I think many of us
7 familiar with redevelopment in its forerunner urban
8 renewal. I've noticed a disturbing trend where it seems
9 like you if you manage something badly enough and blighted
10 enough, that undervalues the and it become really
11 profitable the redevelopment according to a new plan.

12 So I'm very disturbed reading the background
13 section of the staff report which describes, and please
14 understand, I'm not speaking about any current
15 administration, but described about 3 quarters of the
16 century of how the City of Long Beach, under the
17 supervision of the State Lands Commission, everyone's
18 predecessors has pretty much squandered tidelands
19 reserves, destroyed its entertainment resources, destroyed
20 its historic resources in the tidelands, separated its
21 downtown from its waterfront, removed the beach portion of
22 the tidelands that it had, failed to reconnect the
23 downtown back to the waterfront according to the plan,
24 spend the land and water conservation on local park monies
25 on the parks that were asked for, or it implemented

1 significant portions of its LCP. This is the rationale
2 for why we're doing this deal.

3 And in order to approve this, you are going to
4 have to make a finding that the lands entrusted to the
5 people of the State no longer served the purpose for which
6 they were entrusted.

7 How did this come to be? A finding, speaking as
8 someone unfamiliar with the law, making that finding in a
9 civil court would be grounds for damages, making such a
10 finding in a criminal court would be grounds for
11 sentencing. Here is grounds for making a deal that could
12 be the beginning of what some people have told you they
13 think will set a precedent the state. Frankly, I think it
14 will set a precedent for the rest of the tidelands in Long
15 Beach.

16 So I'm very concerned about a condition of escrow
17 that would undo this escrow if the current developer with
18 the current plan does not go forward and complete all of
19 it. Because our City Manager told us last Thursday night
20 an option would be to sell the land and it would be
21 infinitely more profitable without restrictions.

22 Now, since, as Mr. May pointed out, it's really
23 difficult to separate the foot print of one property and
24 its usefulness from the immediately adjacent land foot
25 print, this would be a chain of events that would alienate

1 all of the tidelands from public ownership.

2 In that regard, I understand a lot of work has
3 gone into doing this. And I'm a realist. I suspect it's
4 going to happen today, so I would like to suggest some
5 things that would, I think, make it more palatable to the
6 public.

7 What we learn in Item 88 about the interest which
8 public lands can be put to, as my letter requests, my City
9 has plans to offer a \$43 million bond offering to
10 construct public improvements that would be largely
11 parking facilities, roads and walkways, of which at least
12 a third of it on a square footage basis of the lands
13 you're trading out will be dedicated now not to bringing
14 the public to enjoy public trust uses, but to bringing the
15 public to enjoy and use the movie theater, big box retail
16 and so forth that you are proposing to swap out.

17 Therefore, I mean, this is not a small or a
18 temporary or an incidental part of the parking spaces and
19 the public improvement, so I think they're going to have
20 to be commensurately reduced, because they now would no
21 longer would be serving public trust uses. So that is a
22 condition that I think the staff report we heard on Item
23 88 would make necessary.

24 Otherwise, it's just a financial inducement,
25 which the exhibit B for that report, I think, would have

1 argued against.

2 In addition, I also contest the appraisal. And I
3 don't want to go into great length about it here. When
4 Mr. Ryan was referring to an earlier appraisal the City
5 had had only in connection with that POS for that bond
6 offering, please understand that we have received no
7 written information or even agendized items from our City
8 of any local discussion of this item, until a meeting last
9 week, which had three pages of background. And all the
10 information we've seen has come from your staff in
11 response to a Public Records Act request and we received
12 it last Thursday, as our City has not responded timely to
13 that same request.

14 But looking through the appraisal information, I
15 have to not, again as a lay person, setting aside
16 altogether what the City's appraiser did, I mean, I was
17 very shocked to here Mr. Porter refer today to the process
18 of finding comparables. The whole reason these are
19 sovereign lands is that they're incomparably. We see
20 there are literally no comparables, because public lands
21 don't get sold.

22 So the value that you find through these lands
23 right now is not the value that these lands will be when
24 my city contemplates selling or doing something else with
25 them. It would then be the only land that would meet such

1 a comparable standard.

2 However, going back to the \$605,000 that you're
3 using today as your making a donation, that which was done
4 a decade ago averages out to \$77 a square foot for what
5 you are, in this parcel, saying is, I believe, 22.

6 Now, looking at similar transactions that have
7 been made across the state, and it appears to a lay person
8 that there is no connection to any of these numbers.
9 They're all over the map.

10 Why? Well, they're all politically motivated and
11 publicly subsidized, in, I think, every instance you make
12 such a transaction. There is no correlation to the
13 private market.

14 As Mr. May pointed out the LA River parcels have
15 already been funded. The funding has been obtained
16 because they also under your stewardship have been so
17 degraded by the Port use that what is of interest to them
18 to our city has most been the grant applications, for
19 their remediation and cleanup. And since the neighborhood
20 lacks any recreation, grants were obtained for park use.

21 There is no assurance that the City will perform
22 on creating that park for you anymore that it has in it's
23 On LCPs. So I think we need a performance guarantee or
24 performance bond, as a condition of escrow, so that the
25 State knows this land will be a park. What you get so far

1 it is not.

2 Finally, and I mentioned this earlier, I just
3 really want to be sure that this transfer, if it is made,
4 will the escrow will dissolve, if the developer is not
5 going to develop with all of this. This will not just
6 alienate ownership in a manner that we can keep
7 replicating all over. All of those things I think would
8 make the escrow more advantageous for the State as well as
9 for the people of Long Beach.

10 Thank you very much.

11 COMMISSIONER CONNELL: Mr. Chair, I'd like to
12 follow up and ask for a staff response to that last
13 question on the reality that, you know, if we take action
14 today and there, for some reason, is not movement forward,
15 financing doesn't occur or whatever, I mean, we certainly
16 do not want to be in a situation where we have created a
17 profitable advantage and we are seeing a flipping of land
18 here. Mr. Thayer, how are you going to protect the
19 Commission against that potential problem?

20 EXECUTIVE OFFICER THAYER: There's two public
21 policy concerns here that are competing. And as we first
22 contemplated this project, it seemed that we were looking
23 at taking out these particular sites and not the larger
24 area, because we're inherently conservative. We're not
25 lifting the trust lightly. And although I think the

1 findings could be made to lift the trust from some of the
2 area that's in the immediate vicinity of where these are
3 on the same vicinity, the same findings could be made, we
4 chose to just look at the sites at the suspect uses alone.

5 And so as presently contemplated, in fact, if the
6 development did not go forward, the exchange would not
7 occur. However, the flip side of this and some of the
8 other Commissioners may want to comment on this as well,
9 that other side of this is if you leave this project out
10 of it entirely, this is -- We believe, at this point
11 having done all this work, and done the research on the
12 valuation and utility of the parcels that would be taken
13 out of the trust -- to the trust, and the utility of the
14 parcels that would be put into the trust, this is a good
15 deal for the State.

16 And so there's an argument that could be made and
17 it would be up to the Commission to decide that this would
18 be appropriate to go forward, whether or not the
19 development occurred or not, because at the end of the
20 day, the LA River parcels are greater value to the trust,
21 both from trust purposes and non-trust purposes than the
22 parcels we'd be giving up, whether or not they're
23 developed in a way at the present time.

24 COMMISSIONER CONNELL: Well, it may be a better
25 monetary value for the State, but let me just, as one

1 Commissioner, say emphatically I would not consider taking
2 action today with the expectation this property becomes a
3 poker chip in a land swap deal. I think that's abhorrent.
4 It would be abhorrent in Long Beach. It would be
5 abhorrent in Santa Barbara. It was abhorrent in downtown
6 Los Angeles. And in a rare moment of unanimity, every
7 candidate in the mayor's race stood up and came out
8 against the project in downtown Los Angeles.

9 And I'm happy to say that as of last week that
10 project has now been stopped and the property has been
11 bought by the land trust based on that very issue of
12 whether a swap was contemplated, and whether an excessive
13 project was entertained by the new owner of the property.
14 I do not want to be in that situation here, Paul.

15 I don't know how other Commissioners feel. I
16 mean the only reason I would entertain going forward with
17 this project is that it would enhance the purposes of
18 urban renewal in Long Beach.

19 I certainly would not want it to be an ongoing
20 game play where we have created artificial value that is
21 then swapped for more artificial value to another
22 developer downstream. That is not what I want to see
23 happen.

24 So if this project does not go forward in the
25 manner in which it is conceived, then I think we ought to

1 immediately be able to eliminate our support for the land
2 trust transfer. I think that's what the woman was
3 raising. And I want to know whether those protections are
4 built into the staff recommendation. If they're not, I'd
5 like to amend it to allow that to occur.

6 CHAIRPERSON BUSTAMANTE: How would you build that
7 into the recommendation?

8 EXECUTIVE OFFICER THAYER: As we're presently
9 contemplating, what we would do is end the escrow even
10 though the change hasn't taken place if the present
11 developer does not enter into a lease with the City,
12 within six months of the closure of their exclusive rights
13 to do so. By that I mean, I think it's DDR, are the
14 initials of the developer, has an exclusive right to
15 develop this parcel through May of next year, and then the
16 City owns the plans after that period of time and can look
17 for another developer to implement that project.

18 So, in discussions with the City, we have said if
19 this project does not go forward, by January 1st, 2003,
20 then the escrow is dissolved and the exchange doesn't take
21 place.

22 COMMISSIONER CONNELL: Why January 1st, 2003?
23 Why are we looking at a year and three months?

24 EXECUTIVE OFFICER THAYER: Because the developer
25 has the right to go forward with this project until May

1 of next year and then the City has an additional six
2 months the use the same plans and find another developer
3 to implement the same plans, so that takes you up, I guess
4 it would make it a little bit shorter, it would be
5 whatever six months are after May of next year. It would
6 take you to November, December, I guess, of 2003.

