STATE LANDS COMMISSION

TRANSCRIPTS

February 5, 1992
MEETING
STATE LANDS COMMISSION
STATE OF CALIFORNIA

BOARD OF EQUALIZATION
ROOM 102
1020 N STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, FEBRUARY 5, 1992
10:00 A.M.

Nadine J. Parks
Shorthand Reporter
MEMBERS PRESENT

Leo McCarthy, Lieutenant Governor, Acting as Chairman
Jim Tucker for Gray Davis, State Controller, Chairman
Susanne Burton for Thomas W. Hayes, Director of Finance

Staff:
Charles Warren, Executive Officer
James Trout, Assistant Executive Officer
Robert Hight, General Counsel
Ken Williams, Deputy Attorney General
Nancy Saggese, Deputy Attorney General
Curtis Fossum, Senior Staff Counsel
Jane Sekelsky, Chief, Land Management Division
Paul Mount, Chief, Mineral Resources Management Division
## INDEX

<table>
<thead>
<tr>
<th>Proceedings</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agenda Items</td>
<td>1</td>
</tr>
</tbody>
</table>

### III Approval of Minutes for January 8, 1992 meeting | 1 |

### IV Consent Calendar |

| Approval of Consent Items 01 through 17, with the exception of Pulled Items 5, 7, and 15 | 3 |

### V Regular Calendar |

<p>| 18 Presentation by Jane Sekelsky | 3 |
| 19 Presentation by Jane Sekelsky | 3 |
| Charles W. Trainer, Esq. Counsel for Lessee | 4 |
| Commission Action | 5 |
| Commission Action | 5 |
| 20 Presentation by James Trout | 6 |
| Commission Action | 6 |
| 21 Presentation by Robert Hight | 6 |
| Commission Action | 7 |
| 22 Presentation by Curtis Fossum | 7 |
| Commission Action | 10 |
| 23 Presentation by Curtis Fossum | 10 |
| Questions/Comments | 11 |</p>
<table>
<thead>
<tr>
<th>PAGE</th>
<th>INDEX, continued. . .</th>
</tr>
</thead>
<tbody>
<tr>
<td>24</td>
<td>Agenda Items</td>
</tr>
<tr>
<td>24</td>
<td>PUBLIC COMMENT</td>
</tr>
<tr>
<td>4</td>
<td>Marilyn Willsie</td>
</tr>
<tr>
<td>5</td>
<td>Resident</td>
</tr>
<tr>
<td>6</td>
<td>Questions/Comments</td>
</tr>
<tr>
<td>7</td>
<td>Barbara Devlin</td>
</tr>
<tr>
<td>8</td>
<td>Huntington Beach resident</td>
</tr>
<tr>
<td>9</td>
<td>Questions/Comments</td>
</tr>
<tr>
<td>10</td>
<td>Patricia Snyder, Esq.</td>
</tr>
<tr>
<td>11</td>
<td>Counsel for Destiny II</td>
</tr>
<tr>
<td>12</td>
<td>Donald Coultrup</td>
</tr>
<tr>
<td>13</td>
<td>Destiny II</td>
</tr>
<tr>
<td>14</td>
<td>Commission Action</td>
</tr>
<tr>
<td>15</td>
<td>Report on Executive Session by Mr. Hight</td>
</tr>
<tr>
<td>16</td>
<td>Adjournment</td>
</tr>
<tr>
<td>17</td>
<td>Certificate of Reporter</td>
</tr>
</tbody>
</table>
CHAIRMAN MC CARTHY: Good morning, ladies and gentlemen. Welcome to this meeting of the State Lands Commission. To my right is Commissioner Jim Tucker, representing the State Controller, Gray Davis. My name is Leo McCarthy.

Without objection, the minutes of the previous Commission meeting are approved.

Mr. Warren, our Executive Officer, would you like to get us off on the right track here with the Consent Calendar.

