MEETING
STATE LANDS COMMISSION

STATE CAPITOL
ROOM 2170
SACRAMENTO, CALIFORNIA

THURSDAY, OCTOBER 26, 1978
10:00 A.M.

Cathleen Slocum
C.C.R. License No. 2822
MEMBERS PRESENT

Mr. Kenneth Cory, State Controller, Chairperson
Mr. Sid McCausland, representing Roy M. Bell, Director of Finance, Commissioner
Ms. Betty Jo Smith, representing Mervyn M. Dymally, Lieutenant Governor, Commissioner

MEMBERS ABSENT

NONE

STAFF PRESENT

Mr. William Northrop, Executive Officer, State Lands Commission
Mr. R. S. Golden, Assistant Executive Officer, State Lands Commission
Mr. Robert C. Hight, Staff Counsel, State Lands Commission
Mr. W. M. Thompson, Manager, Long Beach Operations, State Lands Commission
Mr. James Trout
Mr. Alan Scott
Mr. Steve Mills
Mr. Daniel Gorfain
Mr. Jack Rump, Staff Counsel
Ms. Diane Jones, Secretary, State Lands Commission

ALSO PRESENT

Mr. Jan Stevens, Assistant Attorney General
Mr. Bruce Flushman, Deputy Attorney General
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CHAIRPERSON CORY. All right. Call the meeting to order. I apologize for my tardiness. Absolutely no good excuse for it.

The first item is the confirmation of the minutes of September 27th and October 11th. Any corrections or additions?

MR. McCausland: No objections.

CHAIRPERSON CORY: Without objection, they will be confirmed as presented.

Mr. Northrop, your Executive Officer's Report.

EXECUTIVE OFFICER NORTHROP: Mr. Chairman and Members, on September 28, 1978, marked the completion of the Commission's second and final navigational hazard removal contract at Lake Tahoe. The initial contract was completed just prior to winter last year. While most hazards were removed, a sufficient number remained, enough to warrant the letting of a second contract.

The removal work under the second contract was started on August the 14th, and was completed on September 21st, '78. A sunken barge, one large pier and some 13 rock cribs were removed at a cost of $51,975. The operation was performed under staff supervision.

Excellent contractor and local agency cooperation
enabled staff to complete the project within the estimated time, yet comply with specified water quality requirements. Removal operations during '77 and '78 were accomplished with a minimum of trouble and resulted in numerous positive public responses, including favorable press coverage.

In total, approximately $156,000 was expended at Lake Tahoe and accomplished the removal of several dozen hazardous piers, rock cribs, and other miscellaneous structures, as well as several hundred dilapidated pilings.

On the reforestation project, unusually favorable weather has allowed the contractors to complete mechanical brush clearing on five parcels slated for planting in the spring of '79. California Conservation Corps crews are currently working on hand-clearing three other sites. This work will provide for planting of about 160,000 seedlings next spring.

Meanwhile, within the next few days, we will submit an application for a grant that would provide for continuation of the project for an additional two and a half years beyond next July 1st.

Proving once again that bureaucracy is for the birds, staff literally flew into action last week at --

CHAIRPERSON CORY: I know now why I didn't see the Executive Officer's Report.
EXECUTIVE OFFICER NORTHROP: Staff literally flew into action at Mr. Cory's request to save a forlorn Osprey who decided to build her nest in the mast of a yacht in Newport Harbor. The yacht's owner, a little "soar" at the Osprey's choice of a nursery, "bird-dogged" the Department of Fish and Game into action. The only alternative available was to transplant the nest to a pole implanted in the same vicinity and let the Osprey wing it from there. With the invaluable and unfaltering help of the staff, Fish and Game made arrangements to correct this "fowl" situation. A pole was graciously donated by Southern California Edison and transported to the site.

Trautwein Brothers Construction Company placed the pole for a "poultry" amount and, again, So-Cal Edison donated its equipment and services to complete the actual transfer of the nest. The future of the nest now lies in the claws of the Osprey herself, but the conscientious work of the State Lands Commission and its Chairman and members for her well-being is appreciated and is really a feather in your caps.

(Laughter.)

MR. CAUSLAND: Have you polished your resume up?

(Laughter.)

CHAIRPERSON CORY: I suggest if you wrote that,
you find somebody else to write the resume.

(Laughter.)

EXECUTIVE OFFICER NORTHROP: When Miss Smith was told about this report, she said that was a "fowl" thing for you to do.

One other incident --

CHAIRPERSON CORY: What factually, I mean, how is the Osprey doing? Are there eggs in that nest?

EXECUTIVE OFFICER NORTHROP: No, not yet. We have transplanted the nest and Bill Seaman of So-Cal Edison cooperated wonderfully when I called him and asked him for the pole. The Fish and Game has transplanted the nest and I talked to Jim --

CHAIRPERSON CORY: Seaman didn't have any place he wanted to particularly put that pole?

EXECUTIVE OFFICER NORTHROP: Bad name.

(Laughter.)

EXECUTIVE OFFICER NORTHROP: Fish and Game said -- I talked to Jim McCormick at Fish and Game day before yesterday and he said there were other Osprey seen in the area.

CHAIRPERSON CORY: Sex rears its ugly head.

EXECUTIVE OFFICER NORTHROP: And one last information item for the Commission. Last Friday as Don Everitts of our staff was doing a routine inspection check
on a helicopter, and as the helicopter took off from the platform it lost the compressor and put Mr. Everitts and the pilot into the drink. We nearly lost both Everitts and the helicopter, and you know what those helicopters cost.

(Laughter.)

EXECUTIVE OFFICER NORTHROP: So I just want to bring it to the Commission's attention that we have a small hero on our hands. He did survive the downing of the helicopter and floated around long enough, I think, to get reasonably sick before they got him out of there.

MR. McCausland: How is he?

EXECUTIVE OFFICER NORTHROP: Still here.

CHAIRPERSON CORY: Do you have counsel for your lawsuit?

(Laughter.)

EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item 13 we've been requested by --

CHAIRPERSON CORY: Did they lose the helicopter?

EXECUTIVE OFFICER NORTHROP: No. They towed it over to another platform. They were working on EMMY and they took a derrick and pulled it up and worked on it on the platform and got it off all right. But Don said there was just a fleet of ships around there watching him bob around in the water before they finally got them out.
CHAIRPERSON CORY: He does look cleaner.

(Laughter.)

EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item 13, we've been asked to defer this item -- it's on LNG terminal siting -- by Senator Rains, Senator Hart, and a representative of Supervisor Wallace's office has called me. Supervisor Wallace's office indicated that they had a telegram that they sent yesterday, the day before yesterday, but as yet we have not received. I do have a letter from Senator Rains and I have been in contact this morning with Senator Hart's office.

CHAIRPERSON CORY: Okay. Item 13, Western LNG Terminal Associates will be taken off calendar and will be scheduled for the following meeting?

EXECUTIVE OFFICER NORTHROP: Yes, sir. We'll reschedule it for the next meeting.

Item 20, is off calendar. It's regarding Yuba River. Mr. Jan Stevens would like to address it at this time as to the position because I understand the Commissioners and several other state officials have received letters regarding this item.

MR. STEVENS: Mr. Chairman, I won't go into the merits of this controversy now, but since each Commissioner has received a lengthy letter from counsel for Yuba Goldfields, I think that we should indicate several things.
First of all, this item is being put over at Yuba’s consent. Second, contrary to --

CHAIRPERSON CORY: Consent or request?

MR. STEVENS: With their request, pardon me, request and consent. They have requested the item be put over so we can discuss the matter some more.

Secondly, the preliminary indications are that there are serious questions which have to be resolved with respect to the State’s interest in these matters and these questions will not be resolved if we simply walk away from the problem. They’ll remain for Yuba in the future.

Third, I think some allegations were made as to the conduct of staff counsel and others in this. My own review indicates that they did exactly what they should have done. They kept all the parties completely apprised of what the staff was doing here and the matter was handled very well.

Last of all, I guess, contrary to the obligations therein, Prop. 13 really has nothing to do with the question of ownership on the Yuba River by Yuba Goldfields. So we’ll be back next month with this issue again and I hope we’ll have them pared down a little bit more as far as what we’re talking about.

CHAIRPERSON CORY: I just want you to know as a bipartisan effort I’d like to comment that I resented that
man's attempt to inject the gubernatorial campaign into that whole issue. Also, in terms of the terrible way you people have been conducting yourselves.

(Laughter.)

MR. STEVENS: Thank you.

CHAIRPERSON CORY: I said that tongue and cheek for those of you who are reading this transcript.

EXECUTIVE OFFICER NORTHPROP: Mr. Chairman, Item Number 33 is off calendar -- it's a mineral extraction lease -- at the request of the applicant.

This completes my report.

CHAIRPERSON CORY: Which one was that, Bill?

EXECUTIVE OFFICER NORTHPROP: 33.

CHAIRPERSON CORY: Okay. Mr. Golden.

MR. GOLDEN: Good morning, Mr. Chairman and Members. I would like to take this opportunity to advise you of matters which relate to this Commission and the Coastal Commission.

The first item is on the Coastal Energy Impact Program Grant, which was recently awarded to the State Lands Commission in the amount of $303,200 to develop a Marine Petroleum Terminal Safety Program for marine facilities which transfer petroleum and related products. The grant provides for the funding of personnel services and operating expenses for one senior administrator and two
associate engineers for a period of two years. Half of the
allocated amount, $150,000, has been awarded for the first
year of the two-year project. The State Coastal Commission
which administers and allocates such funds determined that
our proposal "is of high priority because within
California there is a need for safe operations of marine
oil terminals and enforcement of terms and conditions on
permitted coastal energy activities."

The second item is on Tomales Bay Comprehensive
Planning. Earlier, staff was directed to prepare a
Management Plan for the Tomales Bay Area. Staff has been
meeting with representatives from various state, federal,
and local agencies to complete this study. Currently, staff
has prepared material which will enable plan reviewers to
gain a clear perspective of the present situation at Tomales
Bay, including the environmental concerns and the conflicts
with developmental interests.

A meeting has also been held with the Director of
the Dillon Beach Marine Laboratory, located near the mouth
of the Bay to discuss environmental studies undertaken by
the Marine Lab. These studies may form a basis for making
policy recommendations to guide the management of the
tide and submerged areas in Tomales Bay.

And finally, PG&E Moss Landing Power Plant Marine
Terminal Expansion. You'll recall this Commission approved
PG&E's marine terminal expansion project on April 27th of this year. A joint public hearing was held by the U.S. Army Corps of Engineers and the Regional Coastal Commission in Monterey on October 19, 1978, and attended by our staff at the request of the Coastal Commission. It is expected that future hearings will be scheduled by the Regional Coastal Commission prior to their action.

That completes my report, Mr. Chairman.

CHAIRPERSON CORY: Questions?

MS. SMITH: No.

CHAIRPERSON CORY: The next item on our Agenda today are the Consent Calendar items. Those in the audience, they're numerals 1 through 12 with the prefix C. If there is anybody that has any problems with the proposed authorizations in any of those items, would they please speak up now because these will be approved all in one motion.

Hearing no objections, --

MR. McCausland: No.

MS. SMITH: No.

CHAIRPERSON CORY: -- the Consent Calendar will be approved as presented.

Item 13 is off calendar.

Item 14.

EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item
14 is a lease for Walter M. Harvey. We have Mr. Mac Mailes, Assistant City Manager of Sacramento, who has indicated he would like to speak.

CHAIRPERSON CORY: Yes, sir.

MR. MAILES: I've got a couple of things. I came here this morning to ask you to do one of two things, either, A, defer action on this for a while or, B, insert some conditions in your lease with Mr. Harvey that would be consistent with some conditions that we would put in our lease since he needs access from the city as well as access from the state. The basic question relative to deferring the matter --

CHAIRPERSON CORY: Is Mr. Harvey here?

MR. MAILES: Yes, he's here.

The basic question relative to deferring the matter had to do with the way the property is actually laid out. Get myself oriented here.

Interstate 5, freeway, comes almost to the river at this point. Now, between --

CHAIRPERSON CORY: Where is that point to help us?

MR. MAILES: Right here which is at --

CHAIRPERSON CORY: What are those things on the map?

MR. MAILES: These are all freeway lanes.

CHAIRPERSON CORY: Yes.
MR. MAILES: P, Q, Front Street, or, rather, Second Street here and Front Street is over here. It's right along here. You see, at this point it gets very narrow and that's the point where the pier and the piece of property in question is. The property line dividing the State's ownership from the City's and Redevelopment's ownership along this line has never been established. We know roughly that it's the sea wall. We don't know precisely where it is.

Now, in the case of the same situation north of the Tower Bridge, the State and the City stipulated that line. We wish to do the same thing as does your staff relative to this line here. However, it's my understanding -- is it true, Alan -- that that line is now over being reviewed by the Attorney General.

MR. SCOTT: Yes.

MR. MAILES: And there's no dispute as to where it is or where it should be, but there's no determination either of where that is.

We'd like to see the issue deferred until we can precisely define that line which will define your lease with Mr. Harvey and our responsibilities for providing utilities.

CHAIRMAN CORY: That sounds to me like you're not really telling me what your problem is.
MR. MAILES: That's why we would like it deferred now. Beyond that, we would also like some conditions set in the lease because we have some problems with allowing it to go forward without any conditions. That has to do with the configuration of the property we're talking about. The City of Sacramento's Docks Plan for this area covers roughly this blue piece right here. As I said before, this is paved. It's a street with some railroad tracks down the middle of it and so forth. The Docks Plan calls for recreational and public access development type things from this point to this point. The only available area where parking of any size can be developed is this triangle here.

There is a capability of producing about two or three hundred parking places there maximum. If development were to occur at any point on here that was sufficiently intensive to use up that parking availability, it would deny the development of the rest of the frontage.

So we have agreed with Mr. Harvey that if he towed his boat in and ties it up at the O Street dock, we will put in on a temporary basis parking meters exactly in front of his place which is necessary because I'm sure you're all familiar that that's all being used now for all-day parking. There are no meters there. There's no control really which would make it impossible for Mr. Harvey to have any kind of a lunchtime business there without pushing the
parking meter across the freeway over into the Crocker Art Gallery or parking on this which is now unimproved and would probably wind up being dangerous for whoever parked there.