7 COMMISSIONER CONNELL: What do you mean, "use the
8 same plans"?

9 EXECUTIVE OFFICER THAYER: The City -- I think if
10 DDR does not go forward with the project, the City, I
11 think, owns the plans for this development and can find
12 another developer to use the same plans.

13 COMMISSIONER CONNELL: Would that come back to us
14 for review?

15 EXECUTIVE OFFICER THAYER: No, because we
16 normally wouldn't -- we only have review because of this
17 exchange that's being proposed.

18 COMMISSIONER CONNELL: I mean, I don't know, I've
19 had hundreds of millions of dollars of financing
20 experience on real estate. I have never seen a
21 developer -- substitute developer step in and be
22 completely happy with the plans.

23 EXECUTIVE OFFICER THAYER: That's right.

24 COMMISSIONER CONNELL: So I guess, I'm a little
25 confused here. What is the criteria or measurement by

1 which we are going to allow the City to continue forward
2 on developing a project that changes in some measure or
3 another from the initial plan that the approved or has
4 been presented today?

5 EXECUTIVE OFFICER THAYER: Well, I think --

6 CHAIRPERSON BUSTAMANTE: We have a City
7 representative.

8 LONG BEACH CITY MANAGER TOBOADA: Commissioners,
9 Commissioner Connell, the way that we envision this and we
10 have every expectation that this project will go forward
11 with this developer, but we do have a termination clause
12 in our development disposition agreement that gives the
13 City the right to take over the entitlements to this
14 project.

15 One way which it could be effected very easily
16 would be for the City to step into the developer's shoes
17 and simply hire a contractor/developer to build the
18 project on our behalf. That is one way in which you can
19 accomplish the same objective. So it's not -- like I say,
20 it's a very unlikely scenario, but certainly we have
21 contemplated that we have rights on this project, based on
22 all of the investment of both the developer and the City,
23 and that we would have an opportunity at the end of that
24 period, should the developer not go forward, to be able to
25 salvage this project in that way.

1 COMMISSIONER CONNELL: That doesn't answer my
2 question. Let me again be very pointed in my question,
3 and my question really, thank you anyway, is to my staff
4 and to the Attorney General's office. I want to know what
5 kinds of precautions, what kind of language we are using
6 that specifically says if this project does not move
7 forward and the City then ends up with a project, say, in
8 May of 2002, what kind of assurance do we have as elected
9 officials, at least two of us as elected officials on this
10 Board, that we have not opened Pandora's Box, at that
11 point, and we're not going to see a substantially amended
12 project moving forward under the guise of an approval that
13 we may choose to give today?

14 EXECUTIVE OFFICER THAYER: We do not have
15 language that provides for that in the agreement now,
16 because of these competing public policy considerations.
17 However, if the Commission directs that that be so,
18 there's no reason why we can't say that we're going to
19 keep it in escrow and that we could enter into some sort
20 of agreement with the City which would provide that the
21 uses of these parcels which, after all, are city owned, so
22 that they can commit to their uses, which are limited to
23 the ones that caused us to consider the swap to begin
24 with, that is the movie theatre.

25 COMMISSIONER CONNELL: Why do we even need to go

1 there? Why can't we make our approval to the City
2 reflective of the time in which this current developer
3 must use this parcel, and that our agreement expires if
4 they do not use their agreement in May of 2003? That
5 then -- or 2002. That then forces the City to come back
6 with us and entertain a discussion with us about what
7 other uses may or may not be contemplated. And if they
8 wish to move forward on another development with someone
9 else, you know, I'm willing to entertain it at that point,
10 but I do not want this to be in play. I do not want this
11 to go on beyond what we have now spent an extended amount
12 of time understanding.

13 My fear is that it may change in its substance,
14 and I certainly do not, in any way, cast aspersions on the
15 current leadership of the City of Long Beach, but we do
16 not know what we're going to have in the future and I am
17 very, very concerned about this.

18 LONG BEACH CITY MANAGER TOBOADA: Commissioner,
19 one guarantee that you have is that the entitlement
20 process that would change this project would take far
21 longer than the six months that we contemplated doing the
22 same project. There's no way we could do it through a
23 redesigned, refinanced, re-entitled project in a six-month
24 period. We would simply step into the developer's shoes.
25 That's all we could do.

1 There's no way this project could change without
2 going through an entire -- we just need that time frame to
3 be able to go back to our council and share with them
4 their options, so that they can express --

5 COMMISSIONER CONNELL: Do you know a single
6 circumstance, perhaps I'm not as knowledgeable as you, and
7 we audit all the redevelopment agencies in California, so
8 I think I've visited most of them. But I don't know of a
9 single circumstance where a City has walked in and taken
10 over the primary responsibility for a project of this
11 magnitude.

12 LONG BEACH CITY MANAGER TOBOADA: We did a design
13 and build on the aquarium, just that way.

14 COMMISSIONER CONNELL: That was a single use.
15 That was the aquarium.

16 LONG BEACH CITY MANAGER TOBOADA: It is still an
17 entitled project.

18 COMMISSIONER CONNELL: This is a multi-use
19 project.

20 LONG BEACH CITY MANAGER TOBOADA: That is
21 correct, but it is entitled.

22 COMMISSIONER CONNELL: Can you think of another
23 circumstance where that has occurred?

24 LONG BEACH CITY MANAGER TOBOADA: Not the one
25 that we managed.

1 COMMISSIONER CONNELL: And on a single-use
2 project, the aquarium.

3 LONG BEACH CITY MANAGER TOBOADA: Well, an
4 aquarium, a harbor, a parking structure.

5 COMMISSIONER CONNELL: Single use.

6 LONG BEACH CITY MANAGER TOBOADA: Well, it's all
7 used for that bring people down to the waterfront.

8 COMMISSIONER CONNELL: That's different than this
9 use.

10 LONG BEACH CITY MANAGER TOBOADA: I don't
11 disagree with thatEXECUTIVE OFFICER THAYER: If the
12 Commission would like, then the Controller's direction
13 could be implemented in the agreement, so that it would
14 require DDR and perhaps some sort of reasonable extension
15 that would be dependant upon a development that occurs the
16 same as we're now facing.

17 CHAIRPERSON BUSTAMANTE: I think the majority of
18 the Board would prefer to have that type of --

19 EXECUTIVE OFFICER THAYER: Well, make sure that's
20 in the agreement.

21 MS. MYOWN: Madam Controller, one of our concerns
22 is given the changes and the length that this project has
23 taken, it's very easy for us -- and changes in the
24 economy, it's very easy for us to imagine going forward in
25 the phased or partial way. And so I'm not sure how a

1 protection tied to a time certain would address that.

2 What if we were to learn right before the
3 contract period expires that they're now breaking it into
4 phases and building one use of it, but they've lost
5 another tennant et cetera, then where We be?

6 COMMISSIONER CONNELL: Well, I'm not familiar
7 with the phases of the project. Although I have visited
8 the project site, and I've been fortunate to get briefed
9 by the developer on this project, perhaps the developer
10 can respond to that. I don't know how the project breaks
11 down in phases or how he's moving it through the zoning
12 process.

13 MS. MYOWN: My question would be what if they
14 broke it down into phases because of changes in the
15 leasing economy or in other words, it's been supposed to
16 start for a long time as one phase and it hasn't, so what
17 would happen if during the contract period they elected
18 the start a portion of it, and where would we then be?

19 EXECUTIVE OFFICER THAYER: I'm not sure if the
20 phases matters so much as the ultimate uses that are going
21 to go on the property that we're swapping out here. And I
22 think as a result to respect the Controller and the rest
23 of the Commission's concerns that we may want to take one
24 or two steps further than just establishing by a date
25 certain, because if it takes awhile or if they suddenly

1 start construction in May and then they end up switching
2 the uses, we haven't really met the goals that you're
3 after.

4 And so I'm thinking we need to sit down and have
5 some sort of agreement with the City or something that
6 would provide at least for some foreseeable future, unless
7 they come back to the Commission that those uses that
8 we're doing the swap for are the only ones that the sites
9 can be used for.

10 Now, four years down the road, of course, things
11 change and we don't want to set up an agreement that would
12 be impossible. But for the near term, that would seem to
13 carry out what you're interested in doing.

14 COMMISSIONER CONNELL: Certainly, it is the
15 intent of my initial concern, and I'm relieved to hear
16 that other members of the Commission agree with me in that
17 regard, and I can't sit here and function as a draft's
18 person today, and come up with that language, but I am
19 very, very concerned that we look with great attention and
20 I've heard from the City in all of my conversations with
21 them that they are resolute about moving this forward
22 quickly.

23 Now, this is a very uncertain world we live in as
24 we have seen by these tragic events over the last week and
25 one can never project what's going to happen, but given

1 the City's leadership commitment to this and the
2 developers, evidently their commitment and financial
3 resources, one has to assume this is going to move
4 forward.

5 If it doesn't, however, and that small percentage
6 of unlikelihood that it would not, I want us to be
7 absolutely protected as a Commission that has granted this
8 opportunity to a city. And I see the developer is
9 standing there, maybe he can address the phasing issue.

10 CHAIRPERSON BUSTAMANTE: I think the staff
11 responded to the phasing issues as long as they maintain
12 within the kind of activities that they were specifically
13 allowed to participate in, that whether they phase it in
14 or they went all at one time, as long as they stayed
15 within those parameters, I think it would be complete.

16 COMMISSIONER CONNELL: I guess the question would
17 be what would they be using the land for in the interim,
18 which is what you were referring to, Paul.

19 MR. CHISESSI: Well, I don't anticipate a phasing
20 program, at this point. That's not the there may not be
21 one single free-standing building that comes along a
22 little bit later. We have not completed all of our
23 leasing, but the way we anticipate today is that we would
24 build a project that would open up, if we did start,
25 approximately in December, as I said. We'd open up in

1 April of 2003, approximately.

2 So there really isn't a phasing plan per se
3 slated for the project at this time.

4 CHAIRPERSON BUSTAMANTE: We have one more
5 speaker.

6 MS. WILSON-KLEEKAMP: Tracy Wilson-Kleekamp.
7 Chairman and Commissioners, thank you for addressing the
8 issue of what would happen if the property or the deal
9 fell out. We were concerned when the City Manager said
10 that they could sell the property.

