MEMBERS PRESENT:

Lisabeth Rasmussen, Acting Chairperson, representing Kenneth Cory, State Controller

Clifford Allenby, representing Jesse R. Huff, Director of Finance

Laura Schlichtmann, representing Leo T. McCarthy, Lieutenant Governor

STAFF PRESENT

Claire Dedrick, Executive Officer

James Trout, Assistant Executive Officer

Lance Kiley

Blake Stevenson

Robert Hight

Jane Smith, Secretary

ALSO PRESENT

Richard Frank, Deputy Attorney General

Joseph C. Rusconi, Deputy Attorney General
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PETERS SHORTHAND REPORTING CORPORATION
5439 AMERICAN RIVER DRIVE, SUITE A
SACRAMENTO, CALIFORNIA 95825
TELEPHONE (916) 972-8894
Item 26: State Lands Commission  
Item 27: Off Calendar  
Item 28: United States of America  
Item 29: United States Air Force  
Item 24: Riverbank Holding Company  
Staff Presentation  
Presentation by Kip Skidmore  
Presentation of Testimony re Item 16  
John L. Cook, City Attorney  
City of Eureka  
Joseph Rusconi, Deputy Attorney General  
Blake Stevenson, Staff Counsel  
Les Grimes  
John L. Cook  
Robert Stockwell, City Manager  
City of Eureka  
Joseph Rusconi  
John L. Cook  
Adjournment  
Certificate of Shorthand Reporter
ROCKEDINGS

---00---

ACTING CHAIRPERSON RASMUSSEN: Good morning.

This meeting of the State Lands Commission is called to order.

I think we need to start out with the confirmation of the minutes of June 21st. Are there any questions or corrections, deletions? None. I approve the minutes.

Report of the Executive Officer.

EXECUTIVE OFFICER DEDRICK: Yes, Madam Chairman,

I granted a letter of permission to the Santa Clara Valley water District in advance of a routine permit so that they could proceed timely with the project which has to be carried out while weather conditions are favorable. The District has applied for a permit which we are currently processing. Staff assures me that the District has all its clearances from other jurisdictions and there are no environmental concerns with the project.

The second item which is not included in the written copy of the Executive Officer's Report is a letter to you, Commissioners, asking permission to hold a submerged lands conference October 8th through 12th in San Diego. You have a letter before you which is exceedingly stuffy and I signed it under protest, but I didn't have time to rewrite it.
COMMISSIONER SCHLICHTMANN: Mine isn't signed.

EXECUTIVE OFFICER DEDRICK: Yours isn't signed?

Well, maybe I did it right.

ACTING CHAIRPERSON RASMUSSEN: Okay. Any questions, comments? Anything else, Claire?

Okay.

We'll move to the --

EXECUTIVE OFFICER DEDRICK: Well, there are some items off calendar, Commissioner. Would you like me to run through those?

ACTING CHAIRPERSON RASMUSSEN: Yes.

EXECUTIVE OFFICER DEDRICK: Okay. Item C1(B) is off calendar. Item C4 should be moved to the regular calendar. Item 16 is off calendar, although I think there are people here who may want to speak to the Commission on that subject. Item 22 is off calendar. That is the Paramount Oil Company item, and I'd like to know if anyone from Paramount is in the audience? No, I think that can be just taken off. As to Item 16, it depends. It's entirely up to you what you'd like to do about that.

ACTING CHAIRPERSON RASMUSSEN: Okay. On Item C4 that's now been moved to the regular calendar, I think it might be easier if we heard that at the end of the agenda. Is there any problem with that rather than --

MR. HIGHT: No.
ACTING CHAIRPERSON RASMUSSEN: The remainder of the Consent Calendar, are there any questions or comments?

MR. HIGHT: Madam Chairman, I'd like to make a statement for the record, please. The Lieutenant Governor's representative, Laura Schlichtmann, will be sitting in a non-voting capacity on the items up to C-4.

ACTING CHAIRPERSON RASMUSSEN: All right. Thank you.

Any questions on the Consent?

MR. HIGHT: You want a motion?

ACTING CHAIRPERSON RASMUSSEN: No, I think we can approve it by consensus.

Okay. We'll move on to the regular calendar, Item 14.

EXECUTIVE OFFICER DEDRICK: Item 14 is a rescission of a prior authorization and approval of a 15-year General Lease - Commercial Use in Turner Cut, which is located in San Joaquin County.

ACTING CHAIRPERSON RASMUSSEN: I have a request to speak from E. R. Williams. Mr. Williams, would you like to take a seat and state your name and who you're representing?

MR. WILLIAMS: My name is E. R. Williams. I'm appearing here on behalf of George Shore and myself.
We are objecting to the Commission's action, the requested action, to rescind the previous authorization for the execution of the lease and the granting of the present lease. I have a letter here which I would like to submit to the Commission which I think sets forth --

MR. TROUT: Do you have another copy?

MR. WILLIAMS: Yes.

ACTING CHAIRPERSON RASMUSSEN: Thank you. Okay.

Proceed.

MR. WILLIAMS: I think this sets forth the basic background of the situation. The Commission previously authorized the execution of a lease to George Shore I think in 1978, and the matter drug along until the date of this letter, 1980, when the only thing remaining to be done was to put up the bond. Then George Shore indicates he thought he did put up the bond, but apparently the State never got it. So it drug on for another six months or so, and I came up here with him and talked to one of the agents and they indicated to me at that time that they no longer had the approval of the upland owner, there had been a change in ownership and we no longer had the approval of the upland owner. Rather than try to force the lease through, the old lease, that we try to get the permission of the upland owner and we've been trying to do that now for some time. There's been a long delay in that. They are the
present applicants for this facility. Now, it's our position -- and incidentally, we have paid rent on this for six years. The rent was paid from the time of its inception I think in '77 until July the 1st of '83. In other words, the rent was not paid for last year. I'll submit to the Commission that our request is that George Shore signed the lease and that we be permitted to execute the old lease. The delay hasn't hurt anybody. Had the old lease been executed, the upland owner now would be in no different position than he was before. He's the new owner, and I submit to you ladies and gentlemen it's grossly unfair to kick us off of there now after we've been out there for six years and paid rent for six years. I'd be glad to answer any questions you may have.