So that our plan is to allow that whole thing to develop as one piece. In effect, we intend to put out a request for proposals probably nationally to develop the whole thing, including that parking. So that the development would continue from one end of it to the other but not at any one place be sufficiently intensive to use up all that parking. It's a matter of balancing. That's where we get to the conditions that we would like in your lease with Mr. Harvey which would be to the effect that the City can provide parking meter parking in front of his establishment on a temporary basis, but if, as and when we put out a request for proposals of development of that whole docks area, that Mr. Harvey would participate in financing it to his fair share of that parking that he would receive on this triangle part here.

CHAIRPERSON CORY: What does Mr. Harvey have to say about that?

MR. HARVEY: I didn't really come prepared to discuss much of this before the Lands Commission -- I'm Walt Harvey -- because I didn't realize until just two seconds ago that the City was going to be here to object.
MR. MAILES: We're not objecting. Don't misunderstand.

MR. HARVEY: I followed the normal procedures in requesting this information from the City several months ago. Went to the Redevelopment Agency of the City. Have a letter to the effect that they would like us to come to the State Lands Commission. Went to the Planning Department. The Planning Director told me to come to the State Lands Commission and secure the lease and then we'll issue, we'll go then to the Planning Commission for a Special Use Permit for this project.

I have a letter also from, as was suggested here, from Mr. Frank indicating when the project was formulated that they would, indeed, provide temporary parking.

On the basis of those understandings and on the basis of working with Alan Scott of your Commission and meeting with Mr. Northrop, I proceeded and we made positive commitments, absolute commitments on the purchase of the vessel to come into this thing. I think that a further delay in doing it -- I'm perfectly willing to work with the City and am going to have to work with the City in order to make the necessary hookups and I'm not in disagreement with providing our fair share of the parking expenses on a permanent basis. I have already agreed to do that.

But as our commitments do not extend past the end of this
year on the purchase of that vessel, we're committed on a half-million-dollar vessel and I don't know why we would have to extend this.

CHAIRPERSON CORY: I'm puzzled about our whole relationship with the City in this matter. I mean, it would seem you've got Mr. Harvey with a substantial amount of control to releasing the thing. He can't do a heck of a lot with it unless he satisfies you. So why do you want these conditions in our lease?

MR. MAILES: Just so that the whole thing flows together as a piece because the State Lands Commission, the City and the Redevelopment Agency are really tri-party developers here. We've been talking with your staff for some time now, something over a year in developing a way we can do it together. So we would like all the documents and obligations to be consistent one with the other.

MR. McCAUSLAND: Well, if our document requires the use of the land be consistent with the terms of the City Permit, wouldn't they flow together?

MR. MAILES: Not necessarily. The City Permit process does not cover the allocation of parking spaces within a single structure among various users.

MR. McCAUSLAND: You have some concern as to whether or not you have the legal authority to require him to participate in the construction of the parking facilities.
with his capital?

MR. MAILES: Yes.

CHAIRPERSON CORY: So you want to use us as the leverage?

MR. MAILES: No, altogether.

CHAIRPERSON CORY: Aren't there some problems with that?

MR. HARVEY: But I've agreed to do this.

MR. MAILES: This is Richard Hyde, Chief Counsel for the Sacramento Regional Development Agency.

MR. HYDE: The basic problem is we are developing ahead of providing permanent parking. This goes on typically when you're developing areas like this. It happened in Old Sacramento. We're trying to anticipate a parking crunch or a need to develop some parking at significant cost. What we would like to do is be in a position that in the event when that point arises and we say to Mr. Harvey on some kind of Assessment District approach, your cost for your pro rata share of the parking is "X" number of dollars. That he either pays that money or somehow divests himself of his interest in this lease. You cannot accomplish that through normal land use controls, nor through an Assessment District.

CHAIRPERSON CORY: Now wait a minute. I have no animosity towards Sacramento or no animosity toward
Mr. Harvey, but I feel like I'm getting sucked in something. I want no part of it. I mean, if you don't have the legal authority to enforce your parking beef with Mr. Harvey, I don't want to be a part of it. You just said that's where we were, I think.

MR. McCausland: I said that.

Chairperson Cory: I think that's what you just told us again.

MR. Hyde: What happens is we're faced with an all or nothing situation. If you lease to him, he is the only developer for that site. If we're unable to reach an agreement, the site remains vacant. That's basically the problem with the two of us not going together and having our agreements met. It's an all or nothing situation from the City's perspective. If we cannot reach agreement with Mr. Harvey, you're right. We say to him: We deny you use of our property. Then there's no development.

Chairperson Cory: Let's turn it around and put it in perspective in terms of the sovereign of the State of California is in essence not receiving any similar control over -- maybe we'll disagree that to maximizing our state use of the rest of that property, you should build an 18,000 foot high parking structure and you don't want to do that. You aren't giving us anything in return. You're saying come enforce what we want to do so we can
unilaterally impose our wishes on your tenants, and that seems to be what --

MR. HYDE: No. See, what I'm saying is the City can prevent him from using that property. So what I'm trying to do is work out a mechanism so the two of us, the City and the State Lands Commission, can provide for the use of the property. What the City was giving you or what we're interested in having is Mr. Harvey on that site. I think the City can legally prevent him from going on the site. Not to through the normal land use controls, but through denial of access as the adjacent landowner.

Let me put the whole hearing in context. What's before us is a negative declaration. One of the elements of that negative declaration that should be considered is the parking. I think it's our position that the parking is treated in that negative declaration in a manner that doesn't provide any assurance that the parking is going to be there. I think then without an absolute assurance that permanent parking is going to be there, I have problems with a negative declaration.

We're here on behalf of the City because the City is an agency that you are to consult with as the lead agency in the preparation of this Environmental Impact Report.

MR. McCausland: I have to admit, I had the same problem with the negative declaration that you have
from that standpoint because I felt it was a fairly narrow
band of land along there and that you were going to have
a lot of competing uses in your overall plan there.

What kind of relationship were you thinking
about working out with the State for the overall development?
Do you want to be the master tenant on our lease?

MR. MAILES: No. You may remember that the
State Lands Commission staff and City staff worked out a
process for a set of criterion and a selection process for
developers in the waterfront between the two bridges in
Old Sacramento. What your staff and we are proposing to
do south of the Tower Bridge in this area here is exactly
the same thing with, instead of the City being the lead
agency in developer selection, the State Lands Commission
being the lead agency. But in order for that to go forward
past this single lease that you're considering today, this
single lease has to be put in context of the whole thing.

MR. McCausland: Let me suggest that, Mr. Harvey
has been here several times with different sites and he
seems to have a proposal that he's willing to commit as
much capital to as he can garner, and apparently he must be
working three or four or five years ahead of where the City
is because each time he comes, we seem to work out most of
our legal difficulties, but for some reason he just never
has quite made peace with the City by the time his proposal
comes to us. Would you have objections to us approving
the lease today subject to its amendment to include his
willingness to participate in the provision of long-term
parking?

MR. MAILES: That's fine.

MR. HYDE: I put together some proposed amendments
that we would like to see him be satisfied with.
Essentially what they do is tie your agreement and our
agreement together and say that a termination of our
agreement constitutes a termination of your agreement and
enter into an agreement with us as a condition precede
to his right to occupy the property under your agreement.
In effect, --

MR. McCausland: I think he expects to have to
have that in order to get his utility hookup anyway.

MR. Harvey: Excuse me. The only thing that
really disturbs me here is the fact that we have to argue
this out in front of the Lands Commission. Now, there's
no reason that they could not have made a telephone call to
me.

Chairperson Cory: We will deal with that issue
in the very near future.

MR. Harvey: Okay.

Chairperson Cory: But I understand your concern,
but it's not nearly as strong as my concern.
What do you think of that language? It seems to me if you have some specific terms, I would be more comfortable about saying if he doesn't come up with the money he promised on the parking, that's one thing, but I'm not so sure I want to terminate this man's lease for any reason that they unilaterally terminate theirs if they get in a beef. I mean, I don't know.

MR. McCausland: The Redevelopment Agency has a very difficult task and I can understand them being very nervous about having a developer move before their overall project is finalized. But I think that the vessel that Mr. Harvey has been seeking to acquire now for the last couple of years is only going to be on the market for so long conceivably and he feels compelled to move. He's probably not terribly comfortable with the uncomfortable relationship he's had with the City thus far. But if he doesn't keep going, as an entrepreneur he's going to lose his opportunity to use that site.

I don't know that the State Lands Commission really wants to get crosswise with the Redevelopment Agency. We should be partners or at least have a joint interest in the successful use of that waterfront property. But for some reason, Mr. Harvey and Mr. Cory are quite right in noting that of all the leases that come before this Commission in California, the one's that seem the most difficult have to
do with the Sacramento waterfront and for some reason it's because new issues, apparently new issues crop up at the last minute every time it comes before us. It makes us uncomfortable about our relationship. Makes us uncomfortable about how you feel about what you want to do with the waterfront.

We would like to help. I, for one, would like to help you because I'm involved in other projects that are going to be within the Redevelopment Agency jurisdiction and I can see that whole project tying together and being beneficial to the State for years to come.

I'd like us to find a way to work together without having to always be surprising some perspective lessee at the meeting where we're supposed to approve his lease.

CHAIRPERSON CORY: What do the legal people have to say here?

MR. TROUT: Mr. Chairman, --

MR. HIGHT: Mr. Chairman, as I read the proposed amendments that the Redevelopment Agency would have us put in this lease, they seem to be already taken care of by other provisions of the State's lease. One, Mr. Harvey has to have the consent of the upland owner. Two, he would have to have their agreement to hook up with the water and power and everything. So it seems to me like the City has really got him in a, you know --
MR. McCausland: But they're faced with a situation where they'll hook up the water and the power, but then the only ability they have at some point downstream when he's unable to meet a financial commitment on parking development, is to go unhook the water and power, I assume, and they're looking for a bigger club than that.

MR. Stevens: Mr. Chairman, as I read the proposed resolution, it does contemplate in rather compact terms that construction will begin and be completed and these developments will occur within specified time limits commencing in 1979. So that there would be grounds, I believe, for cancellation.

I think the Commission should take cognizance of the potential parking problem and it can take official notice as a commission of what arrangements may have been made for taking care of problems of this sort in approving the negative declaration. If no such arrangements have been made, maybe you don't have a negative declaration.

MR. McCausland: As a member of the Commission, I raised this matter when I was discussing the calendar item in a briefing with the staff. I would personally be far more comfortable with the adoption of the negative declaration if we had in fact demonstrated our commitment to solving the parking problem, i.e., a written agreement.
with the lessee that he will participate in the solution of the parking.

CHAIRPERSON CORY: Is that agreeable with you, Mr. Harvey?

MR. HARVEY: The thing that I'm very much concerned about, and I find no problem in committing ourselves to the assistance of that parking solution, but on the basis of the tentative agreements and commitments that the City has already made through the Redevelopment Agency, Commission, and through the engineer's office, the Traffic Engineer's Office, we've gone ahead and proceeded with the direction that they asked us to go which was to come to the Commission and then come back to the agencies of the City. So we committed to the boat on that basis.

CHAIRPERSON CORY: Okay. But right now, you're up against it. You have a tough choice. Are you willing to accept the thing, and I guess it would be approved unanimously with a motion stipulating up front that the negative declaration is approved with the notice that you have agreed to participate in your share of the parking and, therefore, we'll go ahead and approve it.

MR. HARVEY: Absolutely.

CHAIRPERSON CORY: And so that means that if you renege on that --

MR. HARVEY: We won't renege on that.
CHAIRPERSON CORY: -- the thing comes unglued. I just want to put it up front on the table so everybody knows where it is.

MR. HARVEY: I will agree to that stipulation.

MR. McCAUSLAND: Let me ask a question because this is an area of environmental law that I've never been into before.

Is it appropriate for us to request a contractual relationship between the upland owner and our tenant regarding the provision of parking as a condition of adopting the negative declaration or does that, in fact, go against the grain of why you have negative declarations?

MR. STEVENS: I believe --

MR. McCAUSLAND: By the way, that is a statement that goes beyond this notification we want to solve. I'm thinking of incorporation with the motion that there be a separate contractual arrangement with the City --

CHAIRPERSON CORY: A side letter between the City and Mr. Harvey?

MR. McCAUSLAND: -- for the provision of parking.

MR. STEVENS: Properly, Mr. McCausland, it would be an additional fact which the Commission should have before it in determining whether or not in fact there is no significant impact on the environment caused by this project. The fact that adequate parking arrangements have
been made would be one of those factors that would support a negative declaration by the Commission. So that fact should be already in existence before the Commission takes action.

MR. McCausland: That's what's concerning me.

Executive Officer Northrop: Mr. McCausland, I think it's well to point out here that the negative dec. was circulated according to CEQA and there were no comments from either agency represented here. So until this morning we did not know that this thing was coming.

MS. Smith: Mr. Harvey's alternative then is to just have a full EIR prepared; is that correct?

MR. Hyde: Can I comment first on a question of circulation of the Environmental Impact or the negative declaration and the initial study. It was received by the City on the 10th of October. We have been meeting on it and I personally, CEQA does not specify a specific time for consultation and review of those documents. However, this is a very complex issue. It involves a much larger project than simply just one boat going in. It has taken us some time and we have been working on it. One of the reasons we wanted to continue it was to continue working on it some more. That's in response to that.

In response to the full EIR, the answer is no. As I understand the law, and I would defer to your counsel,
if Mr. Harvey would agree to what was suggested in the form of the amendment, what your counsel was indicating was that would then justify your determining that there was a negative declaration. If he failed to agree, then you've got some problems as to whether you can make the negative declaration.

CHAIRPERSON CORY: What we're suggesting, rather than redrafting our leases, is that right now we have perceived a condition preceding which has been orally agreed to which will be, as I understand it, an exchange of letters or contracts between the two, the Development Agency and Mr. Harvey, with respect to the parking. We will take notice of that agreement. We trust that each side is moving in good faith and will enter into that agreement. With that, we will go ahead and approve the item which I think gets you the same place you want to go without us having to redraft our lease.

MR. McCausland: Let me ask procedurally, we can authorize staff to execute the lease at a point in time in which the conditions required for the final approval of the negative declaration exists and it is the finding of this Commission that we cannot sign off on the negative declaration until a contractual agreement is provided for long-term parking.

MR. HYDE: I think if you signed the negative
declaration now, you just wouldn't sign the lease until that time.

MR. McCausland: Well, you're raising the question --

Chairperson Cory: No.

MR. McCausland: -- of whether or not --

Chairperson Cory: Mr. McCausland moves.

Ms. Smith: Second.

Chairperson Cory: Miss Smith seconds that staff should be instructed to proceed and not to enter in and sign the negative dec. or the lease until that site agreement has been signed.