11 One of the things I'd also like the thank you for
12 is to answer my public records request. I got it last
13 Thursday. It was my first opportunity to kind of really
14 look at what's been happening. We haven't had a public
15 dialogue about the land swap until about a week ago.

16 And, as you can see from our discussion, there
17 are a lot of things to talk about. I also think the
18 process has been politically cumbersome. I think that we
19 have been -- our process is really bent towards the
20 developer and not the interests of the public, which is
21 why I brought up the issue before about recreation.

22 We've been promised in terms of Cesar Chavez Park
23 part of the land for the residents in that area. I'm
24 going the switch over and where my mom hat about this
25 situation, Cesar Chavez Park, and I have some pictures for

1 you. I refer to that freeway strip median as asthma park.
2 And I call it asthma park because on either side of that
3 freeway median the port traffic, which means that the
4 children in that area are subjected to rubber particles
5 and diesel fumes, et cetera from the port traffic.

6 The other thing is standing from Cesar Chavez
7 Park, it's all fenced around for safety reasons so the
8 children won't get run over. And in terms of Cesar Chavez
9 Park being 23 acres, ten of it is the freeway median and
10 the freeway. So they have been counted as 23 acres, which
11 they might have done just to get grant money, I'm not
12 sure, but only 13 acres of it is active park land.

13 My concern in the way that they're willing to
14 swap is that eventually that's all going to become a
15 freeway, and I think that that's a problem. I think if
16 the City is making the commitment to us about the park
17 land, they need to keep with it.

18 Now, Mr. Toboado was saying they didn't have
19 anything in their capital improvement budget about parks.
20 I wanted to say that they created their Cesar Chavez
21 master plan in 1996, and they divided it into a number of
22 phases and they have five development phases. And so far
23 construction has happened in three of the five areas, but
24 the master plan has not been completed for any of them.

25 It says the reason why they haven't proceeded

1 with this area five that you are thinking that people can
2 have a bridge to or a road access to it is because they
3 didn't have the money to move the roadway, and they didn't
4 know when they would be moving it.

5 But it's been promised for that particular area
6 that they would get much needed recreation space, because
7 there were not football fields, baseball fields, et
8 cetera, those types of active recreational uses in that
9 area.

10 COMMISSIONER CONNELL: Well, evidently there
11 can't be on our land, anyway, if Mr. Thayer is correct.

12 MS. WILSON-KLEEKAMP: This is a totally
13 unrealistic thinking that you can drive or walk to that
14 median. You are basically telling children to go play in
15 the freeway, all right.

16 Now, you know, we have Cesar Chavez Park, which
17 you're now going to take two and a half acres of, fence it
18 all off and deny the public access there in an any area
19 that's very densely populated with children who are poor.
20 They lack schools, and I think this is an egregious
21 offense to children in the community and what they've been
22 promised in terms of park land.

23 That property already belongs to the City and I
24 don't see why we're going through this process for land
25 that's already been promised to our public. I don't see

1 any State benefit for taking it away from us.

2 So with that said, I don't think that the swap is
3 necessary. At the last council meeting, our city attorney
4 said that this swap was not necessary. It is only
5 operationally necessary which makes me think it means it
6 has to happen just for the developer. And I don't think
7 that these swaps should happen just to benefit the
8 developer.

9 The type of project that we're building is
10 duplicated all around us in a five-mile area. We're
11 chasing the same retail dollars, low-wage earning jobs to
12 perpetuate this cycle of poverty in downtown. And I don't
13 think that we should continue with that path of
14 development.

15 By the way, I have pictures for you, if you're
16 interested of what the freeway and the park looks like and
17 the freeway median. You can see lots of cars and traffic.
18 I think there's a Southern California Edison generator on
19 one of the parcels entirely fenced in, and I would think
20 it would be unsafe for someone to accidentally run into
21 the median from the freeway. There's a tremendous amount
22 of traffic on the 710 freeway from the port, which we have
23 not resolved that issue.

24 I haven't figured out how nine million people are
25 going the get down the 710 freeway to our Queensway Bay,

1 but miracles never do cease to exist.

2 Thank you.

3 CHAIRPERSON BUSTAMANTE: Thank you.

4 LONG BEACH DEPUTY CITY ATTORNEY McCABE: Mr.
5 Chair, I apologize. I filled out a card, but I haven't
6 been called. Is it appropriate to speak briefly?

7 CHAIRPERSON BUSTAMANTE: You're right, you did
8 fill one out, and I have not called you.

9 LONG BEACH DEPUTY CITY ATTORNEY McCABE: Thank
10 you very much.

11 CHAIRPERSON BUSTAMANTE: This is the last one.

12 LONG BEACH DEPUTY CITY ATTORNEY McCABE: I will
13 be brief. I very much urge the Commission to be aware, as
14 a whole, that this has been a very long process, that the
15 Queensway Bay commercial development, which we're speaking
16 of today, has had more than 25 city council appearances
17 over a period of years, that the city council has always
18 acted in a lopsided fashion to approve this project.

19 That the City Council acted in special session
20 this last Thursday, called itself into session especially
21 for this purpose, and voted 8 to 1 to go ahead with this
22 plan swap.

23 The swap itself has the you know, when you boil
24 it down to its total effect, has the end result being that
25 these parcels along the river will be made subject to the

1 trust that we're subject to the trust before.

2 Those uses will be limited to tideland uses for
3 all the relevant purposes are going to be park in this
4 area.

5 The City has an absolute commitment in terms of
6 its energy, subject to future funding and necessary
7 council action, to go ahead with park development. And
8 we'd very much like to encourage this and making this --
9 making these river parcels subject to the tidelands trust
10 would further that goal.

11 I just wanted to emphasize, again, that the
12 democratic process in Long Beach has taken its course.
13 Both councilmen for the districts involved have voted
14 consistently in favor of this project, and both council
15 people involved in this -- in the potential exchange favor
16 that on behalf of their constituents.

17 Thank you.

18 CHAIRPERSON BUSTAMANTE: Thank you.

19 COMMISSIONER CONNELL: Mr. Chair, I have a motion
20 I want to make, but I will certainly respect, Annette, if
21 she wishes to speak on an informational basis.

22 CHAIRPERSON BUSTAMANTE: Annette.

23 ACTING COMMISSIONER PORINI: Yes. I just wanted
24 to ask our last speaker, the two and a half acres within
25 Chavez Park, is that specifically -- is that a joint use

1 project with the City -- with the school district, rather?

2 LONG BEACH DEPUTY CITY ATTORNEY McCABE: Of the
3 parcels that we're speaking of, the river parcels none of
4 them are presently within the boundaries of Cesar Chavez
5 Park.

6 Now, with that perhaps the City Manager can
7 answer.

8 LONG BEACH CITY MANAGER TOBOADA: I think I'm
9 better qualified on this one, because there is no
10 agreement currently between the school district and the
11 City of Long Beach for joint use of the park. It's been
12 proposed. The organizations that give us guidance, such
13 as the project area committee for the redevelopment agency
14 project area have voted not to go forward with that joint
15 development. The council has yet to undertake that
16 particular proposal.

17 And if it did go forward, it would be on the
18 basis that the school would only have shared use of it not
19 exclusive use.

20 ACTING COMMISSIONER PORINI: Thank you.

21 CHAIRPERSON BUSTAMANTE: What's the pleasure of
22 the Commission?

23 COMMISSIONER CONNELL: I would entertain moving
24 forward on this project, but only with two very
25 significant changes to the staff report.

1 And those two changes are that the time factor of
2 May 2002 becomes a dropdead date for movement forward on
3 this project, and that if this project does not have
4 signed leases and is not moving forward as stipulated,
5 that our approval of the swap expires, and that there is
6 no option for the City to develop this project on its own
7 and that occur -- that development occurred without any
8 phasing.

9 So those would be my three restrictions, that
10 there would be a time factor of 2002 that is adhered to,
11 that when that time -- and that second that that project
12 move forward that the lease understanding is without
13 phasing, and third that when the 2002 period expires, May
14 2002, that our swap is basically voided at that point, and
15 that the property comes back to the State.

16 I could see scenarios developing on the economic
17 front, having spent two and a half hours in those meetings
18 this morning, where the State has more resources than the
19 local government, and that the State might actually have
20 greater flexibility in going back and doing something with
21 that property in Queens Bay, where the City could not.
22 And I would not want to be hampered by our ability to do
23 that in the future.

24 So I would make my approval, at least,
25 conditional on those three factors.

1 CHAIRPERSON BUSTAMANTE: What if the City came to
2 us prior to the end of May and indicated they wanted to
3 maintain or we wanted to complete the same activity as the
4 developer, but they came back to the Commission prior to
5 the end of May?

6 COMMISSIONER CONNELL: I think they should go
7 through our approval process again. In other words, our
8 approval today for this arrangement, as we have now
9 analyzed it, we've appraised it, we've factored in after
10 extended discussion all of the players as they now exist.
11 If that group of players, the team taking the field, the
12 going to differ, then I think we should have a second look
13 at that. Given the dynamics of the kind of markets that we
14 are now in, I have every belief that we are going to be in
15 a stronger economic position than many local governments
16 in this state, and I do not want to, in any way, restrict
17 the ability of the State to move forward on a project down
18 there.

19 EXECUTIVE OFFICER THAYER: Would you want also,
20 just as a point of clarification, Mr. Chairman, would the
21 Controller's motion also contemplate then some sort of
22 provision to ensure that even with this developer that the
23 uses presently planned for these sites that we're trading
24 out of the trust, will go forward?

25 COMMISSIONER CONNELL: Well, that's my

1 anticipation. We are certainly not approving this to
2 become a, you know, 24-hour nightclub district. We've had
3 extended discussions about the precedent setting. I know
4 we all have, as Commissioners, heard about the precedent
5 setting nature of what we're doing here and I certainly do
6 not want to have a situation facing us in the Port of LA
7 or Santa Barbara or Ventura County where they're just
8 eager to use their lease of authority to do something
9 which is not as, perhaps, pleasant as we would want.

