STATE LANDS COMMISSION

TRANSCRIPTS

JULY 15, 1991

AUGUST 12, 1991

AUGUST 26, 1991
MEETING
STATE LANDS COMMISSION
STATE OF CALIFORNIA

ENERGY COMMISSION BUILDING
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

MONDAY, JULY 15, 1991
9:05 A.M.

Nadine J. Parks
Shorthand Reporter
MEMBERS PRESENT

Leo T. McCarthy, Lieutenant Governor, Chairman
Gray Davis, State Controller, Commissioner
Jim Tucker for Gray Davis, Controller
LaFenus Stancell for Thomas W. Hayes, Director of Finance, Commissioner

Staff Present
Charles Warren, Executive Officer
Robert Hight, General Counsel
Jan Stevens, Deputy Attorney General
Curtis Fossum, Senior Staff Counsel
Rich Ludlow, Senior Staff Counsel
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CHAIRMAN MC CARthy: This is the meeting of the State Lands Commission, and you're facing the three intrepid members of this Commission. And we're going to very wisely go through what remains of this file now.

Any questions about the minutes of the previous Commission meeting? If none, those minutes are approved.

Mr. Warren, why don't you start. Let's first take up what remains of the consent calendar. Any questions on the remaining items on the consent calendar?

If not, we will go to Item 27.

EXECUTIVE OFFICER WARREN: Mr. Chairman, we received a request this morning from the Environmental Defense of Santa Barbara to pull -- to continue a number of items, including Items 30 and 32. Item 30 deals with the permission of the State Lands Commission to sell off royalty oil, and Item 32 would defer the drilling obligation of Arco. We don't understand how the interests of either of those items would be advanced by continuing them. And we just assume -- we see no reason to do so. But I thought I would communicate to you that we received that request.

CHAIRMAN MC CARthy: You don't have any letters explaining the reasons for a request for postponement?
These are phone calls, these contacts?

EXECUTIVE OFFICER WARREN: The only explanation given was that they have had insufficient time to conduct an environmental review of the documents relating to those items. There's no substantive objective stated.

CHAIRMAN MC CARTHY: Is there any reason to believe that these matters have not been publicly noticed or discussed?

EXECUTIVE OFFICER WARREN: No. They do say -- merely go to the authorities and the best interest of the State and, frankly, of the organization from which we received the request.

Anyway, turning to Item 27 --

CHAIRMAN MC CARTHY: Any questions by Commissioners? All right. Let's proceed on the calendar.

EXECUTIVE OFFICER WARREN: Item 27 is a request of the Commission to approve the amendment of a master lease for the additions of two parcels of sovereign lands totaling 8.23 acres on the San Joaquin and the Sacramento Rivers for the installation of natural gas pipelines to enable the completion of the system bringing natural gas down from Canada into California. We ask approval of the amendment of the lease.

CHAIRMAN MC CARTHY: Questions by the
Commissioners? Anybody in the audience on this?

All right. Approved. 29.

EXECUTIVE OFFICER WARREN: Item 29, the staff recommends the Commission accept the dissolution of an oil and gas lease by Shell Western. The dissolution terms have been complied with, and we recommend acceptance.

CHAIRMAN MC CARTHY: Any questions by the Commissioners? The recommendation is accepted.

30.

EXECUTIVE OFFICER WARREN: Staff recommends that you approve the proposed sale of royalty crude oil, approximately 3100 barrels per day from production from leases off Orange and Santa Barbara Counties.

CHAIRMAN MC CARTHY: Questions by members of the Commission? In the audience? 30 is approved.

EXECUTIVE OFFICER WARREN: Item 31, Mr. Chairman, we request the approval of the assignment by Texaco of 50 percent interest in oil and gas lease in the Belmont Offshore Field. The assignor is Texaco, Incorporated, and the assignee is Texaco Exploration and Production. All terms and conditions concerning this assignment have been met, and the staff recommends approval.

CHAIRMAN MC CARTHY: Questions by members of the Commission? All right. Approved. 32.

EXECUTIVE OFFICER WARREN: Item 32 is Arco Oil
and Gas Company requests approval of its deferment of the drilling operations on certain oil and gas leases off Santa Barbara. These are the areas where Arco production has been postponed, and this request -- deferral of their obligation to begin production. And staff recommends approval.

CHAIRMAN MC CARTHY: Questions by members of the Commission? Approved as recommended. 35.

EXECUTIVE OFFICER WARREN: Item 35, this is an assignment of an industrial lease in the Martinez -- from Martinez Terminal to Wickland Oil. The purpose of the lease is for a marine petroleum wharf, together with certain appurtenances. All terms and conditions pending assignment of such leases have been met, and staff recommends approval.

CHAIRMAN MC CARTHY: Questions by members of the Commission? That's approved. 37.

EXECUTIVE OFFICER WARREN: This item presents a lease between the Port of San Francisco and the San Francisco Redevelopment Agency. Under the Statutes of 1987, the Commission's supposed to review the terms of the lease to ensure that prudent management and leasing practices have been met. The staff has done so, and recommends the lease be approved.

CHAIRMAN MC CARTHY: Questions by members of the
Commission? 37 is approved. 38?

EXECUTIVE OFFICER WARREN: Item 38 involves a request to amend an assignment of a lease of certain tidelands located in Santa Monica. Staff has reviewed the proposal and recommends approval.

CHAIRMAN MC CARTHY: Questions by members of the Commission? All right. That's approved.

39?

EXECUTIVE OFFICER WARREN: Item 39 involves a boundary line agreement and permit for improvements at Santa Monica State Beach, which the staff has reviewed and recommends approval.

CHAIRMAN MC CARTHY: Questions by members of the Commission? That's approved.

EXECUTIVE OFFICER WARREN: Item 40 is a boundary line agreement between the Department of Parks, the Commission, the Attorney General, City of Santa Monica, and the Department of General Services establishing a line of ownership and control on filled and unfilled tide and submerged lands in the City of Santa Monica, and confirms the existing relationship. And staff recommends approval.

CHAIRMAN MC CARTHY: Questions by members of the Commission? That's approved as recommended.

EXECUTIVE OFFICER WARREN: Item 41, Mr. Chairman,
we have a number of folks who have filed a request to appear.

I would like to have Mr. Hight, our General Counsel, present this item.

MR. HIGHT: Item 41, Mr. Chairman, is the approval of a title settlement involving property in the City of Huntington Beach.

Staff proposes that the Commission accept $60,000 in the Kapiloff Land Bank as the State's interest in this parcel.

We have several people who wish to speak on this item.

CHAIRMAN MC CARTHY: Why don't those who are proponents give us an indication of in what order they wish to speak; and if there are opponents, the same, please.

Would the proponents step forward who wish to testify.

EXECUTIVE OFFICER WARREN: We have two speakers.

CHAIRMAN MC CARTHY: James Dorsey and Patricia Snyder?

MS. SNYDER: Yes. Patricia Snyder on behalf of Destiny II.

CHAIRMAN MC CARTHY: James Dorsey?

MR. DORSEY: James Dorsey on behalf of Destiny II.
CHAIRMAN MC CARTHY: Why don't you have a seat there, please.

MS. SNYDER: Yes. We would like to speak only if the opponents have anything to say, and if we feel it's necessary to respond to them. We are in full agreement with the State on the settlement we have negotiated in good faith over a long period of time.

CHAIRMAN MC CARTHY: All right.

MR. DORSEY: Mr. Chairman, I would echo her comments. I'm James Dorsey on behalf of Destiny II also.

CHAIRMAN MC CARTHY: Thank you. Barbara Devlin, Jonathan Lehrer-Grawe?