Any comments from anybody in the audience on that?

MR. McCausland: We do have the power to authorize staff to execute the lease?

MR. Stevens: With the proper delegation.

Chairperson Cory: Okay. Nobody in the audience?

All those in favor.

(Ayes.)

Chairperson Cory: Unanimously carried.

Mr. Mailes: Thank you.

Chairperson Cory: Before you leave, I want to talk to the City because I frankly have got better things to do with my time than waste the kind of time we wasted on
a clerical function before this Commission. This Commission has other things and Mr. McCausland's comments that somehow your inability to deal with Mr. Harvey, and if your inability is going to be the same with other lessees, to not get Mr. Harvey aside when you got the negative dec. and had the problem or the thing, go get it done some place else. Don't come in here and try to negotiate things before a Commission. I just think you guys, if you've got that kind of problem, get it sorted out before it gets here. If Mr. Harvey's lying that he didn't know that, lay that on us and we can deal with that. But for the guy to walk in here minutes before a meeting I think is a disservice to this Commission. If you want cooperation from this Commission, that's not the way to get it. I want to put that just right up front cold turkey with you. I'm getting sick and tired of having last-minute hassles with Mr. Harvey or any other local Sacramento lessee and the Redevelopment Agency. You guys ought to be able to run your shop better than that.

MR. MAILES: Well, I submit in our own defense that the first we knew that this lease was coming to this Commission was last Thursday which is not a whole lot of time to respond. I immediately called your staff and they said it would continue and it would be on this Commission. I told your staff at that time that in that case, we would
have to appear because we have been working with Mr. Harvey on exactly this problem for some months and were in the process of negotiating a very specific contract relative to the City's obligations to provide parking and Mr. Harvey's obligations to pay for part of it. Those negotiations are not complete at this point. I would much prefer not to have appeared here this morning, but we felt we had to.

CHAIRPERSON CORY: I hope you can step back and look in perspective that no place in the state do we have to spend this kind of time. We're able to deal with lessees and other people without this kind of grief. Somehow I've got to say, get your act in order. I don't know what it is.

MR. MAILES: We will most assuredly try.

CHAIRPERSON CORY: Item 15 is off calendar.

EXECUTIVE OFFICER NORTHROP: No. Item 15 is an exchange, Mr. Chairman. If we have a few moments, we'd like to show you some property that we're exchanging it with.

CHAIRPERSON CORY: Okay. Go ahead.

MR. TROUT: Mr. Chairman, the first set of slides are going to be of two parcels in Joshua Tree National Monument that the Park Service would like to acquire. This first one is the Cottonwood Canyon parcel. This is the State parcel and you can see what it basically consists
of. This is the second parcel in Joshua Tree. The first parcel I showed you on that board on the easel is the green dot at the bottom of the little stem that sticks down.

CHAIRPERSON CORY: That's Cottonwood Canyon?

MR. TROUT: That's Cottonwood Canyon. The parcel that you're now seeing on the slides is the other dot up in that area. Palm Springs is just to the left of the green dot and Indio is just below the lower green dot to give you a perspective of where the place is.

EXECUTIVE OFFICER NORTHPROP: Indio-Coachella.

MR. TROUT: This is from the top of the upper green dot. Of this parcel -- the room probably isn't as dark as it could be. This parcel is the Bureau of Reclamation piece of property within a mile and a half of Shasta Dam, northwest of Redding.

CHAIRPERSON CORY: Pardon me. If this is what we're getting, would somebody turn off the lights in the back so we might see it. If we've gone to this much trouble we might as well.

It does look better.

(Laughter.)

CHAIRPERSON CORY: When I looked at it before, my answer was no. We didn't need a black hole.

(Laughter.)

MR. TROUT: Very good weather, beautiful blue sky
for taking pictures, but this is the upper end of the
parcel which we'll point out in a moment. This is basically
what's on it. It's Manzanita with some pines. If Les
Grimes were here, we could tell you what kind of pine. But
they're some kind of pine tree. It's a fairly well-
vegetated parcel for the most part.

This is a water filtration plant that's on one
corner of the parcel. Right in the center of the larger
parcel we'll show you in a minute is a water tank.

CHAIRPERSON CORY: Who's water plant is it?

MR. TROUT: It belongs to, I think, the Summit
City Public Utility District. Across the canyon you can
see a couple of more water tanks.

MR. McCAUSLAND: Do they have a volumetric --

(Laughter.)

MR. TROUT: This is a lower parcel which is fairly
flat and is south of the highway. We'll kind of point this
out in a moment. Kind of spanning across the parcel. It's
flat but does have some trees on it. This is the tank and
is kind of in the southwesterly direction. That's on one
corner of the parcel where there is a trailer park.

In this area is a former government construction
worker camp. It's not included in the parcel we're going
to acquire, but the parcel kind of wraps around it. It's
now being operated by the Bureau of Indian Affairs and is
occupied by a band or several bands of Indians.

Then one of our neighbors to the south of the parcel, south and east, is a trailer park. The boundary of the parcel would run along kind of a line where the vegetation stops behind the trailer park on the right. This is trailer homes on the northern boundary of the property.

Now, Mr. Northrop is standing at the easel there --

EXECUTIVE OFFICER NORTHROP: This is the government camp where the Indians have taken over the former government camp that was there. It was originally --

MR. TROUT: It was a construction worker camp for the construction of Shasta Dam.

CHAIRPERSON CORY: Are you sure that they have title that they can transfer to us or are we going to end up in a hassle with the Indians?

EXECUTIVE OFFICER NORTHROP: We're not taking this. We're taking this cross-hatched area.

CHAIRPERSON CORY: What do the Indians think they own?

MR. TROUT: They apparently don't own anything. The Bureau of Indian Affairs is administering Bureau of Reclamation property in the former government camp and that is not included in the proposed exchange. The areas
colored orange are the areas that are being offered to us.

MR. HIGHT: They don't think they own ours.

CHAIRPERSON CORY: I mean, there's no one, what is the term, "notorious possession"?

MR. HIGHT: Adverse, hostile and notorious.

EXECUTIVE OFFICER NORTHROP: Shasta Dam is four miles in that direction and Interstate 5 is there. Nice piece of property.

MR. TROUT: The more heavily timbered or vegetated parcels are the upper ones there by where the word "government" is. The flatter parcels are the lower, below the boulevard there. We think that, while we at this point don't have any particular thing in mind for use of this property, we believe we can enter into a management agreement with the Public Utility District to police it in exchange for use of the parcel for park purposes or a portion of it certainly. Certainly it is more accessible and more susceptible to management than the existing parcels that are well isolated into the Joshua Tree National Monument. For that reason we recommend the exchange. We have received a title report on the property from one title insurance company on behalf of the government. We have obtained our own. The parcel is covered with a number of easements, but they are essential to the local utility service in the area.
We recommend your approval.

CHAIRPERSON CORY: The land that we're giving up would become a part of Joshua Tree National?

MR. TROUT: That's right.

CHAIRPERSON CORY: So there would be a continued public use of that?

MR. TROUT: That's right.

EXECUTIVE OFFICER NORTHROP: Nice piece of property.

MR. TROUT: It would have to be administered pursuant to the Congressional establishment of a National Monument which guarantees public use subject to reasonable rules and regulations.

CHAIRPERSON CORY: Looks like we gain on that one. Anybody in the audience on Item 15? Questions from Commissioners?

MR. McCausland: Do we have the ability to allow development of the land south of the Shasta Dam?

MR. TROUT: Yes. These would be acquired as State school lands and would be subject to the trust that they must be leased or sold for fair market value. I think our preliminary proposal would be to the public utility district that we would turn the lands over to them for management or for use as a park with the consideration being their policing of the area, fencing certain areas, keeping
the public off, keeping it policed up and what not that
would allow us later, allow the Commission later to dispose
of it or otherwise develop it as they want it.

MR. McCausland: What is keeping the public off
part?

Chairperson Cory: I thought that's what we were
supposed to do is to get this stuff for the public.

Mr. Trout: There are a couple of areas that will
require a little work. The sewage disposal pond down in
the lower area is not now being used. It is an area in
which water does accumulate. We're working with the Bureau
of Reclamation to straighten out the existing dumping on
that site. It is fenced and it should be locked and policed
until we can make arrangements to have the sewer pond filled
in. That I think we can do through the Department of
Forestry and the CCC. But the existence of that as a future
item of work is considered in the appraisal of the values
of the parcel.

Chairperson Cory: Jim, the question I think that
Sid and I are asking is if that's public lands and somebody
wants to go out there driving down Shasta Dam Boulevard
and have a picnic, are we going to have a fence out there
or can they go out there and have a picnic?

Mr. Trout: We don't propose a fence except to
just maintain --
CHAIRPERSON CORY: Nuisances?

MR. TROUT: Just the fence around the existing sewer disposal area.

EXECUTIVE OFFICER NORTHROP: The Federal Government, I believe, has already taken a brush clearance program and, as a matter of fact, some of that is already being used for ball diamonds and that sort of thing when we were out there.

MR. TROUT: Casual public use is entirely permitted without any compensation.

CHAIRPERSON CORY: Okay. Commissioners ready?

Without objection, Item 15, the exchange, will be approved as present.

(Thereupon Item 16 submitted under separate cover.)

Item 17.

EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item 17 should be postponed till next month.

CHAIRPERSON CORY: Item 18.

EXECUTIVE OFFICER NORTHROP: It's a compromise settlement within the Alameda Creek Bed, the City of Alameda --

CHAIRPERSON CORY: Anybody in the audience on Item 18? Any questions from Commissioners?

Without objection, Item 18 will be approved.

Item 19, transfer of easements.

Where are we on --
EXECUTIVE OFFICER NORTHROP: Mr. Chairman, that is a pipeline easement for --

CHAIRPERSON CORY: Is everybody happy with that, now?

MR. HIGHT: Mr. Chairman, we'd like to add one authorization. It would be number 5 to the Commission's recommendation to authorize the staff and/or --

CHAIRPERSON CORY: Just a minute. The people from Inverness who have an interest, you are welcome to sit here or to be with those people if you like. I'm not trying to do anything in a back room. I'm not sure where we end up. Mr. McCausland's office is not a back room. But some of the staff people could make sure that they understand what is going on. I don't want to give the impression that we've --

EXECUTIVE OFFICER NORTHROP: Brian, would you do it. We're going to need Moose before they get back.

MR. HIGHT: Mr. Chairman, if we could add a fifth authorization to the recommendation to authorize the staff and the Office of the Attorney General to take all steps necessary, including litigation to implement this action.

MR. McCausLAND: No objection.

CHAIRPERSON CORY: You're going to litigate to accept a transfer?
MR. HIGHT: There may be some litigation involved.
CHAIRPERSON CORY: I've got no problem. Anybody in the audience?
Without objection, Item 19 will be approved as presented.
Item 20, put over at the request of Yuba whoever they are.
Item 21.
MR. HIGHT: Mr. Chairman, there's a condemnation of some land in the City of San Diego. The Commission would stipulate that, one, the Navy would not condemn the land and that they would dismiss their suit and, three, there would be a 66-year lease.
MR. McCausland: No objection.
MS. SMITH: No objection.
CHAIRPERSON CORY: Without objection, it will be approved.
MR. HIGHT: 22, 23, 24, and 25 can be taken as one. They are condemnations of various federal projects in which the State has no interest.
CHAIRPERSON CORY: Any questions from members?
MS. SMITH: No.
MR. McCausland: No.
MR. HIGHT: 26 and 27 are condemnations where the State is stipulating right to compensation.
MS. SMITH: No.

(Thereupon a discussion was held off the record.)

CHAIRPERSON CORY: Sid, one of you two want to continue?

MR. McCAUSLAND: 28.

EXECUTIVE OFFICER NORTHRUP: 28.

MR. McCAUSLAND: 28.

EXECUTIVE OFFICER NORTHRUP: A negative declaration on geothermal in San Bernardino, Mr. Chairman.

MR. McCAUSLAND: Anybody wish to testify?

Without objection, Item 28 is approved.

EXECUTIVE OFFICER NORTHRUP: Also a negative --

MR. McCAUSLAND: Certification of negative declaration.

Anybody wish to testify?

Without objection, Item 29 is approved.

Item 30 is an authorization for acceptance of quitclaims to Modoc County to terminate permits to prospect for geothermal resources for Getty Oil.

Does anyone wish to testify?

Without objection, Item 30 is approved.

Item 31 is approval for Compensatory Gas Agreement in Stockton Deep Water Channel Area with Buttes
Resources Company. Anyone wish to testify?

Item 31 is approved without objection.

Item 32 is approval of redrilling of "States 145,"
State Oil and Gas Lease PRC 145.1 in Ventura County.

MS. SMITH: No objection.

MR. McCausland: Without objection, Item 32 is approved.

Item 33 is off calendar.

Item 34 is a maintenance dredging permit in the City of Richmond. Anyone wish to testify?

Without objection, --

MS. SMITH: No objection.

MR. McCausland: -- Item 34 is approved.

Item 35, approval of amendments to documents concerning partition and assignments of Atlantic Richfield Company's interests in the Long Beach Unit, basically changing the closing date to January 1, 1979 and certain other terms of the agreement.

Anyone wish to testify on Item 35?

MS. SMITH: No objection.

MR. McCausland: Without objection, it's nice to take up this item in a rather swift and expeditious fashion. Item 35 is approved without objection.

Item 36 is a public agency permit for a shoreline park with the East Bay Regional Park District. Anyone wish
to testify?

MS. SMITH: No objection.

MR. McCausland: Without objection, Item 36 is approved --

EXECUTIVE OFFICER NORTHROP: Mr. Chairman, there is a change in language in that the staff counsel --

MR. McCausland: Item 36 has been amended by a handout delivered to the Commissioners at the beginning of the meeting and will be incorporated in the calendar item.

Status of major litigation.

(Laughter.)

MR. McCausland: We sent our major litigants out and we'll defer action on that.

For those of you who don't want to hang around for the exciting conclusion of today's program, the next meeting will be November 30th in Sacramento.

Shall we recess until 1:00 o'clock? How do you want to handle it? Or shall we just --

MR. HIGHT: I suspect they'll be back here momentarily.

MR. McCausland: Let's just have a cup of coffee.

(Continuation of Item 16.)

EXECUTIVE OFFICER NORTHROP: We have one other item, Status of Major Litigation. Status of litigation, Mr. Stevens was out of the room.
MR. STEVENS: That's all right. There'll be no litigation at the current time in Tomales Bay.

(Laughter.)