ACTING CHAIRPERSON RASMUSSEN: Does the staff have any response?

EXECUTIVE OFFICER DEDRICK: Lance.

MR. KILEY: We met with Mr. Williams, staff met with Mr. Williams and tried to resolve this. One of the major problems is that during the period that this lease has remained unsigned and unexecuted, the access -- they had access at the time the original thing was negotiated. The general Commission policy has been not to lease to people who do not have upland access and to attempt to reach some kind of accommodation with the person who has the
upland access. During the six years that they paid rent, of course, they did have use of the facility. So it's not like they didn't get something for their money. This rescission deals only with approval of a further lease, continuation of the use. Since they don't have access, staff recommends that the thing be terminated.

ACTING CHAIRPERSON RASMUSSEN: Any of the Commissioners have any questions?

EXECUTIVE OFFICER DEDRICK: Commissioner, I'd like to recommend that we hold this item for today and go back into discussion with the applicant.

ACTING CHAIRPERSON RASMUSSEN: All right. Is there any objections from the Commissioners?

MR. WILLIAMS: That means we're going to drop it and we should try to work with them again? Is that what you're telling me? I'm agreeable to it.

EXECUTIVE OFFICER DEDRICK: I haven't had a chance to review this personally, sir, and I'd like to be able to take a good look at it myself.

MR. WILLIAMS: As far as I'm concerned on the calendar today that means off calendar?

ACTING CHAIRPERSON RASMUSSEN: Right.

EXECUTIVE OFFICER DEDRICK: That's what I'm proposing.

ACTING CHAIRPERSON RASMUSSEN: We're proposing to
pull it off calendar and hear it at a later date, if necessary.

MR. WILLIAMS: In the meantime we'll have further discussions on it, is that the idea?

MR. KILEY: That's correct. We'll have further discussions.

MR. WILLIAMS: That's agreeable with me. I have no argument with that.

ACTING CHAIRPERSON RASMUSSEN: Is that satisfactory to staff and everyone then?

MR. KILEY: That will be satisfactory.

ACTING CHAIRPERSON RASMUSSEN: Thank you, Mr. Williams.

Item 15.

MR. TROUT: Madam Chairman, this is an item involving the Memorandum of Understanding we have with the Bureau of Land Management regarding the satisfaction of our indemnity entitlement and this would, our remaining entitlement of federal lands under the School Land Grant. This would add about 50,000 acres of entitlement, and we would be selecting some land available in the Bureau of Land Management primarily in the Ukiah area.

ACTING CHAIRPERSON RASMUSSEN: Sounds like progress has been made, huh?

MR. TROUT: Excuse me?
ACTING CHAIRPERSON RASMUSSEN: Is there anyone to speak on this item? No, there isn't. Any questions from the Commissioners?

All right. Item 15 is approved. 16 is off. I'll move to Item 17.

MR. COOK: The City of Eureka does have two witnesses. We'd like to address the Commission this morning. We came down from Eureka understanding this would be a calendar item. We are prepared to make a presentation to you as it is an item of extreme concern to the City.

As trustee of the State Lands, we want to make the property available for a business. It has suffered the calamity of an entire destruction of its existing plant because of a fire and they intend to rebuild at this site.

ACTING CHAIRPERSON RASMUSSEN: What is your name, sir?

MR. COOK: John L. Cook, City Attorney for Eureka.

ACTING CHAIRPERSON RASMUSSEN: Thank you, Mr. Cook.

The item that you refer to on our calendar was which item? What number is that? 16?

EXECUTIVE OFFICER DEDRICK: 16.

ACTING CHAIRPERSON RASMUSSEN: That was our request to authorize the staff to enter into an exchange
agreement. I understand that no agreement has been reached. I think the Commission would be happy to hear your comments since you have come such a long way. If you wouldn't mind, I would like to wait until the end of the calendar, the rest of the calendar.

MR. COOK: Thank you.

ACTING CHAIRPERSON RASMUSSEN: Thank you.

EXECUTIVE OFFICER DEDRICK: Item 17 is approval and acceptance of easement deeds to relocate a 60-foot wide right of way to a State Lands parcel near Alviso in Santa Clara County.

ACTING CHAIRPERSON RASMUSSEN: Any questions from Commissioners? Item 17 is approved.

Item 18.

MR. TROUT: Item 18 is Commission approval of a refinancing agreement for some subleased lands that would allow the lending company to take over and operate the facility in case of a default and we recommend approval.

ACTING CHAIRPERSON RASMUSSEN: There's no one signed up to speak on this item either. Any questions from Commissioners?

Item 18 is approved.

Number 19.

MR. HIGHT: 19, Madam Chairman, is an authorization for the staff to sue an individual on the Sacramento River...
who has thus far refused to comply with our leasing requirements.

ACTING CHAIRPERSON RASMUSSEN: All right.
I have no signups on this item either. Any questions from Commissioners?

Item 19 is approved.

MR. HIGHT: 20, Madam Chairman, is the same problem at Lake Tahoe.

ACTING CHAIRPERSON RASMUSSEN: All right. I have no requests to speak. Any questions?

20 is approved.

