MEETING
STATE OF CALIFORNIA
STATE LANDS COMMISSION

STATE CAPITOL
ROOM 444
SACRAMENTO, CALIFORNIA

THURSDAY, MARCH 22, 1984
10:19 A.M.

ORIGINAL

CATHLEEN SLOCUM, C.S.R.
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PETERS SHORTHAND REPORTING CORPORATION
3433 AMERICAN RIVER DRIVE, SUITE A
SACRAMENTO, CALIFORNIA 95825
TELEPHONE (916) 972-8654
MEMBERS PRESENT

Leo T. McCarthy, Acting Chairperson, Lieutenant Governor
Jesse Huff, Director of Finance
Walter Harvey, representing Kenneth Cory, State Controller

STAFF PRESENT

Claire Dedrick, Executive Officer
James Trout, Assistant Executive Officer
Jack Rump, Assistant Chief Counsel
Lance Kiley
Miko Valentine
Judy Markell, Secretary

ALSO PRESENT

N. Gregory Taylor, Deputy Attorney General
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TELEPHONE (916) 972-8094
PROCEEDINGS

ACTING CHAIRPERSON McCARTHY: Ladies and gentlemen, for those who might be here to appear on Items 13, 26, 28, and 32, we wanted to indicate to you that they are off calendar. 13, 26, 28, and 32. Thank you.

EXECUTIVE OFFICER DEDRICK: 30 is off? Just a moment, Mr. Chairman. Somebody just mentioned that Item 30 has been taken off. 30 is off. I'm sorry.

ACTING CHAIRPERSON McCARTHY: All right. And may we also add Item 30 that is taken off calendar.

If we may proceed, we welcome all of you here and express our regret at starting the Commission meeting a few minutes late.

I'm pleased to be joined by Mr. Huff and Mr. Harvey sitting in today.

The first order of business is approval of the minutes of the last Commission meeting. Is there any question from the other two Commissioners on it?

If not, it will stand approved.

EXECUTIVE OFFICER DEDRICK: For the last two Commission meetings.

ADTING CHAIRPERSON McCARTHY: Oh, that's correct. We had not received the previous copies. So
it's the minutes of the last two Commission meetings. They stand approved. There is no Executive Officer's report --

EXECUTIVE OFFICER PEDRICK: That is correct.

ACTING CHAIRPERSON MCCARTHY: -- at this time.

I'm prepared to begin the Consent Calendar unless there's any other item to arise before that. All right, hearing none, the first ten items are on the Consent Calendar, and hearing no objection from either Commissioner or from any member of the audience, those ten items are approved.

We'll turn to Item 11, and I have the following indications that people wish to testify: Marilyn Borovoy, Bryan Wilson, Graham Gettemy. Apparently the first and the third are on the same side of the issue. Would Mrs. Borovoy and Mr. Gettemy like to step forward.

Now, I had the pleasure of hearing your testimony at the previous meeting on this matter, although I missed some of the subsequent Q and A. But the other two Commissioners sitting today did not, as I recall. If you'd like to succinctly restate your position, you're certainly welcome to do so.

MS. BOROVOY: I don't know, can you stand hearing it again, Leo?

ACTING CHAIRPERSON MCCARTHY: I don't know. Try
MS. BOROVOY: I'm Marilyn Borovoy and I'm part owner of the property that has caused this beautiful report to be written. I own it with my husband, two elderly aunts who are getting older by the minute and me, too, and an uncle.

Anyway, we purchased this back in the twenties. I won't go into a long detail because it's on the record.

In 1972, eleven and a half years ago, we decided that it would be nice to build three little homes similar to the ones already along the waterfront and the property was considered as one piece. So we asked for a subdivision in order to get permission to build. Three years later and thousands of dollars later we received from the Marin County Planning Department in February of '75 a lot split, three waterfront lots with permission to build and in turn we would deed the marsh to scenic easement. For various reasons we decided not to build ourselves and we decided to sell the property.

In November of '78, five years ago, six years ago, Mr. Graham Gettemy obtained an option from the family to purchase these three waterfront lots with the proviso that he could get permission to build. We started to pay sewer bonds back in '72. Also in 1972 we wrote to the
State Lands Commission asking about our title to the land and could we build. The answer we received was such that we were led to believe we could build and we might get permission. They said it wouldn't be easy, but that there were exceptions and that we should, you know, so on, to go. The door was not closed and nothing was said about the title. That was back in '72.

Then over the years we did all the right things and then the Marin County Board of Supervisors gave Mr. Gettemy permission to build two houses and our family would in turn deed the marsh parcel to Marin open space.

We went to BCDC and they said: We cannot move until we come to the State Lands Commission and ask you will you exercise a public trust on the three waterfront lots, and will you allow housing on pilings, and what about the ownership of the marsh? Well, lo and behold, Mr. Valentine, who is a very nice attorney and very smart, found out with Mr. Sledd of the Title Department that it doesn't belong to us after all these years. Well, it didn't make us too happy.

Okay. I only wish they'd told us in 1972. Now we've spent a lot of money. Now here we are today. You have written a beautiful report about you're going to, recommending from the staff, that to
exercise the public trust over all the property. What we would like to ask you today is that you exempt our three waterfront lots. We feel we've gone through quite a bit of -- I can't use the word I'd like to use -- quite a bit of stuff to get here and we really feel that for an equitable, fair treatment we should be exempt. Then today, if you accept this, all the people will know about it and they won't go through the shit we've been through.

Okay. You talk now.

MR. GETTEMY: Well, I think Marilyn has pretty well told how we got where we are at the present time and I understand that the staff and I understand that the Commissioners can't just all of a sudden throw a public trust away that's been there for years. So we would like to come to some sort of an amicable conclusion to this where everybody could walk away feeling relatively happy. We would, number one, call for today to be made exempt from the public trust on your voting today, and of course everybody thereafter will know what they're up against. Number two, if that wouldn't work, we would request that the state allow us building permits or allow us permits to go to BCDC and not relinquish its legal right to the water over which the homes are built. In this way, why, of course, down the line if you decided to build a shipyard off that channel in the future
you could do so and widen the channel.

By the way, it's called a navigable channel. The truth of the matter is there are four tides every 24 hours and during the low tides there is not any water period in the channel. It is absolutely dry. So it really is not what you would call navigable according to Webster's dictionary.

I won't go through the process of how it got to be zoned. I think that we all know that the laws were made in Sacramento and they go down to the counties in California and the board of supervisors of these counties and the city councils of these counties pretty much police these laws that you people make. We can't call up Mr. McCarthy every day and ask him if we can do this, so we go to our Board of Supervisors.

Now, the Board of Supervisors and the Planning Commission of Marin County approved this subdivision. They also approved an EIR which we were asked to submit to them. The EIR had a negative declaration. Now, I don't have to tell you that a negative declaration simply means that there was no environmental problem with this property. They didn't see any environmental problem in building a couple of houses out there. However, since then we've been in many, many meetings with BCDC and public hearings with State Lands Commission and
have been subjected to the same open hearings regarding this environmental problem which obviously there is none or the EIR wasn't done properly and I doubt that very much.