10 And I want to send a very strong message to local
11 government, that there are very restricted uses when we do
12 have a swap. And so I would assume that exactly the uses
13 that have been contemplated that have been presented to
14 this Commission, the exact potential conceptual drawings
15 be used and that we not have any amendment of uses as we
16 move forward, that we do not have retail space,
17 substituted for entertainment space or, you know, some
18 other use that we cannot, at this point, contemplate. We
19 are approving a particular plan.

20 EXECUTIVE OFFICER THAYER: Thank you.

21 ACTING COMMISSIONER PORINI: Just one point of
22 clarification, that the dropdead date then as proposed
23 would be May of 2002 or May 2003?

24 COMMISSIONER CONNELL: May 2002.

25 EXECUTIVE OFFICER THAYER: And May 30th, I

1 think -- 31st.

2 COMMISSIONER CONNELL: I'll restate that again
3 for the record, if you want me to. There are four factors
4 then. We've had three and we've now added a 4th. I
5 appreciate your alerting me, Paul, to that one.

6 The time factor is the end of May, May 31st of
7 2002 for having these necessary local agreements in place.

8 Secondly, the developer must be moving forward
9 without phasing on the development of this project.

10 Third, that that development activity must
11 reflect the existing plan as presented before this
12 Commission and in the attachments that we have.

13 And fourth, that should the deadline not be met,
14 that our approval of the land swap would expire and we
15 would be able to have our property back as the State's.

16 CHAIRPERSON BUSTAMANTE: That's four.

17 COMMISSIONER CONNELL: That's the fourth. That's
18 the fourth. In other words, it reverts back. I don't
19 want us to be in limbo, using a Catholic phrase, and find
20 that, you know, it is expired, but we don't know who owns
21 the property. I want it to be clear that it comes back to
22 Heaven, the State being Heaven, here.

23 CHAIRPERSON BUSTAMANTE: So there's a motion.

24 Is there a second?

25 ACTING COMMISSIONER PORINI: I'll second.

1 CHAIRPERSON BUSTAMANTE: Let the record show that
2 the motion passes unanimously.

3 EXECUTIVE OFFICER THAYER: Very good.

4 Moving on to the next item.

5 CHAIRPERSON BUSTAMANTE: And what is that next
6 item?

7 EXECUTIVE OFFICER THAYER: Item 93.

8 CHAIRPERSON BUSTAMANTE: The next item is a brief
9 break for the Commissioners who are drinking a lot of
10 water up here.

11 (Thereupon a brief recess was taken.)

12 CHAIRPERSON BUSTAMANTE: If we can get this
13 meeting back in order.

14 EXECUTIVE OFFICER THAYER: If people could find a
15 seat, we're going to go ahead and get started.

16 CHAIRPERSON BUSTAMANTE: Paul, is there a reason
17 why we can't do 93 and 94 together. They're both
18 basically the same activities, just --

19 EXECUTIVE OFFICER THAYER: Certainly, we can work
20 right through those. I think actually 93 might not take
21 too long.

22 CHAIRPERSON BUSTAMANTE: We basically have until
23 2:15 to be able to complete this hearing, so we need to
24 move these other items fairly quickly.

25 EXECUTIVE OFFICER THAYER: Ninety-three then I'll

1 be very brief in the introduction merely say that the
2 resolution propose by the Lieutenant Governor echos the
3 approach to offshore oil drilling that's been taken by
4 many of the State leaders. And the resolution does two
5 things. It urges Congress to first -- or Congress and the
6 administration, in general, not to conduct oil development
7 on the 36 undeveloped leases in federal waters.

8 And the second thing it does is it urges the
9 federal government not to proceed with any other new
10 leases. And this is consistent with the approach taken by
11 a lot of the others in California.

12 CHAIRPERSON BUSTAMANTE: Annette?

13 ACTING COMMISSIONER PORINI: I just wanted to
14 commend the Lieutenant Governor and the staff for bringing
15 this resolution forward. I believe it's very consistent
16 with the position we have had in the past and with
17 Governor's statement just recently, with regard to the
18 federal decisions. So I'm very supportive of it.

19 CHAIRPERSON BUSTAMANTE: Thank you. Is there any
20 comments by the Controller?

21 ACTING COMMISSIONER ARONBERG: Also very
22 supportive.

23 EXECUTIVE OFFICER THAYER: We have just one
24 speaker.

25 CHAIRPERSON BUSTAMANTE: I believe we have two.

1 Carla Frisk and Tanya Gulesserian.

2 MS. FRISK: Chairman Bustamante and
3 Commissioners, it's pleasure to be here in Sacramento with
4 you today. As you know, the Legislature is out so Senator
5 O'Connell is in the district, therefore he couldn't be
6 here.

7 To say that he's very thrilled about that this
8 Commission entertaining a resolution opposing the
9 development of the 36 federal leases off the Santa Barbara
10 County coast would be an understatement. As you know, the
11 Senator repeatedly opposed the development of those leases
12 for all the reasons cited in your resolution. And I'm not
13 going to go over them, because you already know them.

14 As you may recall, this Commission took the lead
15 a number of years ago in establishing a moratorium on new
16 leasing in all State waters that had not already been
17 protected statutorily. That action was very important
18 because it led the way for the passage O'Connells
19 O'Connell's legislation when we was in the Assembly, AB
20 2444, the California Coastal Protection Act.

21 So today Senator O'Connell has asked me to thank
22 you, Lieutenant Governor, for introducing this resolution
23 and putting it before this Commission and to express its
24 strong support for it's passage.

25 I also have, which I have handed copies out, and

1 I guess they will be passed out to later, from two of our
2 county supervisors, since we weren't able to get this on
3 the agenda, Susan Rosh from the Second Supervisorial
4 District and Naomi Schwartz from the First Supervisorial
5 District mentioning the potential cause of dangers of
6 offshore oil development, the local opposition to new
7 development, the importance of tourism and healthy oceans
8 to continued.

9 The long established ocean based industries in
10 our area urge you to adopt this resolution to ban further
11 oil development off our shores.

12 CHAIRPERSON BUSTAMANTE: Thank you. There's also
13 a letter from the Citizens Planning Association of Santa
14 Barbara County. I believe that's on record.

15 MS. GULESSERIAN: Lieutenant Governor and
16 Commissioners, I have those other copies of those letters
17 from the Environmental Defense Center and Citizens
18 Planning Association.

19 My name is Tanya Gulesserian and I'm a staff
20 attorney with the Environmental Defense Center. We
21 strongly urge the State Lands Commission to adopt the
22 resolution propose by Lieutenant Governor Bustamante
23 supporting termination of the 36 undeveloped leases in
24 federal waters off the central coast of California.

25 The Environmental Defense Center is a public

1 interest environmental law firm working in Ventura, San
2 Luis Obispo and Santa Barbara counties. And we brought
3 the original request for termination of the leases and
4 review by the State of California.

5 EDC also represents environmental intervenors in
6 the State of California versus Norton Case.

7 EDC believes the federal leases should be
8 terminated because the oil companies failed to demonstrate
9 due diligence in developing these leases, and because the
10 environmental harm associated with such a development far
11 outweighs any potential benefits. In addition, EDC
12 supports a permanent ban on any new leasing off the
13 California coast.

14 According to a State report, the California ocean
15 resources, which is mentioned in our letter, the State
16 receives much more revenue from nonpolluting industry such
17 as tourism than offshore oil development.

18 Thank you for your consideration of this
19 important resolution and we urge you to adopt it today.

20 CHAIRPERSON BUSTAMANTE: Thank you.

21 Any other concerns?

22 What's the Commission's pleasure?

23 ACTING COMMISSIONER PORINI: Move approval.

24 ACTING COMMISSIONER ARONBERG: Second.

25 CHAIRPERSON BUSTAMANTE: Let the record show that

1 the motion was made, seconded and is moved unanimously.

2 EXECUTIVE OFFICER THAYER: The next item is 94
3 and Kris Walker from the Commission staff will give a
4 brief presentation on this.

5 MR. WALKER: Lieutenant Governor and
6 Commissioners, as you know, Chevron removed four oil
7 platforms off the coast of Santa Barbara in '96 leaving
8 large shell mounds on the bottom. The staff of the State
9 Lands Commission and the Coastal Commission directed a
10 study to be made of those mounds two years ago.

11 That study showed several things. First, that
12 the mounds are not biologically productive. And second,
13 that they all have a similar structure of hard mound
14 followed drill nodes and cuttings in the sea floor. There
15 are samples taken -- core samples taken that show there is
16 chemical contamination within the mounds, but it is a very
17 low level.

18 And finally, it is physically possible to remove
19 those mounds using one of several methods. Although, all
20 of those would be operating at the depth within the
21 current technology.

22 The study did not address several important
23 questions, and the item before you is a request to do an
24 Environmental Impact Report to answer those questions and
25 then come back to you with a recommendation of the project

1 as to whether the mounds should be removed, left in place
2 or some other treatment take place.

3 CHAIRPERSON BUSTAMANTE: Now, we did a core
4 sample. I remember we did this some time back. What were
5 the results of the core samplings.

6 MR. WALKER: On three of the mounds --

7 CHAIRPERSON BUSTAMANTE: This idea was to take
8 the core to see if there was anything we could discern
9 from that coring, so that we're not just having to go
10 through more expensive EIR process if it were not
11 necessary or that we can make some kind of determination
12 if, in fact, we could remove the shell mounds.

13 MR. WALKER: That is correct. And on three of
14 the mounds we found essentially below levels of detection
15 for almost all chemicals. On one of the mounds we were
16 above allowable amounts in PCBs and in nickel.

17 What it did not determine was and why we now need
18 the EIR is whether or not if you took those mounds out,
19 what would you have to do to dispose of them, whether it
20 can be disposed in the sea, on land in a regular landfill,
21 or whether it would be special treatment. And so now
22 that's what we are asking to go back and do.