EXECUTIVE OFFICER DEDRICK: Item 21 is approval of a 25-year General Lease - Right-of-Way permit for the Phillips Petroleum Company to locate a pipeline bundle for Molina Gas Plant Number 7 in Tajiguas. Is that an adequate description?

ACTING CHAIRPERSON RASMUSSEN: Sounds good to me. I have two requests to speak on this item from Jerome Lind from Phillips Petroleum and from Gary Kuse also from Phillips Petroleum. Do you want to --

MR. KUSE: Just in response.

ACTING CHAIRPERSON RASMUSSEN: You're here just to answer questions if necessary?
MR. KUSE: That's correct.

ACTING CHAIRPERSON RASMUSSEN: All right.

Are there any questions from the Commission?

Item 21 is approved.

Thank you for coming.

Item 22 is off.

Number 23.

EXECUTIVE OFFICER DEDRICK: Item 23 is an extension of the initial drilling obligation on geothermal lease in Sonoma County of GRI Exploration, Inc. GRI, the Commission has approved an assignment of a number of leases which were originally Aminoil to GRI. The leases are old and there are some negotiations still ongoing.

We normally would not come to you to give an extension because in this particular instance in the law it's only when we notify them that they've got a problem that their problem exists. In this instance we are in negotiations with GRI on what the content of the net profits accounting procedure will be. It's a very cooperative effort on the part of my staff, your staff, and the people at GRI and we wanted them to be sure that they were not going to get their lease pulled because they didn't drill on time while we're negotiating.

ACTING CHAIRPERSON RASMUSSEN: Okay. I have no requests to speak. Are there any questions?
Item is approved.

Item 24.

EXECUTIVE OFFICER DEDRICK: Item 24 is a three-month dredging permit for the Golden Gate Bridge District to dredge 90,000 cubic yards at the Larkspur Ferry Terminal in Marin County.

ACTING CHAIRPERSON RASMUSSEN: All right. I have no requests to speak on this item either. Are there any questions?

Item 24 is approved.

25.

EXECUTIVE OFFICER DEDRICK: 25 is an application of the Benicia Port District to increase the spoils volume dredged at the Port from 60,000 to 90,000 cubic yards a year and to extend the dredging area another 1400 feet.

ACTING CHAIRPERSON RASMUSSEN: All right. I have no requests on this item either.

Any questions?

25 is approved.

26.

EXECUTIVE OFFICER DEDRICK: Item 26 is a certification of an EIR which the Commission has done on Cobb Mountain which is a geothermal parcel in The Geysers area at one of the few, if not the only one, where the State also owns the surface as well as the mineral rights.
The EIR is completed and we will ask you today to certify that EIR and authorize us to prepare a competitive bid package and I would like you to require us to return to you in no more than two months with that bid package or you would like to know the reason why.

ACTING CHAIRPERSON RASMUSSEN: Done.

Any questions from the Commission? That item is approved.

27 is off calendar.

Number 28.

MR. HIGHT: 28, Madam Chairman, is the authorization to file a disclaimer in a parcel in Mono County which the Commission has no interest in.

ACTING CHAIRPERSON RASMUSSEN: Any questions or comments?

Item 28 is approved.

29.

MR. HIGHT: 29 is the authorization to hold a hearing on a proposed Retrocession of Jurisdiction over Mather Air Force Base and we will report back to you on the results of that hearing.

ACTING CHAIRPERSON RASMUSSEN: All right. Thank you very much. 29 is approved.

All right. Now, we want to return to Item C4.

EXECUTIVE OFFICER DEDRICK: Would you like to
heal Mr. Cook from Eureka before you do C4?

ACTING CHAIRPERSON RASMUSSEN: All right. That
would be -- is there a problem? Do we have a timing
problem? All right.

Excuse me, Mr. Cook. I think we may have to --
all right. If you wouldn't mind, Mr. Cook, Item C4 will
not take very long.

MR. COOK: Okay. Thank you.

ACTING CHAIRPERSON RASMUSSEN: Item C4, does
staff have a presentation?

MR. HIGHT: Madam Chairman, for the record --

ACTING CHAIRPERSON RASMUSSEN: It is now numbered
Number 30 on the regular calendar?

MR. HIGHT: It is still C4, but it is on the
regular calendar and you will now be sitting in a non-
voting capacity and Laura Schlichtmann will be in a voting
capacity.

ACTING CHAIRPERSON RASMUSSEN: All right.

Understand that and agreed. Okay.

Is there a staff presentation on this item?

EXECUTIVE OFFICER DEDRICK: Lance, would you?

MR. KILEY: Item C4 is a proposal to develop
a marina project along the Sacramento Riverfront just
north of Village Marine which I think most of you
Commissioners are familiar with. It's a fairly elaborate
project involving development of some restaurants, floating
restaurants, boat sales office, harbor master office, and
all the related facilities.

ACTING CHAIRPERSON RASMUSSEN: All right. I do
have one request to speak on this item, Kip Skidmore.

EXECUTIVE OFFICER DEDRICK: Before you call the
witness, let me add just a little bit to Lance's description.
When the applicant originally applied, the project went
much further out into the river than the one that is now
before you and it was also proposed at that time to have
houseboats and live-aboards as part of the project and
also to tie some of the berths in the third phase of the
project to upland condominium ownership. None of the
latter things that I've just discussed are of course
usually approved by this Commission. But I want you to
understand that the item as it now stands is for 175
berths, all of which will be handled on a first come,
first served basis. No live-aboards, nothing tied to the
upland and the project is within 200 feet of the shore
which though still very large is maybe two-thirds of what
the original proposal was.

ACTING CHAIRPERSON RASMUSSEN: All right.