EXECUTIVE OFFICER WARREN: May I --
CHAIRMAN MC CARTHY: We've got three items pulled.
EXECUTIVE OFFICER WARREN: Three items to be pulled.
CHAIRMAN MC CARTHY: Items 7, 15 --
EXECUTIVE OFFICER WARREN: And Item 5.
CHAIRMAN MC CARTHY: And 5, 7, and 15.
Commissioner Burton, welcome.
COMMISSIONER BURTON: Thank you.
CHAIRMAN MC CARTHY: So, those three consent items are pulled off the calendar. None of them were put on the regular calendar.
EXECUTIVE OFFICER WARREN: That's correct.
CHAIRMAN MC CARTHY: So, 5, 7, and 15 of the Consent Calendar are off. Anybody have any comment on the rest of the Consent Calendar?

MR. WAGNER: (From the audience) I do.

CHAIRMAN MC CARTHY: Yes, sir?

MR. WAGNER: My name's Jeff Wagner. I just wanted to take this opportunity to thank Duncan and the State Lands Commission for interfacing with me and finding a reasonable solution to my problem and making -- enabling me to stay in business at a reasonable rate.

And I'd like to -- what I'd like to see is a couple of guarantees -- I'm not going to be the only marina out there under lease at a distinct disadvantage to my competitors (sic), and that the State Lands Commission would also seek to clean up the docks and posts that are sunken around my facility on State lands creating an eyesore and detriment to my business.

Once again I'd like to thank the Commission for considering my application.

CHAIRMAN MC CARTHY: (Addressing the court reporter) Did you get the note? It's not often we get thanks for something like that.

(Laughter.)

All right. Do you have any comments? All right.

Thank you.
Without objection, the Consent Calendar is adopted.

We'll move on to the regular calendar.

EXECUTIVE OFFICER WARREN: On the regular calendar, Mr. Chairman and Commissioners, we have requests to speak received on Items 19, 21, and 24.

And to present Item 18 is Jane Sekelsky, who is the Chief of our Land Management Division.

MS. SEKELSKY: Item 18 involves a request for authorization to go out to bid for commercial sand and gravel extraction at three locations in San Francisco Bay.

CHAIRMAN MC CARTHY: Any questions by members of the Commission?

Any thoughts on Item 18 by members of the audience?

If not, the recommendations are adopted.

Next?

MR. SEKELSKY: Item 19 regards a lease for an existing marina and a restaurant facility on the Sacramento River. The lessee has applied for an additional ten-year lease, term effective June 18th of 1991.

There will be a provision for maintenance dredging in the lease not to exceed 10,000 cubic yards per year. They are also requesting approval of a sublease for
a portion of their leased premises to Riverbank Holding
Company in conjunction with their marina next door.

CHAIRMAN MC CARthy: Questions by members of the
Commission?

Anyone in the audience wish to address this
issue?

MR. TRAINER: (From the audience) I placed my
name --

CHAIRMAN MC CARthy: Yes. Come forward, please.
Mr. Charles Trainer?

MR. TRAINER: Yes. I just placed my name there
in the event there was any opposition. And so --

CHAIRMAN MC CARthy: Is there any opposition
to Item 19 as it stands before us?

MR. TRAINER: If none, I've said what I have to
say.

CHAIRMAN MC CARthy: All right.

EXECUTIVE OFFICER WARREN: You can say thank you.

MR. TRAINER: Thank you very much.

(Laughter.)

MR. TRAINER: Might I add, the State Lands
Commission staff has been superb in working with us on
this.

(Laughter and simultaneous comments.)

CHAIRMAN MC CARthy: Let's not get carried away
here.

(Laughter.)

COMMISSIONER BURTON: How about the Chairman?

CHAIRMAN MC CARTHY: The Chairman wanted to stay as far away from this particular issue as possible.

MR. TRAINER: Thank you.

EXECUTIVE OFFICER WARREN: Item 20, Mr. Chairman, will be presented by Paul Mount, the Chief of our Mineral Resources Management Division.

COMMISSIONER BURTON: Did we approve 19?

EXECUTIVE OFFICER WARREN: Oh, I'm sorry.

CHAIRMAN MC CARTHY: Yes.

COMMISSIONER BURTON: Okay.