MR. LEHRER-GRAWER: Good morning, Mr. Chairman and members of the Commission. My name is Jon Lehrer-Grawe. I'm an attorney and represent property owners in the Huntington Harbor area. And I believe that the Commission members have received my written communications itemizing the reasons why I believe that this is a bad deal for the State, a bad deal for the residents of the community, and a rushed and hasty proposal to the State.

I believe it's premature under current and ongoing litigation that we have currently. And I'll be glad to go into more details. I would like to focus the Commission's attention on a very important fact, and that is that this developer has had notice that this property
had a public trust easement from the early days of the
development. The city ordinances, both the specific plan
and the coastal element required this developer to
obtain from the State Lands Commission a letter of
determination specifying whether this property was subject
to a public trust easement.

This developer failed, consciously failed to
do that, relying on an 1985 letter that related to an
earlier conditional use permit.

The city ordinances required him to obtain a
letter on the new conditional use permit, which he sought

The residents of the area, because that earlier
letter and this fact, were kept from the public hearing,
did not know that this property was subject to the public
trust until after filing the lawsuit on April 9th.

As soon as that issue was discovered, I sent a
letter to the city and to the attorney for the developer
on May 11th, outlining that there -- it is in public trust.

We were told that orally by Leslie Grimes.

I then followed up when we received a letter
from Mr. Grimes on May 31st, and sent that to the
developer. And the developer had only received a grading
permit on May 10th. He continued to develop despite
knowledge that this was public trust property. And this is
only one example of the irresponsible attitude of this developer in connection with the public interest and the interest of the community.

This developer also submitted false, totally false geological reports on the property that sits astride the Newport/Inglewood fault. Reports that the consulting geologist mis-cited the age of the supposedly underlying fossil bed as 12,450 years, which would make it inactive, when that consulting geologist himself had obtained the age dating from the University of California, stating that it was only 1245 years.

This developer has also lied to the Coastal Commission in specifically misrepresenting to Commissioner Glickfeld under direct questioning on the distance that the development was going to be from the existing earthquake fault. The agent for the developer told Commissioner Glickfeld that it would be 71 feet from either side of the earthquake fault. In reality, it was planned for only twelve and a half feet, which violates the Alquist-Priolo Act. And in reality, the project turns out to be built encroaching on the Newport/Inglewood Fault.

This developer has now also committed perjury to the Department of Real Estate by answering in the questionnaire for the public subdivision report that this property was not even in a special study zone under the
Alquist-Priolo Act.

And when this developer had itself produced a geological report, because it is in a special study zone, when the city's own documents showed this to be directly over an active earthquake fault, and when the major geological report for the whole region concluded that the Newport/Inglewood Fault in this area is active and has seen significant vertical displacement in the recent past.

So, you are dealing with an unscrupulous and deceitful developer to say the least, who is now attempting to have this Commission bail it out for its own wrongdoing. And I would like to now turn the microphone over to Miss Barbara Devlin, who is a resident of the community, and who has some comments and some input from the residents.

CHAIRMAN MC CARTHY: Do you understand the grounds on which this issue is before the State Lands Commission?

MR. LEHRER-GRAWER: Yes, I do. But I think that the Commission should be aware of the background involved. I also address specifically the issues of whether this is in the public interest.

I question, first of all, whether the Commission has the legal authority. I've not been cited to legal
authority that allows the Commission to sell the property.

I've been given references by the Attorney
General's Office and by staff of the Commission to two
sections in the Public Resources Code, which allow for
exchanges of property and the Kapiloff Land Bank Act.

I did not see any section that allows for the
sale of the property.

If there is an implied right to sell the
property, then it must be based on a sale for full value.
I have not seen any evidence, except for the one-line
statement in the staff report, which was made available
to us only this morning, that there is a staff appraisal
of this property. I have not seen that appraisal. I don't
know whether that appraisal is accurate. But certainly
the sale price of this property indicates that $60,000
is far below the value of this property and the value of
the State easement on this property.

CHAIRMAN MC CARthy: Okay. Is it your purpose
to stop the development, period, or to gain better public
access? What is it you're aiming at so we can understand?

MR. LEHRER-GRAWER: I'd like to let Miss Devlin --

CHAIRMAN MC CARthy: Before we get to Ms. Devlin.

We'll give her ample time.

MR. LEHRER-GRAWER: Sure. I believe that the
purpose is to maintain this property for a marine-related
use, which involves maintaining the view, which was an
important consideration in the city's own ordinances.

This whole community was built sort of in a
semicircle around a bay, Weatherly Bay, with this property
at the southern end of that bay next to Warner Avenue.

This property now, with the development that is
on it, presents a walled-off area, which the Coastal
Commission staff concluded that it walls off one of the
last remaining views and access to the bay area.

Now, I understand that they're leaving an
easement. But that doesn't deal with the issue of the
destruction of the view amenity, both for the public and
for the residents of the community. Also, with this
development there, it is highly unlikely that anyone would
know that there was an easement or access to that bay.

CHAIRMAN MC CARTHY: Okay. I will hear from
Ms. Devlin. Do you have a question?

Commissioner Tucker.

COMMISSIONER TUCKER: Is it your position, then,
that if the Commission staff was recommending that
$200,000 appraisal of the property or $690,000, or a
million and a half, would be a settlement of the issue?

MR. LEHRER-GRAWER: No. I think there are a
variety of problems. One problem is that I think the
value that's being proposed is far too low. Another issue
is that this settlement undercuts an ongoing litigation, which may be of benefit to the State. Because if that litigation is successful, if the residents are successful in invalidating the permits, then the State's easement on that property is much, much more valuable. And also, it could result in a restoring of that easement.

COMMISSIONER TUCKER: But what would they do with it? If you won in court --

MR. LEHRER-GRAWER: If we won in court, either the court would order the demolition of the property -- which may or may not be the end result -- or we may -- we would -- if the court doesn't feel that that is appropriate, we would seek the full damages for the development of this property in violation of local and State laws.

COMMISSIONER TUCKER: I don't understand the connection between the pending lawsuit and this. And incidentally, this isn't a -- I wouldn't characterize this as a sale. As I understand, it's a settlement of a title dispute, which is very common. We go through these all the time where there's a dispute between the State and somebody over where a boundary line should be drawn.

So, this is not at all unusual. This is a pretty normal kind of procedure. But whether this dispute is settled or not, I don't understand how it impacts on the
case that's, I guess, now before the court of appeal.

    MR. LEHRER-GRAWER: Well, one of the claims
in that case is that the developer failed to obtain the
necessary determination from the State Lands Commission
if, in fact, the issue of whether this property of
State Lands is settled. And that issue is, in effect,
mooted out.

    COMMISSIONER TUCKER: I mean that's sort of an
odd position, it seems to me, for you to take, to go to
court and assert that he's failed or she's failed to
settle their dispute with the State. And then you turn
around in some other forum and try to prevent them from
doing the very thing that you're arguing that they're
failing to do in your appeal.

    MR. LEHRER-GRAWER: It's not a claim that they
failed to settle. The ordinance required them to obtain
from the State Lands Commission its position.

    COMMISSIONER TUCKER: They're in the process of
doing that.

    MR. LEHRER-GRAWER: Well, the position by the
State Lands Commission was very clearly stated by
Mr. Grimes in the May 31st letter. There was no
ambiguity to it. And that is that the State has the public
trust easement. As late as June 24th, his letter to
Miss Snyder, who was just up here, was that the State -- the
State recognized that the settlement that it made and would abide by it, and consider that the State had a public trust easement. I don't know what happened between June 24th and July 5th when the staff did a 180 degree turnaround.