Thank you, Mr. Skidmore.

COMMISSIONER ALLENBY: While Mr. Skidmore is
on his way up, I'd like to suggest that we consider
the following. That we approve the project as presented today with the understanding that the staff of the Commission will take a look at this total area of trying to deal with the kind of development that should be done in the river that's compatible with the river and compatible with the people that live around it. That we further have an understanding that until that study is completed, that we not have further development. We would be willing to work with the staff and probably the other jurisdictions involved because we're not in this by ourselves to finance the funds required to finance the study.

EXECUTIVE OFFICER DEDRICK: Thank you, Commissioner. We would very much like to do such a study and I'll undertake to get back to you at the next Commission meeting with a plan for that study and an estimate of cost and sources of funding, potential sources of funding.

ACTING CHAIRPERSON RASMUSSEN: All right. Let's hear from Mr. Skidmore and maybe we can discuss this.

MR. SKIDMORE: My name is Kip Skidmore. I'm a partner in the Riverbank Holding Company.

As you may or not be aware, this project has been in the planning stages for about three years now,
has gone through 35 different agencies for approval.
It has had the attention of a variety of different people including the newspapers as some of you have seen.

We have struggled to get this project to this point and it really wasn't until yesterday that we were aware that there was a problem. We assumed that it was on the Consent Calendar and it was a routinely approved lease. Yesterday morning we were informed that there was a problem with it and the problem stemmed from the fact that we need to look at the environmental impact of an additional boat marina on the Sacramento River. That has been addressed in some hundred-and-some-fifty pages of report that we did, environmental impact we did three years ago and it's been addressed by the State Rec Board, by the Corps of Engineers, by a variety of other sources. So it's kind of a surprise to us that the Commission has raised this issue.

We do, however, have some financial constraints that we feel make our case compelling at this particular point in time and that is financing for marinas isn't easy to come by. We have obtained financing. That financing expires on July 20th. It also has a proviso that we complete the project within one year and those of you familiar with the river realize that we can't work
on the flood plain after November 1st. We have to be off the flood plain. So it puts us under some tremendous time constraints. We don't object to a study at all on the river. We think it's been done. I think that's something your staff has to look at. But in any case, our particular project has approximately a million dollars invested in it at this time of which all is in jeopardy if we're unable to obtain the lease from this Commission as it is a condition of our financing that we obtain this.

I'll entertain any questions you might have on the project, but I wanted you to realize the corner we're kind of backed into at the moment particularly with financing.

ACTING CHAIRPERSON RASMUSSEN: All right.

Thank you.

Is there any response from the staff on this?

EXECUTIVE OFFICER DEDRICK: No. We'll be very happy to carry out that study and I think that the thrust of the study, as Commissioner Allenby has said, really should be the cumulative impacts of the developments, not just this one, but many other proposed developments along the river and it will certainly take the cooperation of the City and County of Sacramento and probably Yolo County and the Corps of Engineers as well and the
Department of Boating and Waterways, Fish and Game, and the other appropriate agencies.

MR. WILLIAMS: I would like to add, the Department of Boating and Waterways I think is represented here today which can address some of these issues the Commission may have in terms of the environmental impact that marina will have on this particular stretch of the river. A study to us again is fine; but any study like that, a comprehensive study like that, will probably take six months to a year to complete which would essentially kill the project.

COMMISSIONER ALLENBY: We're not suggesting that we kill the project, that we approve the project but serve notice before additional projects are really accepted that we have a better understanding of how everybody interacts.

ACTING CHAIRPERSON RASMUSSEN: I know Mr. Cory is very concerned with the environmental affects of development on the river and I think the idea that we're trying to get across here in the Commission is that we appreciate the time and effort that Mr. Skidmore has put into the study for his, the environmental study that he's done for his particular development and I think that what we need to do as a Commission is to look at the river as a whole and do a study that would include all
development and that we preclude any further development until this study is completed. I think that Mr. Allenby will do all he can to provide some funding on behalf of the State towards this study and then the staff will be getting back to us as far as how the study will proceed and how it will be funded and whether we can get some sort of funding from local government to move the study along.

Are there any questions of Mr. Skidmore or the staff?

COMMISSIONER SCHLICHTMANN: Just to clarify, Mr. Skidmore, you have no problem with the study, the particular study that's being proposed?

MR. SKIDMORE: No. We don't. It would impact our further development down the road, but I agree with the Commission that you probably should take a look before you approve those kind of leases, but our concern is more of July 20th. Thank you.

ACTING CHAIRPERSON RASMUSSEN: I'd entertain a motion.

COMMISSIONER ALLENBY: I'll move.

ACTING CHAIRPERSON RASMUSSEN: The project is approved with those conditions, that the staff look into the study and the funding of the study and that all future development will be halted until the study results
are available.

EXECUTIVE OFFICER DÉBRICK: Thank you, Madam Chairman.

ACTING CHAIRPERSON RASMUSSEN: Thank you, Mr. Skidmore.

All right. Now we would like to hear briefly from the City of Eureka.

Thank you for your patience, Mr. Cook.

MR. COOK: Thank you.

I'd like to introduce myself. I'm John Cook, the City Attorney for the City of Eureka, and to my right is Robert Stockwell who is the City Manager for the City of Eureka.

What I'd like to do is discuss some of the issues as we see them. We do have a disagreement with your staff as to their methodology and to their view of this item.

Mr. Stockwell will address the problem from what it means to the City of Eureka to have its entire industrial base subject to these amorphous and we think unsubstantiated claims. This is where our industrial development is scheduled to take place. This is where the Coastal Plan says they should be.