CHAIRMAN MC CARTHY: Yes, we unanimously approved 19.

MR. MOUNT: Item 20, Mr. Chairman, is to consider an assignment of State geothermal leases to Central California Power Agency No. 1 by GRI Exploration Corporation and GRI Development. It involves 674 acres of geothermal steam field in Sonoma County. This is a negotiated agreement between CCPA and the State Lands Commission.

CHAIRMAN MC CARTHY: Any questions on Item No. 20 by members of the Commission? By members of the audience?

If not, the recommendation is approved. Next?
EXECUTIVE OFFICER WARREN: We'll do 21

ASSISTANT EXECUTIVE OFFICER TROUT: Item 21 is the approval of boundaries for a proposed annexation by the City of Folsom. It runs from the center of Folsom Boulevard to the center line of the American River under Lake Natoma, and from Aerojet Road on the west to some distance up on the north side of the freeway, and would allow the continuation of the submittal of this request. All the Commission is approving now is the adequacy of the boundary description.

If this goes through LAFCO, the item for the actual annexation of the State tidelands would appear again for the Commission.

So, all you're approving here is the legal description of the property.

CHAIRMAN MC CARTHY: Questions by members of the Commission? Members of the audience?

That's approved as recommended. Next?

EXECUTIVE OFFICER WARREN: Items 23 and 24, Mr. Chairman, will be -- oh, I'm sorry.

Let's go back to Item 22. That will be presented by Mr. Hight, our General Counsel.

MR. HIGHT: Item 22, Mr. Chairman, is the assignment from Exxon to Atlantic Richfield of Exxon's share in the Long Beach field in THUMS.
This agreement will complete the acquisition by Atlantic Richfield of the interest of the successors in THUMS, and the Commission supports this action, and it's consistent with prior actions the Commission's taken.

CHAIRMAN MC CARthy: Questions by members of the Commission? By members of the audience on this issue?

All right. Approved as recommended.

EXECUTIVE OFFICER WARREN: Items 23 and 24 will be presented by Mr. Fossum of our Legal Division.

MR. FOSSUM: Mr. Chairman, Commissioners, my name is Curtis Fossum, Senior Staff Counsel for the Commission.

Item 23 is a review of the County of Orange's proposed leases involving granted filled tide and submerged lands in lower Newport Bay.

This is an item that has been worked on by the staff of the Commission as well the Attorney General's Office for almost 11 years.

During that time, the County of Orange has been seeking to negotiate the leases with the homeowners that own approximately 33 lots on the island, and which involve lands that were filled 60-some years ago as part of the dredging and filling of Newport Bay that created the harbor
The lands themselves were granted by the Legislature to Orange County in 1919, and that was amended in 1975.

When it was discovered that some of the lands that had historically been tidelands were filled out to the U.S. Federal bulkhead line, the county began a process to bring them under lease. Part of that process was the understanding that residential uses are not a public trust use, and so special legislation was sought by the county to allow them to bring these back yards under lease.

That legislation was approved in 1984 by Chapter 715 of the Statutes of 1984, and authorized the existing landscaping uses that are on the island to be leased by the county for up to 49 years.

The county has negotiated with the homeowners the lease. There was an interim lease of five years that provided a temporary authorization for the encroachments. At that time, appraisals were conducted. Three separate appraisals were conducted. The first one was the county hired an appraiser who valued the property. The homeowners objected to that appraisal, did not feel it was adequate. They submitted their own appraisal, which was considerably lower.

It was then agreed between the county and the
homeowners on a third independent appraisal that they both paid for.

During this entire time, the State Lands Commission staff and that of the Attorney General believed that all three appraisals were low because of a significant discount factor that the appraisers gave of between 75 and 100 percent to the property. That's the primary reason that this has taken so long to get approved.

During the recent year, negotiations had reached a climax in that the county and the homeowners agreed on splitting the difference between the 50 percent that the Commission staff was prepared to recommend and the 75 percent that the appraiser said was appropriate. And that came to 62.5 percent.