I don't know what happened between July 1st, when we were told that there wasn't going to be a settlement, until July 5th. The only thing that I can fathom is that the title company increased the offer from $10,000 to $60,000. And from a practical standpoint, that is not an amount of money that should lead this Commission to jeopardize the interest of the State and the public in this case.

COMMISSIONER TUCKER: Okay. I still haven't seen how this settlement of a boundary dispute jeopardizes the other claims.

MR. LEHRER-GRAWER: Well, it moots out the claim that they did not obtain a determination from the State Lands Commission.

COMMISSIONER TUCKER: But they're trying to do that.

MR. LEHRER-GRAWER: No, no. That determination was required before they obtained the conditional use permit.

COMMISSIONER TUCKER: You're saying once they
failed to attempt to get it at that point, they are foreclosed from ever attempting in the future to get that sign-off?

MR. LEHRER-GRAWER: It is not simply a matter of a technical procedural point. It is a matter that I think leads to a very serious policy consideration for this Commission. Because if a developer is allowed to do what this developer has done, then this Commission will simply be validating proposals to settle title disputes instead of preserving public trust easements.

If this developer had gone to the State Lands Commission before he received a conditional use permit and before there was any development on this property, and it got the letter from Mr. Grimes saying there is a public trust easement, he couldn't have proceeded with any development on this property. And then staff wouldn't be recommending that the State give up its interest for $60,000.

COMMISSIONER TUCKER: I don't think that's correct. If they had come here earlier -- it's not unusual for us to settle boundary disputes. It happens probably in almost every single hearing the Commission has.

MR. LEHRER-GRAWER: That's right, but --

COMMISSIONER TUCKER: And all of the developers, whether they come in early or late, if our legal staff
determines that there is a valid or a potential dispute that we may or may not win in court, then they have to make a judgment, as attorneys, as to what course of action to recommend to the Commission to take. Anyway, we don't have to continue this.

MR. LEHRER-GRAWER: But the --

COMMISSIONER TUCKER: Has the city council approved this? The development itself?

MR. LEHRER-GRAWER: The city council originally approved the development without knowing that this property had a public trust easement and without knowing that the geological reports were fraudulent.

COMMISSIONER TUCKER: And then you brought those things to the city council's attention?

MR. LEHRER-GRAWER: No. They had approved it. We didn't know about them until after they approved the development.

COMMISSIONER TUCKER: Are you in the process of trying to get the city council's attention for this?

MR. LEHRER-GRAWER: The city council's position is that, once they have approved it, they have no legal recourse until some other body intervenes -- either a court or some other agency -- and prevents the development.

COMMISSIONER TUCKER: Did the Coastal Commission approve --
MR. LEHRER-GRAWER: Yes. The Coastal Commission also did not have before it the State Lands, did not know about the geological falsity.

COMMISSIONER TUCKER: When did they take their action?

MR. LEHRER-GRAWER: May the -- March 15th of 1990. And that was the hearing when this developer specifically lied to Commissioner Glickfeld on the Alquist-Priolo issues.

COMMISSIONER TUCKER: Okay. Thank you.

CHAIRMAN MC CARTHY: Ms. Devlin?

MS. DEVLIN: I'd like to present to you petitions --

CHAIRMAN MC CARTHY: We have copies of them.

MS. DEVLIN: No, no. These are a lot more that came in. You know, we only had one week. In one week, we've gathered over 400 petitions from citizens of Huntington Harbour.

And I'm up here today because, Mayor Green, Peter Green of the City of Huntington Beach and Mr. Uberaga, the City Manager, suggested I come up here, because the staff made a report that they have discussed this matter with the State Lands Commission, and they talked to Mr. Green, and they approve of this.

Mr. Green was going to call the State Lands
Commission today and tell you that he has never contacted this and he has never had any contact with the State Lands Commission. He never said anything about it.

Mr. Uberaga also said he has had no contact with the State Land: --

CHAIRMAN MC CARTHY: Why don't you sit down and use the microphone, Ms. Devlin. Thank you.

MS. DEVLIN: Oh. No one has contacted him. They also checked with Mike Adams of the Planning Department. There's been no contact at all with the city to find out how the city feels about this.

And I'm one of the plaintiffs in the case against Coultrup Development, and I'm here to present the petitions to you. And even though we only had less than one week to prepare for this day, we have -- you have refused to postpone the meeting, and I've been able to gather 400 petitions against your releasing the land trust easement on this property.

I don't know if you realize how upset the people in the area are about this project. If you will give me a few more weeks, I will get you probably 98 percent of the people in the harbor to sign this petition. That's about 3,000 families. Even people who were on the side of the developer in the beginning have signed our petition.

I have been overwhelmed by the support I have
been getting from residents. And why would some of the
supporters change their minds? Because the developer has
been unscrupulous and deceitful all throughout the
planning of this project in regard to both State and
local issues.

The people are very easily -- extremely upset
and they're not going to forget what happened. They feel
that all of the developers in the State should obey the
laws of the State and the city. Previous supporters are
incensed of how the government is catering to an
unscrupulous developer who lied to the Coastal Commission
in my presence, who lied to the Department of Real
Estate, whose geologist lied about the age of a fossil
bed on the property, and who lied about the placement of
the earthquake fault.

He told the Coastal Commission in my presence
that he had a 71-foot setback from the earthquake line,
when the reality is the building is on top of the earthquake
line.

And now he is in a jam, because he has violated
a State law, a State law that he knew about before he
received his building permit on July 10th, 1990.

I sent you a letter in the mail dated -- showing
you that on May 10th, 1990, he was told about the land
trust easement. I don't know when he approached you
about releasing the land trust easement, but on January 18, 1991, in the Huntington Beach News, I would like to quote John Coultrup.

"It is all very clear that it is not tideland, Coultrup said."

I don't know whether he approached you before January 19th, or was this another lie?

We thought we were be in trial on this case in three months. We filed suit before Coultrup had a building permit. Coultrup delayed and delayed the suit, always telling the city and the court he was continuing at his own risk. It looked like his delaying tactics have enabled him to complete his building, proving that the old adage -- justice delayed is justice denied.

When we first discovered from Les Grimes that there was a land trust easement on this property, we notified the city and Coultrup on May 10th, 1990. Les Grimes told us that he had notified the Attorney General, but that the State had no money to prosecute or pursue this case. So we, the public, stepped up and hired a lawyer to make the developer obey the laws of the State of California, because the State had no money to do so.

Instead of congratulating us as good citizens, you're going to pull the rug right out from under us. Actually, it was former Mayor Tom Mays, who is now in the
State Legislature, who called me after the city council meeting on January, 1990 (sic), and told me to get a lawyer and file suit.

He told me that I was right and that the city was wrong in this instance. But the former city council had made a colossal error in approving the 42 original homes -- units. He repeated these comments to Ann Pepper, a newspaper reporter for the Orange County Register. At the time, neither Mayor Mays nor I knew that the original 42 permit was in error. The former council gave permission to the original owner for a three-story building with no more than six adjoining apartments on any one floor; six units per floor times three equals 18. And 18 and 18 is 35 -- six.

We looked back at the tapes of the meeting and it seems as if a typographical error was made stating seven units per floor. And Mr. Mike Adams of the Planning Department told the council that it was a typographical error and should have been six instead of seven, and that he would correct it. He never did.

Mr. Mays told me that he just could not support me in the city council meeting because he was afraid 42 built units went up instead of 36, which was the new CUP, that the people would be so angry that he allowed 42 units to go on the property. And Mr. Uberaga, who is the...
City Manager of the City of Huntington Beach, at a meeting in March with our group and Mr. Adams of the Planning Department at city hall, told Mr. Adams that this was a new conditional use permit and asked him if a letter from the State Lands Commission was required in this case.