MR. STEVENS: The Supreme Court has accepted the Murphy case.

MS. SMITH: That's it.

CHAIRPERSON CORY: We stand adjourned.

(Thereupon the State Lands Commission Meeting was adjourned at 1:20 p.m.)

--000--
CERTIFICATE OF SHORTHAND REPORTER

I, CATHLEEN SLOCUM, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing State Lands Commission Meeting was reported in shorthand by me, Cathleen Slocum, and thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of November, 1978.

CATHLEEN SLOCUM
Certified Shorthand Reporter
License No. 2822
MEETING

STATE LANDS COMMISSION

STATE CAPITOL

ROOM 2170

SACRAMENTO, CALIFORNIA

EXCERPT

THURSDAY, OCTOBER 26, 1978

10:05 A.M.

Cathleen Slocum
C.S.R. License No. 2822
MEMBERS PRESENT

Mr. Kenneth Corty, State Controller, Chairperson
Mr. Sid McCausland, representing Roy M. Bell, Director of Finance, Commissioner
Ms. Betty Jo Smith, representing Mervyn M. Dymally, Lieutenant Governor, Commissioner

MEMBERS ABSENT

NONE

STAFF PRESENT

Mr. William Northrop, Executive Officer, State Lands Commission
Mr. R. S. Golden, Assistant Executive Officer, State Lands Commission
Mr. Robert C. Hight, Staff Counsel, State Lands Commission
Mr. W. M. Thompson, Manager, Long Beach Operations, State Lands Commission
Ms. Diane Jones, Secretary, State Lands Commission
Mr. James Trout, Chief, Division of Land Management & Conservation
Mr. Alan Scott
Mr. Steve Mills
Mr. Daniel Gorfain
Mr. Jack Rump, Staff Counsel

ALSO PRESENT

Mr. Jan Stevens, Assistant Attorney General
Mr. Bruce Flushman, Deputy Attorney General
Mr. Peter Kagel, representing Kagel and Kagel Corporation, Applicant for Permit to Construct Residence on Patented Tidelands
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CHAIRPERSON CORY: Item 16, Kagel and Kagel Corporation.

EXECUTIVE OFFICER NORTHRUP: Mr. Chairman, Item 16 on the staff presentation will be Mr. Flushman from the AG's Office and Mr. Mills.

MR. FLUSHMAN: I don't know whether there is any presentation to be made on behalf of the Applicant today, Mr. Chairman.

EXECUTIVE OFFICER NORTHRUP: We understand he has asked to speak.

MR. FLUSHMAN: Is he here?

CHAIRPERSON CORY: Mr. Peter Kagel?

MR. KAGEL: I'm here.

MR. FLUSHMAN: Members of the Commission, Executive Officer, counsel, this application is being brought to your attention in the manner that it is because of the direction that the staff was given in June of 1977 to prepare a comprehensive plan for the development or non-development of tidelands in Tomales Bay subject to the trust. Those lands have generally been identified for planning purposes as all lands that were subject of tidelands patents around the perimeter of the Bay. The application that was filed here, it was filed in June of
1977 and was recently updated by the submission of certain environmental data. As a result of the direction to the staff, a series of meetings have been conducted on approximately a six-week or bimonthly basis with the County of Marin, the Coastal Commission, the North Central, North Coast, North Central Coastal Regional Commission, whichever one it is, to prepare in conjunction with the local coastal planning process a recommendation to the Commission as to what the appropriate use of the tidelands is in the Tomales Bay area and how should be exercised.

The data compilation process has been going on. In Mr. Golden's report today he indicated that contact has been made with Pacific Marine Station. There have been ongoing studies by Fish and Game to have inventory of the flora and fauna in the tidelands area, including an inventory of all clams, oysters and et cetera that exist along the shore.

They have prepared certain maps which show preliminarily their determinations which have been considered in conjunction with this application. It is expected that after this compilation process is completed, that there will be a draft plan for consideration of the various bodies in the county, the Coastal Commission and the Lands Commission by the end of this year or the beginning of next year.
As a part of this process, the Commission entered into a Letter of Understanding with Marin County and the Coastal Commission to prevent the uncoordinated and premature land-use characterization in this area. The Letter of Understanding was entered into and it generally provides that permits will not be issued unless there is consultation between the parties and comments are made on them and that the land-use proposal is for uses or activities that are continuations of an existing use or activity which are consistent with the public trust and the objectives of the California Coastal Act and consistent with uses of adjacent or affected tidelands or submerged lands or et cetera.

There are certain exemptions to that not pertinent here.

The Lands Commission, as you are aware, is charged with the exclusive jurisdiction and authority of all interests of the state in these granted tidelands pursuant to Public Resources Code Section 6301.

In May of 1977, Kagel and Kagel Corporation applied for a Claim of Exemption and a Permit from the Coastal Commission. That Claim of Exemption and Permit were denied. In June of 1977, the State Commission denied it. It was a reapplication for a permit to the Regional Coastal Commission in August, I guess it was August of this year. That was denied and the State Coastal Commission has denied
the appeal of this.

The Applicant now wants the State Lands Commission to approve his project as proposed in his application. The project is located -- I'm going to put this up for demonstrative purposes. We seem to be short. This is a photogrammetric map which fits the tidelands surveys in the area which are identified by --

MR. McCausland: Because of the glare, we can't see your map.

Chairperson Cory: The nonglare overlay material, Prop. 13 doesn't allow us to afford that.

Mr. Flushman: The tidelands patents are identified on there and they have been fixed photogrammetrically and topographically. That is for demonstrative purposes only and does not represent a boundary determination by the Commission. We have placed the parcel and the proposed development on the map itself.

Mr. Gorfain was at the site last week and is prepared to show slides which will depict the site in its various aspects and show the surrounding area to the Commission.

Chairperson Cory: How much minutiae do we need to have to deal with this issue?

Mr. Flushman: I believe it's important that we do so to establish a record in case there is later action to
mandate the Commission to exercise its authority.

MS. SMITH: You have the proposed building located on your map?

MR. FLUSHMAN: Yes.

MS. SMITH: Are there other residences nearby?

MR. FLUSHMAN: I think that will be shown by these slides. You can see it on the map.

CHAIRPERSON CORY: Okay. Another dog-and-pony show.

MR. McCAUSSLAND: Mr. Kagel would like to see the maps.

EXECUTIVE OFFICER NORTHROP: Would you leave the set on in the rear, please? The back set on.

MR. GORFAIN: This is the Kagel site looking toward the street on the Bay. The house will be located approximately over there. There are two septic systems on either side.

Next slide.

CHAIRPERSON CORY: Pardon me. There are septic systems for what?

MR. GORFAIN: For a single-family residence.

CHAIRPERSON CORY: In other words, they're not there yet.

MR. KAGEL: No, they're there.

MR. GORFAIN: The septic systems are in, the
house is not.

CHAIRPERSON CORY: Okay.

MR. GORFAIN: This is looking across the site towards the southeast from Sir Francis Drake Boulevard.

Next slide.

The property immediately to the south from Mr. Kagel's property. You can see that the type of terrain, the type of vegetation that possibly could have been on the Kagel site, probably was on the Kagel site before it was filled. The house on the property to the south sits all the way back towards the street.

Next slide, please.

Just another closeup.

Next slide.

CHAIRPERSON CORY: That's the same house?

MR. GORFAIN: The same house with the same house on the site.

This house is, I presume, pre-Prop. 20 and it is on the property immediately adjacent to the north of Mr. Kagel's property. The sign you see on the property here is the notice for the filing of Coastal Permit.

Next slide.

This shows you the Tomales Bay immediately north of the house you just saw and, again, it's possible that this was the type of vegetation that characterized the Kagel site.
or at least part of it before it was filled.

Next slide.

A shot along the shoreline and where the person is standing is approximately, as best as we can determine, the seaward extent of the house if it is built, Mr. Kagel's house, if it is built.

MR. KAGEL: That's not true.

MR. GORFAIN: We can discuss that, but from the plot plans we had, that was the best we could determine.

MR. McCausland: Could we have that slide so Mr. Kagel can show us?

EXECUTIVE OFFICER NORTHROP: For the record, would you identify yourself, sir?

MR. KAGEL: My name is Peter Kagel.

It's kind of an interesting way to present this. We could probably do it a lot faster if I could bring you up to date on what we went through. As we go through these slides, I can explain to you where we are, if I may do that.

CHAIRPERSON CORY: I'm not convinced I want to listen to all the staff is giving me.

MR. KAGEL: I can tell you this, Mr. Cory, that we're entitled to have this heard on its merits and I really do want to come here and have it heard on its merits because you are a party to a three-party understanding.
Marin County on Saturday is taking our tidelands permit away from us and we have no choice but to go to court. I've drafted everything last night. It's going to be typed today and I'm going to present it to a court today or tomorrow. It's vital, I think, that you hear this on its merits.

CHAIRPERSON CORY: I'm prepared to do that, but I'm still puzzling this point, the question of clarifying at this point in the record, if you would like to, where that point should be if --

MR. KAGEL: Yes, Mr. Cory.

It is back towards the road. It has to have a 25-foot setback by Marin County ordinance. We are in compliance.

CHAIRPERSON CORY: Twenty-five foot from --

MR. KAGEL: From I think the top of that bank. We are up to ordinance. We have the right to have a building permit right now. We have a conceptual building permit. I have a letter in my file that says we are up to code on everything, including septic systems.

MR. GORFAIN: We have one more quick slide. This is the house you saw sitting over the water and it is approximately the same height as the house that Mr. Kagel is proposing.

MR. KAGEL: Incidentally, that house is on the
same fill.

MR. FLUSHMAN: Yes, Chairman Cory, there has been no permits issued by the Commission for the septic systems or the fill that took place on this property. The staff has recommended a denial in accordance with the calendar item. We don't believe it's consistent with the Letter of Understanding and it involves some premature characterization of the tidelands and there is some question as to the consistency of a single-family residence with the public trust for commerce, navigation and fisheries.

CHAIRPERSON CORY: Is the question over the ownership of the property, whether it's patent or --

MR. FLUSHMAN: No. There's no question over the title, over the ownership. The question is whether or not the use that he wishes to put his fee is consistent with the easement that we have for commerce, navigation and fishery.

I might note that this is a sensitive environmental area and has been so designated by the Commission in its inventory.

CHAIRPERSON CORY: We have an easement over what, the entire parcel?

MR. FLUSHMAN: The tidelands patent as it is described.
CHAIRPERSON CORY: Is there a fee parcel and a patent parcel, or what?

MR. FLUSHMAN: Well, the demonstrative map reflects that there is a certain portion of the parcel that lies within the Rancho line and within the Tidelands Act as well as outside of the tidelands patent. But the development itself, as it is depicted, falls within the tidelands patent.

This map is not a survey, as I've indicated.

MS. SMITH: You indicated in your presentation that there is certain conditions that had to be met in accordance with the Memorandum of Understanding. Are you suggesting that the use which Mr. Kagel is proposing would be inconsistent with the uses that are being made of the property now?

MR. FLUSHMAN: That are inconsistent with the uses made of the property now?

MS. SMITH: Yes.

MR. FLUSHMAN: Well, the use that's being made of the property now is that it's open space.

MS. SMITH: But there are other residences in the area.

MR. FLUSHMAN: I think you can see from the indication on this map and the slide presentation that the residences are spread apart. Whether or not there are other
residences there does not necessarily mean that the Commission in its monitoring or in its approval for tidelands should be issuing permits to build residences on tidelands. I'd be happy to provide the Commission with my opinion on this in Executive Session, if you wish. I'm not sure this is the appropriate time to do it.

CHAIRPERSON CORY: Okay. Does that conclude what you have to say?

MR. FLUSHMAN: I might add that this land has been designated in the Inverness Ridge Community Plan as a park and open space and that we were advised by the Applicant yesterday or, excuse me, the 24th, that he would not appear and he wished certain matters to be presented to the Commission. We have done so through a letter from Mr. Mills confirming that conversation to the Commission. We will be introducing matters as part of the record of the Commission which I have not taken the time to do now. Copies will be provided to Mr. Kagel if he desires them.

I have nothing further.

CHAIRPERSON CORY: Okay. Mr. Kagel.

MR. KAGEL: May I sit down?

CHAIRPERSON CORY: Sure.

MR. KAGEL: The property you saw, plus the house that was built just adjacent to it, are build on the same filled land. That land was filled in 1970. At that time
no one was required to get a filling permit, et cetera, except probably from Marin County. At least State Lands wasn't involved. As a matter of fact, we've been trying to get State Lands involved in this thing for some years, and I guess it's a question of being overburdened.

At the time that the lots were built we put in two septic tank systems because we wanted to build two single-family residences and we had building permits granted from Marin County prior to Proposition 20. Then the next thing that happened was the price of money went up and we let them expire because we just didn't have the funds.

Then we reapplied when we did have the funds and, lo and behold, Marks versus Whitney came down. Now, I don't know if you're familiar with Marks versus Whitney, but you must be.

Marin County was the only county in the state that said building above the water, or building any solid structure above the ground violated Marks versus Whitney. Then Marin County passed what they called a tidelands permit which is Ordinance Number 22.77 of their Code.

So, to get to court to argue with this, you have to exhaust your administrative remedies. So we proceeded to go through that tidelands permit procedure which took some years. In doing so, we had to develop an Environmental
Impact Report which you have here. It's over a hundred pages.

Now, pursuant to that and on all of the hearings we had, we finally got a tidelands permit on the Board of Supervisors' level from Marin County. The Board of Supervisors of Marin County -- and this is the last word in how they planned and how they planned for that particular parcel -- they ruled, they made 12 findings and the findings are:

Number one, it would not inhibit navigation.

Number two, it would not inhibit access to publicly-owned tidelands.

I want to say at this point, all the way along this process we said we'd dedicate 100 percent of this property to the public trust except for where the house sits and the two parking spaces. In other words, people can walk all over that place. We don't care. Matter of fact, we want them to. Let them do it. So bear in mind, we said, sure, go ahead. Okay.

Number three, this will not cause or increase the likelihood of water pollution.

Number four, it will not cause or increase the likelihood of flooding of adjacent lands, likelihood of flooding adjacent lands.

Five, it will not destroy or accelerate the
destruction of habitats essential to species of fish, shell fish or other wildlife of a substantial public benefit.

Number six, it will not interfere with or detract from the line of sight of the public toward the water, particularly natural features of visual prominence.

What those pictures didn't show you is that property's on a curve and it's got willows growing up and you can't see from the road. You can't see out there from the road at all.