Getting back to the subdivision, when it was approved, the County of Marin simply stated that we will not record that subdivision until you put in your utilities. We tried to bypass that because it was a very expensive proposition, but they said: No, put in the utilities. Put in the three water meters. Put in the laterals. Put in the fire hydrant and the sewer, and we'll be very happy that you did and then we will grant you your subdivision. At which point an EIR was made by another EIR was made by William Desmond, who is Director in Division of Environmental Control of the Marin County Health Services. I have the Environmental Impact Report in front of me and it doesn't say much that would be of interest here except probably on the last page, which I think was quite interesting. It says: "Present Condition." This is before. "Highly" -- what is it? -- "utrified" -- whatever that is. Probably means putrified, but it says "utrified due to sewage entering water falling from septic tanks. Recreational use of water and beach limited by overflow of sewage. Project will abate overflow and render water and beaches
safe from present septic sewage overflow. Present bacterial count high, et cetera, et cetera.

Now, after this was taken care of, of course, all of those things disappeared and they became an attribute to Bayside Acres at which time we had 75 members of the Homeowners Association sign a petition to stop our building of two homes which makes a lot of sense after the fact, after they got their sewer, after their environment was cleaned up, and they didn't pay a dime to do it. But of course they're bucking us again.

After going through the Board of Supervisors and getting everything approved -- and, by the way, on a five to zero vote. There wasn't any dissention and there wasn't any no vote. Our project was approved for title and permits five to zero including Al Aramburu, who is a voting member of BCDC. For that -- everything is a give and take proposition -- for that we gave up one lot with a fair market value of $175,000. We gave up that lot simply for open space and public easement. We wanted to take care of two things. We knew we had to give public easement and we knew that we had to give open space. The marsh directly across as you well know is probably owned by the State of California and probably will be open space in perpetuity. I hope it is. I don't think the state wants it. I think the state should probably
give it back to the Borovoy family and then let the Borovoy family give it to the Marin County Open Space Foundation which is what they would like to do. That will take it off the state's tax rolls and put it back on where you don't have the maintenance of the marsh. I don't think the state wants the marsh, number one. I just think that when it was originally surveyed in 1852 that when Mr. Alardt was asked to survey it, he happened to hit a high tide and it was flooded and he surveyed totally around the marsh, calling it a salt pond. I think it was a mistake by Mr. Alardt in 1852 which we're never going to correct.

We have here in your staff report approval of residential use in San Rafael Bay would set an unfavorable precedent. Well, I've listened to a lot of talk from BCDC and a lot of talk from a lot of people that claim there are 15,000-some odd lots out there that are single-family dwellings zoned on the shores of San Francisco Bay. I don't believe that. But what I do believe is what precedent did the approval of 110 permits to Burt Clawson at Brickyard Cove set? Did that set a precedent? I don't think so. If it did, we wouldn't be here arguing the State Lands Commission trying to get our permits.

I don't have to tell this Commission any history
with regard to the Brickyard Cove permits, but the reason for granting those permits was simply the fact that his subdivision was started and improvements completed before the Berkeley decision of 1980. That means that his subdivision was started, his improvements were started, and I guess this Commission felt that he deserved to have some permits. Now, he didn't get them all. Mr. Clawson donated $250,000 to be used to buy open space for San Francisco Bay area. He also donated 30 acres of a delta island and he donated 56 lots in order to get 110 permits. So he gave up quite a bit to get quite a bit.

We have donated one-third of our subdivision, one out of three, and all we ask for is two permits and we're only asking for fair and equal treatment. We're trying to figure out a way that we can get this thing taken care of in as much as we are sitting there with a subdivision that is totally no good, absolutely useless, because the zoning happens to be R-1. It's been R-1 for 43 years. It has just been rezoned R-1, first class residential which means to me single-family dwellings.

Now, also your staff report is concerned about impacts of shading. Now, there's been a lot of talk about the damage our homes will cause to the environment. We propose to drive 24 cement piles that will
cover a total landfill of 64 square feet. Now, if you want to visualize what 64 square feet is, it happens to be eight by eight. So this table is close to eight feet long. If it were eight feet long and squared, that would be 64 square feet. As a comparison, BCDC approved a landfill of 240,000 cubic yards of fill to be poured into Richardson Bay so as to complete a parking lot for the Lincoln Properties office and restaurant, a project built entirely on the tidal wetlands. Now, this was just last year. Our homes will be next to seven like homes. In other words, we're not asking for anything that isn't already there. They're already there, have been built, are on stilts, and certainly have not hurt the environment. Now, if homes are not allowable or if homes are not an allowable structure on the shore of San Francisco Bay but desalination plants, restaurants, office buildings, marinas, fishing piers are acceptable, then I'm a little bit confused. Now, I know that the Commissioners that I'm speaking to are very intelligent people or you wouldn't be here. But can you explain to me the environmental difference between a pile supporting a restaurant or office building and a pile supporting a home? I think you'll find there is no environmental difference.

As far as setting a precedent, the so-called
15,000-plus waterfront lots in San Francisco Bay are as follows: Most are in the middle of Richardson Bay and underwater in Candlestick Park and salt marshes owned by Leslie Salt. Most of these so-called buildable lots are zoned other than single-family I think you'll find. The other so-called lots in Marin County and North Bay are flag lots. That is a lot that is an underwater three-foot easement to a lot that's further out and totally underwater. There are many, many flag lots in Marin County and many, many flag lots in the Northern Sonoma area.

I've asked BCDC for a list of all the buildable lots that they're continually referring to and they can't deliver because their statement I think is untrue and I think completely unfounded.

Your vote for two permits will not be in conflict with the McAteer-Petris Act as the Attorney General would like you to believe. If that were true, we would not need the State Lands Commission, number one, and we would not need BCDC, number two. We could totally rely on Van de Kamp's office to make our decisions.

I would like to quote from a publication authored by BCDC in the founding year '67 entitled, "Waterfront Housing." On page 5 it says:

"Housing is not a necessary use"
of the bay and shoreline due to any regional shortage of residential land, but accessibility and physical attractiveness make housing a desired one."

Page 6,

"So long as it does not displace other more necessary uses of the shoreline, housing can be public as well as private benefit. It improves the appearance of the shores of the bay and provides public access to the water. Well-placed buildings can enhance the appearance of many parts of the bay and shoreline. A residential project, because of the flexibility possible, design can be tailored to enhance a shoreline site much more readily than can most other urban users as was demonstrated in the BCDC report on appearance and design."

Page 9 it says,

"Piles permit a structure to be raised above its site without
minimum disturbance of natural conditions. The feasibility of housing on piles or stilts is increased by the fact that the cost of a residential unit built on piles is now about the same and often less than the same unit on fill at the same site. San Francisco Bay is the dominant feature of the Bay Area. Among other things, its shores offer an attractive location for housing."