Mr. Adams answered, yes. Mr. Uberaga then asked Mr. Adams if he had such a letter. And Mr. Adams said, no.

He went on and said it was not his job to get the letter from the State Lands Commission. It was Mr. Coultrup's Development's job (sic) to get the letter and that was the responsibility of the Coastal Commission to make sure that there was a letter as a member of the State Lands Commission sits on the Coastal Commission.

And I have here a little thing from the Coastal Commission. And when we went before the Coastal Commission, they said that the city was -- had obeyed the law on the CUP. Well, they haven't, because they didn't have that letter.

And I assume that you might ask why we did not get an injunction to stop the building. We tried to do so again and again, without coming up with the bond. We would have had to come up with a cash bond of $5 million, and we could not come up with that kind of money. We are individual homeowners. We are not a rich development
company or a title insurance company. If we had put up
our homes, I would be here in tears before you now, because
all of us would be losing our homes to Coultrup
Development removing one of our biggest causes in our
action.

My husband is retired, and if we had stopped --
(Thereupon, the court reporter
requested the witness to speak
slower for the sake of clarity.)

MS. DEVLIN: I'm nervous. I've never spoken
before. -- we'd be out in the cold and probably be on
welfare the rest of our lives.

And evidently, Chicago Title has been working
on this problem with you for quite a while. And you gave
them a long time to present their position. And the
citizens of California were just given one week to
prepare the contest -- to contest this decision.

You might be interested that I spoke to Jim Silva,
one of our council members, after our original court
date in February. And when I told him the results, he
said, "I can't believe that the court did not order a
new geological study." The city thought the court would
surely order a new study, because the previous one is so
flawed.

I told him what the judge said. The judge said
he didn't even read the material we submitted to him, because it was too complicated, and he was not going to second-guess the city.

He did not even look at it.

Mr. Silva then -- I'm going to quote him -- said, "Damn." I told him the city council would order a -- could order a new study. And his answer was, "We can't. We thought the court would do so. I can't believe they didn't. The city has no money. If we order a new geological study, Mr. Coultrup will sue the city. But if the court orders the study, then Mr. Coultrup would sue Action Geotech."

I then said, "Mr. Silva, you are letting a building stay on an active branch of the Newport/Inglewood fault with the State always having to help cities pay for damage when a quake occurs."

He said his hands were tied. You asked me before why the city council didn't do anything. The city attorney, everytime we have presented things before the city council, the city attorney would say, "I don't want any actions on this, because this matter is in the court. I don't want you to take any actions. Let the court decide." That's the question (sic) that he said all the time.

And we hired a lawyer and paid a lawyer on the
advice of Mayor Tom Mays, who told me that I was right and the city was wrong. And we also relied on the letter from Les Grimes that we had a substantial issue. And, gentlemen, I turned down $150,000 offer one year ago from Chicago Title for releasing the land trust easement on this property.

We also had a separate offer up in the six figures from Mr. Coultrup. But, you know, you're going to take away from us -- honest citizens who obey the law, went to the planning commission, went to the city council, went to the Coastal Commission, never lied, never were deceitful, never tried to delay the court case -- and you want to give it to a man who has lied to the city, lied to the Coastal Commission, lied to the Department of Real Estate, and reward him because he has invested so much money.

On the phone, someone from the State Lands Commission said, they were very concerned about Mr. Coultrup, because he had invested a lot of money. But, as I told you, a reasonably intelligent man would try to do something about it before he built the building. But he was hoping that if the building went up, he could have done all these things and no one would do anything about it.

And I think that's a wonderful story for him to tell his children. Lie and cheat your way through life like
I do, and then beg for mercy until we get it. Don't be honest and be upright, and do everything that you try to do the right way, because the government then will not be on your side (sic).

And I also have a letter from the Huntington Harbour Property Owners Association telling you -- well, I thought there would be more members here, that --

CHAIRMAN MC CARthy: That's all right. Why don't you just sit down and we'll get it.

Have you concluded your --

MS. DEVLIN: Well, I just feel that we were given, you know, really a very inadequate time to prepare, you know, for this. And I don't know who told them that the city would approve this, because the city doesn't approve this. They would like it to go to court. And Mr. Uberaga said he would send you a FAX, and Mr. Green would call this morning.

And I'm requesting that the Commission deny the proposed settlement as not in the public interest, because the value of the State interest has not been established, because the subject property should be maintained for marine-related purposes, and because the developer has violated and is continuing to violate a number of State laws, and because the proposed settlement may adversely affect the existing, ongoing litigation.
I'm requesting, at a minimum, a continuance of the proposed settlement agreement until a proper appraisal is completed and in order to provide residents with a reasonable time for preparing their opposition.

You read my petition. And when I took it around, most of the residents were very unhappy that I was willing even to have an appraisal. But I know that the State of California is indeed in financial trouble, and I don't know what the answer is. But it might be interested that yesterday morning, we talked to Ray Logan, who's president of Christiana, and we told him about this 60,000 offer.

We asked him if he thought it was a fair one, and he just started laughing, and he never stopped laughing and wouldn't answer the question.

So, you know, I just feel that there are laws and that the laws should be the same for everyone. And the City of Huntington Beach did require a new letter from the State Lands Commission. And Mr. Coultrup just did not bother to get it even though he knew he was supposed to get it, because he was hoping he would get the building completed, and then he'd say, "Oh, please, be sorry for me." And, you know, and then you would -- he would be in a jam, and you would bail him out.

And in reality, you're bailing out Chicago
Title Insurance Company, because they're the ones who are going to have to pay Mr. Coultrup what he paid for the land if he doesn't get a clear title. And I think I wrote -- and I don't know if you have my letter in front of you, but I told you that Mr. Coultrup bought the land for $5 million some-odd dollars. And then he resold it six months later to Destiny II, which is, I believe, a Japanese investor holding company, and he made two and a half million dollars profit on this land that was a State Lands trust easement that never was supposed to be any residence on, according to Mr. Grimes.

It was supposed to be used for a marina and for recreation. And this was the open space for our homes -- my home is called Beach Club Development.

CHAIRMAN MC CARTHY: Thank you. Is there a Kevin Stowe in the audience? There is an emergency call for Mr. Kevin Stowe.

Are you Mr. Stowe?

UNIDENTIFIED PERSON IN AUDIENCE: No, but I'll take it for him.

CHAIRMAN MC CARTHY: All right. This is from a Frank Holmes.

Let me just sympathetically try to put into focus what our function is here. This Commission is not a city planning commission. We do not attempt to
substitute our judgment for local government planning decisions, unless they have clearly violated State law or some provision of the State Constitution, which mandates and defines our responsibilities to uphold the public trust doctrine.

Now, some of the testimony I've just heard the two of you give has bearing in that area. A good deal of it does not. We are not an ombudsman agency that reviews every conversation that was had by a mayor of Huntington Beach or the city council, or other State agencies, unless their actions somehow step on what our responsibilities are.

So, I'm not making a judgment on the accuracy or the inaccuracy of what you say happened at the local government, nor are the other members of this Commission here.

I just want you to understand. And we are not narrowly construing what our responsibilities are. We carry them out very aggressively -- public access to the coast. And we have contentious boundary dispute hearings all the time. And incidentally, I don't know this developer. Never heard of this developer, have not met anybody connected with this. And I doubt -- I think it's safe to say that neither of these two Commissioners have. This one nor the preceding one who sold to this one
in interest. So, we can just put that out there.

Now, I want to ask our staff to say anything relevant bearing upon our responsibilities, not narrowly construing our responsibilities, but our responsibilities in this matter based on the testimony just given by these two witnesses. We might start with that $150,000 appraisal. I don't know where that came from.