The City of Eureka is the trustee of the State lands in the issue here. We have a land grant dating back
to at least 1945. So we are the trustees coming before you. The City of Eureka has been very protective of its tidelands and has engaged where necessary in extensive and very costly litigation to protect those. I refer you particularly to the City of Eureka Waterfront litigation, normally known as the Lazio litigation. It went from 1967, was not finally settled until 1981 at a cost of in excess of $1 million to the City. In addition with respect to other tidelands, we have done extensive engineering and other analyses to determine exactly where those tidelands are so that we can assert them where proper, but where we feel those claims are not proper, then to make that determination.

We do have a number of maps that we wish to refer to. These are the maps that we use in administering this trust. I would hope that we'd be able to take them back with us so that we could continue to administer this trust in accordance with these historical maps. Is that permitted?

ACTING CHAIRPERSON RASMUSSEN: What maps are they you're talking about?

MR. COOK: I have a number of maps that I wish to refer to in making my presentation.

ACTING CHAIRPERSON RASMUSSEN: I see no problem with you using the maps. These are the City's maps, right?
MR. COOK: Yes, they are.

Okay. The area in question has long been held and has been developed for industrial and commercial purposes for many years. I'd like to hand out first, this is a small aerial map that shows the area in question, gives you some idea of the type of development that's there now. What this one has is an overlay of what has originally been known as a tideland survey. It says TLS Number 1, or 2, that kind of numbering system. It will give you an idea of the type of property we're dealing with and I do have a better map which I can also show to you.

If I could approach the Commissioners, what you have is a xerox copy of this aerial photograph showing the area in question. The area that we're discussing this morning is located right here by the railroad.

ACTING CHAIRPERSON RASMUSSEN: Mr. Stevenson, did you want to see this?

MR. COOK: This was a map that was given to me by Les Grimes for the purpose of administering the trust in about 1981. So this gives you an idea that the area has been filled and it is in an area that is far removed from the harbor and has been converted to other types of private uses.

ACTING CHAIRPERSON RASMUSSEN: Thank you.
Mr. Cook, do you have an estimate of how much time you'd like to use this morning?

MR. COOK: I would think about 20 minutes.

ACTING CHAIRPERSON RASMUSSEN: Okay. Thank you. We have some other commitments.

COMMISSIONER ALLENBY: I'll try to be right back.

MR. COOK: This property in question is at an elevation of 12 plus which indicates that it is well above tidal influences. The City acquired this property some time ago. We don't know exactly when. We do know that we have a proposed development of a dog pound on it in 1946, that there was already an existing dog pound at that time. The grant in question affecting this area was given to the City in 1945. It wasn't effective until September.

The State granted to the City of Eureka unconfirmed title. It says all interests that the State may have. The State did not first make the determination by studies or by judicial action or otherwise as to where these tidelands were. It was left up to the City of Eureka then to make these determinations in its administration. The grant itself indicates the only use for the property is harbor, docks and facilities to promote those uses. As you can see, that is so removed from the harbor that it is not useful for such a purpose.
It has never been used for such a purpose and has been;
as far as we know, used for a dog pound which the Attorney
General has said is not a proper trust use if there was
such a trust there.

We, in trying to administer our trust, we
obtained some legislation from the State of California,
Chapter 1085 in 1970. This section specifically says
that it is found and declared that lands within Humboldt
Bay which have heretofore been and are improved, which
have been filled and reclaimed, are no longer submerge;
and below the high tide line are no longer useful for
commerce, fisheries, and navigation. So the Legislature
determined that filled lands are no longer useful for
any trust purpose.

In the next subsection they ask that the
Commission determine such lands and then execute appropriate
documents clearing those lands of the cloud that may be
upon them because of alleged trust claims. The City of
Eureka is permitted to make an application to the
Commission for such a determination. The Commission may
do on its own and you may do it upon a petition of any
affected property owner. The section goes on to indicate
that it's up to the City of Eureka to settle these
disputes and that the City shall determine the appropriate
compensation with the concurrence of the Commission.
Thus we see the statutes as the trustee and pursuant to the statutes we have the primary obligation to do this.

We ask for your concurrence in our settlement proposal.

We did propose to your staff in April of this year, we did our analysis and suggested that the trust -- there's a claim to an easement by virtue of the fact that it was originally pursuant to a tidelands patent. We feel that that was erroneous and inconsistent with other settlements and ask that it be relieved with a payment of compensation of $1,000. This statute also indicates where property has been filled, then you shall give credit to the property owner for the value of the fill. We have here an elevation of plus 12. If this was tidelands, elevation might be around 4 which would indicate around 8 feet of fill. It costs 25 cents a cubic foot. So you can see that to be two dollars a foot just for the value of the fill. We think the property is probably worth one dollar to two dollars. So the fill is what added its value, but we do not think it was fill in this case. If you look at that first map that I showed you, we have surrounding the area tideland Number 8 which is directly to the north. That was done in 1859 and the property was subsequently patented by the United States Government to the State of California as swamp and overflow and we think that's its
proper characterization of the area in question here. Number 8, surveyed the area between the margin of the bay and U.S. Meander line and the area between was described as a salt marsh.

Tidelands Survey Number 1 which is also adjacent came to the State of California as swamp and overflow patent. If you'll look directly south to the survey in question, we have a swamp and overflow that goes directly north and south.

Well, let me show you this overlay here. What we'll be talking about is we're in Number 1. I just mentioned 1 and 2. Right here we have swamp and overflow. We think that it not likely that natural conditions would have designated between swamp and overflow land and tidelands at an angle such as this that is so straight. We think rather the swamp and overflow follows all the way up this way. They did this as swamp and overflow below. This appears to be the same land.