This is right out of BCDC's Waterfront Housing. So in closing I'd like to state that all the facts that I've brought to your attention may paint, may paint a different picture as to the Borovoy family's situation and my situation. We've had a legal subdivision on land that has been one ownership for 43 years. The Borovoy family hasn't purchased this land in hopes to spin it off and make a lot of money. They've had it for 43 years. They've paid taxes well over $100,000. They've paid the sewers and the water and this and that, well over $40,000. Land that has been zoned R-1 for 43 years, does that kind of tell you something? The zoning hasn't been changed. It's always been R-1. Now then, we've gone through the process since 1974. We
have given up a third of our project in order to gain approval. Many thousands of dollars have been spent toward this goal. We have satisfied the County of Marin in its General Plan. Certainly we followed their guidelines right down to the end. Taxes have been paid on the property for 43 years. I think to condemn this property through what we would call in the real estate business inverse condemnation would be an outrage. We're asking for fair and equal treatment. After all, we were only following the guidelines of the County of Marin in order to construct two homes on property zoned for that purpose.

I hope that we will get a favorable vote from you people and I appreciate very much you giving me your attention for this long period.

MS. BOROVAY: May I add one more request?

ACTING CHAIRPERSON MCCARTHY: Go ahead.

MS. BOROVAY: We requested that the three waterfront lots be exempt from any action that you take regarding this. We'd also like official notification of our ownership status re the two marshland lots and we'd like that sent to us. We really haven't had official notification from the State Lands Commission. Also, we feel that the official notification should be sent to the owners, the 21 owners who own all around the
marshland and whose titles are in jeopardy or unclear or fuzzy and we think they should be notified, too. Thank you.

ACTING CHAIRPERSON MCCARTHY: Questions by members of the Commission?

Would someone please tell me whether the State Lands Commission played any role in the Brickyard Cove development or the Lincoln Properties?

EXECUTIVE OFFICER DEDRICK: Yes, we did. The situation at Brickyard Cove was a subdivision which had advanced sufficiently far to be exempt from the Bay Conservation Development Commission Act of 1964. The development involved a substantial amount of fill in the form of peninsulas. The program that they intended to follow would have involved a good deal more. In the opinion of the Attorney General's Office and the counsel to the State Lands Commission, the intent of the Berkeley decision was to clear the trust from filled areas that had been filled prior to 1980 but to retain the trust over the water. In the case of Brickyard Cove, it was kind of a borderline case. Some houses had been built in the subdivision, quite a few. It seemed to us that it was close enough, it was a close enough call that with a careful control by the State Lands Commission we could carry out the intent of the Berkeley decision in both its property ownership sense and in its public trust
protection sense. So the agreement which was authorized by this Commission last fall, I guess, involves the Commission agreeing not to exercise the trust for a period of I think it was 49 years on the 100 -- was it 100 lots -- I think it was 100 lots immediately adjacent to this filled portion.

ACTING CHAIRPERSON McCARTHY: What date did the Commission act on this?

EXECUTIVE OFFICER DEDRICK: About September I think, Commissioner. At any rate, in return for which that is a severe impingement on public access. We decided that retaining some of those lots for public access would be less useful to the public than purchasing another waterfront area in the area of value of a couple of those lots. That's the source of the $250,000 figure.

The other public considerations that were part of the requirement from the applicant was to deed to the state their underwater ownership outboard of the pier headline and to deed to the state the remaining portion that's not in public ownership of Brooks Island. With these considerations of the public interest, the increase in access, increase in state ownership, and the property ownership of Brooks Island, the Commission felt that there was sufficient compensation for the loss of tidelands use and for the not exercising the trust for a period of
ACTING CHAIRPERSON McCARTHY: How much of the development went forward after the agreement? What did we authorize? What had been built at the time of the agreement and how much did we authorize to go forward after the agreement?

EXECUTIVE OFFICER DEDRICK: Possibly about two-thirds had already been constructed. All of the peninsula had been built, paved; had all the utilities in and street lighting. We did not allow them to go forward with the further fill project that they wanted to construct. We did not lift the trust over that area.

MR. TAYLOR: I think the key difference between the Brickyard Cove situation and this one is the fact that Brickyard Cove was found to be exempt from the provisions of the McAteer-Petris Act and because substantial work had been done--

ACTING CHAIRPERSON McCARTHY: Expressly excepted?

MR. TAYLOR: Well, they filed a claim of exemption which BCDC recognized.

ACTING CHAIRPERSON McCARTHY: It wasn't in the terms of the statute itself?

MR. TAYLOR: No. There was a grandfather provision in that. They perfected their rights under
that? They had done sufficient construction at the time the Act was passed so that the Act was found to have no applicability at all to this project.

ACTING CHAIRPERSON MCCARTHY: Are you telling me that if it were the Attorney General's opinion that that not be permitted to go forward with any further development, that we would have lost in court because they had a case that they were grandfathered in under the McAteer-Petris Act?

MR. TAYLOR: The problem for the Lands Commission was a different problem than that. The McAteer-Petris matter was settled. BCDC acknowledged it had no jurisdiction. The problem for the Lands Commission was the applicability of the Murphy decision. They argued that they had done sufficient work under that their entire project could go forward as originally planned because under Murphy they were grandfathered. The argument at that point was whether or not they were sufficiently grandfathered as to the wet areas. That's where we felt that there was reason for doubt and dispute, and so we recommended the compromise that your staff reached.

EXECUTIVE OFFICER DEDRICK: We retained the trust over the area. We did not, the Commission did not lift the trust over the water. The Commission agreed --
ACTING CHAIRPERSON MCCARTHY: Of course, that's one of the options that the applicant before us now is offering as an option as well.

EXECUTIVE OFFICER DEDRICK: A primary difference here of course is that the three lots that belong to the Borovy's front, they're only landward side is a public road. There is no other fill there. The lots are completely below the mean high tide line.


ACTING CHAIRPERSON MCCARTHY: How much?

MR. GETTEMY: Mean high tide, three, four feet.

By the way, as I indicated before, at low tide 100 percent.

ACTING CHAIRPERSON MCCARTHY: Would you comment on the Lincoln Properties now?

EXECUTIVE OFFICER DEDRICK: I am not familiar with that.

ACTING CHAIRPERSON MCCARTHY: Mr. Gettemy, you referred to --

MR. GETTEMY: Yes, Lincoln Properties --

ACTING CHAIRPERSON MCCARTHY: -- the Lincoln Properties.