If you have anything in writing, you know, if you have anything to verify that, that would be of considerable relevance to me. You know, it doesn't do us a lot of good --

MS. DEVLIN: (Interjecting) Mr. Grimes said he spoke to Patricia Snyder this week, and she verified it. I believe she's here today and she probably can verify the conversation.

MR. LEHRER-GRAWER: That was an offer made to me by the attorney for Chicago Title for $150,000 just on the State tidelands issue and the pending lawsuit.

CHAIRMAN MC CARTHY: Let's let our staff make some remarks.

MR. FOSSUM: Mr. Chairman and Commissioners, I'll try to address several issues.

The opponents of our agenda item have suggested that the proposal that the staff has presented to the Commission is a bad deal for the State and the community;
that it was rushed and premature, and undercuts their litigation.

The staff has analyzed the situation and believes that it is a good deal for the State of California in settlement of the claims of the State as to the potential public trust easement in the subject area.

The community in the area, as was pointed out, both the city and Coastal Commission have approved the project -- whether based on claims of inaccuracy or not, it has been approved.

The opponents were notified last week -- excuse me -- they were notified the prior week through their representative that was in contact with me that we would be, in fact, presenting this to the Commission, and were given the legal public notice that all members of the public are given, both to their attorney and to the representative of the opponents.

We do not believe this is premature. We've been in contact with the property owners through their attorneys and their title company for close to a year on the question of whether or not there is a public trust easement in the area. We have been involved in numerous negotiations. They've submitted numerous documents which they believe show that there is no public trust easement. The staff has spent many weeks and months
analyzing the status of the property, and have come to the conclusion, after obtaining an appraisal from the staff and evaluating the value of the easement, the potential easement on the property, and have concluded that the $60,000 is equal to or greater than the State's claim on this property.

I can't speak to the ongoing litigation as far as undercutting it. We were led to believe that the litigation that was filed was based on several things. As pointed out to you, that litigation apparently claims a lot of misleading statements or failures to comply with certain local governmental regulations as well as violation of the Alquist-Priolo Act.

And I'm lead recently to believe that they added a public trust claim into their lawsuit. As to that issue, presumably, our claim of a potential easement in the property would be resolved by the settlement that's presented to the Commission, but it wouldn't get to any of the other issues that they have raised as to the violation of other provisions of either the Coastal Act, or the local planning laws, or the Alquist-Priolo Act.

Mr. Grawer raised the issue of this being a sale. I'm sure you're all familiar, even if he is not, with the Kapiloff Land Bank Act, which allows the Commission to take money to acquire additional lands in
exchange for the property interest that the State is claiming in this property. And therefore, it is not a sale. He was informed, I believe, of those sections, but I'm not sure why he wasn't able to conclude that this is not a sale.

The sequence of events of the last year in 1990, when the opponents filed their lawsuit, the Coastal Commission had already taken its action as well as the city council. According to the landowner and his representatives, a purchase and sale of the property, based upon our staff's representation to them in 1985 regarding the subject property, that -- if I can quote from a portion of our response letter -- was that, based on information available to us at this time, the project does not appear to involve State land; therefore, a permit from the State Lands Commission will not be required.

We're informed by them that that was the letter upon which they relied for this project, both the purchase and development and proceeding with construction.

The statements that if they had contacted us later -- at a later date, we may have had a different statement are apt. However, we do have a situation of a great deal of money being spent on this development. This property had maps going back a hundred years. There's photographs from 1974. This property was developed...
basically in the 1960s — bulkhead, filled, utilities placed down. And for practical purposes, any existence of tide or submerged lands post-1960, there's no evidence of it. So, for the last 30 years, at least, it's been filled and reclaimed.

Access — we checked with the city on the access issue, and we're assured and have copies of both the deed and acceptance by the city of public access along the waterfront of this property. The waterfront of this property, which was solicited to have the trust cleared, the staff does not recommend a public trust easement or a claim of easement be terminated on that property, since it is waterfront and provides public access.

The only area that we're proposing to settle title to are the lots which involve the actual condominiums that have been built and are for sale now.

The value of that property is estimated somewhere around $20 million. As you are well aware, if the State Lands Commission were to exercise the easement for a use, such as public access at this point, we would be potentially liable for the value of the property less the easement value. That is certainly one consideration that the staff has put into the analysis of the value of the easement, as well as prior correspondence, and the actual factual information that led us to our
claim in the first place.

I might point out lastly that Ms. Devlin, who represents the Huntington Harbour Property Owners Association, which consists of at least hundreds of citizens of Huntington Harbour, is in a similar situation as the Coultrup Company and Destiny II. That is, that they are on filled tidelands on which a residence has been constructed.

And I think, if they are asking the Commission to take an action that would threaten the existing residences that have been built on there, they should consider the impact that kind of request would have on those other hundreds of property owners as well as Mrs. Devlin herself. Her house is built on property that is within the tideland path.

CHAIRMAN MC CARTHY: Have you finished? Any other staff comments on this?

MS. DEVLIN: Mr. Fossum, my -- a lot of the homes in the Harbour are built on tideland. Actually, mine is not. Mine is built on what was called Las Pajos (phonetic). Mine was not built on tideland. But the houses across the street are on tideland. However, the people happen to be in the suit are not the people that built on tideland property. Our property was there before, because people who grew up there said they used to bicycle
by my house many years ago.

MR. FOSSUM: That kind of points to the existence of the fact that the State has only claiming an easement in this area. We're not saying that your property is owned by the State or has an easement. But I'm --

MS. DEVLIN: I'm just --

MR. FOSSUM: Well, the USGS quad sheet, which I've got here somewhere, does show, in fact, that the house, which according to the assessor's records, would show -- concludes your house is within a tideland path. That's just one piece of evidence.

But it is a major concern, and if the State of California owned this piece of property, it would be a very valuable piece of property. However, our claim of an easement in the property and the situation, factual situation, the legal situation surrounding the piece of property, the $60,000 staff has determined is equal or greater than the value of our easement claim.

MR. LEHRER-GRAWER: May I respond to Mr. Fossum? I am not an expert on State tidelands that are in California. And I reviewed what he referred me to and what the Deputy State Attorney General referred me to. And my reading did not reveal any authority for the sale for cash for this property.

It reveals authority for land exchanges for
land of equal value. It did not reveal that the
Kapiloff Land Bank also has -- provides the right to
sell the property. And I don't know what, you know, what
verbal semantics we're playing here, "This is not a sale."
By any definition, this is a straight sale of the State
interest for $60,000.

Mr. Tucker, you brought up previously that
this is a settlement of a dispute, and that it's no
different whether it occurs before or after the
development. And I beg to differ with you. A prime
consideration, and it was alluded by Mr. Fossum, a
prime consideration by the staff in recommending $60,000
is the fact that this development has occurred. This
development has occurred contrary in violation of your
trust, of the public trust easement. And this developer
has done it with knowledge that he was violating that
easement. He may have relied initially on the 1985 letter,
but in that same package, you have a letter by Mr. Grimes
of May 31 -- you have his letter that then says -- that
letter of May 31 supersedes all other letters.

You have the fact that this developer was on
notice at least of May 11th or May 12th that that letter
was coming, and that the State was asserting the public
trust easement one day after obtaining the grading permit,
no building permit had been issued. And this developer;
revertheless, proceeded with development.

Now, under the case that I think was alluded to -- City of Long Beach versus Mansell (phonetic), where the court lays down standards and conditions where the State may be estopped from asserting the State easement for parties that develop their property on State public lands, one critical element that is there is that the party that develops did not have notice that it was a public trust easement. That element is totally missing in this case.

This developer knew at least as of May 11th -- and there is a further complication that this developer knew that he was under a legal obligation to obtain from the State "tidelands" Commission a letter of determination before proceeding with any development on that property.