Number seven, it will not conflict with the scenic beauty of the shoreline due to height, bulk, form, color, materials, illumination and the standard design of parking facilities.

Eight, it will not create a safety hazard in connection with settlement, fill or earthquakes.

Nine, it will not diminish natural waterways by siltation, sedimentation or bank erosion.

Ten, that the project is in substantial harmony with the adopted General Plan.

Number eleven, public benefits would be created to offset some of the detriments which may be caused by the nature of the proposal.

Finally, proposed fill excavation and construction will not adversely affect any existing public
rights on the property.

So we have that tidelands permit.

MR. FLUSHMAN: Excuse me. Let me interject at this point. This is a Marin County Tidelands Permit for what it's worth since no grant has been made of the public trust to the County of Marin in the area of Tomales Bay. So with that characterization, --

MR. KAGEL: If you look at your report compiled by Mr. Mills, you will see that they beg the question of what public trust is. What they do is they say the public trust is whatever Marin County's planning groups are going to say it is. It's your job. I submit it's your job. You can't delegate that duty. You have to decide on an individual case-by-case basis about what the public trust is on each and every single parcel there. Then we have to run the gamut and run their local plan. But the public trust situation is the only thing that you should be addressing yourselves to.

Now, the Coastal Commission in their infinite wisdom turned us down in our vested rights application by saying, well, we didn't construct those septic tank systems with reliance on building permits. Which, you know, is somewhat absurd. That's number one.

Getting back to the regular thing, let's just say that the Code, that the Coastal Commission, that the
Coastal Act does have authority over us. They said that they turned us down on the basis of the public trust wasn't delineated by you. What you've got here is a situation where agency after agency is playing ping-pong back and forth in an effort to stall the people who have land there, not giving them an answer. We played ball for seven years but we can't because Marin County is pulling our permits, as I said, on Saturday. I'm getting a Writ of Mandate and we're also bringing a declaratory relief action for inverse condemnation and somebody's going to end up paying for that property because we have a failure here in our State Government for everybody to take care of their jobs. You know, the Coastal Commission did not tell me that they had this Letter of Understanding between Marin County and you. I say that's a lot of nerve. I say that's damn sub rosa, sickening, totalitarian. They knew all along they were going to turn it down and they didn't tell us.

I went through all this hassle compiling reports, hoping, right? I'm a lawyer. I'm supposed to say, well, you're not supposed to hope. Just be objective. Just keep your head back. I was hoping. All the time it was on -- okay. Let me show you something else the Coastal Commission said.

Because your staff has incorporated their findings in its findings, I think you have to address yourself.
The Coastal Commission said we're not up to Code in our septic system. We are up to Code. What they're doing is they're creating a super agency for the state to decide what is up to Code and what is not up to Code. That's a county situation. They knew all the way along the line that that house that you saw next door was on the same fill and has one septic system and they never had any problem. They're saying we're going to have a problem and we've got two septic systems. One's a fail-safe, a backup system.

So here we are since 1970 playing the game and it's running out. We want you people on an individual basis, not on some Letter of Understanding, to cope with your authority, to take it on a case-by-case basis and tell us whether or not we are consistent with the public trust or not, bearing in mind that we've given a hundred percent of the property to the public trust for access.

Now, if you say that we are not, that we are not consistent with the public trust, then you're virtually going to say that nobody is consistent with the public trust in terms of a single-family residence. That's all. Plain and simple, that's it.

The other thing that this staff report says is, well, we've got the proposed local coastal program and we know about them. That's in the Letter of Understanding.
If you know about it, you're supposed to go by those
guidelines even though they haven't been certified or
anything else. The only testimony that's ever been put
before any public hearing on that property, despite this
convenient representation that I just heard from your
counsel, that they want to make it a park, is they want
to have a linear trail across the property. Now, that
piece of property is 43,000 square feet. The house is
going to take up like 1265 square feet plus the two parking
spaces. You're telling me that they can't put a lousy
eight-foot trail across 42,000 square feet? It's absurd,
unbelievable, and it's unfair.

Now they're trying to hold us out and say, okay,
we've got some group, the Inverness Ridge Committee saying
we want a park there. Let's have a park. I'm telling you
they considered that at the EIR and they ruled it out.
They wanted a boat launching site. They ruled it out.
There's no parking space. If you show the pictures again,
you'll see it doesn't go right on Tomales Bay. It has sort
of a little finger, sort of a dike that was put in there.
It is not appropriate for that. There are houses not only
next door in sight, but there's houses all the way up and
there's even a motel.

So what we've got here is a situation where the
green panthers are running amuck. They may destroy it for
everybody because I voted for that Coastal Act, but we've got a situation where we've got to be the bad guys. I almost feel like let's cut everybody off at the knees because nobody is taking their authority, nobody is addressing themselves to the issue. The issue is, on this particular piece of property, is it consistent with the public trust. Letter or no letter.

MR. McCausland: Just to start things off, we rejected an application last year on the basis that if we had to go house by house, we would deny each application on the basis that there was no way for us to understand at what point equity was reached in terms of the balance of the need for bayside housing and the need for public access. We, as an alternative, suggested if we could have before us a Master Plan for the area that demonstrates to us that in aggregate the public trust is adequately protected, then we as a Commission can have a legal basis for on a case-by-case basis saying this particular structure is consistent with the Master Plan for the area.

Since the Master Plan for the area makes adequate provision for the public trust, we can go along with specific structures. That's the position that the Commission finds itself in.

MR. Kagel: I can understand that. Now, under Section 30600 of the Coastal Act, the local government, which
is Marin County, and I assume you'd be paying attention
to them, has the option to put in procedures during the
course of the formulation of the local coastal program.
If they don't take that option, which they didn't, then
they leave it up to the state. Now, the state has a staff
to do it and they're going on a case-by-case basis and
maybe you don't have the staff to do it. But I suggest
to you that maybe you should be exercising, you should be
looser on your exercising of your jurisdiction because
we're going to be in a situation where we're going to have
judicial -- the courts are going to decide it for you.
It isn't going to be a question of planning. It's going
to be plain and simple Writ of Mandate time and it is.
I'm sorry, but it is. I can't go any further. We played
ball all the way along. We think we have a meritorious
situation. The public trust stopped on that land when
those septic tanks were put in and the land was filled.
We are saying we can all live together.

CHAIRPERSON CORY: Let me clarify just in my own
mind. I believe I heard you say that there is a some 1200
square foot house that you wish to build.

MR. KAGEL: Yes, sir.

CHAIRPERSON CORY: Some 25 feet back from the
bank.

MR. KAGEL: It's the only place it could be
built because of all the leachlines running all over the property.

CHAIRPERSON CORY: But you are prepared to grant public access to everything save that 1200 feet plus the parking?

MR. KAGEL: Yes, sir, we've always done that.

CHAIRPERSON CORY: That's somewhat of a unique offer; is it not, staff?

EXECUTIVE OFFICER NORTHROP: Yes. I don't know anyone who has offered that.

MR. FLUSHMAN: I wasn't present at the earlier application hearing that Mr. Kassel made an offer of dedication. It may have been for the same amount of a comparable amount of his parcel. This is another parcel in Inverness along the tidelands between two houses.

CHAIRPERSON CORY: I just wanted to make sure I wasn't misunderstanding.

MR. KAGEL: Yes, I have the authority and I hereby stipulate that 100 percent of that property belongs to the public trust except for the house and the two parking spaces.

CHAIRPERSON CORY: Okay. Betty, you had some questions?

MR. MILLS: I don't quite understand what belongs to the public trust. Do you mean you would dedicate fee
title to a hundred percent of the property?

MR. KAGEL: I'm saying that people can enjoy it, can come on it, do whatever they want on it, short of creating a nuisance.

MR. FLUSHMAN: The easement is there regardless of whether he dedicates it or not. That's an offer that he is making that has no legal effect. The easement is not terminated by the filling of that property.

CHAIRPERSON CORY: No. Wait. Let's clarify that.

As I understand from that map, there is a small portion of it to which there is tideland easement.

MR. FLUSHMAN: We are assuming now, perhaps I've stated, that for purposes of our discussion that the entire parcel is encumbered by the trust. Even if it isn't, well, then his offer of dedication does have some effect. As to the parcel that lies outside the perimeter description of the tideland pat.

CHAIRPERSON CORY: Take me very slowly through the derivation of that easement, what you're talking about. I'm trying to find out whether that's an offer or a non-offer.

MR. KAGEL: Well, I think I might be able to help you. It's your job to decide what the easement means.

CHAIRPERSON CORY: But I'd like to understand because that seems to have been glossed over in the
presentation. There were a lot of details, and I don't understand that. It seems to me an integral part of what our position is or isn't.

MR. FLUSHMAN: The tideland patent is placed on this photograph which is not a rectified photograph. It was not taken with any controls by control set. So this has been photogrammetrically fit, all of these parcels, these maps have been photogrammetrically fit.

This is a 1974 photograph, excuse me, 1977 photograph of Inverness at one to two hundred feet is the scale. Superimposed over that is the property as it was depicted by the United States in 1862. On that 1862 topographic, on that is depicted the parcel in tape which indicates that as far as the topographic map, a portion of the parcel was on a map upland part and part of it was on either submerged lands or tidelands. The tideland patents are depicted on the next overlay which indicates that substantially all of the parcels fall within, within tidelands survey 185. Also imposed on this map is the Rancho line in the area. The Rancho line is the base title for the upland parcels which show that there is a conflict between the tideland survey and the Rancho line which is not an infrequent occurrence in Western Marin County where the monumentation is slack and lax to put it mildly.

Does that answer your question?
MR. MILLS: In other words, what he's saying is that substantially all the parcel, and I think it's accepted by Mr. Kagel, was included within a tideland patent which was sold by the state, fee title was sold by the state to the private owner. However, the state retained an easement over that parcel for commerce, navigation and fisheries. It's that easement which has been referred to as the public trust easement.

CHAIRPERSON CORY: And Mr. Kagel's position is that that was terminated when the fill was made in 1977?

MR. KAGEL: No. I'm trying to persuade you to say that the use is what we're talking about here.

CHAIRPERSON CORY: Is consistent with?

MR. KAGEL: Yes. It ceases to be a bird preserve. You can't use it as a bird preserve because it's filled. It's got septic tanks underneath it. The law's going to look and say, what's the most proper and best use for it. It's got septic tanks on it. You have access to a highway. You have water to it. You have power to it. There are houses on each side. So, you know, we're not arguing over whether or not it falls within the jurisdiction of state lands. We are saying, what I was trying to say to you is that the use is, you know -- Let me say something else.

You say that you don't have enough staff and you can't take it on a case-by-case basis.
MR. McCausland: I made no representation about staff. I said the policy statement that if we went case by case, we would determine that we would never know in aggregate at what point we had built so many houses that we had damaged the public trust. But if we had a Master Plan to compare the project-by-project proposal, we could determine that in aggregate we were still protecting --

MR. KAGEL: As a practical matter, this is the only single house that you're going to have to worry about between now and the time you get your Master Plan, and I'll tell you why.

Mr. Mills told me Mr. Cassel did not have all of his permits in order with Marin County. That's why you didn't consider it. There's no way anybody else is going to get their permits in order with Marin County because they have to go through this bloody tidelands ordinance which I just read you all the findings you have to satisfy. To my knowledge, there is absolutely no Environmental Impact Report in the process of being made on any other parcel. This parcel is the only parcel that I know of that's large enough to accommodate up to Code septic systems. As a matter of fact, what they did to us, we're grandfathered in on that septic system. We're probably grandfathered in for two houses. Well, I just as soon wait.

MS. SMITH: I have a question for staff.
Would the approval of Mr. Kagel's application be in breach of the Memorandum of Understanding that you've reached with the County of Marin and the Coastal Commission? If so, in what respects and what are the consequences?

MR. FLUSHMAN: All that the Memorandum of Understanding requires us to do is to consider the criteria that are set forth in that understanding. As far as being in breach of it, I'm not sure it's possible to breach it by an approval because the agreement, the Letter of Understanding does not say that you cannot approve. It says you have to give consideration to these factors when you do approve. The reason that we entered into the Letter of Understanding, of course, is so that we didn't have approvals being adopted by one agency and not by others and to prematurely characterize what the ultimate plan is going to be. So it wouldn't be a breach in short. It would not be something that I would recommend the Commission doing, however.

MS. SMITH: For what reason?

MR. FLUSHMAN: For the reasons that are stated in the calendar item.

MS. SMITH: What is the date certain for the completion of the Master Plan?

MR. FLUSHMAN: A date certain? The date certain
is that it will be sometime after the first of the year.

CHAIRPERSON CORY: Mr. Kagel's problem is that he bites the bullet the 28th.

MR. KAGEL: That's right.

MR. FLUSHMAN: Well, of course, this has been a year since he made his first application and now he wants the Commission to decide today.

MR. KAGEL: Let me say, I want to address myself to that and then I want to come back and talk to what I was talking to you about.

When I went before the Coastal Commission down south, Mr. Golden was there. They told me, they said you don't have to wait your six months pursuant to the Administrative Code to come back. The Master Plan, you know, is moments away. I've waited and I waited. So we've been good faith on this thing all the time. The minutes don't reflect that, but the tape does.

CHAIRPERSON CORY: Of the Coastal Commission?

MR. KAGEL: Yes, sir.

So what's the point of doing that, what's the point of incurring all of this expense unless you know that you're really up against the wall. We've tried to play ball with everybody.

Now, let me finish why you're not going to have any other houses. No one -- We have one acre there, one
acre. And I don't think there's another acre parcel there. There's no way that anybody can conform with Marin County's septic ordinance on even one acre any more. What they did, when we came back and reapplied for our building permits again, they knocked us down from two houses to one. They said you had to have a 100 percent fail-safe system. Now they've even changed it more. So you're not going to have to face this thing.

We have a lot of hardship in this thing, seven years. Seven years and it's not going to be any skin off anybody's nose because they're going to be able to use the property.

MR. FLUSHMAN: That seven-year period is not taken up by consistent pressing of the application on a daily basis. This is a sporadic process that has been going on as is evidenced by the matters which we'll be submitting to the Commission.

CHAIRPERSON CORY: Questions from Commissioners?

MR. MILLS: I think there may be some other people in the audience.

MR. McCAUSLAND: As long as people in the audience want to testify, I would like Mr. Golden, if he could relate for us, how this application might relate to an application within the Bay Conservation and Development Commission jurisdiction because it appears to me, although this is
really a superficial forum in which to try to get to this, that public use of all nondeveloped portions of the parcel is a fairly significant commitment and one that many property owners are most reluctant to agree to in fact, if not in semantics. But can you describe for me how we can make a public trust finding in a San Francisco Bay project which perhaps is virtually identical to this one?