MR. GETTEMY: The Lincoln Properties is a Richardson Bay project. Lincoln Properties is a subsidiary of Title Insurance and Trust Company.
They did Larkspur Landing in Marin County if you're familiar with that. They have just purchased, pardon me, just built out and completed a project that is entirely over a marshland behind the old Sabellas building in Richardson Bay in Mill Valley. I think it's in Mill Valley city limits. It could be county. I don't know which. I do know that the fill that was put in there was fill that went entirely over wet marsh in order to -- the rest of the buildings are all on pilings, but they had to put fill in there for the parking lot.

ACTING CHAIRPERSON McCARTHY: Is the State Lands Commission involved in any way in that development?

MR. GETTEMY: I don't know if it was State Lands or BCDC. I wish I had the -- I don't think I have -- I can produce it, but I believe that I left it at home, the thing to substantiate my statement.

ACTING CHAIRPERSON McCARTHY: You say the development was over water and presumably a public trust. Public trust would have been an issue.

MR. GETTEMY: I believe -- Miss Dedrick, do you recall having anything to do with that project?

EXECUTIVE OFFICER DEDRICK: I believe that was a project in the Mill Valley grant. So the grantee and BCDC would have been responsible for that. It also would have been grandfathered because that's an old project.
I don't know.

MR. GETTEMY: What do you mean it's an old project? I misunderstood you.

EXECUTIVE OFFICER DEDRICK: The plan for it has been around for it a long time.

MR. GETTEMY: Oh, not more than five to six years.

EXECUTIVE OFFICER DEDRICK: I could be wrong.

MR. TAYLOR: Was this on the open area of the bay or --

MR. GETTEMY: This is one foot away from the water's edge at high tide. It is office buildings. It's all built on top of marsh, totally on marsh.

EXECUTIVE OFFICER DEDRICK: That's not the same question.

MR. TAYLOR: Governor, I think we'd have to put it over to get the facts for you.

EXECUTIVE OFFICER DEDRICK: I think we would, too.

MR. TAYLOR: I think that the difference may be in the fact of -- I don't know whether BCDC had jurisdiction over that or not. They're limited to the shoreline.

EXECUTIVE OFFICER DEDRICK: They have nothing --

MR. TAYLOR: And they have nothing behind a certain point of the shoreline. The McAteer-Petris Act,
BCDC Act, is from the shoreline out of the bay.

EXECUTIVE OFFICER DEDRICK: Excuse me, Greg, for interrupting.

Mr. Chairman, there's someone here from BCDC who knows all about Lincoln Properties. Would you care to -- I didn't get the name.

MR. VALENTINE: Steven McAdam.

ACTING CHAIRPERSON McCARTHY: Mr. McAdam, do you want to take a microphone?

MR. GETTEMY: Thank you.

MS. BOROVY: Do you want us anymore?

ACTING CHAIRPERSON McCARTHY: You can remain Mrs. Borovoy, if you wish to.

MR. MCADAM: I'd be happy to answer any questions you have about --

ACTING CHAIRPERSON McCARTHY: Why don't you describe the Lincoln Properties development to us, please, and tell us whether it was over water or not and what were the primary considerations involved.

MR. MCADAM: There were basically two different sections of the Lincoln Property project. The first was an office and commercial development which BCDC approved entirely on land, that is on upland areas.

ACTING CHAIRPERSON McCARTHY: Is your microphone working? I want the audience to hear you.
MR. McADAM: I don't see a switch. Is this better. I'll speak as loudly as I can.

The Lincoln Property project was basically in two parts. The first was a commercial and office structure or series of structures which BCDC approved and they were located entirely on upland areas. They were not part of the bay.

The second part was a parking lot that was associated with the commercial and office structures. It was located underneath the Richardson Bay Bridge on lands that apparently are owned by Caltrans and leased for long-term basis to Lincoln Property Company. The land underneath the Richardson Bay Bridge was solid fill and at one time above the line of highest tidal action; not a part of the bay under BCDC's regulation. Subsequently it subsided to some degree so that the highest tide reached over the land area thus bringing it within BCDC's or at least partially within BCDC's bay jurisdiction although it retained all the characteristics of upland. There was no marsh on which the parking lot was placed. As a result of the negotiations for that project, the project developers entered into a mediation type of a situation where they would enhance a nearby marsh. But this particular project did not damage any marsh to any great degree.
ACTING CHAIRPERSON McCARTHY: Any questions by Commissioners.

All right. Thank you very much.

I'm satisfied the Lincoln Properties' issue is distinguishable from the matter before us.

I'm still somewhat troubled by the Brickyard Cove matter, however. Would someone please state once more to me succinctly the substantive differences between that matter and the question before us.

MR. TAYLOR: Governor, the distinction is that they argued that they, that the trust had been terminated by virtue of the Berkeley decision. We disputed that as to the water covered, some of the water-covered portions. But they felt because they had undertaken prior to the Berkeley decision a project which had been found to be exempt by BCDC because it had been so far along, that they had a right to complete that project even though water was included. They were going to press that in litigation against the Lands Commission and we felt that under those circumstances, since they had undertaken the project, had substantially filled or done all the filling they were going to do, that there was an area for compromise with them. Had we not compromised it, they would have persisted in their claim that they were totally exempted in that area.
ACTING CHAIRPERSON McCarthy: There was absolutely no additional filling?

EXECUTIVE OFFICER Dedrick: That's correct.

None whatsoever.

ACTING CHAIRPERSON McCarthy: And they built how many additional units on top of the fill that had been there, that they had created?

EXECUTIVE OFFICER Dedrick: They haven't as yet started construction because the final papers are still being signed. My memory is that it was around 100 and that it was not for sure because they were going to consolidate some lots and so forth.

So our concern was, the public trust easement concern was a very strong one. We felt that lifting the trust following the Berkeley Act over water at all was a very serious step for this Commission to take.

ACTING CHAIRPERSON McCarthy: I understand, Mr. Taylor, that the fill of the Brickyard Cove development was created before the 1980 decision.

MR. Taylor: That's correct.

EXECUTIVE OFFICER Dedrick: That's correct.

ACTING CHAIRPERSON McCarthy: Are you stating that had we, that in acting as we did in that case, that would not be cited as a precedent or if could not be cited as a precedent --
EXECUTIVE OFFICER DEDRICK: That's right.

ACTING CHAIRPERSON MCCARTHY: -- despite the fact we settled the matter after the 1980 case?

MR. TAYLOR: For this situation the answer to that would be no. I don't know of any other project other than Brickyard Cove that was in that position, but if there might be another Brickyard Cove situation, it might, if we were faced with the same situation, recommend the same thing.

EXECUTIVE OFFICER DEDRICK: We did a thoroughly exhaustive search to establish that the Brickyard Cove development was really unique -- excuse me -- Dennis Eagan did that.

MR. TAYLOR: The difference there was that the project was substantially complete on the day that the Berkeley decision came down which the Supreme Court said was the magic day to determine whether the public trust existed or not. In this case, under the McAteer-Petris Act, the pilings and the construction of a house on pilings is defined as fill. There is no exemption for this property and the Act, McAteer Petris Act, seeks to allowing no further fill bayward of the shoreline of San Francisco Bay at the time the Act was granted except in certain instances of which this is not one.