And he specifically violated that. And it doesn't take much to conclude that he did that knowing that the 1985 letter was not ironclad, and the State tidelands -- the staff has never -- has always taken the position -- Mr. Grimes took the position that that 1985 letter was ambiguous at best. It did not specifically state that the State did not have a public trust easement.

Mr. Fossum also indicated that if the State Lands Commission exercises its easement, it would be liable to this developer, that gets back to the same point. It
would only be liable if this developer proceeded under
the standards of the California Supreme Court and was not --
was not knowledgeable of that public trust easement.

This is a shrewd, deceitful developer that
you're dealing with here and you're bailing him out.
And you're not doing a service to the public interest or
to the State, or the people of the State of California
if you support the position of the staff.

At a minimum, there are major issues open here
that should be resolved. I have not seen a determination
by the Attorney General's Office that this deal is valid.
I would like to see that. I think this Commission should
have that opinion before it proceeds.

MS. DEVLIN: Mr. McCarthy, I have written to
Dan Lungren, and sent him the copy of the same letter,
plus other information. And I did write to him about it.
I wrote to Governor Wilson about it, too.

CHAIRMAN MCCARTHY: The Attorney General's
Office is represented here, Ms. Devlin.

MS. DEVLIN: Oh, all right.

CHAIRMAN MCCARTHY: Do you have any further
points you want to make in response to counsel's?

MR. FOSSUM: Well, the only point I want to
clarify is the impression that the Commission would only
have to pay for the development if these recent improvements
were constructed under lawful permits.

The Commission is required to pay for any lawful improvements which would have included those improvements that may exist on the property prior to the latest phase of development, which could include such things as bulkheads, utilities, roads, and other types of improvements.

So, there would still be value to the property that would have to be compensated. And to date, as far as I'm aware, the Commission has never exercised the trust and paid for improvements in one of our trust exercises. They can if they want, but it would be very difficult for the Commission presumably to come up with the funds for that.

CHAIRMAN MCCARTHY: Commissioner Tucker.

COMMISSIONER TUCKER: My suggestion would be that we consider putting this over for a very limited period of time, depending on everyone's calendar, perhaps as little as ten days, so that the appraisal can be made available and other other information that could be shared that is not confidential because of its legal status, legal advice status with the parties here.

I think that there needs to be some understanding, however, that our review is going to be -- I would expect be very limited. And that is, if the appraisal is
adequate, we're going to have to rely upon the advice
of our attorneys and the Attorney General's Office that
this is an appropriate legal action. And that's based upon
their evaluation of the merits of our case. And quite
frankly, we can't take legal advice from some other
attorney who doesn't owe an obligation to us that owes
an obligation to other people and is, I'm sure, very
adequately and forcibly representing the interest of those
people. But we have to rely upon our legal advice.
And that is that this is an appropriate action based upon
the merits of our claim, weighing of those merits, and
weighing the likelihood that we'll succeed or not succeed
if we were to go to trial and the risks of going to trial.

If that's their conclusion, then it seems to me that -- it's my opinion that the Commission is
certainly not in a position to second-guess that legal
advice, particularly when it comes both from our staff and
from the Attorney General.

So then, I think the focus would shift at our next hearing, if the other Commissioners are agreeable to
that and it seems appropriate, to the adequacy of the appraisal. And quite frankly, I don't think you're going
to be satisfied, when we finish that discussion -- and I certainly don't want to prejudge it. I haven't seen the
appraisal. But I really don't think your issue is whether
we get 60,000 or 600,000. I think your concerns are
other things. And I do think it's gratuitous, to say the least,
for members of the city council, for Tom Mays, and all
these other people to tell you to come here, and that
they don't have any way of rectifying this. I think
that's baloney. If they really felt that they were
misled by the action, certainly, they can join in your
lawsuit. The city attorney could be a part of this,
asking the court to overturn this action, and documenting
ways in which they were misled.

If that's the case, you know, it's the easiest
thing in the world to say, hey, take your problems to
somebody else and tell them all about it, because our
hands are tied.

And unfortunately, we get that from time to
time. And as Governor McCarthy's indicated, we're not
really in a position to weigh the merits and demerits
of local development projects. That's why we have a
Coastal Commission, and that's why we have a planning
commission, and that's why we have a city council. And
certainly all those local officials are subject to,
hopefully, to input by local voters and property owners.
And I think if they're telling you, "Jeez, it's really too
bad. You know, we passed this, and we didn't quite know
what we were doing, and take your case to somebody else," I don't think that they're being straightforward with you on exactly what's going on.

They're probably giving you an easy answer. I think that would be pretty clear. But I think if they honestly believe that they have been lied to, that the process has been distorted to the extent that they would have come out with a different opinion and a different vote at that time, that they would be involved in this lawsuit, if nothing else, filing affidavits, being an amicus; if not, actually intervening as a party.

MS. DEVLIN: Mr. Tucker, Mr. Grimes said that the State would be willing to join in amicus curiae in the beginning of this suit. He told us that not at the -- when he told us that the State Attorney General said they didn't have the money, he said that they wouldn't be able to joint in on the actual suit, but if we appealed, they would joint in as an amicus curiae --

CHAIRMAN MC CARTHY: Who said that?

MS. DEVLIN: Les Grimes told us that he had talked to the Attorney General, and the Attorney General said that he would join in --

CHAIRMAN MC CARTHY: Ms. Devlin, I'm sorry. You're missing the Commissioner Tucker's comments.

MS. DEVLIN: No. I wanted to say something else
to Commissioner Tucker. When he said --

CHAIRMEN MC CARTHY: We're not talking about
joining in a lawsuit here. His point was --

MS. DEVLIN: (Interjecting) I realize. I
realize. But when you said that, that made me feel that
you want to encourage --

CHAIRMEN MC CARTHY: Could we respond to the
point that he was making?

MS. DEVLIN: But I would like to make --
respond to what he said about the Coastal Commission.
When I found out about the laws of the Coastal
Commission, I did tell them, and they agreed that they
were lies. But they said, once they have given a coastal
permit, they have no way of rescinding it, even for
lies.

COMMISSIONER STANCELL: Mr. Chairman?

CHAIRMEN MC CARTHY: Commissioner Stancell.

COMMISSIONER STANCELL: Mr. Tucker, before we
leave the issue of your proposal, you mentioned Tom Hayes.
Is that the Tom Hayes that I'm familiar with?

COMMISSIONER TUCKER: I said Tom Mays.

CHAIRMEN MC CARTHY: Former mayor, now an
assemblyman.

MR. FOSSUM: Commissioners, the offer that was
made by Chicago Title on behalf of their clients, the
deadline for acceptance is today basically. And we haven't heard from them. So, if you are proposing to extend it, I would like to at least give them an opportunity to see whether the offer would be continued.

COMMISSIONER STANCELL: I would like to ask a question.

CHAIRMAN MC CARTHY: Go ahead.

COMMISSIONER STANCELL: The appraisal that's before us, was this appraisal derived through the normal process of determination of the value of the easement of properties that —

MR. FOSSUM: Yes. It was a land-use appraisal that came to a value for the land itself. At that point, it's reviewed by the staff based upon the other factual evidence that we have and the law as applied to this property. And then a value of what our claim is in the property is concluded based upon that.

So, the appraisal is the value of the land itself. So, we're talking in excess of $6 million. So, if you look at the appraisal, it says 6 million. But that's not what the claim of the State in the public easement in this property, based on what would happen, we believe, in litigation, and the facts involved in the property. And that's how the conclusion on the other number is reached.
COMMISSIONER STANCELL: So, it sounds like, even with the delay, you'll probably come back with the same conclusion.