Additionally, the homeowners had asked for a four percent rate of return on the leases. The Commission staff had recommended a nine percent rate of return. The county at one point and the homeowners split that at 6.5. The Commission staff refused to go along with that compromise.

However, after all the analysis that has been conducted on this over the years, the staff is now recommending that the review -- that the Commission approve the range of consideration that has been adopted by the county. Last month, they voted five to zero to approve
this lease, and also that the Commission would approve
the lease itself as to its form.

And I believe that is laid out in the item as
to the details of how much -- there's back rent due up to
March of this year. I should say that some of it's been
paid, but over a million dollars will be going into the
Tidelands Trust of Orange County, which can be spent,
among other places, on upper Newport Bay ecological
reserve, which has an ongoing need for funds to keep it
functioning.

And there will be over a hundred thousand dollars
a year coming into that fund as well.

CHAIRMAN MC CARthy: Any questions by members
of the Commission?

Anyone in the audience wish to comment on this
item?

Approved as recommended. Item 24.

MR. FOSSUM: This is an item that has been before
the Commission last July. At that time, the Commission
asked that it be put over for a period, during which time
opponents of the item would have an opportunity to review
the appraisalsl that was conducted. That was presented to
them.

Additionally, they were in litigation at the
time, and they asked at that time that it be postponed
during which litigation could go forward.

That litigation was resolved in trial court
and the Court of Appeal in favor of the property owner
and against the opponents. And during that time, the
staff of the Commission conducted an additional analysis
of the property both with in-house experts as well as
private consultants on the outside.

At that time, the staff was recommending a
$60,000 title settlement. Additional information,
however, was obtained primarily from the Office of the
Attorney General, which had correspondence -- internal
Attorney General correspondence from 1960, which staff of
the Commission had not been privy to prior to July.

And, which after having that information, it
helped support our case. That, as well as additional
supporting evidence that was obtained by our investigations,
allowed us to seek a higher negotiated settlement.

And this item, which is presented to you, is a
settlement of claims of a public trust easement within
a 1.7 acre parcel of land. The offer from Destiny II was
$110,000. The staff's analysis showed showed that it's
equal to or greater than the value of the State's claim
to the property.

COMMISSIONER TUCKER: We were also providing some
property?
MR. FOSSUM: Not in this particular transaction. This -- areas have been dedicated as a part of the coastal permit process. Several parking spots were dedicated on site for public access to and along the waterfront. And the waterfront area -- it's a 10-foot strip of public access that is owned by Destiny II, but which the Commission is not being asked to terminate the easement to.

EXECUTIVE OFFICER WARREN: We have three speaker slips.

CHAIRMAN MC CARthy: Yes. I have Marilyn Willsie?

MS. WILLSIE: (From the audience) If I could just speak from here, I --

CHAIRMAN MC CARthy: No, ma'am. We want to get you on the record. If you'd come up and use the microphone, we'd appreciate it.

And Barbara Devlin?

MS. WILLSIE: I'm Marilyn Willsie, and I'm a resident of the Huntington Harbor area. And I couldn't hear what Mr. Fossum said about the dedication --

(Thereupon, the reporter requested the speaker to speak into the microphone.)

MS. WILLSIE: Okay. I didn't hear what Mr. Fossum said about the dedication. I know that there has been an offer to dedicate the walkway, but I've never seen the final
1 dedication. I notice it's in the past tense in the
report, but it has been dedicated?

MR. FOSSUM: I have a copy in the file.

MS. WILLSIE: I called the City Clerk's office
yesterday, and they couldn't find any record of it.

MR. FOSSUM: I have a copy of the dedication of
the parking, and I believe the access --

CHAIRMAN MC CARthy: Well, we don't want this
conversation to go back and forth. Why don't you come on
up. Give Ms. Willsie a copy of the information you have
that she needs.

(Thereupon, Mr. Fossum approached the
microphone and handed Ms. Willsie documents.)

MR. FOSSUM: It was accepted, apparently, in

CHAIRMAN MC CARthy: I'm sorry. Closer to the
mike, please.