Perhaps to clarify the record, there is no
permit application before you with regard to these lots today. What is before you is a staff recommendation for purposes of conveying to BCDC your opinions about public trust needs in this area. The area is much larger than the three lots and the marsh that has been talked about.

MS. BOROVOY: Governor McCarthy, what we object to is being used as a scapegoat. This policy, it's wonderful that you've taken time to do this, but we're caught right in the middle. I notice that if it would help to clarify the situation so that we could be used as, in other words, Brickyard Cove could be used as a precedent for us, we'd be happy to threaten a suit, too, and therefore you would then want to make a settlement with us because that was one of the things Mr. Taylor said.

MR. TAYLOR: I did not say that the situations were at all comparable. They are not.

ACTING CHAIRPERSON McCARTHY: Mr. Taylor, do you want to make your presentation at this point?

MR. TAYLOR: I think there are several things that should be noted. When the state sold tidelands it reserved an easement which was a property interest for purposes of commerce, navigation, and fisheries. The Supreme Court clarified the fact that that applied...
to Board of Tideland Commissioners' lots in its 1980
decision. The Legislature determined in its enactment of
BCDC that there would be no further fill in San Francis-
co Bay and in part that statute was an enactment or an
exercise of the trust.

This property has reflected since the 1920's in
its title report that it was subject to an easement of
commerce, navigation and fisheries. So that's been a
matter of actual notice to the owners of the underlying
fee to this property for a long period of time.

The second thing, reference was made to a letter
from State Lands Commission to Robert S. Borovoy in
1972. I think that the letter speaks for itself and that
letter says:

"This is in reply to your
August 6th letter regarding the
public trust attaching to tidelands.
This trust was imposed upon lands
upon their conveyance from the
federal government to the State
of California. The trust exists
without assertion by the State
Lands Commission. Under some
circumstances the trust can be
abated. However, there is not
enough information in your letter to allow comment on that possibility.

"If you have any questions, please feel free to contact me at any time."

It's signed by Leslie H. Grimes, Senior Land Agent. That was in a letter from Robert S. Borovoy to them, to the State Lands Commission in 1972 asking about the consequences of the trust.

CHAIRPERSON McCARTHY: A response to a letter from Mr. Borovoy to the State Lands Commission.

MR. TAYLOR: That was a response to Mr. Borovoy informing him in '72 that the easement did exist.

I think the only other, the only other thing is with regard to the ownership of the marsh which has been offered in mitigation. I think that the staff had unequivocally stated, based upon the search by title companies and by the staff itself, that they can find no private record title to the marsh in question. That it was left out of any of the Board of Tideland Commissioners' lots and that it is waterward of the Rancho and, therefore, it would have been sovereign land. That is about the best answer we can give Mrs. Borovoy. She has not provided us with any deed or evidence of private title to that back area. I think that the Lands
Commission participated in the Berkeley decision in 1980 with BCDC for the purpose of clearly establishing or confirming the existence of public trust interest in these kinds of lots. There are a series of lots across this entire section of San Rafael Bay as well as across Richardson Bay and from Richmond to Alameda. It was the concern of both of these agencies as well as a substantial number of the public in the Bay Area that there be no further filling of San Francisco Bay and that the public rights in ownership -- if you remember the BCDC reports that were made in the creation of the Act in 1968, I believe, the final reports came out urging that the public's title to San Francisco Bay be clarified. That was done in the Berkeley decision. This is the first case that I know of where something which is subject to BCDC jurisdiction shoreward or on the shore and within BCDC's area of jurisdiction which would be an encroachment on the line established by the Legislature where that Act has come before it. The staff has studied the entire area because it felt that it wasn't fair just to look at one situation, but that it should look at the entire problem that's presented by further development in this area of San Rafael Bay and it is felt based upon the public hearings and the evidence reviewed and the expressions of the Legislature previously that
further development in this area would be inconsistent with public trust needs as found by all the various reports, legislative declarations, and that's why it is making that recommendation to the Commission at this time.

ACTING CHAIRPERSON McCARTHY: Any questions by Commissioners at this point?

All right. Mr. Harvey.

COMMISSIONER HARVEY: Mr. Gettemy, in your presentation you offered what I think, if I don't misunderstand, was an alternative for the Commission to adopt and that would be to essentially have the Commission exercise the public trust and then essentially grant a permit for building on these two lots. The alternative is, I gather from what you've said, Greg, is not before us today.

MR. TAYLOR: That is correct.

COMMISSIONER HARVEY: I would also at this point probably question the wisdom of the alternative. Were I a title company or a purchaser wanting to live in one of those lots, I wouldn't want my house essentially run over by someone widening the channel day after tomorrow, or if this Commission would grant such a permit which I don't think we could do under any circumstance, have a subsequent Commission perform or take some action that would be detrimental to that position.
My understanding of what I'm saying -- correct me, Greg -- is that where we really are? What I'm saying is there is an alternative submitted by Mr. Gettemy. That matter is not before us today, but an action that we, if we took the action of exercising the public trust, that would not preclude Mr. Gettemy and Miss Borovoy from coming before this Commission at a later date with that sort of a request; is that a good statement?

MR. TAYLOR: That is correct. They could come back at a later time and ask for a modification of this finding with regard to a specific proposal. But during the interim, the public trust would have been exercised and from that standpoint the state is saying that its title interest in the property should be paramount and that there should be no change in existing use.

MR. GETTEMY: May I clarify something, please? I'd like to make it very well known that when this Commission talks about many, many lots in Northern San Pablo Bay and in and about Bayside Acres where we are, I think that you should clarify and understand that a lot is only as good as its zoning, only as good as its ingress and egress, and you will find that the majority -- and I'm talking maybe 99 percent of these lots or 99.9 percent -- are not zoned R-1. They're zoned many other uses, but they are not zoned R-1.
I think you're going to find this to be the truth if you dig into this thing. But BCDC has been talking for two years now about the 15,000-plus lots that are out there and these 15,000 people are going to rush and say: If you give me a building permit, I want mine, too. And this is a statement that I don't think is true and I'd like somebody to explore it. I've asked for names of these people and I don't get them. I don't get anything back from anybody. I just don't think they exist.

ACTING CHAIRPERSON McCARTHY: Commissioner Harvey.

COMMISSIONER HARVEY: Somewhat of an answer to that, sir, is that I have been at different times an owner of property that has been zoned in a particular manner for an extensive period of time. I just lost one in the Los Angeles Harbor area that had been zoned multiple-residential as far back as I could find and the Zoning Commission in its infinite wisdom and the City of Los Angeles, City Council in its infinite wisdom, changed it on me in the middle of the stream. What I think that I'm really trying to say is the fact that a particular piece of zoning existing for an extended period of time I don't think is a valid consideration of what we should do because of what some future zoning commission might do.