23 ACTING COMMISSIONER PORINI: I'm just wondering
24 about timing. What do we think our timeframe is going to
25 be if we go back for this EIR, it seems like there's been

1 a significant amount of time that's elapsed.

2 MR. WALKER: There has been a large amount of
3 time. We have gone forward with interviewing contractors.
4 We have not done the cost negotiations pending your
5 action. If this is approved and you select them in the
6 next week, we would have a draft EIR available for public
7 distribution in April, and we would probably have a final
8 document by August.

9 CHAIRPERSON BUSTAMANTE: Any questions?

10 In this process, this is going to be the first
11 time that we're contemplating removing shell mounds. And
12 so I would hope that any kind of removal would contemplate
13 staging or phasing of activities to ensure that as things
14 are taking place there are assessments that are being made
15 in each of the phases, so as not to bid out something in
16 which -- or to have an EIR that would talk about only the
17 removal in one large effort.

18 I would hope that we would be very diligent. And
19 we are going to go through this process, so let's figure
20 out how we would go through it in a way that the first
21 time was done the right way, and if we get involved with
22 something that we didn't anticipate, that there are
23 different checks and balances.

24 MR. WALKER: I just hope that the EIR would also
25 sort of identify the order in which we should approach the

1 formats, from least harmful to most dangerous.

2 EXECUTIVE OFFICER THAYER: And we could also
3 direct the consultant preparing the EIR to look at that
4 alternative of the phase removal or at least concurrent
5 monitoring, so that when one is completed, one is removed
6 and the results of that would be immediately available to
7 see whether or not we should be altering the method of
8 removal for the others.

9 But we, at this stage of the game, we can provide
10 that input to ensure that the document looks at that
11 question.

12 CHAIRPERSON BUSTAMANTE: Any comments on that?
13 Any other comments?

14 We have two people Tanya, again and Carla.

15 MS. FRISK: Again, Carla Frisk with Senator Jack
16 O'Connell's office. As all of you know, this has been a
17 very long arduous process that we've been working on. As
18 was stated earlier, these mounds were removed -- or the
19 permits were issued in '95 and in '96, the platforms were
20 removed. It took a long time to get the study, but your
21 staff and the Coastal Commission staff finally got
22 together and got it complete. And as your staff
23 succinctly stated, it showed the three things that we had
24 been maintaining all along.

25 And, in fact these shell mounds do have toxics in

1 them. And, in fact, they are not providing the habitat
2 that's some had indicated they were and that they can
3 actually be removed.

4 Again, as your staff stated, Chevron has
5 submitted a permit application for three potential
6 projects, removal, modification and mitigation. And
7 attached testimony from Senator O'Connell has those
8 descriptions attached, so it's in the staff report.

9 I think it's important to note that the
10 California Coastal Commission did require on June 13th
11 that the application to the Commission be for removal.
12 And in discussing this issue, I think it's important that
13 the project description be consistent for a CEQA review
14 process.

15 And one of the concerns that we would have is
16 that if the project is not for removal, that all of the
17 options have to get full project review. So you then have
18 one project that gets full project review and alternatives
19 that are looked at or you have three projects that are
20 getting full project review.

21 And when you look at the issue of the two other
22 projects shell mound mitigation or modification, those
23 projects don't, in fact, take into account this issue of
24 the toxicity in the mounds. This report says they do not
25 represent this. The assumption in Chevron's project

1 description is that they do not represent a chemical or
2 biological hazard to the environment. The information in
3 the study, meaning the shell mounds study, does not
4 suggest that this is the case.

5 Further more, the project description for removal
6 includes the removal of the caissons that the platform has
7 on it. It's critical that we have -- that you that the
8 Coastal Commission and the State Lands Commission have the
9 option if it comes down to that, which is what you're
10 addressing of partial removal, complete removal so that
11 you're not put in a box. It's either all or nothing.

12 Again, the same concerns are that were just
13 reiterated about the longevity of this process. In 1995
14 and 1996, the Senator indicates, "It is nothing short of
15 ridiculous that it took Chevron five years to apply for a
16 permit to address this issue." And we hope that you and
17 your staff will stay on this project, now that we do have
18 many of the studies that we were hoping to get to make
19 sure that this goes forward and that we get this issue
20 resolved as soon as possible.

21 There are at least 20 platforms off the central
22 coast, which will ultimately be going through the
23 abandonment process. And it is likely that many of those
24 will have these mounds under them, if not all of them and
25 that there will be toxics there as well.

1 So it's really an arduous process, but this is so
2 critical in terms of what will occur in the future with
3 regards to additional abandonments and additional mounds.

4 Also, I have a letter from a Supervisor named
5 Schwartz in whose district these shell mounds rest in
6 Santa Barbara County, mentioning that the county of Santa
7 Barbara owns the property on which the platforms were
8 once erected, and therefore the county has a vested
9 interest in ensuring that post-abandonment activities
10 environmentally sound. Naomi Schwartz endorses the
11 Commission and State Lands Commission's permits to
12 remove -- original conditions to remove the toxic debris
13 beneath the platforms upon abandonment, including the
14 shell mounds, and are, again, concerned about the time
15 line. Finally, urging you to proceed with the preparation
16 of the environmental document to evaluate the issue of the
17 removal.

18 Thank you.

19 EXECUTIVE OFFICER THAYER: On two points, we'll
20 fully investigate all 3 different options and the EIR will
21 do that, particularly the full removal option, which is
22 the one that I think she and some of the others are mostly
23 in favor of.

24 And her second point is we don't necessarily
25 accept at face value -- we don't accept at face value

1 Chevron's assertion that there is no contamination.
2 That's the job of the EIR to determine, you know, how much
3 contamination there is.

4 CHAIRPERSON BUSTAMANTE: And we also don't accept
5 at face value that just full removal is the only
6 alternative.

7 EXECUTIVE OFFICER THAYER: That's correct.

8 CHAIRPERSON BUSTAMANTE: If it's the best
9 alternative here. It's going to be very important, the
10 idea of coring and then the reason for the EIR was to --
11 because we are setting a precedent. We've never done this
12 before. We have to make sure that the first one is done
13 right. And so, however, we do this, we have to make sure
14 that it is done in a way that you're not going to stir up
15 a tremendous amount of toxins that end up in the water and
16 that it ends up having greater environmental damage.

17 If we could all take it out without any problems,
18 my guess is that that would be the option that most people
19 would want. But if it's going to create huge damage and
20 pollution in the waters, I think we have to be very, very
21 careful exactly how we're going to do this.

22 MS. GULESSERIAN: Lieutenant Governor and
23 Commissioners, I have a copy of Environmental Defense
24 Center's letter, and another letter from the Citizens
25 Planning Association.

1 My name is Tanya Gulesserian. I'm an attorney
2 with the Environmental Defense Center.

3 Just to comment regarding the late submittal of
4 letters. Several agencies are able to put their staff
5 reports on the web site. This would ease the public's
6 ability to review the information in a timely manner at
7 least a week prior to the hearing, so that we are able to
8 review it and then submit a letter commenting on this
9 information on a timely basis, so that you're able to
10 review those letters before you come here today.

11 So we would request that staff reports be
12 available on the Internet if that is possible.

13 The Environmental Defense Center is a public
14 interest environmental law firm. We're representing the
15 Citizens Planning Association, the Sierra Club, and the
16 Pacific Coast and Federation of Fisherman's Association,
17 with respect to Chevron's failure to remove its debris in
18 compliance with State Lands Commission, Coastal Commission
19 and Army Corps permits.

20 Since 1996 some Four-H platforms were removed.
21 The Environmental Defense Center has been advocating for
22 compliance with these permits.

23 Finally, in June 2001, five years later, the
24 California Coastal Commission directed Chevron to apply
25 for a permit to remove the toxic mounds. Because the

1 State Lands Commission is the lead agency under CEQA
2 Chevron was also required to submit a permit request to
3 the State Lands Commission.

4 However, rather than apply for a permit to remove
5 the mounds, Chevron has submitted a proposal involving a
6 range of alternatives. This proposal violates the clear
7 direction of the California Coastal Commission to submit a
8 permit amendment to remove the mounds.

9 The State Lands Commission should consider the
10 removal alternative to be a project description and
11 evaluate other proposals as project alternatives. The
12 alternatives now listed should also include an alternative
13 involving removal of all debris except the caissons. And
14 then as the Lieutenant Governor was mentioning, perhaps
15 another alternative that dealt with phasing to address a
16 phased project so that we have all the information in one
17 environmental review document, and we're not hear next
18 year with an inadequate EIR that doesn't cover some action
19 to comply with these permits.

20 This recommendation is consistent with the
21 existing State Lands Commission permit, which already
22 requires full site clearance.

23 Removals is especially important, given the fact
24 that interim safety measures required by the State Lands
25 Commission, in particular the requirement for buoys to

1 mark the locations of the mounds have been woefully
2 inadequate. We have submitted some charts to you attached
3 to our letter that show that buoys have been found missing
4 or damaged 34 percent of the time.

5 In addition, the shell mounds environmental
6 review confirmed that the mounds do contain toxic levels
7 of contaminants and that such contaminants are leaching
8 into the sedimentation beneath the mounds.

9 Contrary to the staff report, and I believe Ms.
10 Frisk addressed this question, the review did not find a
11 lack of water column contamination. In fact, the review
12 did not test the water column.

13 Although EDC has requested that water quality
14 testing be conducted, to no avail.

15 Finally, EDC urges the State Lands Commission to
16 demand a timely permit review process and to ensure that
17 this process that is set forth is being met. The issue
18 has been unresolved for over five years. And, as you know
19 and you stated, this action will set a precedent for over
20 20 platforms that are offshore of the central coast.