MR. FOSSUM: The public access dedication of
15 parking spaces and access to and from Warner Avenue
that I presented her was dated May of 1991.

MS. WILLSIE: Does that include the 30-foot
roadway that comes off of Warner and goes around to that
parking lot? It's a very narrow lot.

MR. FOSSUM: It doesn't have a legal description.
It simply says, (Reading rapidly.) "Grantor does hereby
grant and assign grantee an easement for the sole purpose of vehicular parking, ingress and egress over, across, and along the said described property to and from Warner Avenue and certain parking areas located adjacent to said streets to and from the marina located adjacent to grantor's real property."

MS. WILLSIE: It's a very narrow lot. It's like 10-feet wide. And this easement would amount to about 45 feet of the lot, 30 feet for the roadway and 15 feet of the front access to the harbor.

I know that in the hall of records, it was offered to dedicate in 1988, but it had a 21-year time limit on it. It wasn't forever.

CHAIRMAN MC CARTHY: All right. Does Barbara Devlin or Patricia Snyder have an answer to the question being asked?

MS. SNYDER: Yes. Don Coultrup is with me. He's from Destiny II, and he is also on my list, and he has an answer.

CHAIRMAN MC CARTHY: All right. So, we can hold in abeyance. Would you like to make any other comments for now?

MS. WILLSIE: No.

CHAIRMAN MC CARTHY: Thank you very much.

Ms. Devlin? Would you take a seat, please.
MS. DEVLIN: I'm just going to give her a copy, because last time you told me I spoke very rapidly, and --

CHAIRMAN MCCARTHY: I hope I said it politely.

MS. DEVLIN: Lieutenant Governor McCarthy, my name is Barbara Devlin, and I'm a homeowner in Huntington Harbor. And I am appealing to you today not to give up this land trust easement on the Destiny II development in Huntington Beach for $110,000.

This was supposed to be open space from day one; limited to uses for navigation, fishing, and marina. Mr. Ahadpour, the owner of the land from 1980 to 1990, had knowledge from the day he bought the property that there was a land trust easement on the property.

According to the deed transactions, the sale to Mr. Coultrup occurred the day after the Coastal Commission turned down my appeal March 10th, 1990. Mr. Ahadpour was still the owner until then, and they hid from anyone the knowledge of the 1980 letter mentioned in Deputy Robert Collins' letter, and Mr. Ahadpour knew that the 1985 letter did not address the issues.

The whole flaw in the staff report is that the staff report is merely looking at this as an unfortunate problem and honest mistake, and that they are trying hard to do justice and provide equity.

It's understandable that you didn't have all the
facts about all of the lies, fraud, and deceit the
developer committed.

On page 5 of the staff report, Item D states:

"The parties have a good faith and
bona fide dispute as to their respective
interest and claims within the subject
property."

How can this be true if there is fraud involved, as the
Attorney General indicated and as we now know, based on
the January, 1980, letter to Virtue and Scheck.

Well, it is not an honest mistake. It is out-and-
out fraud -- ab initio.

Just as Deputy Attorney General Collins -- just
read his report -- I have brought copies with me if you
have not seen it. Just look at the knowledge that
Mr. Ahadpour had at the very beginning and his underhanded
and fraudulent power play.

They just can't throw themselves at your mercy
now and ask for anything. They should be estopped from
asking for or getting anything.

Marilyn Willsie, who is with me today, called the
State Lands Commission and spoke to either Mr. Trout or
Mr. Rump, and was told that if Mr. Ahadpour or Mr. Coultrup
had asked in advance for the land trust easement to be
lifted, it would have been denied them.
On page 7 of attorney Collins' letter, in the last paragraph, he states, quote:

"Moreover, it is inconceivable that the title companies were unaware of the existence of the public trust easement over the subject property. Given my experience with title companies, I also believe that Destiny II developer and its predecessors in interest, including Coultrup and Mr. Ahadpour, were aware of the easement claims."

There have been nothing but lies, deceit, fraud, and coverup on this project.

I will start with Mr. Ahadpour and how the question of fraud, deceit, or concealment applies to him -- Mr. Ahadpour -- the original owner.