MR. TAYLOR: Commissioner Harvey, I think in
addition to your remarks is the fact that there is a property interest in this property which has been retained by the public and that's irrespective of any exercise of zoning authority as to the underlying fee title of the private properties. What we're battling with here is an ownership interest of the state which is completely separate from the question of zoning.

MR. BOROVOY: Governor McCarthy, might I ask about process?

ACTING CHAIRPERSON McCARTHY: Mrs. Borovoy, we have two more witnesses to hear from. I'd like to give them an opportunity and then close on this matter.

Mr. Norman Gilroy and Mr. Brian Wilson, if either of them have something new and not duplicative to add at this point, we'd be delighted to hear from them.

You can both come up to the table if you want. You want to identify yourself, please?

MR. WILSON: My name is Bryan Wilson. I'm speaking for Save San Francisco Bay Association and we're a non-profit public interest group in the Bay Area with about 20,000 members.

The Association believes that private uses of the bay including residential uses are inconsistent with the public trust, the McAtteer-Petris Act, and the San Francisco Bay Plan. All three of these say that they
should be used only for public purposes serving statewide or regional needs. Your staff’s recommendation reinforces and clarifies what these needs are.

Further, we encourage you to rely heavily on the McAteer-Petris Act in the Bay Plan since BCDC is a co-trustee of the public trust in this instance and they definitely do have jurisdiction as opposed to Brickyard Cove.

The McAteer-Petris Act says that the fill should be authorized only for "water oriented uses or minor fill for improving shoreline appearance or public access," and it also states firmly that "the public has an interest in the bay as the most valuable, single natural resource of an entire region."

The Bay Plan emphasizes that "the most important uses of the bay are those providing substantial public benefits in treating the bay as a body of water, not as real estate."

The Association believes that your staff’s recommendation is correct. The public trust should be reserved for purely public uses and we would urge you to support it.

ACTING CHAIRPERSON MCCARTHY: Thank you.

Mr. Gilroy.

MR. GILROY: My name is Norman Gilroy. I'm a
consultant for Basalt Rock Company, which is one of the
owners in the area.

My purpose here is not so much to raise anything
new as it relates to the testimony that's gone before, but
maybe to speak a little bit to some of the wording that
has been used by staff in the recommendations.

As background, Basalt is a very active user
of a portion of the area as access to their deep-water
loading activities at the McNeer's Quarry which is a very
large quarry which supplies a great deal of rock to the
delta area and uses that deep-loading facility very
regularly. It depends on access over these lands and
the continuing right of navigation which is discussed in
here. Commercial navigation is appropriate, of course.

One of the things that I see as a problem, however, is
that right next to it you talk about wildlife preservation
and a whole variety of other issues. Those can sometimes
come headlong into conflict with maintenance dredging,
the rebuilding of structures or the building of structures
necessary for mooring of large barges, things of that kind
which are in fact out in the water. If it were
possible to recognize those kind of structures and
activities, maintenance dredging being one of them,
structures being another in the wording I think it would
be more appropriate. Then I think at least the public
would be on notice that they had been recognized as activities.

Additionally, there is an intention which has been approved by the County of Marin in principle and by the City of San Rafael in principle. Their general planning process to create quite a large marina in that location, which again is consistent with the wording of commercial and navigation in your recommendation. However, again, there is a need for dredging and building of some jetties to make the channel mouth safe from sedimentation and that kind of thing. Again, if there's recognition of appurtenant structures or something of that kind in your wording, it would help later when someone clearly might say: Well, this is for wildlife purposes primarily and no one ever said anything about changes for structures and that kind of thing. Otherwise I think as it relates, frankly, we're not clear of a couple of things and I don't know that we're going to get clear in this meeting on those things to do with the large area of marshland. Basalt owns 400 acres of tideland there which is directly affected by this decision. We don't see any conflict between their intention to maintain those as open space in their plan and essentially not use them and your recommendations, but there is an area of marshland which I think is one of the
areas sometimes of conflict as to who has jurisdiction over what. In that area the marshland is in the plan as an area to be preserved and even enhanced as a wildlife area, maintained as a marsh, and that is being worked out again with the city and to a degree with BCDC so it's not gone through a formal process with BCDC yet.

There are some areas on the edge of the marsh that long ago were filled and -- used to I think be marsh -- were long ago filled for industrial uses and have in fact industrial uses going on right now. We're assuming that none of what you are doing here would infer that those areas should be in any way ripped out and turned back to wildlife uses or that kind of thing.

ACTING CHAIRPERSON McCARTHY: Mr. Taylor.

MR. TAYLOR: I think a couple of things that should be clarified at the outset. Any existing use that is presently going on is not to be affected by this exercise. This only speaks to the future and says that there won't be any change in those uses. So to the extent that you're using the property at the present time and if we need to clarify it, we can talk to you about that kind of language. But it is the purpose only to freeze the existing situation, whatever that may be, and of course if that would mean maintenance dredging and things of that sort, that would be --
With regard to a new use, such as a marina, I think that would be something that would have to be separately considered at the time it was proposed.

EXECUTIVE OFFICER DEDRICK: But it would not be precluded.

MR. TAYLOR: But it would not be precluded under the recommendations.

There was one other thing, though, and I think that the study area included a portion, a large portion of the study area included lands granted to the City of San Rafael in trust. While the study area included that, the direct jurisdiction of the Lands Commission only applies to the upper portion and the only recommendation before the Commission at this time is to exercise the trust as to the upper portion. So that your interest may not be involved at all.

Are you in San Rafael? If you can see that map, there's a line drawn across it. Where are you in relation --

MR. GILROY: We lie within the county jurisdiction as privately owned land.

MR. TAYLOR: You're in the exercise area then. The city will be informed of the Lands Commission action and they may wish to consider the matter themselves based upon that later on, but at least the bottom part of
this is not in the normal part of the thing since that's in the city's jurisdiction. If you're in the upper part, then I think we've given you the assurances that you --

MR. GILROY: We're in the very top end of the upward part.

EXECUTIVE OFFICER DEDRICK: Mr. Chairman, I think that Recommendation Number 2, perhaps too generally for your taste, but in fact guarantees the right of navigation. Obviously fishing, navigation and commerce as well as ecological considerations are the primary purposes of the trust. I do not believe that a trust exercise phrased as those three recommendations are phrased would in any way preclude further marina development, maintenance dredging, mooring buoys and all the things that are appurtenant to navigation. We have a long history of dealing with such things directly as part of the public trust.

ACTING CHAIRPERSON MCCARTHY: Mr. Gilroy, you've made your statement. You heard Mr. Taylor's response. You've heard Miss Dedrick's response. If you want to add something in writing that you wish us to place in the record, the Commission would extend that privilege to you.

MR. GILROY: All right.
ACTING CHAIRPERSON McCARTHY: I think that probably is responsive to the concern you raised.