MR. FOSSUM: I haven't seen any other evidence that would change it.

COMMISSIONER STANCELL: So, I'm just wondering whether it serves any purpose or not.

CHAIRMAN MC CARthy: Well, the only thing that unsettles me somewhat are the separate allegations from the two opposition witnesses, and the number of 150,000 was used in a separate conversation regarding the appraisal of this property. And I think I would like to have that checked out by you.

May I just add my voice to Commissioner Tucker's point about what you repeatedly, frequently said about private comments made to you by local government officials or former local government officials. The difference between private sympathy and public support is quite a wide chasm. And, if indeed, Huntington Beach local elected officials or top appointed officials, some of whom may be in this audience, really do support you, as you indicated, as you characterized their comments, why don't you have that reduced to writing? Why don't you have them write this Commission immediately, and tell us that they made a mistake and they're going to review the
decision that they made? And they may join the lawsuit, or whatever course of action it is to show support. It's impossible for us at this stage to listen to your characterizations. And I'm not for a moment suggesting that they're inaccurate. But it's impossible for us to give weight to that at this point in the absence of their willingness to go on the public record with some kind of different position that impacts the issue, the issue as you laid this out to us.

I think we've heard this thing rather thoroughly at this point. So, Commissioner Tucker is proposing that we delay final action on this to share the appraisal information. Go ahead.

Normally, you know, we don't go back and forth on this. You chose not to take the time you had in the first place. Now, do you want to come up and make a brief comment? We'd be happy to hear from you.

MS. SNYDER: Very briefly. Two things.

CHAIRMAN MC CARTHY: Would you mind giving up one of the microphones?

MS. SNYDER: Thank you. Patricia --

CHAIRMAN MC CARTHY: And would you restate your name.

MS. SNYDER: Yes. Patricia Snyder on behalf of Coultrup and Destiny II. First of all, with regard to
what the city's position is, yesterday, I read their respondent's brief. They are the respondent in the appeal. And their respondent's brief fully supports all of their prior actions, including the State tidelands issue.

So, I think in terms of city people taking a different position, I've never heard it. And the city is fully supporting this project.

Secondly, relative to the $150,000 offer: Assuming that offer was ever made, it has nothing to do with the appraisal. What Mr. Lehrer-Grawer said was that -- excuse me -- an offer of $150,000 was made at the outset of the litigation. There had been no appraisal made of the property at that time.

Assuming that offer was made by my partner, it was to resolve the litigation issue. It was before any expert had been retained by Coultrup Development Company to determine the tidelands trust issue, and it was to resolve the public trust issue.

So, I don't think that $150,000 fee -- $150,000 offer had anything to do with the $60,000 offer that has been made to the State Lands Bank for settlement of the public trust easement. Since that time, we've hired an expert. We've gone to court. We've won every step of the way. We've won at the city council. We've won at the Coastal Commission. We've won at the trial court. We've
won at the court of appeal when they were trying to have a stay, and a stay of the building permits. We won that issue, and also before the California Supreme Court.

CHAIRMAN MC CARTHY: Let me just ask a question of either of the two opposition witnesses.

The $150,000 figure, which I understood you each to represent was mentioned in two separate conversations, was that stated in the context of the appraisal of the State's interest in this? I got your testimony. I'm now asking the opposition.

MR. LEHRER-GRAWER: It was stated as a settlement of the State tidelands issue in the litigation. It was simply as a way of eliminating that issue from the litigation.

There was no representation made that there had been an assessment or an appraisal. It was a negotiation to eliminate an issue that Chicago Title. That's the only reason they're in the lawsuit because of that one issue.

CHAIRMAN MC CARTHY: Was it an attempt to be an overall settlement of the litigation?

MR. LEHRER-GRAWER: No, it was not an overall settlement. It was just on that one issue.

CHAIRMAN MC CARTHY: Mr. Devlin, do you have a different picture? Was the $150,000 you referred to -- let
Were you in a conversation in which you were a participant where you were told about the $150,000 figure?

MS. DEVLIN: Yes. I was told that, but it was only to drop --

CHAIRMAN MC CARthy: That didn't come from your attorney now, that came --

MS. DEVLIN: No, no. That came from our attorney.

CHAIRMAN MC CARthy: And was that $150,000 figure any reference to an appraisal of the value of the State's interest, title interest?

MS. DEVLIN: No. It was many classes of action. And Chicago Title evidently is just representing them because they guaranteed them clear title when they purchased the property. And that was just -- was the -- for us to drop -- Chicago Title, I was told, wanted us to drop the land trust part of our suit. Mr. Coultrup offered us a second six-figure amount on his own, which we turned down also, because we were not in this for money. We were in this for the State of California.

CHAIRMAN MC CARthy: So, you're substantively in agreement on this.

MS. DEVLIN: Yes.

MR. LEHRER-GRAWER: One thing. Ms. Snyder
referred to hiring an expert. There has been no expert
testimony provided on the appraisal of the State
easement or on --

CHAIRMAN MC CARTHY: I consider that irrelevant
on this point in any event.

MR. LEHRER-GRAWER: Mr. Chairman, I whole-
heartedly support the suggestion by Mr. Tucker for a
continuance so that we have an opportunity to review the
appraisal and have an opportunity to provide some
input on that issue.

CHAIRMAN MC CARTHY: All right. Commissioner
Tucker is still putting forward that suggestion. You're
talking about ten days to share the appraisal information?

COMMISSIONER TUCKER: We have to notice another
meeting, so that's why the ten days.

(Thereupon, the Commissioners caucused
among themselves off the record.)

EXECUTIVE OFFICER WARREN: Mr. Chairman?

CHAIRMAN MC CARTHY: Would this require another
Commission meeting if we did give the continuance?

MR. HIGHT: Yes, Mr. Chairman.

EXECUTIVE OFFICER WARREN: I would like to make
a couple of comments I think would have some bearing on
your deliberations. First off, our recommendation here
is based on the value of the claim, not on the appraised
value. It was arrived at after careful discussions with legal counsel, both for the Attorney General's Office and our own staff.

It took into consideration the 1985 correspondence and other correspondence to which reference has been made. At the time we were making that consideration, the question was who was going to proceed to litigation -- the developer, the State Lands Commission. At that time, we had a proposal that we accept $10,000 in settlement of the claim. We weighed the offer, and as a result of further negotiations with the developer, arrived at the figure which is presently before you, with the understanding that the offer would be open only until today.

Admittedly, compared to other things, this is a minimal amount, the difference between 10 and 60, I guess, is not particularly consequential in terms of major sums.

But if the Commission is inclined to continue it for further action, please keep in mind that our recommendation is based not on appraised value, but value of the merits of the claim and, two, that the offer may be withdrawn if not accepted today.

CHAIRMAN MC CARTHY: Are there any other points, Mr. Warren, as you listened to all of this, any other points raised by the opposition witnesses --
EXECUTIVE OFFICER WARREN: No, Mr. Chairman.

We spent considerable time on this. And we feel that the recommendation to you is in the best interest of the State.

CHAIRMAN MC CARthy: Any further comment by the Commissioners?

COMMISSIONER DAVIS: It's my understanding --

CHAIRMAN MC CARthy: Commissioner Davis.

COMMISSIONER DAVIS: It's my understanding that what Jim Tucker recommended sitting in my stead would be a courtesy to the people who were very, very recently apprised of the pending settlement and want to provide some information to us that may or may not affect the substantive resolution of this issue.

In the past, I've generally been sympathetic to what I felt was a legitimate request for more time. It does inconvenience the Commission. I understand Stan's view in the matter. But I still think that these issues shouldn't turn on the function of 10 to 15 days. I recognize the developer may withdraw his offer. He has all the leverage in this issue, and these people don't have much.