On page 6, attorney Collins says he found in the files a letter dated January 28, 1980, stating:

"This is to advise you that the area of concern shown on your map is within tide land location 221 patented by the State on January 6, 1903."

Attorney Collins called us when he discovered the letter -- I have a legal brief for you, legal style brief.

The letter was to the law firm of Virtue and
Scheck in Newport Beach in answer to a letter from attorney Scott McConnell.

Mr. Collins told us that he tried to contact the law firm of Virtue and Scheck, but the firm no longer exists.

He then said he called Mr. McConnell, and was told that attorney McConnell had no idea why he wrote the letter; that it was either for a client or an attorney in the firm. But after 10 years, he really had no idea.

Attorney Collins then asked us if we could find out any relationship that might have existed between Mr. Ahadpour and/or the Huntington Harbour Beach Club and the law firm of Virtue and Scheck.

We went to Orange County Superior Court and we researched the files. Lo and behold, we discovered that an attorney from the law firm of Virtue and Scheck, Tim Paone -- who was a planning commissioner for the City of Huntington Beach, and who stepped down from the Planning Board specifically to continue representing the Huntington Harbour Beach Club and Marina -- was representing Huntington Harbour Beach Club and Marina in a lawsuit filed in December, 1979.

One of the allegations in this lawsuit was that this property was on State tidelands. In my opinion, it is obvious that the allegation was the reason -- that
allegation was the reason that Virtue and Scheck wrote the letter to the State Lands Commission.

So, from January 28, 1990, Mr. Tim Paone of the law firm of Virtue and Scheck knew about the land trust easement on the property.

In August of 1980, Mr. Ahadpour purchased the property and the lawsuit continued with Mr. Ahadpour continuing using Mr. Paone as his attorney until June of '81.

I prepared a legal-style brief proving knowledge to attorney is knowledge to the client. This is a conclusive rule of law. I presented this legal-style brief to the City of Huntington Beach on February 6th.

On November 4th, 1991, I appeared before the City Council of Huntington Beach and read them part of attorney Collins' letter. The whole council was stunned when I read excerpts from the letter.

The City Manager said that I and the Attorney General had made serious accusations, and that the city would have to study them and get back to me and have a conference about the issues we raised.

To date, I have not heard one word from the city. So, since the city attorney was not interested in doing any work on this matter -- and I am not a lawyer -- I decided to do the work for the city attorney and research
the laws of agency.

Attorney Collins claimed that he believed that Destiny II, Coultrup, and Mr. Ahadpour were aware of the easement claims. I felt then and I feel then (sic) that attorney Collins was indicating that fraud had been committed in this matter.

Fraud, to me, is when one knows about something and tries to deceive you. That's what most people would claim as fraud.

But I also looked it up in the dictionary. The definition of fraud, according to Funk and Wagnall's "New Comprehensive International Dictionary of the English Language," is:

"(1) Deception in order to gain by another's loss. . . 
"(4) Law: Any artifice or deception practiced to cheat, deceive, or circumvent another to his injury. . . 
A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. . . "

What we have in open space on this property for marine and navigation, and by hiding this, Mr. Ahadpour was able to build condos on this by not letting the city or anyone else know that there was a land trust easement.
As I mentioned before, I prepared a legal-style brief for the city, showing that Mr. Ahadpour knew from the day he purchased the property that there was a land trust easement, because his attorney and agent, Mr. Tim Paone of Virtue and Scheck, knew it.

This is a conclusive rule of law. It actually does not matter, even if Mr. Paone did or did not tell Mr. Ahadpour about it. And to my knowledge, Mr. Ahadpour has not made any denials that his attorney actually did not inform him about -- that I know about.

Attorney Collins also accuses Chicago Title of knowing about this land trust easement and even goes on to mention that former State Lands Commission employees Don Davidson and James Dorsey -- who are now working with the title insurance companies, were aware of this.

I have an article from the Orange County Register, dated 11/2/91, stating that 14 homes were built on land set aside as public domain five years ago. County officials and the developer point the finger at Chicago Title Insurance Company.