MR. GILROY: I would assume also that the comments just made which I think are exactly what I was hoping we might have might be in the record so that we have, that's clear in the future.

ACTING CHAIRPERSON McCARTHY: It is in the record.

MR. GILROY: Because five or six years down the way these words have floated away, and you know, Thank you.

ACTING CHAIRPERSON McCARTHY: All right. Thank you. Any questions of Mr. Wilson?

All right. Thank you both very much.

I think we're prepared to act on the matter.

Mrs. Borovoy, I didn't mean to cut you off a minute ago. Was there a final point you wished to make?

Is Mrs. Borovoy still with us?

MS. BOROVOY: I'm tired of walking up and down. I do thank you for all this attention. It's very nice:

I'm interested in the process. If this policy is adopted today, you mentioned that we could apply for a modification. If this is adopted today, doesn't it go into effect today?
MR. TAYLOR: Yes, it does.

ACTING CHAIRPERSON McCARTHY: Yes, it does.

MS. BOROVOY: It goes into effect today, so
then --

ACTING CHAIRPERSON McCARTHY: I'm not sure
what you're referring to with reference to the modification
but if the majority of the Commission approves the staff
recommendation, then that is effective. That is the
Commission's statement of policy.

MS. BOROVOY: In other words, the process is
such that we would like the modification before you
adopt the policy.

ACTING CHAIRPERSON McCARTHY: No, we appreciate
your original presentation of the options.

MS. BOROVOY: I was just trying.

ACTING CHAIRPERSON McCARTHY: Thank you.

I think we've concluded the testimony. I've
consulted with the members of the Commission. It's been
moved and seconded that the staff recommendation be
approved and the majority of the Commission does so approve

Thank you very much.

Item Number 12.

EXECUTIVE OFFICER DEDRICK: Yes. This is an
authorization on the removal of a pier at Pebble Beach
and acceptance of the Quitclaim Deed for that underwater
area. The pier is in bad condition. The Pebble Beach
Company sees no further use for it. So they'd like to
remove the pier and quitclaim the land back to the state.

ACTING CHAIRPERSON McCARTHY: Any questions by
members of the Commission or in the audience?

If not the staff recommendation is approved.

Number 13.

EXECUTIVE OFFICER DEDRICK: 13 is off calendar.

ACTING CHAIRPERSON McCARTHY: Off calendar.

Number 14.

EXECUTIVE OFFICER DEDRICK: Number 14 is the
approval of the issuance of a patent that was issued
in 1903.

ACTING CHAIRPERSON McCARTHY: Any questions by
members of the commission or the audience?

If not, staff recommendation is approved.

Number 15.

EXECUTIVE OFFICER DEDRICK: 15, Flying M Cattle
Company, is a denial without prejudice of an application
for use of state lands for a grazing lease. The reason
for the denial without prejudice is 884 is running
and we have not been able to come to an agreement
with the applicant.

ACTING CHAIRPERSON McCARTHY: Is there any
question?
Staff recommendation is approved.

Number 16.

EXECUTIVE OFFICER DEDRICK: Item 16 is the approval of a steam sales contract between our lessee, Geothermal Resources International, and the Central California Power Agency. The staff believes that if the Commission adopts the resolution that is before you which makes it very clear that in any apparent conflict between the lease, GRI with the State Lands Commission, and their contract with CCPA, that the lease will govern all of their relationships with the state.

ACTING CHAIRPERSON MCCARTHY: Any questions by Commissioners? Commissioner Harvey.

COMMISSIONER HARVEY: Have you examined the sales contract to see if there is any conflict based on examination at this point?

EXECUTIVE OFFICER DEDRICK: Staff is trying to bring that contract into conformance with what we would prefer to be there. GRI has negotiated the contract with the power agency itself. There are areas of potential conflict. In coming to bringing this item to the Commission I've had substantial discussions with the Executive Vice President of GRI and the conclusion that we came to and that I think is correct is that GRI's relationship with CCPA is a business relationship.
Their relationship with the State Lands Commission is a separate business relationship. They are bound by the terms of the lease to pay the steam sales price to the state which the lease requires and anything they do with CCPA is essentially their business but the terms of the lease shall prevail in their relationship with the state.

COMMISSIONER HARVEY: I think that that statement essentially then should be a part of our action today and that we make clear that we are approving the steam sales contract with the total proviso that the provisions of the lease in the event of any conflict would totally override the power contract.

EXECUTIVE OFFICER DEDRICK: On the recommendation, Commissioner, our recommendation, particularly the conditions attached under Recommendation 2(b):

"In the event of any conflict between the terms and conditions of the steam sales agreement and those of the lease or rules and regulations of the State Lands Commission, the terms and conditions of lease PRC 57.17 and the rules and regulations shall prevail as between the state and its lessee."
ACTING CHAIRPERSON McCARTHY: Is that satisfactory?

COMMISSIONER HARVEY: Yes.

EXECUTIVE OFFICER DEDRICK: I think we have the state protected.

ACTING CHAIRPERSON McCARTHY: Staff recommendation is approved.

Number 17.

EXECUTIVE OFFICER DEDRICK: Number 17 is approval of a settlement agreement and royalty accounting procedures between the State Lands Commission and three of its lessees in the Geysers geothermal area.

ACTING CHAIRPERSON McCARTHY: Any questions? Staff recommendation is approved.

Number 18.

EXECUTIVE OFFICER DEDRICK: Number 18 relates to the replacement of Island Esther off Seal Beach which was destroyed in the storms of a winter ago. The staff recommends that the replacement of the island as a platform instead of an island is exempt from CEQA and we would like to give them permission to go ahead with the project. The exemptions I think Greg may want to speak to, or is it you, Jack?

ACTING CHAIRPERSON McCARTHY: Any questions?

MR. TAYLOR: We have no problem with the staff
recommendation. It's an appropriate area for exemption.

ACTING CHAIRPERSON McCarthy: All right. Any questions by Commissioners?

Staff recommendation is approved.

Next.

EXECUTIVE OFFICER DEDRICK: The next is an application to install a power cable from Platform Emmy in Orange County by Aminoil, our lessee.

ACTING CHAIRPERSON McCarthy: Any questions?

Staff recommendation is approved.

Number 20.

EXECUTIVE OFFICER DEDRICK: The next one is a continuation of exploratory drilling operations on a lease off the Santa Barbara County Coast by Shell California Production, Inc., and the certification of the EIR which was carried out by staff on the proposed project.

ACTING CHAIRPERSON McCarthy: Any questions?

Staff recommendation is approved.

Twenty-one.

EXECUTIVE OFFICER DEDRICK: Twenty-one is a deferment of drilling obligation by Texaco, Inc., on another lease in Santa Barbara County. They want to do some more geophysical work before they decide that they want to apply for a permit.
ACTING CHAIRPERSON McCARTHY: There is no seismic activity here?

EXECUTIVE OFFICER DEDRICK: No. This is just a deferment of drilling.