MR. GOLDEN: I think, Mr. McCausland, in response to that, the McAteer-Petris Act which set up the Bay Development Commission was an exercise of the public trust in itself and it's significantly different in any respect than the Coastal Act which is also an exercise of the public trust.

So you have a number of different items in the Coastal Act which have to be considered as exercised. For instance, the effect on the environmental factors, whether or not these leach fields have an impact on the environment and what not would be a matter for the Coastal Commission to consider but perhaps not in the same context as the BCDC.

MR. McC Ausland: Plus perhaps the fact that BCDC has already adopted plans and elaborate rules and regulations to allow you to view each application on its merits.

MR. GOLDEN: Yes.
MR. FLUSHMAN: If I might add, Commissioner McCausland, that maybe a result of this planning process that goes on here is that that's what will be recommended for the Lands Commission to do in the Tomales Bay area.

CHAIRPERSON CORY: Just what I always wanted, get elected Controller and be a Planning Commissioner. I'm sorry.

Are there any other people in the audience who wish to comment on this permit?

Would you come forward and identify yourself for the record, please.

(Thereupon a discussion was held off the record.)

CHAIRPERSON CORY: Yes, sir.

MR. HOWE: My name is William Howe and I'm the President of the Tomales Bay Association.

You have, I hope you've received it, letters from the Inverness Association signed by Daniel Morse and a Mailgram from the Marin Conservation League. There is one other organization in West Marin called the Environmental Action --

CHAIRPERSON CORY: Do you have copies of those documents because we do not have them?

MR. HOWE: Oh, you do not have them. I have these here. Maybe they didn't reach you.
There is one other organization called the Environmental Action Committee of West Marin whose chairman is in Europe. However, the history of that organization is in accordance with those of the rest of it.

We all support the staff report. We were up here for the Cassel hearing, as you may recall, when the situation was a little bit different. Our organization specifically, a long time ago, sent a letter to you shortly after the Marks-Whitney decision stating our general position. Many of our members actually own tidelands, but most of them are not the people who own undeveloped property. They own some of these small houses that are around the Bay. So we've been rather conservative in this issue.

However, we very early came to the decision that in cases of undeveloped property, we strongly urge you in undeveloped property, such as Mr. Kagel's, I believe, to give maximum weight to the public trust. Tomales Bay is not San Francisco Bay. Tomales Bay is a rural area surrounded by the seashore. It's an area in which it's become a very great recreation area and it's the general feeling that for houses to be built along the Bay which are conflicting with the views and conflicting with the recreational use, that there is a strong case to be made to not encourage them. That's basically the point that I wish to convey to you.

It's a matter of community sentiment.
MR. KAGEL: May I --

CHAIRPERSON CORY: There are a couple of things that go through my mind that's puzzling to me. One, because I feel as a representative of the government and put in a position of being asked to decide upon something to try to absolve somebody from the sins of another governmental agency. I mean, I'm uncomfortable about that. I feel that there may have been something less than a meritorious treatment by some of my other people in government of an applicant here.

The thing that I'm going through in my own mind, and I don't know where this comes out in terms of a final decision, but the down side of what you told me, I'm receiving this way and I'd like to tell you how I'm receiving it so you'd have a chance to correct me if I'm misperceiving it.

The concept that you're representing a group of people who have their houses and, therefore, don't want anybody else to have houses. I mean, "I've got mine." I'm sitting here trying to weigh using the public power as a trustee to preclude this person's use of his property right for your convenience. I think there may be something more to your argument than that, but I want you to know what the kind of things that I'm going through. I don't know how I'm going to vote on this, but rather than you walk away
with just that statement, I'd like for you, if you could, to respond to that in some way.

MR. HOWE: Well, there's obviously an ambiguous situation now. People who have had their houses for a long time, you know, have a homeowner's interest in their own property. They live there. You know, they've lived there, many of them for a long, long time. Of course, such property does change hands.

It seems to me that that's one situation, but it's a completely different situation where you can look out and see the birds and so on and for someone else to come in and then put a structure up.

CHAIRPERSON CORY: If I could just pursue that and then Sid has a question for you.

In this particular case, as I understand it and nobody's disputing the fact that either rightfully or wrongfully the property was filled in 1970 and septic tanks were put in. Is there any way in your hearts that you can conceive that he's one of you rather than one of them? He has already done his development. I mean, I don't know.

MR. HOWE: At the Regional Coastal Commission, I got up at that time because I was somewhat concerned about the fact that Mr. Kagel had an investment in his property through the work that he had done. I suggested at that
time that possibly that this was an instance where, although I really thought that he should not be allowed to build, that possibly this was a case where he should receive some compensation.

MR. FLUSHMAN: Compensation for --

MR. HOWE: For the things that he did before the decision, you know, before the Marks-Whitney decision.

MR. KAGEL: Including reasonably attorney's fees from then on?

MR. HOWE: I'm not an attorney so I will pass on that one, what is a reasonable attorney's fee.

At which point the attorney for the Regional Commission asked Mr. Kagel a question and I'm not going to pretend that I can give a completely accurate answer to this. Mr. Kagel, I'm sure, will correct me. But the general gist of the thing was there was a point after the decision that Mr. Kagel for personal reasons allowed his permits to expire at which point Mr. Kagel then began all over again.

Now, I don't know how you feel about it, but I feel that this was the point at which -- I've changed my mind, obviously -- that this was the point at which the local and state agencies involved were off the hook on this one.

MR. KAGEL: This is prior to Proposition 20 ever coming down. This was conforming with their laws all
the way down the line. If we didn't stand a chance in the beginning, why would we even go forward.

CHAIRPERSON CORY: Sid, did you have a question?

MR. McCausland: Do you reside in the vicinity of this?

MR. Howe: I have a so-called weekend residence in Inverness. It's up on the hill. It's on the other side of the highway. I'm a legal resident of San Francisco.

MR. McCausland: Are you familiar with many undeveloped pieces of property that already have fill and septic systems in place around the perimeter of the Bay?

MR. Howe: Well, I was talking about places with houses.

MR. McCausland: I'm curious to know, Mr. Kagel has a piece of property that's been filled and it has a septic system in place. Are you familiar with other pieces of property in that vicinity that have undergone that degree of development?

MR. Howe: Off the top of my head, no.

MR. McCausland: Is our staff aware of any?

MR. Flushman: I don't believe there are any.

MR. McCausland: Did Mr. Cassel or whoever the other party was have a similar circumstance?

MR. Flushman: I think there's partial fill on his property, but that's it. There is no septic system.
MR. McCausland: There is no septic system.

MR. Flushman: Whatever the origin of that fill is, it's undetermined whether he did it himself or it's a --

MR. McCausland: Was the State Lands Commission actively administering any permit laws related to fill in 1970?

MR. Flushman: Were they actively administering or did they have the authority? They were not actively administering it, I believe. I wasn't counsel to the Commission.

MR. McCausland: Did they have the authority?

MR. Flushman: I believe they did.

MR. McCausland: Do we have any evidence that suggests to us at all that the fill or the septic tank was not in full conformity with the laws in place at the time those actions transpired?

MR. Flushman: Which laws?

MR. McCausland: Whichever laws were applicable to fill and septic.

MR. Flushman: As far as the County of Marin, according to the Coastal Commission findings, they were in accordance with the standards as they existed for septic systems in 1970. Whether or not they meet present standards is subject to question, but you also have to consider that there has been studies of the ground water and septic...
sewage disposal systems in the Inverness area along the tideland which will be presented at the time that the planning determinations hopefully will be made by the Commission as to what should go on the tidelands. So regardless of the fact that they meet Marin County standards, if, for example, the septic system studies show that two septic systems, whatever the fail-safe procedures, would cause a discharge of effluent into the Bay at this area, the Commission may have to make an independent determination as to whether or not the use of the property so as to cause effluent to flow into the Bay --

CHAIRPERSON CORY: I think that's irrelevant to what Sid is driving at.

MR. FLUSHMAN: I'm not sure that it is.

MR. McCausland: Let me go on to my next question then.

Is there any contention on the part of this Commission staff that any actions have been taken since Marks versus Whitney that are not in compliance with applicable law at this time?

MR. FLUSHMAN: I'm not sure that I understand your question.

MR. McCausland: It occurs to me or it seems to me that everything that he's done up to this point in time has been in conformance with the laws under which he undertook
those actions to the best of our ability to discern that.

That any impairment made to the public trust was made prior
to Marks versus Whitney. As far as the state's sovereign
interest in the public trust relevant to this particular
parcel, it's been substantially altered already. While
there are potential trust uses available to us, I don't
quite understand what premise we should use at this point
in time, in the absence of planning by Marin County for
this area earlier in its General Plan, and in view of the
fact that the Coastal Commission has yet to act on this
property at the regional level --

MR. MILLS: The Coastal Commission has already
acted on it.

MR. FLUSHMAN: It's acted by a denial as
affirmed by the State Commission.

MR. McCausland: On the basis of a plan?

MR. MILLS: On the basis that it was not --

MR. FLUSHMAN: I'll be happy to read to you what
the findings are. The findings are that the proposed
development represents private residential use of historic
state tidelands that are subject to the public trust
doctrine. The applicant's offer to dedicate a pedestrian
easement does not satisfactorily resolve the conflict
between private development and the public right to use
of these tidelands.
There are also other findings that are available.

MR. McCausland: Is it their place to make that specific finding?

Mr. Flushman: There is a conflict between the Coastal Act of 1970 and the Public Resources Code, Section 6301 as to exactly who has the exclusive jurisdiction over the tidelands.

MR. McCausland: Is there exclusive jurisdiction or is it shared?

Mr. Flushman: Well, the 6301 says exclusive. The Coastal Act says that the State Commission retains jurisdiction over the tidelands regardless of whether there's a local coastal program instituted in the area, the State Commission.

Mr. McCausland: Let my attorneys correct me if I'm wrong. So, in fact, the more current and more specific language of the Coastal Act is very likely to prevail in this instance?

Mr. Mills: Yes.

Chairperson Cory: Let me stop here at this point. Mr. Kagel, you've indicated, I believe on the record, that you feel, in fact you've gone to the point of drafting documents that you're going to have to do whatever you have to do in terms of mandamus actions and the like to protect your property; is that correct?
MR. KAGEL: That's right.

CHAIRPERSON CORY: Okay. In view of that --

MR. KAGEL: But I hope you're not going to say:

Well, take us along with you.

CHAIRPERSON CORY: No. I'm going to say, and it's a substantial inconvenience, but I think it's important at this point that because of the potential litigation question, we confer with our lawyers just to make sure because at one point there was a statement by one of the staff people that there was something that he didn't want to get into at this point. It might be appropriate for us to confer with our counsel and then --

MR. KAGEL: In an Executive Session.

CHAIRPERSON CORY: -- in Executive Session right now. We will come right back. No decision is going to be made there, but I need a clarification of what --

MR. KAGEL: May I just say, I want to read you three sections out of the Coastal Act. I think I can clear this up, your question about who has exclusive jurisdiction over the public trust.

The public trust is what you have. Now, they have jurisdiction over the same territory for other reasons, but when it comes to public trust, they can't hang their hat on the public trust.

Now, Section 30400 reads:
"It is the intent of the Legislature to minimize duplication and conflicts among existing state agencies carrying out the regulatory duties and responsibilities."

30401 reads:

"Except as otherwise specifically provided in this division, enactment of this division does not increase, decrease, duplicate, or supersede the authority of any existing state agency."

And then it goes on in another section talking State Lands specifically saying what State Lands has. That's 30416. Then it reiterates the fact that you have what you had before this Act was passed; and what you had before this Act was passed was exclusive jurisdiction.

Exclusive means exclusive.

MR. McCAUSLAND: That's what I thought it meant.

MR. KAGEL: That's right. That's exactly it.

CHAIRPERSON CORY: I would like the room cleared. This should not take more than five or ten minutes, but I would like to get that additional information before we make a decision.

(Thereupon a recess was taken.)

CHAIRPERSON CORY: Okay. Now, where were we before I so rudely interrupted?

MR. FLUSHMAN: We were considering this
application.

CHAIRPERSON CORY: Oh, yes, Item 16.

(Laughter.)

MR. McCausland: We had just determined with the help of the Applicant that we had exclusive jurisdiction over the finding of public trust, but also with a reminder from counsel that our actions should not be inconsistent with Coastal Commission actions.

MR. Kagel: Why not? We're entitled to our --

MR. McCausland: Let me finish. That area over which we have exclusive jurisdiction is public trust. As a Commissioner I would be unwilling to make findings other than those specifically consistent with that exclusive jurisdiction. Then anybody else who wants to say that our findings are inconsistent with theirs, can argue as to whether or not they had jurisdiction.

CHAIRPERSON CORY: Okay. Mr. Kagel, do you have any --

MR. Kagel: Have I apologized for that last outburst?

CHAIRPERSON CORY: You've been down the road.

MR. McCausland: Seven years even if only sporadic is a big investment.

(Laughter.)

MR. McCausland: Most things in my life are
sporadic too.

MR. KAGEL: Well, I thank you for your consideration and I feel that you've heard me. I can't say that about the Coastal Commission, but I felt you've heard me today. I don't think we present any threat whatsoever to anybody's future plans on Tomales Bay and I think it's only just, considering the investment we have there and the fact that we've been law-abiding all the way down the line.

CHAIRPERSON CORY: I want to get back to this confusing area of public trust easement and the like. How far are you willing to go for the non-house, non-parking and driveway into that?

MR. KAGEL: The public may use it as it wishes. I don't want an RV next door to the house, I mean, you know --

MS. S?ITH: What's that?

CHAIRPERSON CORY: A recreational vehicle. He doesn't want a motor home coming in with its generators going all night.

MR. KAGEL: The people can use it to pass over to Peppermill Creek. They can walk over the property. If there's ever a bicycle path, which is highly unlikely because they're going to hate to condemn all the property on each side, then, by God, they could have a bicycle path
with our blessing.

In other words, we'll give you 100 percent, 100 percent dedication to the public trust for pedestrian right-of-way.

MR. FLUSHMAN: Is that in fee or is that in easement?

MR. KAGEL: In easement.

MR. FLUSHMAN: Only an easement.

MR. KAGEL: Yes, sir, it's an easement, but it lasts forever. That's the difference. If you want to pay the taxes, we'll give it to you in fee.