CHAIRMAN MC CARthy: What is it we are seeking to find out? I haven't -- I'm trying to understand. I just want the opposition witnesses to appreciate that if this...
were delayed to another Commission vote, the only issue in front of us would be whether or not the appraisal were inadequate. That's what Mr. Tucker has stated before Commissioner Davis arrived.

So, there are no other points in front of us we can understand.

MS. DEVLIN: Commissioner --

CHAIRMAN MC CARTHY: Just so you have an understanding of this. That is the request Commissioner Tucker made. We've heard all the evidence. So, the matter's not going to be reopened at another Commission hearing.

MS. DEVLIN: You had told me that if I could get letters from any of these people, to bring them to you.

CHAIRMAN MC CARTHY: I didn't say that. When did I say that?

MS. DEVLIN: Yes, you did.

CHAIRMAN MC CARTHY: Oh, from city officials.

MS. DEVLIN: From the city officials. Yes. Or the Coastal Commission, or something like that.

CHAIRMAN MC CARTHY: I was echoing Mr. Tucker's point, that private expressions of sympathy by city officials that voted against you or acted against you are not useful here. If they have a position -- if they want to
reverse their position with what limitations they have
now to do so, they have recourse to try to do that if they
choose to do that.

So that might be of some interest for us to
look at, at least, but only if it's got bearing upon what
our duties are in carrying out the public trust doctrine,
not on their land-use decisions at the local level.

I want to be very clear about that. We are not
an appellate division for the local city council. Okay?

Now, with that in mind, I'm not -- you want to
postpone it? It's not ten days really; it's a month.

When's the next Commission hearing?

MR. HIGHT: August 12th.

CHAIRMAN MC CARTHY: So, it's postponed until
August 12th.

COMMISSIONER DAVIS: Unless you want to advance
that meeting.

CHAIRMAN MC CARTHY: For this single point?

COMMISSIONER DAVIS: No. Just have our normal
meeting earlier rather than August 12th.

CHAIRMAN MC CARTHY: I don't know. I suppose
there are lots of other issues being processed that are
going to come before this Commission at that time.

EXECUTIVE OFFICER WARREN: I do not know what
prejudice would be relieved by having an earlier meeting of
the Commission than August 12th.

I don't think it would benefit any of the parties
to have a hearing in two weeks rather than four weeks.
So, that being the case, I'd like to stick to the August
12th date, because that what staff -- limited as it is
these days -- is the schedule with which we have been
working.

CHAIRMAN MC CARTHY: Any further point? I have
to admit I'm very close on this one. I'm not sure I see
the reason to go ahead trying to extend courtesies to
a citizens' group here. But this one's wearing thin.

All right. This matter is postponed until the
August 12th meeting solely to review the point of the
appraisal, unless there is some further evidence that
has not been adduced in this Commission meeting that
bears upon this Commission's public trust responsibilities.

Anything else to be said?

COMMISSIONER STANCELL Record my vote as no.

CHAIRMAN MC CARTHY: All right. Two to one.

EXECUTIVE OFFICER WARREN: Mr. Chairman, the
next item, 42, is the staff request for authority to
litigate for ejectment and damages for unauthorized
occupation of State-owned land in Imperial County. This is
at that site known as the "slabs." This is at the request
of the local board of supervisors, and we ask for approval.
CHAIRMAN MC CARTHY: Any questions? Approved as recommended.

EXECUTIVE OFFICER WARREN: Item 45, at the request of the applicant, and it's concurred in by our Land Management Division, will be postponed to the next hearing.

CHAIRMAN MC CARTHY: Any questions? Approved as recommended.

EXECUTIVE OFFICER WARREN: Item 47 is an application for a proposed construction of a two-story recreational structure and placement of bank protection on Snodgrass Slough in Sacramento County. The staff recommends denial of the application for the reasons set forth in its report.

CHAIRMAN MC CARTHY: Any questions? Approved. Next?

EXECUTIVE OFFICER WARREN: Item 48, Mr. Chairman, is a staff recommendation of consent being given to the City of Long Beach for assignment to Atlantic Richfield Company, ultimately to Arco Long Beach of Mobil Oil Corporation's interest in a field contractors' agreement for the Long Beach Unit. The terms and conditions of the assignment is set forth in the staff report, and we recommend approval.

CHAIRMAN MC CARTHY: Okay. Any questions?
Approved as recommended.

MR. FRANCHETTI: Mr. Chairman, I'm Michael Franchetti, and may I speak for just a moment, please?

CHAIRMAN MC CARTHY: Yes, certainly.

MR. FRANCHETTI: Thank you, Mr. Chairman and members. I'm representing Mobil Corporation. There have been some suggested changes to the agreement which were sent to the staff of the Commission relatively late last week. It's my understanding that most of them are greeable to the Commission. They're mainly procedural matters and so on. And we'd like to just as a matter of record to indicate that that agreement would reflect those. Is that a fair statement?

MR. LUDLOW: Yes. I'm Rick Ludlow, senior staff counsel of the Commission, Mr. Chairman. The exhibit to the present calendar item will be amended to put in -- these are clarification phrases and clauses that Mr. Franchetti's just referring to. They don't change the meaning of the agreement or any of its terms and conditions.

COMMISSIONER DAVIS: So they don't change your recommendation.

MR. LUDLOW: They don't change the recommendation.

MR. FRANCHETTI: And there is one other item that was reflected by Mobil dealing with exactly what
obligations Mobil would have should there be a default of all the parties, and Mobil have to continue to purchase oil under this agreement.

We understand the staff is not in agreement with that at this time. But -- and, again, is it fair to say, though, that that is a matter that might be negotiated in the future, assuming that contingency should arise?

EXECUTIVE OFFICER WARREN: Well, that's their statement, but it's not a statement that I understand the circumstances to be.

MR. FRANCHETTI: Okay.

EXECUTIVE OFFICER WARREN: We thought that the percentage --

(Thereupon, both conversants spoke simultaneously.)

EXECUTIVE OFFICER WARREN: -- Mobil Oil following this assignment were spelled out.

MR. FRANCHETTI: It's nothing to do with the percentages. It has to do with whether or not Exxon was to default.

MR. LUDLOW: Most favored nation clause.

MR. FRANCHETTI: That's something that we can work on, assuming we need to. I just want to get this on the record, so that --
MR. LUDLOW: It can be raised at a later time. That can be raised at a later time if Exxon ever comes forward with a proposal of its own.

MR. HIGHT: At the current time, Mr. Chairman, staff is not recommending a most favored nation's provision. However, we are always happy to talk to Mr. Franchetti. But we do not see the reason for recommending it.

CHAIRMAN MC CARTHY: Is that a satisfactory answer?

MR. FRANCHETTI: That's fine. I just wanted to be up front with everyone to let you know what our concerns were.

CHAIRMAN MC CARTHY: All right.

MR. FRANCHETTI: Okay. Thank you very much.

CHAIRMAN MC CARTHY: Thank you very much, Mr. Franchetti.

Any other comments on this? All right. Approved as recommended.

EXECUTIVE OFFICER WARREN: That concludes the calendar, Mr. Chairman. But we do have an executive session.

CHAIRMAN MC CARTHY: Thank you very much, ladies and gentlemen.

(Thereupon, the meeting was adjourned at 10:32 a.m.)

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CERTIFICATE OF SHORTHAND REPORTER

I, Nadine J. Parks, a shorthand reporter of the State of California, hereby certify that I am a disinterested person herein; that the foregoing meeting of the State Lands Commission was reported by me in shorthand writing, and that thereafter my shorthand writing was transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of July, 1991.

Nadine J. Parks
Shorthand Reporter