21 Thank for this consideration of this issue.

22 EXECUTIVE OFFICER THAYER: On two points on the
23 Internet question, we've started to post some of our more
24 popular items. And so, for example, the Queensway Bay
25 item and the public trust items have been on the Internet

1 for several weeks. We are investigating moving the next
2 step and to make even more of them available. It does
3 require both staff and equipment resources in order to do
4 this. We know that the Coastal Commission does, in fact,
5 make some of theirs available, although not all of them in
6 recognition of those resources, but I wanted to let you
7 know that we're headed in that direction.

8 And then in terms of the project, I'm not sure --
9 the Coastal Commission has directed that Chevron return
10 with a full shell mound removal application for a permit
11 amendment. However, the Commission's original approval,
12 in essence, gave them the authority to demand that kind of
13 an amendment. We don't have that. And instead as the
14 previous speaker mentioned, Chevron's proposed a range of
15 removal options including the one that the Coastal
16 Commission required. So all of that will be studied in
17 the EIR.

18 CHAIRPERSON BUSTAMANTE: Along with the issues of
19 water quality testing?

20 EXECUTIVE OFFICER THAYER: Absolutely.

21 CHAIRPERSON BUSTAMANTE: Any questions?

22 ACTING COMMISSIONER ARONBERG: So, Paul, I guess
23 what you're saying that the project description is going
24 to be removal with the other alternatives as suggested by
25 the speaker?

1 EXECUTIVE OFFICER THAYER: No. All of them will
2 be evaluated equally. The project description for the EIR
3 is somewhat dependent upon what the applicant applies for.
4 In other words, we can't write that separately from what
5 The applicant is proposing. And in our case, the
6 applicant proposed that an EIR -- in essence a range of
7 options that they wanted the EIR to review to determine
8 which would be best. But this full removal option, which
9 is one that the Coastal Commission asked for, is one of
10 the co-equal options that has to be fully examined.

11 ACTING COMMISSIONER ARONBERG: Is there any
12 reason for this Commission to express its desire that the
13 mounds be removed, if it is safe and feasible and
14 nonpolluting?

15 EXECUTIVE OFFICER THAYER: The Commission can do
16 that, but, of course, the EIR will develop that
17 information. And so I think, you know, the approach right
18 now, the best approach, would be to come up with a
19 solution, the direction might be the solution that's best
20 for the environment. And we don't know what those answers
21 are yet. One suggestion on method of dealing with them
22 that was discussed in the earlier study was whether or not
23 some of them should be buried in sand. And I'm not
24 necessarily subscribing to that as the best solution at
25 all, but if there's some contaminated mound where the

1 removal of the mound itself might be sustained, some of
2 the contaminants, that might be a good one for one of the
3 mounds. So, at this point, it would be difficult to say
4 what's best for the environment.

5 ACTING COMMISSIONER ARONBERG: Can we have this
6 be expedited as another question.

7 EXECUTIVE OFFICER THAYER: I believe Kirk Walker,
8 the staff person indicated, that the draft would be out in
9 April if everything worked out and the final coming in
10 August.

11 CHAIRPERSON BUSTAMANTE: What's the pleasure of
12 the Commission?

13 ACTING COMMISSIONER PORINI: I'll move approval.

14 ACTING COMMISSIONER ARONBERG: Second.

15 CHAIRPERSON BUSTAMANTE: Motion has been made and
16 seconded. Let the record show that the motion passed
17 unanimously.

18 Are we going -- do we have anything on 95?

19 EXECUTIVE OFFICER THAYER: It's an oral staff
20 presentation. I'd recommend that perhaps we take up the
21 two items that have been trailed, 82 and 84 from consent,
22 and if we're running out of time we can do the audit
23 report at a future meeting.

24 CHAIRPERSON BUSTAMANTE: Let's go to those 2
25 items.

1 EXECUTIVE OFFICER THAYER: Item 82 I think is a
2 presentation. This is the proposal by Venoco to extend
3 the due diligence requirement for submitting a development
4 plan by two years.

5 MR. MOUND: Venoco, a least was transferred to
6 Venoco in March of 2000. They acquired Chevron's 50
7 percent interest in this Lease 3150. At that time, they
8 had asked for a two-year drilling deferment to study the
9 drilling options and to come in with a development plan
10 and a proposed drilling plan. However, the Commission
11 only granted them one year.

12 They had requested, like I said, an initial two
13 years. However, they didn't meet that requirement and we
14 still, as of yet, don't have a plan or a development plan
15 or a drilling deferment approved.

16 We've reviewed their request to extend this
17 another two years. We believe that they've had plenty of
18 time. They blame the fact that they haven't submitted a
19 plan to the Commission on the fact that they were having
20 difficulty getting information from Chevron during the
21 transfer. We looked at their reasons for the delays. I
22 believe it was partly Chevron in their reorganization and
23 moving the facilities, files were relocated and could not
24 be located. We also believe that Venoco could have within
25 diligent in getting the information they needed to develop

1 a plan for this lease.

2 Therefore, because of that, we're suggesting that
3 you do not give them a deferment -- well, that you give
4 them a deferment, but not beyond the year -- not beyond
5 January 1st, 2002, which is about four months from now,
6 which is giving them another four months to complete a --
7 or to come into you with a development plan for this
8 lease.

9 CHAIRPERSON BUSTAMANTE: Is a representative of
10 Venoco here? Yes, I believe so.

11 CHAIRPERSON BUSTAMANTE: I didn't see a request
12 to speak form, so I'm assuming you don't want to speak?

13 They don't want to speak they're just here to
14 answer questions.

15 Do the Commissioners have any questions?

16 ACTING COMMISSIONER PORINI: I'd just like to
17 make a statement.

18 CHAIRPERSON BUSTAMANTE: Sure.

19 ACTING COMMISSIONER PORINI: I kind of feel like
20 I'm being put in a position of being a mom, but I'll
21 approve this deferment for four months, but I don't
22 believe I'll approve any further deferments, period.

23 ACTING COMMISSIONER ARONBERG: Move approval of
24 staff's recommendation.

25 ACTING COMMISSIONER PORINI: Second.

1 CHAIRPERSON BUSTAMANTE: There is a motion and a
2 second.

3 EXECUTIVE OFFICER THAYER: There is one person
4 who has signed up to speak.

5 CHAIRPERSON BUSTAMANTE: I'm sorry. I must
6 have missed that.

7 MS. FRISK: When you have to go through two
8 airports to get here and two airports to get home, you try
9 to make it worthwhile. Thank you.

10 Carla Frisk with Senator Jack O'Connell's office.
11 I'm here today to express the Senator's concern about
12 deferments in general. A concern that oil companies do
13 not take their due diligence requirement seriously. And
14 as you heard from staff, there is some concern at that
15 level as well.

16 Again, as you know, Senator O'Connell has
17 significant concerns about additional drilling in the
18 Santa Barbara channel. And this concern is just basically
19 augmented by this situation. For example, I was present
20 at the hearing before the State Lands Commission when the
21 Benton Oil Company promised this Commission it would
22 absolutely be drilling in one year, and I believe all the
23 members were there. I think this Commission was very
24 clear that they wanted that to move forward or not.

25 And in the end what happened was Benton did

1 virtually nothing for about ten months and then
2 immediately started activities, applied to the Commission
3 for an additional deferment. The county acted before this
4 Commission could act. The county had an entirely
5 different permit condition.

6 CHAIRPERSON BUSTAMANTE: We're talking about
7 Venoco right now.

8 MS. FRISK: Right, but in the end the point is
9 Benton was sedate, which they should be doing in it one
10 year and now it's three years. And our concern is that we
11 have are seeing these deferments come before the
12 Commission and we don't really feel that the oil companies
13 are taking the deferment seriously.

14 We don't feel that we are sure that, in fact,
15 when the one-year is the one year is going to be up. And
16 until the Commission begins denying some of those
17 deferments that may not be the case, that may continued to
18 be the situation.

19 CHAIRPERSON BUSTAMANTE: Please sum up.

20 MS. FRISK: Many of those deferments for
21 submitting a development plan actually expired last March,
22 so it has already received de facto a six-month extension
23 and it is still unable to meet it's obligation. Again,
24 it's critical that this Commission take an action that
25 will get the attention of oil companies and send a message

1 that if their operating in State waters or they have due
2 diligence requirements they better take them seriously.

3 CHAIRPERSON BUSTAMANTE: Thank you.

4 MS. GULESSERIAN: Tanya Gulesserian. Lieutenant
5 Governor and Commissioners, thank you for the opportunity
6 to quickly comment. That EDC is very concerned and
7 opposed to all deferrals until the oil companies
8 aggressively prove that they are due diligently meeting
9 all deadlines. You have two requests for deferments being
10 heard today months after their actual expiration. That
11 means they are due de facto extensions already.

12 In opposing these deferrals and de facto
13 extensions, EDC urges the Commission to, one, require
14 requests four a deferral before the expiration to get
15 information in a timely manner, and, two, only allow
16 deferments if the industry has made significant and
17 aggressive efforts toward meeting the deadline and cannot
18 meet that deadline only through no fault of their own.

19 With respect to Venoco, the Commission put Venoco
20 on notice when the Commission approved the assignment of
21 the lease from Chevron in February of 2000 that Venoco
22 must submit an exploration and development plan by March
23 2001. It is already been one and a half years and Venoco
24 has not submitted a plan.

25 A staff report states and the staff has spoken to

1 you here today that inaction by Venoco appears to have
2 contributed to the delay.

3 CHAIRPERSON BUSTAMANTE: Please sum up.

4 MS. GULESSERIAN: EDC urges the State Lands
5 Commission to deny the request for deferment and require
6 the leasee to final quit claim as soon as possible.

7 Thank you.

8 CHAIRPERSON BUSTAMANTE: Thank you.

9 Any other questions, any other comments?

10 Motion?

11 ACTING COMMISSIONER ARONBERG: Move approval of
12 staff's recommendation, noting that the Controller shares
13 Senator O'Connell's concerns about deferment as well as
14 EDC's and would echo Annette's comments about this being
15 the last deferment.