CHAIRPERSON CORY: If we took it in fee and gave you an easement for your septic leases which I guess are in that area, --

MR. KAGEL: They're underneath the entire property.

CHAIRPERSON CORY: -- that might alleviate you of some portion of the tax burden.

MR. KAGEL: We have a problem. Because we were in court, we have to represent that we were the fee owners of the property. I think we might lose our standing to stop Marin County and to pursue our remedy with the Coastal Commission.

CHAIRPERSON CORY: What would happen -- I'm just thinking hypothetically here -- that if we found some
mechanism that a portion of that was not adverse to the public trust, the house site, and at this time you still have a lot of problems down the road.

MR. KAGEL: But they're going to be solved in short order.

CHAIRPERSON CORY: But --

MR. KAGEL: If you say the house and the two parking spaces are consistent with the public trust, I guess that's all you have to say.

CHAIRPERSON CORY: I'll put a caveat on there, at this time.

MR. KAGEL: Fine. I don't see anybody coming in and razing the house if they change the use.

MR. FLUSHMAN: If I can suggest that if you were going to do that, hypothetically, it might be more appropriate to do it and find that this area is no longer subject to the public trust in that it has been filled, reclaimed and is no longer useful or acceptable to that purpose.

CHAIRPERSON CORY: Well, I was thinking of the other way, that if down the road, since we don't know what's going to happen with the other agencies and all, if at some point -- I'm trying to avoid digging the state in a hole that's, say, two years from now you're still in the saga of fighting the bureaucracy's battle and a plan came out
that they needed that for a purpose --

MR. KAGEL: Now, wait a second. We do own that property.

CHAIRPERSON CORY: Yes.

MR. KAGEL: And we do have a right. If somebody wants to come in with eminent domain, I suppose they could do it at any time.

CHAIRPERSON CORY: As I understand where we are legally at this point in time, if we wanted to exercise the public trust and we needed it for some legitimate public purpose, the improvements that have been placed there we would under law have an obligation to compensate you for taking.

MR. KAGEL: Absolutely.

CHAIRPERSON CORY: I've got no problem with that. What I'm concerned about is if for other people or other reasons, not our control, you have not actually built the structure and at a future point in time you wish to do that because circumstances change or more information is available, --

MR. KAGEL: Then you're not going to have to pay for structures that we couldn't build.

CHAIRPERSON CORY: That's the point I'm trying to clarify and put on the record. If they haven't been built, this grant here does not convey a right to increase the
value of whatever is there. Whatever is there is there and what its value is is not enhanced by our approval today.

MR. KAGEL: It's my understanding you can't sell a building permit. You've got to build a building permit. What you're saying is, you're essentially licensing us to build a house. You're saying that it's an easement in growth, only belongs personally to you. I guess that's right, or a profit or whatever. You're saying it's a personal right is what you're telling me.

MR. McCUSAULD: I want it understood that no action taken by this Commission today should ever be construed as a license to build a house. We're simply discussing the matter of the finding regarding the public trust.

MR. KAGEL: That's exactly right. That's why we're here. We're here because you have to decide what is the proper use under the public easement, and the proper use under the public easement is a single-family residence. It's okay. But we are going to --

CHAIRPERSON CORY: I think that getting you as close to where you might like to be is going to not quite be that as I read the Commissioners. I'm not so sure that there are three votes to find a single-family residence is consistent with trust purposes.

MR. KAGEL: Well, we're not going to put up a
CHAIRPERSON CORY: That you might well find that in this unique property that acts that occurred prior to Marks versus Whitney may make this particular homesite an act that the public trust is no longer applicable.

MR. KAGEL: I'm here because I have to go through the laws of the Public Resources Code and your laws. Now, I'm here and I presented to you a single-family residence because that's what we're talking about. Either you give it to me or you don't. I can't understand this gray area in between. Now, yes, we may not make it with the Coastal Commission and then the whole issue is forever dead if that's what you're saying. There's no way that you, how can you --

MR. McCAUSLAND: Perhaps I can frame a motion for the Chairman that we can discuss and you can respond to.

MR. KAGEL: Fine.

MR. McCAUSLAND: Let's move that the State Lands Commission find that due to the placement of fill and a septic system prior to the finding in Marks versus Whitney and the subsequent alteration of the character of the land on this specific parcel, State Lands Commission finds that the public trust would not be irreversibly damaged by the construction of a structure on that land, granted that.
all other portions of the parcel be dedicated in fee for public access in perpetuity.

CHAIRPERSON CORY: With an easement for his septic system. If you're going to take it in fee, you've got to give him an easement back to use his portion of it.

MR. McCausland: Incorporate any relevant easements into the motion.

MR. Kagel: I think we're getting there, but I have a difficult problem with what you mean by "in fee." Why do you want to end up owning the land? You see, what you're doing then, of course, if we have an easement and something happens to that land, we can make you fix it. If the land starts caving in and the septic systems don't work, we could say, hey, come fix your land, you've wrecked our easement. Or if you do something there or something happens with people coming over the property and you own the property and their activities are interfering with the septic system, then you have a real problem. I would suggest that you just reshape it and let us give you the easement. We'll keep the fee. I'm trying to keep you out of trouble, out of managing, out of all that hassle.

MR. McCausland: Let me suggest that the Coastal Conservancy reluctantly has been accepting public access easements on behalf of the State Coastal Commission lately
because no other agency was willing to accept them. We could either take this as the State Lands Commission or we could request that the Coastal Conservancy take such a public access in perpetuity.

MR. KAGEL: Sure, we'll give it to the State Conservatory or whatever it is.

CHAIRPERSON CORY: If we did this, what form do you think it should be in?

MR. FLUSHMAN: If I might suggest that the Commission rephrase its motion to indicate that the parcel, because of its configuration being filled and the septic systems being installed with appropriate permits from the local governmental agencies, is no longer needed for the trust. In return for that, and that further it is no longer needed because there has been a dedication of whatever form it takes that the application be granted.

MR. McCUSAULD: What is the application?

MR. FLUSHMAN: The application is to build the residence.

MR. McCUSAULD: Why should we make a finding about granting the application? All we have to do is make a finding that the public trust is --

MR. FLUSHMAN: That's what you're doing. You're saying that the land is no longer needed for the public trust.
MR. McCAUSLAND: I don't want to go so far as to saying an application should be granted. I merely want to say that, as the State Lands Commission, we don't find adequate grounds for suggesting that the public trust has been irreversibly impaired.

MR. KAGEL: See, the problem is the vehicle we get here which is an application.

CHAIRPERSON CORY: An application will be approved delineating whether something is or is not within the public trust. We are trying to avoid the problem of ever saying that a single-family residence is consistent with the public trust.

MR. KAGEL: Why don't you just say for this particular parcel, and you keep your options open everywhere else. So, as far as this particular parcel goes, the application is approved that it is no longer needed as a public trust because of what occurred prior to then, and as a condition of approval you have from the applicant an easement in perpetuity for the public, for pedestrian right-of-way.

MR. McCAUSLAND: What do we have before us, Mr. Hight?

MR. HIGHT: Mr. Chairman, if I could comment on something first. The Commission still owns an easement. So technically they are gaining little, if anything, from
the conveyance of the easement back. It's a nullity.

The suggestion of the conveyance of a fee for all that area except the area of the house and the parking lot, to me seems like it would be the best position for the state to be in.

MR. KAGEL: Excuse me. I don't think we can do it either, because then you're creating a new parcel of interest and you have to go through Marin County to do that and then I got to go to court. You're creating another parcel if you do that.

MR. FLUSHMAN: The interest is there.

MR. KAGEL: You're creating two parcels.

MR. FLUSHMAN: Well, there are ways that parcels can be created without the necessity of going to the local agencies through boundary line agreements with the State Lands Commission. And if there is, as there appears to be, a boundary question in this area, it may be possible to work out a boundary line agreement with them as to where the state's interest is and where his in interest is, which may include the homesite and may not.

MR. KAGEL: Your interest is over the entire property right now.

CHAIRPERSON CORY: Well, we could enter into a boundary line agreement redefining that for mutual interest.

MR. KAGEL: Well, what does the boundary line
mean? Is it going to show up on the official records of Marin County or not?

MR. FLUSHMAN: It will show up on the official records of Marin County. It is not subject to the Subdivision Map Act.

MR. KAGEL: Regardless of whether it's, you know, up to the Subdivision Map Act or not, you're still going to have to get a tentative map approved.

MR. FLUSHMAN: If it's not subject to it, you don't have to have it approved. It's exempt from it.

MR. TROUT: We might make an exchange. We could agree on the location of the inner boundary of the tideland survey. We can make an exchange of interest whereby from that line to the Rancho line or to the balance of the upland the property would be exchanged and become tidelands and some other piece of the property would then become upland through a boundary exchange.

MR. KAGEL: Maybe we could --

MR. TROUT: We have a problem if you have a date --

MR. KAGEL: Could we all have lunch together and maybe we can work it out?

(Laughter.)

EXECUTIVE OFFICER NORTHERN: No. It's a public meeting.

MR. KAGEL: Well, maybe the lawyers could have
lunch together with me on the State.

(Laughter.)

CHAIRPERSON CORY: Okay. If we could get a couple of other points from some Commissioners. If that could be put in the record, I think at the conclusion of that what we might ask is some of the staff people sit down with Mr. Kagel and see what they come back with and bring that back before the Commission. The Commissioners will not be here. I want to say, I have a problem that I have to catch a 1:15 airplane, but I will try to go ahead and conclude this calendar, the entire calendar here this morning before that time.

Betty, you had some comments you wanted to make.

MS. SMITH: We're instructing staff to go out and try to work out a suggested finding, right, --

CHAIRPERSON CORY: Yes.

MS. SMITH: -- to reach some sort of agreement.

MR. KAGEL: Can we do it before you leave?

CHAIRPERSON CORY: I'm hopeful.

MS. SMITH: Included in that finding I would like to have that the State Lands Commission makes no finding at this time with respect to the consistency of the proposed development with the provisions of the California Coastal Act of 1976.

MS. SMITH: We, in making this, whatever finding we make, should we decide that we are going to approve the application contingent on some conditions, that nothing contained in that declaration indicates in any form that we are setting a policy that private residential use of tidelands is consistent with the public trust.

MR. KAGEL: That's fine with us, too. If someone can remember that, that's fine with us. I don't see why we can't just say we accept that, we accept both of those, we will give you an easement for the public in perpetuity for pedestrians.

CHAIRPERSON CORY: If we could have some of the people in the hall, somewhere, sit down and see what you can come back with.

MR. McCausland: You can go down and use my office.

MR. KAGEL: When we come back, can we come immediately here?

CHAIRPERSON CORY: Yes.

Item 16 will be held in abeyance.

(Thereupon a recess was taken.)

MR. McCausland: Let's keep this thing at a low emotional level if we can.

Go ahead, Mr. Kagel.

MR. KAGEL: It's not a problem we have here. We
can exchange a swap of -- we'll give you the land that gives
the public access from the highway to the rest of the
property and you're going to give us the building site and
the parking spaces. That's fine. The only problem we've
got is we have to have a finding. The finding is they have
to be of equal value which means these guys are telling me
you have to have an appraiser. We can't settle this thing
today. That's really upsetting me. We've got to settle
it today. If you are in agreement that our thing is just,
we'll be glad, we'll be glad to make the finding, you know,
along the lines that they outlined --

MR. McCAUSLAND: We can make the determination
today that our decision is contingent upon the ability to
develop an equal value determination here, can't we?

MR. KAGEL: Now, Bruce is --

MR. McCAUSLAND: Let me find out if I'm doing
something that you can't handle.

Our normal procedure would be in all likelihood
to put the calendar item over and ask that an appraisal
be completed and brought back to us. We don't want to do
that today because of permits lapsing. So what we're
proposing is to include in our decision a hook that says
our decision only holds if we can make this equal value
determination.

Is that something that staff can work with?
MR. KAGEL: And if, in fact, there's, you know, the land is raw land --

MR. McCausland: Before we change the issue --

MR. KAGEL: I'm not changing it.

MR. McCausland: I know. But let me finish.

EXECUTIVE OFFICER NORTHROP: That's a question of staff. Jim, what do you think?

MR. McCausland: Before you even answer that, let me ask you another question. It's not clear to me that the Commission really is intent upon any fee interest.

MR. KAGEL: We've given that up.

MR. McCausland: That's not a question.

MR. KAGEL: We just want to be able to supplement in money. We're talking about raw land. It's going to come down to square footage. Now, let's just say the building site and the two parking spaces are more land than what is not out, what we're giving you for public easement, and nobody knows what the line is anyway because there's never really been an accurate survey. Let's say it's more. And I think we should allow us to make up the difference in dough.

MR. McCausland: We can allow others to make up the difference in dough.

MR. TROUT: We could put it in the land bank fund.

MR. FLUSMAN: But the finding still has to be
made regardless of whether he agrees now to do it.

MR. McCausland: The finding needs to be made that we can find a basis for the equal shares arrangement, whatever the appropriate terminology is.

MR. Flushman: And the other findings that are required by Section 6207.

MR. Mills: Could I make one other suggestion? It seems to me that there is at least a possibility that Mr. Kagel will not get a permit from the Coastal Commission.

MR. McCausland: That is a possibility.

MR. Mills: And it also seems to me that the land we're giving up since it's located within 21 feet of the edge of the fill, --

MR. Kagel: Twenty-five feet.

MR. Mills: Well, your plot there shows 21 feet.

MR. Kagel: Well, it's 25.

MR. Mills: Well, you submitted the plot. That's what it says.

MR. Kagel: What's your point?

MR. Mills: The point is that this whole settlement be contingent upon Mr. Kagel obtaining a Coastal permit through a court action or whatever.

MR. Kagel: You can't do that. It's illegal.

You can't do that. We're only talking here about where we
stand now. You can't say what another agency is going to do. I don't think that's fair.

MR. FLUSHMAN: We're not saying what they're going to do.

MR. McCausland: The question is, see, one of the things that we're doing is because you have a very unique set of circumstances and a fact pattern that is unlike any we've dealt with before. We're trying to develop a solution --

CHAIRPERSON CORY: It was so interesting, I couldn't --

(Laughter.)

MR. McCausland: I knew I wasn't doing it right.

(Laughter.)

MR. McCausland: We're trying to find a fact pattern that will allow you to exercise whatever residual rights you might have.

MR. KAGEI: Yes, sir.