How many times has Chicago Title done this and they weren't caught; you -- because you and the citizens weren't vigilant. It was the citizens who caught this, and making them pay only $110,000 is letting them get away with a mere slap on the wrist, paying a mere pittance for
what they could not have obtained before they had even tried.

If they had been lucky, they would have gotten away without our finding out. Now that you've found out, you are going to let them get away with what you would not even let them get away with in the beginning if you knew.

But they knew. They knew all along that they could not build if they asked. So, why not go ahead and maybe no one will notice the mistake, and they can get by with fraud again? Or if they get caught, maybe they'll be lucky enough to find a tender-hearted person that will slap their wrists and make them pay only $110,000 for what they could not have gotten away with for any amount of money if they had been honest in the beginning.

Obviously, there was no incentive for them not to try. And, of course, if they get away with it, there's no incentive for them not to do the same thing all over again.

Clearly, they have a pattern of doing this. This isn't the first time, and it won't be the last time they do it. If you let them get away with it, what company wouldn't want to pay $110,000 to make a large profit on something that they knew in advance that they should not even start?

You will note in attorney Collins' letter on
page 7, that in May of 1990, the State Lands sent another letter that rescinded the 1985 letter. And attorney Collins states:

"It is my understanding that Destiny II became aware of this 1990 letter after ground stabilization work at the property had been commenced, but prior to above-ground construction."

Marilyn Willsie has a picture of the property at that time. So, I guess that Destiny II decided, "Let's go ahead and build on it even though the law says we can't, but we'll probably get away with it. Nobody will probably notice. The State has not the time or money and the State told us that. And the little guys can be trampled upon and what citizen is going to find this out and use his or her time, money, and effort to defeat us anyway? Hey, even if we lose, we'll only have to pay a pittance and still make a fortune. They'll let us off the hook. I guarantee it."

The way I see it, if you let them have it for this, then you're going along with it, too.

They have a problem now, because they had knowledge from the very beginning, and yet they went ahead and broke the law. And they might well be on the stick to the developer for $5 to $7 million. And I'm sure that
is what they are really interested in. That's the bottom line. They surely are not interested in you, me, the little people, or the State of California.

You have before you today a title insurance company who has a practice of not finding evidence of protected lands which benefit the public.

You have the owner, Mr. Ahadpour, who knew from day one that there was a tideland easement on this property. And you have a developer, Mr. Coultrup, who has lied to the Coastal Commission about the geological setbacks, inflating them from 25 feet to 142 feet, and having one edge of a building on the fault, who submitted papers from his geologist with a 10,000 year fossil dating error, trying to take the project out of the Alquist-Priolo Act, and a 43-foot surveying error, which just happened to be place the earthquake fault between the two buildings when, in reality, the fault goes under the corner the corner of one building.

The city now admits these errors. Mr. Coultrup even lied under penalty of perjury to the Department of Real Estate in stating that his project was not in a special studies zone and that no geological studies were done on the project. I have that for you.

You might be interested to know that our attorney called the District Attorney in Orange County, and his
answer was, "Well, now that you've found out about it, no harm done."

Don't let them steal this land for a pittance just because we caught them with their hands in the cookie jar -- our cookie jar. It belongs to the citizens of Huntington Beach and the entire State of California.

We have filed our appeal in the Supreme Court. The court is not over, Mr. Fossum. I don't know if you understood that or not.

Please do not make a decision now until we have exhausted our remedies in this matter. You owe that to the citizens of Huntington Beach, who have hired a lawyer and paid their own money to fight this in the court, because you would not be getting a dime unless we citizens had spent our own money to fight this fraud.

Mr. Coultrup and Mr. Ahadpour knew all -- about all of these problems and they went ahead Mr. Coultrup kept saying, "I'm doing it at my own risk."

Now he's really saying, "Oh, take pity on me and get me off the hook." Don't reward him now for doing it at his own risk.

Please realize that we turned down $150,000 from the title insurance company. And you were told at the last meeting by attorney Snyder that they had offered
that amount to us. When we turned them down, they were shocked. They never had any homeowner group do this before.