Also we see bayward of this that in 1872 someone determined that this was tidelands and the boundaries of tidelands is between low water and high water. Therefore, we think this was high water, and, therefore, landward of that was above high water and not subject to trust claims.

MR. RUSCONI: Madam Chairman, perhaps I can
shorten the presentation. My name is Joe Rusconi, Deputy Attorney General.

The staff, I believe, will concede that there is a dispute here as to title. I think the position of the staff and my office is that that is irrelevant. That the trustee cannot under trust law take a position that is adverse to the trust by claiming that an asset that, if there's any possibility that it is a trust asset, he cannot take a position that it is not one. I think that is really the crux of the problem and perhaps the presentation could be shortened if they were to address that issue and there are other issues of importance to the downtown development of the City.

ACTING CHAIRPERSON RASMUSSEN: Thank you.

MR. COOK: Well, this is not a trust asset in our view and, therefore, it becomes very important to get into the basic issues. Our problem has been that the staff of the State Commission has not addressed where the limits of these tidelands are. We feel as a property owner, as a trustee, it's incumbent upon us to make that determination. We did settle litigation that was extremely costly in the last decade. We had hoped in the future to be able to make those determinations upon a reasonable basis based upon historical maps and engineering. So that we are not asserting claims we cannot prove,
end up in costly litigation both to the public and to the private parties and also in delaying development of their property. So we have embarked upon a program of trying to figure out where our tidelands are in this area. The State has not -- we have come up with a line. We have not disagreed with that line. But all they tell us is that because we are a trustee, that that determination is not relevant.

MR. STEVENSON: Pardon me for a moment. Blake Stevenson, I'm Staff counsel with the Commission.

If I may interject, I have done substantial research on the question of trust obligations. What the City is speaking of here is acting in two different disparate and conflicting ways. On the one hand they held a title, excuse me, on the one hand this property was sold pursuant to a tidelands patent under an established 1913 case, California Fish. That means there's a public trust easement on the property. The City then acquired a private title in it and today seeks to assert that private title over its trust obligation. By law when a trustee acquires an interest privately in the asset which is subject to the trust, those titles merge. That protects the beneficiary. Otherwise the trustee would have an adverse relationship to the beneficiary and would try to assert private...
interests just as we're seeing here today?

So I think the central issue is a legal one rather than a factual one. As Mr. Cook knows, it is open to factual dispute as to whether this property was tidal or not. It's designated on the topographic charts as being salt marsh. However, we've made every attempt to try to settle this case and we feel that the overriding factor is that where a person is a trustee to certain property and has an obligation, they can't act as a private party would in trying to dispute the ownership which they are given the duty to protect. We have made an offer to them last night. I came in early this morning to try to word an agreement in anticipation of possible settlement of it. The acceptance of our offer was not forthcoming. Therefore, that was to no avail.

We have made them an offer which is perfectly consistent with the prior settlement we did there in 1980 where we exchanged some land that was similarly situated in this area both legally and factually and transferred the trust to another parcel. That was the offer we put on the table and it was consistent and I've never heard a refusal or an acceptance up till now.

MR. COOK: With respect to that, I did discuss it with Lou Allen last night. He called me and at that
time I indicated that the City would not be in a position
to accept that offer and I assumed that he would have
conferred that with the other State Lands officials.
We would like to complete our presentation.

ACTING CHAIRPERSON RASMUSSEN: Excuse me,
Mr. Cook. I think that the discussion is deteriorating
into something rather inappropriate for the Commission
to be looking at at this time.

I think that your presentation of some
information that might be helpful to settling the issues
at hand would be perfectly acceptable, but I haven't
seen any of that at this time. I think that the
only action that we should take as a Commission is to
direct staff to proceed with what they're doing with
negotiations and do what they think is appropriate.

I am concerned with the City's attitude about these
lands. I was formerly the grant lands representative
to that area. The grant language you refer to earlier
I believe reads all rights, title and interests and
there is an implied and outwardly stated trustee
role that the City is to assume. This includes all
responsibilities as a trustee of the people of California
and I think that the City would do very well to take this
responsibility to heart and negotiate further with the
staff.
MR. COOK: We have. You've indicated you haven't heard sufficient testimony. I was just getting to the heart of our presentation.

ACTING CHAIRPERSON RASMUSSEN: Do you have some new information that will be helpful? I think it would be more appropriate that it be presented to the staff at this point. I don't want to get into a legal argument --

MR. COOK: We're so far apart with the staff that it's not possible to come to a settlement. We're at $1,000. They want us to give up property that was worth $119,000 in 1979. It's probably worth in excess of $200,000 at this time. We think that this disparity is a bit much.

ACTING CHAIRPERSON RASMUSSEN: I think what I'm telling you is that your chances are far better with the staff to continue negotiations rather than to talk to us at this point.

MR. GRIMES: Madam Chairman, may I say something?

ACTING CHAIRPERSON RASMUSSEN: Yes.

MR. GRIMES: This is the first time that we've had any indication that a trade would be acceptable. It's probably common knowledge that the two lots down by the waterfront are more valuable than the west of Broadway property and we can certainly carve out an
appropriate dollar amount of those parcels and transfer straight across.

MR. COOK: Can I finish the presentation?

ACTING CHAIRPERSON RASMUSSEN: Well, how much longer?

MR. COOK: Well, a couple of major points --

ACTING CHAIRPERSON RASMUSSEN: I'll give you five minutes. I know Laura has an appointment.

MR. COOK: Thank you very much.