MR. McCausland: But we also wouldn't mind having the ability to say, if the time ever arrived at which it was here that you weren't going to be able to exercise any more substantive rights than you've already exercised, that we could withdraw this special finding that we're essentially making on your behalf.

MR. KAGEI: You know, it's almost like we don't
know if the Coastal Act is going to be dissolved or the local program is going to change. Once we get this eligibility, I think we should at least have this eligibility. We're giving you something forever. We're giving you access from the road all the way out.

MR. McCAUSLAND: It would clearly be the contention of the State Lands Commission that we already have access from the road all the way out.

MR. KAGEL: No, you don't. That's what you don't have right now. The line from the Rancho line does not extend to the road. So you don't have it, and that's what we're talking about. Here's a plot map. May I approach the Bench?

EXECUTIVE OFFICER NORTHROP: Jim is doing a drawing.

MR. TROUT: I hope we can kind of explain this. I can't show both the Commission and the audience, but if we have a piece of total parcel here in which we have an approximate location of the boundary, the inner boundary of Tidelands Survey 185 which would be the high tide line. The area landward of this high tide line we first would agree that the line shown on the plat, and we can locate it by distances, is in fact as between Mr. Kagel and the state. The boundary between the trust lands and the Rancho lands. Then in an exchange of interest within the boundary
settlement, Mr. Kagel would quitclaim to the state in
effect the Rancho lands in this location and this location. These lands would be accepted as trust lands by the state.

MR. KAGEL: As an easement, not in fee.

MR. TROUT: Tidelands trust easement. We would agree that these lands then would have the same character as all of the remaining patented tidelands under 185.

Then in turn the state would patent to Mr. Kagel with the necessary finding of equal value this portion of the tideland, free and clear of the trust, in exchange for getting the trust implied on this and access to the water across these parcels. Then Mr. Kagel would have to go ahead and make his already agreed to finding that the whole property would be available to the public other than his building site and the parking area.

MR. McCASLAND: We don't get that good a deal in the San Francisco Bay.

MR. KAGEL: Furthermore, in the event that these two pieces of property don't match up in terms of size, then we have the option to put in money to your land bank to make it up. Okay'

MR. McCASLAND: And you will donate the state any excess if it turns out that yours is worth more than ours? Do you get tax advantages for doing this?

MR. KAGEL: If we're getting more than you are
giving us, is that your question?

CHAIRPERSON CORY: No. If you're giving us more than we're giving you --

MR. KAGEL: We'll just donate that as in kind. But let us be understood that this thing is going to be appraised at the current use which is about zero. Okay?

MR. FLUSHMAN: Well, the Commission has an understanding of how it's going to be appraised, but it will be conveyed to the staff whether that's the way it is or not. It's the present use is it's filled lands.

MR. KAGEL: Without a house.

MR. McCausland: So we have agreed that part of the Commission finding will be that there will be this --

CHAIRPERSON CORY: And how many weekends' use?

(Laughter.)

CHAIRPERSON CORY: That's a joke.

Have we got an agreement?

MR. McCausland: That one element of the agreement. Our staff said we had to have an appraisal before we could go much further and I suggested that we should just make the equal exchange provision part of our finding.

Mr. Trout: The covenant would be that, the deal would be that it was equal and that if the property received by the state is less than that that the state gives up, the
agreement would bind Mr. Kagel. In other words, the Commission would make the finding today that Mr. Kagel would be bound to deliver the difference in money to be used in the land bank to purchase the small additional portion of Brown's Island or something like that.

MR. KAGEL: At today's property value.

MR. MILLS: My suggestion was that should Mr. Kagel be denied a Coastal permit through his court action, that it seems to me that this parcel may, in fact, be more valuable for the trust than having this here. I would suggest that the Commission consider at least making this finding contingent upon Mr. Kagel being able to secure all necessary permits to actually build on his homesite.

MR. KAGEL: Is he a Commissioner or a lawyer? We're sitting here, we're making policy here.

MR. McCausland: He's making a proposal for policy that is a legitimate proposal from our standpoint because if, in fact, there is a bike path down the side of the Bay, it would be advantageous to us to have the bayward portion of the land under those circumstances for picnic areas or stopover spot. We even have the ability to put two public restrooms in there.

(Laughter.)

MR. KAGEL: We're losing sight of what the situation is in reality. There's houses going up. That way
a motel and there's houses going up like that. There's no sidewalk along the road. It isn't going to happen. We don't know what the Coastal Commission is going to do, if the local coastal program is going to change or anything else. I don't think it's fair. We're giving you access.

MR. MILLS: If you can't build on the property, why do you want the site?

MR. McCausland: Isn't it possible for us to defer signature of the land exchange agreement until such time as all permits, whatever, are decided to your satisfaction?

MR. KAGEL: No, sir, that's not fair. That's not what we're here for. We're here to get this thing resolved today. That's our duty.

MR. McCausland: We are willing to offer you, I believe we are willing to offer you, an opportunity for a land exchange that we believe we can find will be in our responsibility for the management of the public trust. I don't see if we've already entered into that agreement why the execution of the document cannot be deferred until such time as you as developer --

MR. KAGEL: If you're entering into an agreement, it's specifically enforceable. I mean, after all, we have to have some kind of status. What is our status? If you're going to tie it into every single state agency, you're just
talking about a can of worms again. You're just hanging us up again. What is our status? We'll give it to you if the Coastal Commission does, I mean.

MR. McCausland: Your status is that at some point in time you're either going to get to build a structure on that land or you're going to get compensated for the improvements you made to it to date.

MR. Kagel: We still have to get past the coastal plan. If the coastal plan doesn't work, if we don't get past them, we're probably not going to build for the time being or at least for the next 200 years. But you guys still have a right to go over the land and we'll give it to you anyway. I came in here and said you can use the land anyway, regardless of this thing, regardless of this public trust, but I'm not going to give away that building site. I mean, that's not fair.

MR. McCausland: We're not asking you to give away that building site.

MR. Kagel: That's what he's talking about.

MR. McCausland: What he's talking about is --

MR. Kagel: If we don't get the permits, give it back.

MR. McCausland: Our staff is being instructed by the Commissioners to develop a suitable land exchange.

MR. Kagel: Yes, sir.
MR. McCausland: Our staff is also advising us as Commissioners that that exchange is really only of interest to this Commission if you in fact get to build on your site. If you don't, it's awfully difficult for our staff to believe that we should have agreed to that exchange because the integrity of the other parcel looks better to them in terms of potential public uses.

MR. Kagel: That's fine if you think that you can, under the law, under the law, make the value of the property that we're exchanging on the day that you agree or is somebody going to hold it's at the time you get the permits? If it's at the time you get the permits, then we'll be paying off a lot of money to the state trust fund.

MR. McCausland: We're willing to gear the value from the date of today's Commission.

MR. Kagel: All right. Fine. We'll take it.

MS. Smith: I have one other question. Are we saying that if or in the event that he doesn't get the permits from the Coastal Commission to build --

MR. Mills: Or from Marin County. If he can't secure all necessary permits to build, that we will return to the status quo as it sits now.

MS. Smith: Just continue exercising the public trust over the entire lot.

Chairperson Cory: If that should happen, I would
like for the staff to start looking around as to where we find the money to acquire the improvements that were put there. I don't have any strong feelings vis-a-vis the legal time. I understand that's a real expense, but there's a problem in terms of state precedent. But it would seem to me that we have an obligation to an individual who has invested some effort in trying to comply with the law, to go ahead and clean up a mess rather than letting it sit there in perpetuity.

MR. KAGEL: Miss Smith, I want to speak to something you said. The State Coastal Commission said that they turned us down because we interfered with the public trust. Okay? Now, I'm going to go into a court of law and I'm going to say we have an arrangement with the State Coastal Commission that we're not interfering with the public trust, State Lands Commission that we're not interfering in the public trust and they have acknowledged that they have exclusive jurisdiction over that property.

MR. TROUT: That's not what we're purporting to do.

MR. KAGEL: In terms of public trust.

MR. FLUSHMAN: That's not what's been acknowledged here as I understand what the Commission is saying. In fact, --

CHAIRPERSON CORY: We're silent on that issue.
MS. SMITH: We made absolutely no finding at all in terms of the consistency of this proposal with the Coastal Act.

MR. FLUSHMAN: As I understand what you indicated, Commissioner Smith, that you weren't approving a residential use of tidelands either as consistent with the trust.

MS. SMITH: Yes, I did make that stipulation to the findings before you left the room.

MR. McCausland: You haven't said any of those things.

MR. KAGEL: What I'm trying to say is this: They said, what they did is they went into your bailiwick and they said that because State Lands, they said there's been no determination public trust-wise. That's what they said. So they turned us down in that regard. Now, I don't think they can. I think it's up to you guys. So I'm going to make the presentation to court that I have reached an agreement with State Lands whereby we have avoided the entire issue because the land is no longer in the public trust as far as State Lands goes; is that correct?

CHAIRPERSON CORY: That's correct.

MR. FLUSHMAN: As far as the homesite is concerned.

MS. SMITH: Just the homesite.

MR. KAGEL: But you can't landlock us. We can get...
a right --

MR. FLUSHMAN: We're not talking about landlock.

MR. KAGEL: Good. We have an agreement then.

Okay?

MR. TROUT: It has been common in these boundary settlements that they were effective immediately and for a period of time until some specific event occurred. I just wanted to see if we're understanding where we're going. That we enter into this agreement. We all make the agreement. However, if at the end of three years there is no house, then both sides agree to undo the agreement. Now, that I think is what Mr. Mills was saying and I'm not clear in my mind whether that's in or out of the deal.

MR. McCausland: It is the desire of the Commission to find the ability.

MR. KAGEL: Fine.

MR. McCausland: If this land exchange has not been completed within five years --

MR. KAGEL: Then we go back to status quo.

MR. McCausland: -- then we go back to the boundaries as they existed this morning.

MR. TROUT: A little longer than normal, but with the unusual circumstances, that's understood.

MR. KAGEL: Do you have to take a vote on that?
MR. McCAUSLAND: Since this is a transcript that you're undoubtedly going to ask for, I would like somebody to restate for the record the agreement that we have just made.

MR. TROUT: I think staff, under Commission direction, the staff would propose this as a settlement to the problem.

We would propose that Mr. Kagel or the upland owner, the owner of the property and the state agree, first, as to the location of the inner or high tideland boundary of Tideland Survey 185. Have I got the right number?

MR. RUMP: Yes.

MR. TROUT: Once having done that, Mr. Kagel would deed to the state or grant to the state an easement and the state would accept as tidelands trust lands two parcels of property now lying between the agreed boundary and the inner or highway limits of the Applicant's property. In exchange, the state would grant to Mr. Kagel a parcel of land inside the tidelands survey that would be without trust characteristics.

In other words, we're exchanging trust lands for trust lands. We would give up some lands now subject to the trust and apply the trust on other lands. So that, in effect, the building site would no longer be trust lands. It would have the character of the uplands portion of Mr. Kagel's
lot. That the Commission finds that in this transaction that the state is receiving equal or greater value and that in the event that the value of the lands themselves that are exchanged are not equal or greater in favor of the state, Mr. Kagel agrees to give to the state sufficient monies to meet the equal value requirements and that those funds would be applied by the Commission to purchase other tidelands under one of the land bank agreements.

MR. KAGEL: And it's today's prices that we're talking about.

CHAIRPERSON CORY: Today's prices.

MR. TROUT: And the last point would be that both parties covenant that if after five years from the date of the agreement Mr. Kagel does not have his house constructed on the property, that both sides agree to return the deed.

MR. KAGEL: But if we are currently in litigation at that time, we will extend it until we get out of court.

CHAIRPERSON CORY: Fine.

EXECUTIVE OFFICER NORTHROP: One other point, if I may, Mr. Kagel.

You talked about a bike trail or path. Supposing a bike trail came across the area.

MR. KAGEL: And we will give you a bike trail.

EXECUTIVE OFFICER NORTHROP: Even though it would
cross your driveway?

MR. KAGEL: Bicycle, not putt-putt. A bicycle.

MR. MILLS: Could I suggest that we can resolve the problem of public access and guarantee public access by at the same time asking the Commission here to exercise a public trust over the balance of the tidelands parcel, the present tidelands parcel for public use and access.

MS. SMITH: I thought you were doing --

MR. KAGEL: You already have that.

EXECUTIVE OFFICER NORTHROP: No, exercise the trust.

MR. KAGEL: What does that mean?

MR. FLUSHMAN: It means that it is now in formal existence.

MR. KAGEL: Good God, fine.

Do we have to take a vote?

MR. McCAUSLAND: Well, the motion is, I believe, and let's go back to the beginning, on the basis of unique set of facts related to the fact that, number one, this parcel has been filled apparently pursuant to all laws in existence at the time, that this parcel possesses two septic sytems installed apparently in conformance with the laws in existence at the time of such installation, and the just-described land exchange agreement presented to us, and on the basis of the findings Miss Smith reiterated
sooner -- maybe you should read those into the record
again -- we make the finding that this specific parcel,
the Applicant's portion of the parcel after the land
exchange agreement, can be suitably freed from the public
trust.

MR. KAGEL: Wonderful. And Miss Smith said your
action today does not condone private residential uses on
any other public trust lands. That's essentially what she
said.

MR. FLUSHMAN: I think it's in the record. It
was more eloquently stated.

MR. KAGEL: I'm sure it was. She's an eloquent
lady.

MR. MILLS: And also that we make no finding with
respect to the Coastal Act.

MS. SMITH: Does that take care of all the
findings for 6307?

MR. TROUT: There's one more technical finding;
and that is that the Commission needs to find that the
transaction is in settlement of title and boundary
disputes and that the provisions of CEQA are inapplicable
under 6307.

CHAIRPERSON CORY: There we have it. Ready for
the question?

All those in favor, signify by saying aye.
(Ayes.)

MS. SMITH: I have a question. The gentleman indicated that we had to make findings under 6307 of the Public Resources Code. We've taken care of all of those, right?

MR. FLUSHMAN: Yes.

CHAIRPERSON CORY: Are we ready for the question? All those in favor, signify by saying aye.

CHAIRPERSON CORY: Opposed. Motion is carried.

MR. KAGEL: Thanks so much.

(Thereupon the foregoing concludes Agenda Item 16.)

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CERTIFICATE OF SHORTHAND REPORTER

I, CATHLEEN SLOCUM, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing State Lands Commission Meeting Excerpt was reported in shorthand by me, Cathleen Slocum, and thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of November, 1978.

CATHLEEN SLOCUM
Certified Shorthand Reporter
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