16 ACTING COMMISSIONER PORINI: Second.

17 CHAIRPERSON BUSTAMANTE: Motion was made and
18 seconded. Let the record show that it was passed
19 unanimously.

20 Item 84, Berry Petroleum.

21 MR. PLANCK: Lieutenant Governor and
22 Commissioners, Jeff Planck, staff at the Commission.

23 PRC 3314 was a acquired by Berry from Shell Oil
24 Company. And an on-shore facility which has one well and
25 a small oil and gas processing plant that's on shore in

1 the neighborhood of a third to a half mile from the
2 shoreline.

3 In 1985 there was one drill -- one well drilled
4 there by Chevron and it's been producing ever since 1985
5 at about 100 barrels and continues to produce. This lease
6 actually encompasses another lease, PRC 735, that are all
7 off-shore in Montalvo and Ventura County. It's actually a
8 rather large oil field on-shore that does go out into the
9 State waters.

10 Berry Petroleum received a deferment from the
11 Commission in 2000, and they were in the process of trying
12 to find a buyer for the lease and assign the lease. They
13 have since decided not to assign the lease and do want to
14 continue to develop the lease, but they believe that they
15 need more seismic information before they can fully
16 understand the faulting and the geologic structures.

17 They're in here asking for another deferment to
18 review -- to actually do the seismic study, to get all the
19 permits they need necessary, and to begin drilling by the
20 end of next year.

21 CHAIRPERSON BUSTAMANTE: What is their due
22 diligence up to this point?

23 MR. PLANCK: You mean like how man deferments
24 have they had?

25 CHAIRPERSON BUSTAMANTE: No, they've had

1 deferments. What have they been doing while they've had
2 deferments?

3 MR. PLANCK: Well, in the last year they were
4 actually in the process of trying to sell and sign the
5 lease. And that's all I know. They have come in twice
6 now --

7 CHAIRPERSON BUSTAMANTE: Is there somebody here.
8 Please come up.

9 MR. BERG: Steve Burg and Richard Pulley with
10 Berry Petroleum. Lieutenant Governor and Commissioners,
11 thanks for considering our --

12 CHAIRPERSON BUSTAMANTE: We need a very quick
13 response sir,

14 MR. PULLEY: We spent \$10,000 --

15 CHAIRPERSON BUSTAMANTE: Your name please.

16 MR. PULLEY: My name is Richard Pulley. I'm the
17 staff geologist on this project. We spent \$10,000 on
18 getting cost estimates to do the seismic program. The
19 seismic program will cost about two and a half million.
20 That will give us targets for development both on shore,
21 and in this off-shore portion of the lease.

22 We cannot do this effectively without doing the
23 seismic. This is something that's never been done before,
24 that's why we want to do it.

25 CHAIRPERSON BUSTAMANTE: Well, yeah wasn't this

1 done earlier? I mean, you've been trying to sell the --
2 if you're going to use the time for deferment, why haven't
3 we proceeded quickly to deal with this?

4 MR. BERG: Lieutenant Governor, the cost to drill
5 a well from on-shore to off-shore at these targets, which
6 are about 11 thousand feet subsea, is in the neighborhood
7 of \$3 million. And it's only been within the last year
8 that the oil prices have stabilized to allow us to have
9 the economics to move forward with a project of this
10 magnitude.

11 ACTING COMMISSIONER ARONBERG: I guess I'll just
12 add my caution to you that I will be willing to agree to
13 this postponement this time, but I won't agree to it next
14 time.

15 CHAIRPERSON BUSTAMANTE: So is there a motion?
16 Is there any other questions by staff or any
17 other comments to be made?

18 Carla and Tanya.

19 MS. FRISK: Again Carla Frisk with Senator Jack
20 O'Connell's office. Just for the record, let me reiterate
21 Senator O'Connell's concern that oil companies are not
22 taking their due diligence requirement seriously. I agree
23 with your comment that this should have been moving
24 forward for the past year.

25 And in this case, in fact, Berry Petroleum is

1 asking for twice the amount of time that they were given
2 originally to move forward with this project. Again, the
3 message must be sent that oil companies that do not
4 seriously pursue their projects will not be granted
5 deferments.

6 CHAIRPERSON BUSTAMANTE: Thank you. Staff, the
7 time of deferment staff is recommending is?

8 EXECUTIVE OFFICER THAYER: It would expire
9 January 1st, 2003 and there are also interim milestones
10 established in this.

11 CHAIRPERSON BUSTAMANTE: Run out a year and a
12 half.

13 EXECUTIVE OFFICER THAYER: Correct.

14 MS. GULESSERIAN: Tanya Gulesserian with the
15 Environmental Defense Center. I just wanted to put our
16 comments on record today that the State Lands Commission
17 approved a year ago a deferment until June 2001. Here we
18 have another example of a de facto extension, and an
19 after-the-fact-request for another deferral.

20 I'd also like to put on the record that economic
21 considerations are not a justification for failing to meet
22 due diligence standards, and now you're considering a
23 request to defer until 2003. We will be returning then to
24 oppose any further deferment.

25 Our experience with these companies is they make

1 every promise to the regulatory agencies, yet most of
2 these promises remain unfulfilled. We would urge the
3 State Lands Commission to make sure that these deferments
4 do not continue and that do diligence is met.

5 Thank you very much.

6 CHAIRPERSON BUSTAMANTE: We have a staff.

7 MR. MOUND: I just wanted to add one thing.
8 We're taking deferments very seriously. These deferments
9 include the previous two that you issued at the last
10 meeting, all asterisk milestones which these companies
11 have to meet. So from now on we should not hit in this
12 position with any deferments that you're issuing.

13 CHAIRPERSON BUSTAMANTE: What's the pleasure of
14 the Commission?

15 ACTING COMMISSIONER PORINI: I'll move approval
16 of the staff's recommendation with the specific
17 milestones.

18 ACTING COMMISSIONER ARONBERG: Second.

19 CHAIRPERSON BUSTAMANTE: Motion and a second.
20 Let the record show that it was passed unanimously.

21 Is that the end of the regular calendar.

22 EXECUTIVE OFFICER THAYER: Yes, it is. We could
23 put over that public -- excuse me the audit report.

24 CHAIRPERSON BUSTAMANTE: Put it over.

25 EXECUTIVE OFFICER THAYER: We do have two

1 requests to speak during the public comment period.

2 CHAIRPERSON BUSTAMANTE: Yes, we do. You're
3 right. Candice Harper.

4 MS. HARPER: I'm here to respond on the comments
5 that I expect to be made on behalf of the Riverbank
6 Holding company so I would like to be able to speak
7 following that, if I may.

8 CHAIRPERSON BUSTAMANTE: River Bank Holding
9 Company.

10 EXECUTIVE OFFICER THAYER: I believe Rod Blonien
11 is signed up.

12 MR. BLONIEN: Thank you, Governor Bustamante, Ms.
13 Porini and Ms. Aronberg. Ron Blonien on behalf of the
14 River Bank Holding Company.

15 The chart we have on the wall is for purposes of
16 explanation. And if you take a look at the chart, you
17 will note that the blue part is the area indicating where
18 River Bank owns the La Toro portion of the property. The
19 pink indicates where the Virgin Sturgeon owns the La Toro
20 portion of that property.

21 And, generally, the regulation that the State
22 Lands Commission has indicates that generally the person
23 who has La Toro property rights is assumed to also be
24 entitled to the trust property rights to the sovereign
25 property rights, the submerged water rights.

1 In this situation, we have here in 1976 Virgin
2 Sturgeon gets a lease from the State Lands Commission for
3 the portion that's in the pink. Subsequently, River Bank
4 Marina comes along gets the lease for the property that's
5 in the blue. And then in 1986 River Bank enters into a
6 sublease with the Virgin Sturgeon for that portion of the
7 property which is the La Toro, the back part is the pink
8 and the blue part is leased by River Bank from the Virgin
9 Sturgeon.

10 And the piece we're talking about is this piece
11 right here, and that was in 1986. Staff, at that time,
12 sends a memo to file indicating that they are concerned
13 with the quote, "Windfall profits that enure to the
14 benefit of the Virgin Sturgeon," by virtue of the fact
15 that they pay the State approximately \$250 a month for the
16 lease of that property and they're getting over \$2,500 a
17 month from River Bank for the lease of that property.

18 Then we progressed to 1992, at which time the
19 Virgin Sturgeon comes forward and asks to exercise their
20 option under the lease. The recommendation from the staff
21 is that they go ahead and they grant the option, even
22 though River Bank has indicated that they would like to
23 directly negotiate with the State and have the right to
24 lease the property and not to be subleasee.

25 Obviously, it would be to the advantage of the

1 State to do that, because they would be able to get the
2 profit that is now inuring to the benefit of Virgin
3 Sturgeon. Staff indicated at that time, since this was an
4 option, what they would like to do is continue for the
5 option period.

6 But in a letter to Mr. Skidmore, the President of
7 River Bank Holding, Mr. Valentine indicates, the staff
8 counsel indicates, that at the time this lease expires,
9 which would be the year 2001, that then River Bank would
10 have the ability to lease directly from the State and that
11 they would provide notice to River Bank.

12 Something odd happened then, Governor Bustamante.
13 In 1996, the lease is again extended for a 25-year period
14 of time, in spite of the fact that that lease still had
15 ten years to run. So the lease has got ten years to run
16 and the staff goes and extends that lease for another 25
17 years, gives no notice to River Bank, doesn't give River
18 Bank the opportunity to compete for that property. And
19 despite the fact, again, that the La Toro property rights
20 should go to River Bank marina.

21 Subsequently it's determined -- incidentally,
22 this takes place on a consent calendar, which is supposed
23 to be for noncontroversial items, but in the meantime
24 there are at least two pieces of litigation filed back and
25 forth between the parties relating to this business

1 transaction. So it clearly was controversial.

2 No notice given to River Bank. The lease has got
3 ten years to run and they extend it for another 25 years.
4 Subsequently, it's brought to the attention of the Lands
5 Commission staff that they had extended this lease so long
6 it now violates statutory law.