We are told in administering this trust that we were to use the 1872 maps. This map was supposed to be the most accurate designation of where these lines were. This is a copy of this map. The area in question is located right near one of, looks like a little fingerling slough is an indication. So, all we know at this time that the edge of vegetation is approximately 600 feet bayward of the property in question and we think that's the best evidence of where the mean high tide was. This issue was discussed amongst officials, government officials in the late 19th Century and the land was then resurveyed as swamp and overflow land and that is the reason we have a federal patent to the State as swamp and overflow. Although this occurred in 1903, your staff still takes the position, without reference to these documents and maps, that it is not swamp and overflow but...
rather it is tidelands.

MR. STEVENSON: Once again I think we're getting to the actual legal merits of the case.

MR. COOK: Well, can I finish my presentation?

MR. STEVENSON: You may.

MR. COOK: I only have five minutes. Thank you.

Okay. You indicated with respect to the City of Eureka what it should do in terms of determining its boundaries. We did hire Bill Wright who is a respected engineer in this area and this map shows the mean low water line and it shows—

ACTING CHAIRPERSON RASMUSSEN: Your case is falling apart.

(Laughter.)

MR. COOK: That's not mine.

And it does show plotted on here the 1870 shoreline. As you can see, it is some 600 feet away from the subject parcel. This is the most accurate map that is available. It was done through computer digitizing, redoing the original maps since we were afraid they were no longer accurate. They'd become folded, they become extended a little bit, so they were readjusted in the most accurate way possible. So I think we have done everything possible as a trustee to make this determination.
We believe that your staff in prior settlements has totally agreed with this position. Unfortunately -- I would have brought some kind of visual display thing but Lou told me there was nice magnetic clips and things.

In about 1980, until about 1980, the State Lands staff for the City of Eureka used these maps here to determine where the boundaries were and effected settlements. Given the instruction to use this, if I can show the two of you here, to line those up perfectly, okay, the subject property is right in there. So we can see this edge of vegetation way bayward.

Based on this map, your staff then did a number of settlements of property and relieved the claim. We have mapped these upon this overlay. This is why we think they agree with us. Okay.

Over here we have the Lundblade settlement. That's Number 1. That was this property here was cleared, $4,000. Next you have the Rainbow Mini-Storage. That was cleared for about $8500. The reason there's a slough, an old slough that runs through here. So there was sovereign claims. The slough continues through here, the Callison clearance, and that was at $14,100. But they had the slough. Unlike this parcel, you saw no slough here other than a little fingerling. We have here Number 4, the identical kind of property.
ACTING CHAIRPERSON RASMUSSEN: You have about a minute left, Mr. Cook.

MR. COOK: That's good.

Okay. See, that's identical property to the one the City has got right here. That was relieved of the trust, North Coast Mercantile, for $1,000 per lot. This one here for Merish, $1,000 per lot. The same thing. These were negotiated by Les Grimes and approved by your Commission. We think the property that the City of Eureka has here is identical. We think that the claim was worth a thousand dollars here, it's worth a thousand dollars here. It's not worth the value of the property.

ACTING CHAIRPERSON RASMUSSEN: Thank you, Mr. Cook.

MR. RUSCONI: Madam Chairman, for the record each of those settlements was with a private party and was not with a person in a trust capacity.

ACTING CHAIRPERSON RASMUSSEN: Acting as a trustee. All right. I think that will have to conclude your remarks.

MR. COOK: Yes, I have. Now, if the City Manager, Mr. Stockwell, could address you briefly.

ACTING CHAIRPERSON RASMUSSEN: Did the staff want to make any further brief comments at all?
MR. COOK: Were you going to permit the City Manager to testify briefly?

ACTING CHAIRPERSON RASMUSSEN: How does the staff counsel feel? Is this appropriate? I don't want to do anything --

MR. STEVENSON: We're about to get into the economic situation in Eureka and the necessity of having this particular company operate at this site. I think the case really boils down to a legal issue. The City cannot have it both ways, acting as a trustee and as a private property owner with land that was sold in a tidelands survey. So it really isn't relevant in terms of the other issues, but it really is a Commission decision.

ACTING CHAIRPERSON RASMUSSEN: Okay. For your information, we had an Executive Closed Session this morning in which we gave the staff the authority to sue the City if it felt that it was necessary and I'd like to state for the record that I have seen nothing so far to change my opinion on that authorization.

MR. STOCKWELL: Could I state for the record that the esteemed State Lands Commission has refused to hear comments from the City Manager of Eureka relative to the project there. I think that's certainly significant to the issue.
ACTING CHAIRPERSON RASMUSSEN: What was your name, sir?

MR. STOCKWELL: Robert Stockwell, City Manager of Eureka.

EXECUTIVE OFFICER DEDRICK: Sir, what is your name for the record, please?

MR. STOCKWELL: Robert Stockwell still. I appreciate counsel giving my testimony for me.

MR. STEVENSON: I did not give your testimony, sir.

MR. STOCKWELL: You allowed that to go into the record.

ACTING CHAIRPERSON RASMUSSEN: Mr. Stockwell, if you would like to go ahead and proceed. How long do you think your presentation will take?

MR. STOCKWELL: Well, I would hate to interfere with whatever your schedule is. It took us six hours to get here at no small expense to the City of Eureka which I'm sure is insignificant to you also.

ACTING CHAIRPERSON RASMUSSEN: I'm trying to be helpful to you, sir, by suggesting that your time and money would be better spent working with the staff on this item. We're in no position to make any sort of a decision today and I think it would behoove you on behalf of the citizens of Eureka and the State of
California to work with the staff on this. I'd be
happy to take some comments from you and hear what you
have to say, but I would appreciate it if you would keep
it brief.