ACTING CHAIRPERSON McCARTHY: All right. Any questions?

Staff recommendation is approved.

Twenty-two.

MR. TROUT: Mr. Chairman, on Item 22 and 23 which really can be considered together in one action, the proposal is to have a crude oil sell-off in Long Beach Harbor Department of a tidelands parcel and Parcel A of -- and what you're doing is adopting the procedures or the conditions of the sale, and directing the City of Long Beach to in turn direct the contractor to sell the oil and we recommend approval. It should provide some additional money for the state.

ACTING CHAIRPERSON McCARTHY: Any questions?

Staff recommendation is approved.

Number 23 (sic).

EXECUTIVE OFFICER DEDRICK: Number 24 is the award of a royalty oil sales contract to Edginton Oil for oil from the Belmont Offshore Field, and in a sec I'll give you the bonuses. The high bonus bid was $1.861 per barrel above the posted price.
ACTING CHAIRPERSON McCARTHY: Any questions?

Approved.

Twenty-five.

MR. TROUT: Mr. Chairman, Item 25, the legislation affecting the grant to Long Beach provides that there will be surveys to determine if there's been any subsidence in the area. These surveys are run twice a year and this is the report of the latest survey and it indicates there is no subsidence.

ACTING CHAIRPERSON McCARTHY: All right. Any questions?

The report is accepted.

Twenty-six is off calendar.

Twenty-seven.

EXECUTIVE OFFICER DEDRICK: Number 27 is a report on revising the economic projections from the Long Beach unit. The average oil production rate during the first half of the fiscal year was higher than we had originally estimated. The revenue to the state will therefore be about $20 million higher than we estimated for this fiscal year.

ACTING CHAIRPERSON McCARTHY: Any objection to that?

(Laughter.)

ACTING CHAIRPERSON McCARTHY: We'll accept that.
MR. TROUT: That's not in addition, that was included in the revenue statement we reported to the Commission at the last meeting.

ACTING CHAIRPERSON MCCARTHY: Very good.

EXECUTIVE OFFICER DEDRICK: Sorry about that. Can't do it twice.

ACTING CHAIRPERSON MCCARTHY: All right. Twenty-eight is off calendar.

Twenty-nine.

EXECUTIVE OFFICER DEDRICK: Twenty-nine is approval of a compromise title settlement for 25 acres of land in Novato, Marin County.

MR. TROUT: Mr. Chairman, before you act, let me point out that on Item 29, 30 and 31, the Commission is acting both as the Lands Commission and as the trustee for the Land Bank Trust.

COMMISSIONER HARVEY: We're not acting on 30.

ACTING CHAIRPERSON MCCARTHY: Any questions on 29?

Hearing none, that is approved.

Thirty is off calendar.

Thirty-one.

EXECUTIVE OFFICER DEDRICK: Thirty-one is another approval of a compromise title settlement. As Jim rightly points out you'll be acting both as Lands Commissioners and

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as trustees for the Land Bank Trust for a small piece of land in Milpitas and Santa Clara County.

ACTING CHAIRPERSON McCARTHY: All right. Any questions?

Thirty-one is approved.

Thirty-two is off.

Thirty-three.

EXECUTIVE OFFICER DEDRICK: Thirty-three is approval of a retrocession of jurisdiction, if partial jurisdiction of the Naval Radio Station in Imperial Beach in Coronado in San Diego County.

ACTING CHAIRPERSON McCARTHY: Any questions about this?

All right, approved.

Thirty-four.

EXECUTIVE OFFICER DEDRICK: Thirty-four is to approve the proposed annexation boundaries of Batizuitos Lagoon to the City of Carlsbad.

ACTING CHAIRPERSON McCARTHY: Any questions about this?

Approved.

Thirty-five.

EXECUTIVE OFFICER DEDRICK: Thirty-five is an authorization to hold a public hearing on a retrocession of jurisdiction in San Diego County in Carroll Canyon.
ACTING CHAIRPERSON McCARTHY: Any questions?

Approved.

EXECUTIVE OFFICER DEDRICK: Item 36 is an authorization for the City of San Mateo to take interim steps to increase water flow. We've had a request from the City of San Mateo that wants to speak to some potential changes in the staff recommendation. Mr. Tom Adams is here.

ACTING CHAIRPERSON McCARTHY: Mr. Tom Adams.

MR. ADAMS: Thank you. I'm an attorney. I represent Kumam Corporation which is a private land owner in the area. Our land has previously been the subject of a settlement with the Lands Commission, and the adjoining land in the City of Belmont was recently the subject of a settlement from the Lands Commission.

At the moment the only access to our property is across a road and beneath this road lies a culvert which San Mateo wants to remove and replace.

Ultimately we will build a bridge across the slough for access to our property in accordance with plans that are being prepared locally. We have no objection to the removal of the culvert to improve the water flow, but would ask that the Commission condition the permit so that when the new culvert is installed, it's backfilled to provide a road surface across it.
equivalent to what we have now. We're not asking that they construct a fancy road, but one that is suitable to transportation of heavy equipment which the current road surface is suitable for.

Additionally, in the event that there are unforeseen circumstances which prevent for some reason the culvert being reinstalled, we would ask that a condition be imposed that the City of San Mateo provide a temporary bridge across the slough. In the event these things are not required, we would totally lose access to our property.

EXECUTIVE OFFICER DEDRICK: I did mislead you. I couldn't read who Mr. Adams represented, but I knew San Mateo wanted to talk. I believe this is San Mateo.

MR. BEZANT: I represent San Mateo. My name is Bob Bezant, Public Works Director, City of San Mateo.

We're agreeable with the conditions. Our interest is merely in taking out that collapsed culvert and placing some culverts in there so we can get an adequate water supply and restoring the access as it originally is constituted. So we have no objection.

ACTING CHAIRPERSON MCCARTHY: Have you agreed to a rope bridge or some other form's been discussed? You'll have to get into all the details here. After such a stimulating meeting, I just wanted to add something
whimsical.

MR. TROUT: Mr. Chairman, the staff tells me they've looked at the conditions and it's fine with staff.

EXECUTIVE OFFICER DEDRICK: Do the conditions need to be read into the record?

We'll put them in the record.

MR. ADAMS: "Please.

ACTING CHAIRPERSON McCARTHY: Any questions?

All right. That's approved.

Last.

EXECUTIVE OFFICER DEDRICK: Item 37 is the authorization to file a disclaimer on behalf of State Lands in a lawsuit in which we have no interest.

ACTING CHAIRPERSON McCARTHY: Any questions?

Approved.

Thank you all very much.

(Thereupon the meeting of the State Lands Commission was adjourned at 11:34 a.m.)

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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 meeting of the State Lands Commission was reported in shorthand by me, Cathleen Slocum, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of April, 1984.

CATHLEEN SLOCUM
Certified Shorthand Reporter
License No. 2822