7 Statutory law provides you cannot have a lease in
8 excess of 49 years. They now have a lease in excess of 49
9 years. It's our contention that the lease, at that point,
10 is void and cannot -- you cannot be remediated in any way
11 or fashion. But what the staff then seeks to do is to cut
12 off the final year and a half approximately to that least
13 to bring it under 49 years and to allow the situation to
14 continue.

15 And, again, our concern is that promises were
16 made, commitments were made to River Bank that were not
17 followed. We got to a point in '96 where no notice was
18 provided, staff went against what they previously had
19 committed to River Bank and just recently, just within the
20 last couple of months, staff went in and amended that
21 lease to shave off the last couple of years and try and
22 make it a legal lease.

23 We contend it is not legal. We would ask that
24 this matter be put on the agenda for your next meeting so
25 that may be reviewed and so that we may have this thing

1 discussed in public and not have it slip through the
2 consent calendar as it has been done in the past.

3 CHAIRPERSON BUSTAMANTE: Thank you. If you could
4 just hold for a moment.

5 I heard three issues. And so from staff, are we
6 required to give notice to River Bank on this particular
7 issue?

8 EXECUTIVE OFFICER THAYER: Staff does not give
9 notice for extension of existing leases. It does give
10 notice to any who requested it for new leases, and that's
11 been our standard practice.

12 CHAIRPERSON BUSTAMANTE: And was there a
13 commitment made to provide a notice?

14 EXECUTIVE OFFICER THAYER: Most of this happened
15 before -- all of this happened, except for the last
16 incident, before I came to the Lands Commission. My
17 understanding is that Mike Valentine did, in fact,
18 indicate that notice would be given, but it was within the
19 context of the 1992 meeting. And I believe notice was
20 given at that time.

21 And I believe that at that particular juncture
22 there was contemplation of an agreement between River Bank
23 and Virgin Sturgeon. And so at that particular moment in
24 time, and it was a brief one, there was not a disagreement
25 going on, and so there was no objection from River Bank to

1 the 1992 action.

2 But I don't believe, and, again, I'm going --
3 we're digging stuff out of the piles to deal with these
4 issues, I don't believe that that assurance was for longer
5 than that 1992 meeting.

6 CHAIRPERSON BUSTAMANTE: Was that notice in
7 writing?

8 EXECUTIVE OFFICER THAYER: I don't know.

9 MR. BLONIEN: Yes, Governor, it is in writing and
10 it's one of THE attachments in the binder and that's a
11 1991 letter from Mr. Valentine.

12 EXECUTIVE OFFICER THAYER: I think the Lieutenant
13 Governor was asking about the notice that we gave River
14 Bank for the 1992 meeting. I don't know whether we sent a
15 special notice or whether we sent a copy, as we generally
16 do, the agenda, which shows the items that will be coming
17 up.

18 CHAIRPERSON BUSTAMANTE: Would we have that on
19 file?

20 EXECUTIVE OFFICER THAYER: Yes. And as a matter
21 fact Jack did the research on this.

22 CHIEF COUNSEL RUMP: Yes. I took a look at the
23 file for that date and mailing was made to, I believe, two
24 individuals within the River Bank organization.

25 CHAIRPERSON BUSTAMANTE: And those two people.

1 CHIEF COUNSEL RUMP: I believe it is Kip Skidmore
2 and I think there was generally to River Bank.

3 CHAIRPERSON BUSTAMANTE: Also, on the the lease
4 in excess of 49 years, are we required to now reissue an
5 entirely new contract in order not to exceed the 49 years
6 or how does that process work?

7 EXECUTIVE OFFICER THAYER: When Kip Skidmore met
8 with me and with Jack and several every others, within, I
9 guess, about six months, eight months ago to bring up this
10 issue. And we consulted with the Attorney General's
11 office who reviewed the relevant court cases. And in
12 situations where there's a discrete -- I'm going to say
13 this and ask for Alan to really say what it means. But my
14 understanding of it was that where there are discrete
15 mistakes made under contract, which are easily
16 correctable, that the rest of the contracted is not void.

17 And in this particular circumstance, the advice
18 was to stay that this contract was only valid for the
19 49-year period in which was lawfully allowed under the
20 law. There was a mistake made and it was granted to 50
21 years instead of 49. I then sent a letter not a amending
22 the lease at all, but merely advising Virgin Sturgeon that
23 their lease would expire after 49 years by operation of
24 law. So I did not amend it.

25 CHAIRPERSON BUSTAMANTE: And that's all as far

1 Attorney General.

2 ASSISTANT ATTORNEY GENERAL HAGER: That's pretty
3 close. We looked at the law. There has been some
4 conflicts among the different Appellate districts, but we
5 think the weight of the authority and the better authority
6 is that when you have a lease where part of the period
7 where it goes beyond the statutory prescribed period, only
8 the extended -- only that longer portion is void. The
9 whole lease is not void.

10 CHAIRPERSON BUSTAMANTE: And so there's no. -- at
11 this point, is there, as we've entered into a contract,
12 based on what you've said, can we enter into new
13 negotiations on a lease since we've already let a lease?

14 ASSISTANT ATTORNEY GENERAL HAGER: You've issued
15 a lease that is valid for 49 years. You do not need to
16 amend that lease to make it 49 years. It, by operation of
17 law, remains a valid lease, but only for the 49 years.

18 CHAIRPERSON BUSTAMANTE: Do we have an option to
19 be able to get in to that lease or do we have cause to
20 reopen that lease as a result of this either notification
21 or the excess of 49 years.

22 ASSISTANT ATTORNEY GENERAL HAGER: I don't
23 believe so.

24 CHAIRPERSON BUSTAMANTE: Did you want to say
25 something?

1 MR. BLONIEN: Yes, Governor. Not to prolong this
2 and get into an attorney's argument, but we believe the
3 authority indicates that the lease is void once it goes
4 beyond 49 years, and that the Commission could just as
5 easily follow that line of cases and open this thing up,
6 and get the best benefit for the people of the State of
7 California, keeping in mind that what Jan Stevens said
8 this morning about these being trust properties and trying
9 to maximize State revenues.

10 CHAIRPERSON BUSTAMANTE: Thank you. The issue
11 does raise another concern. And that is the \$250 per
12 month versus the \$2,500 per month. How come we're not
13 getting more?

14 EXECUTIVE OFFICER THAYER: I don't know the exact
15 financial arrangements. I need to look into that. I
16 don't for example whether we received in a percentage of
17 the revenue that the Virgin Sturgeon receives from its
18 sublease or what and I need to look into that. I don't
19 know the answer to that.

20 I think originally though, my understanding from
21 Kip Skidmore, who represents River Bank, that they made a
22 mistake, and that they started building their marina and
23 didn't realize their lease didn't encompass of what they
24 wanted to build. And literally while the equipment was
25 waiting, went in to negotiate with the Virgin Sturgeon.

1 So the original problem was created when River
2 Bank designed a project for which they didn't get the
3 right to build. And that's created a problem.

4 CHAIRPERSON BUSTAMANTE: Okay. That's good. I
5 understand that. And I'm still wondering about the money.

6 EXECUTIVE OFFICER THAYER: I'll need to get back
7 to you on that, because I'm not sure exactly what's
8 happened.

9 CHAIRPERSON BUSTAMANTE: We don't have a quorum
10 here to be able to add anything to the agenda for next
11 time. We are going to be going into -- are you still
12 going to go --

13 EXECUTIVE OFFICER THAYER: Closed session.

14 There is, of course, that one other comment.

15 CHAIRPERSON BUSTAMANTE: And we'll need to talk
16 about that particular issue. Let me see if there's
17 something in that that we should do with respect to any
18 kind of an increase that would take place.

19 In the meantime, if there is -- if you could
20 prepare the information that's been requested of you and
21 make sure that the two Commissioners receive it, that way
22 they can have an opportunity to review it, and we can get
23 together, at some point, perhaps by phone or we can put
24 together in the appropriate way to figure out if this is
25 something that the Commission would like to do.

1 We have Candice Harper.

2 MS. HARPER: Thank you.

3 CHAIRPERSON BUSTAMANTE: You have the distinction
4 of being the last speaker today.

5 MS. HARPER: I'm very happy of that, I'm sure for
6 all of you here. I represent the Virgin Sturgeon. My law
7 firm Trainor Robertson does, and I would just like to
8 clarify a few of the points made by Mr. Blonien.

9 CHAIRPERSON BUSTAMANTE: Rebuttal.

10 MS. HARPER: Well, number one that the 200 feet
11 that we are talking about, as to that portion, at least,
12 River Bank marina is not the La Toro owner. That
13 property -- they have a grant of easements for parking
14 easement only. They sold that property many, many years
15 ago, so I think you should number one be aware of that.

16 Number two, I believe the State Lands Commission
17 whose started leasing this property to my client in 1976,
18 I believe was determined that they were the best qualified
19 user, which understand the statute that is a basis for
20 leasing the State Lands property.

21 Secondly, and Mr. Thayer already brought up this
22 point, the problem that we have today was caused by River
23 Bank. When they built their marina and docks, they
24 extended, they encroached onto the property that was
25 leased by my client from the State Lands Commission as

1 well as onto other property that was other sovereign
2 property of the State Lands Commission not leased by any
3 party. And so the position they find themselves in is a
4 position they created.

5 And so they were caused to come to my client and
6 obtain permission from Virgin Sturgeon Inc. to sublease
7 that property. Had they not encroached, the issue would
8 have never arose.

9 Also, I note that this extension occurred in
10 February of 1996, five and a half years later, when that
11 wasn't an issue. It seems rather untimely.

12 So with those comments, I just wanted to make
13 those comments for the record.

14 CHAIRPERSON BUSTAMANTE: Thank you.

15 Is there any other thoughts or questions?

16 Are you sure there isn't anybody in the audience
17 that would like to say one more thing?

18 (Laughter.)

19 CHAIRPERSON BUSTAMANTE: Thank you.

20 This will adjourn the regular session and we'll
21 go into closed session.

22 (Thereupon the State Lands Commission
23 meeting was adjourned at 2:30 p.m.)

24

25