MR. STOCKWELL: Last April we notified your
staff of the situation and proceeded to obtain a grant,
a CDBG grant, to assist the developers of this property
whose business burned, who 40 employees are now out of
work. We're attempting to get this business relocated
and operating. In June when we had received approval
of a CDBG grant, Redevelopment Agency had parceled
a loan and everything was proceeding. Then on the eleventh
hour before the Council meeting at which the final
decisions were to be made, we were notified that there
was some sort of a problem and that's why we're here.
The staff indicates to you that they've made exhaustive
negotiations, that they've attempted to settle the issue.
Exhaustive negotiations occurred yesterday. There has
not been an attempt to meet the City on any middle ground
on this issue. Otherwise we wouldn't be here. I think it
ought to be significant to you that we come all the way
to Sacramento at the expense of the City to try to
communicate with the Commission because we've been unable
to communicate with the staff. We were warned that it would
do no good to come and dispute the position of the staff
and apparently it won't. The Commission will not exercise any influence over the staff. But yet I think you need to understand that we are being treated differently. We understand our obligations as a trustee. What we're telling you and what you're refusing to hear is that this is not a trust situation. That this is property owned by the City of Eureka. There are significant properties surrounding it that is owned by the City of Eureka that this whole situation now throws a cloud on. It is the only property in the City of Eureka available for industrial development. If we are forced to exchange on a par value every time that we have a project that needs to be developed on the only property remaining for industrial development, there isn't sufficient land to trade. We have in that area land probably worth $5 million. There isn't $5 million worth of other land that could be used for a legitimate State purpose that you could exchange it for. So what do we do then? It's an issue that the Commission is going to have to address. It's an issue that is going to have to be one of overriding the staff's opinion because the City of Eureka is blocked into a corner. On this particular project if we don't leave here today with a decision, this business will go bankrupt and leave the City of Eureka. And the employment will be gone. Forty jobs is meaningless in Sacramento, in
Los Angeles, in many areas of the state. In Eureka it's critical and we need a solution. The solution we need is to be treated exactly like Schmidbauer Lumber would be treated, our adjacent property owner there, and that's to be able to purchase the easement and go forward and let the solution to this overriding problem that the staff apparently has rest for another day. If you choose to sue the City of Eureka, that's certainly your privilege. Perhaps the City of Eureka ought to sue the State Lands Commission.

ACTING CHAIRPERSON RASMUSSEN: It's our responsibility. It may be our responsibility.

MR. STOCKWELL: Well, I appreciate the threat and we certainly will respond to that. I also thought it was illegal to disclose actions taken in a closed session. Maybe you treat the Brown Act differently here. But the point being, the Commission has the ability and we came here to ask for it.

Now, my testimony is entirely different than I intended because I assumed that what I was told wasn't going to be true. I'm sorry that it was. We will pack our maps and we will go back and our business will disappear and the State Lands Commission will have won.

COMMISSIONER SCHLICHTMANN: I don't think that that's the issue. I'd like to hear from staff of the
A.G.'s office on this.

MR. RUSCONI: In response, the only comments I have are that, one, when we were initially told of this in April, we were very clear that there were significant problems with the mechanism that they had chosen to use in trying to clear the title to this land. Two, there would be other options for the City. They choose to give this land away to the developer rather than a lease, which would be the proper way of using trust assets or, as we have done before, as Blake Stevenson said, a swap with another piece of land and then perhaps leading to another day—a discussion of the greater impacts on the City of the vast amounts of land that may be subject to the trust and in City ownership. This would allow the project to go forward now, not cost the jobs and would then allow the staff and the City to sit down and try and work out a greater solution.

COMMISSIONER SCHLICHTMANN: Your advice to the Commission on the proposal put forth by Eureka is that it is not acceptable and would not be consistent with the State Lands responsibilities to the State's—

MR. RUSCONI: That's true.

MR. COOK: My concluding remark to you is that in discussion with Les Grimes, he informed me that if this was Eureka Lumber Company and it came before you, $1,000
would be entirely reasonable and would be acceptable.
What your staff has said, because it's the City of Eureka,
then it has to be the full fee value. That is what we
disagree with. We think your Commission needs to take
a position on that issue. The value of the claim is the
value of the claim and it doesn't vary with who owns
the property. It was agreed that it was a thousand dollars
for a private party.

COMMISSIONER SCHLICHTMANN: I want to make sure
I understand that, because legalities are not my strong
point. Legally your advice is that for the Commission
to accept that position would be to abrogate its
responsibilities to the State?

MR. RUSCONI: It would be an approval of an
abrogation by the City of its responsibilities under the
grant.

ACTING CHAIRPERSON RASMUSSEN: Under the
granting statutes the cities are given the same
responsibilities as the State itself.

MR. COOK: Well, Item 28 you disclaimed an
interest, apparently no problem. I don't know why you
can't disclaim it here.

MR. HIGHT: We had no interest in Item 28.

MR. COOK: Same here.

MR. HIGHT: Wrong.
MR. COOK: There's no testimony that there's any interest.

ACTING CHAIRPERSON RASMUSSEN: Are there any further comments or response from staff?

MR. GRIMES: I'd just like to add that we have negotiated since about April 28th. I've had three extended telephone calls with Mayor Moore, one of which John was in on that lasted most of the afternoon.

Blake has had a great deal of interplay with them.

ACTING CHAIRPERSON RASMUSSEN: All right. Thank you. Your comments will be a part of the record and I appreciate your coming up.

MR. NIGHT: Madam Chairman, for the record, I would like to correct the City of Eureka in regard to the Brown Act. Matters of litigation are appropriate to be addressed after closed session.

ACTING CHAIRPERSON RASMUSSEN: Thank you very much. The meeting is adjourned.

(Thereupon the meeting of the State Lands Commission was adjourned at 11:05 a.m.) --o0o--
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 [date] day of July, 1984.

CATHLEEN SLOCUM
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