That tells you that they have a pattern of doing this and have always been able to buy out the opposition. I'm sure they felt, if we wouldn't take the money, then the State would take the money. We have no idea how many times they have done this, but they obviously have a pattern of doing this.

And I brought you an article from the Register stating that -- that county officials and the developer point the finger at Chicago Title Insurance Company, which was to ensure that all property was free from other claims as the final maps were drawn up.

In this case, the county's claim wasn't discovered.

I also want to mention to you that Destiny II will also be asking for a release of more State tidelands on this property. I have with me today a copy of the April 12th, 1984, Coastal Commission report, in which Commissioner Nutter on page B-3 asks, quote:

"These greenbelts area (sic) that are provided in the schematic in the area where the buildings are now (sic) proposed to go, are those areas assured of remaining
open space?"

Liz Fuchs' answer is, "Yes."

Gentlemen, we do not want the release of any more State tidelands easement on any more of this property. We knew that all of this land should be open space, and we want the rest of the property to remain open space, and to be used for navigation, fishing, and commerce, as promised on April 12th, 1984.

We want -- indeed, we demand -- a guarantee of this from the State Lands Commission. You are supposed to represent us, the citizens of the State of California, not just the title insurance company, or Mr. Ahadpour, or the Japanese company, Destiny II, that bought the property from Mr. Coultrup.

They are all culpable and charged with the knowledge by the Attorney General's Office -- and if there is a wrong, the Japanese company, Destiny II, can sue Coultrup and Ahadpour for fraud. And the State Lands Commission should not be releasing this State lands easement and thereby rewarding Ahadpour, Coultrup, and Destiny II at the expense of the State.

I suggest that you request a formal opinion from the Attorney General's Office as to whether the State would have liability if it maintained its public trust easement, and whether the State can require the developer
to compensate the State fully for the violation of the public trust easement.

Originally, attorney Collins felt there was knowledge, and coverup, and deceit all along, which was on the part of Ahadpour, Coultrup, and the title insurance company. And of course, he didn't know --

(Thereupon, the reporter requested Ms. Devlin to speak into the microphone.)

MS. DEVLIN: -- but, but certainly, when he wrote the letter to Patricia Snyder that Ahadpour was connected to the law firm of Virtue and Scheck, Marilyn Willsie and I found out all that afterwards, after Mr. Collins left, which makes Collins' letter 100 percent stronger. Because if he didn't know what you now know --

And on page 8 of the letter from attorney Collins, he says: (Reading)

"I do not believe that the proposed agreement can be justified under Public Resources Code, Section 6307 and the Kapiloff Land Bank Act."

The idea of Kapiloff is to allow land exchanges under Section 6307 when an exchange parcel is not immediately available. Implicit in applying Kapiloff is the notion that the exchange value could be objectively ascertained so that a relatively equivalent parcel later
could be purchased.

This, however, is not what is proposed in this case. I do not believe that there is any property which would be equivalent in its public trust utility which could be obtained in the immediate vicinity of the subject property for 60,000.

Perhaps an equivalent parcel of at least an equal amount of acreage could be found in exchange in order to meet the requirements of Section 6307. I would like to know if the equivalent parcel -- is that going to be purchased? The -- evidently, you told -- Mr. Fossum was speaking to our attorney and told him that the value of the property is $6 million with the condo on it, $4 million if it was kept a marina.

So, I don't understand why the value of the land trust easement isn't worth $2 million.

In September or in July, the staff justified $60,000, because they felt only a small part of the property was tideland.

But now, that argument has been discarded, and that changes the whole value of the property. And I believe there's a $2 million difference, and I would like this explained to me.

I am asking for at least a delay or a continuance while it is still before the State Supreme
Court. Let the Supreme Court decide it. Please don't be premature and pull the rug out from under the court.

If we win the lawsuit and it's remanded to the city for reconsideration, the city will have a perfect right to insist that the developer get the proper letter from the State Lands Commission stating that the property does not have a land trust easement on it.

Thank you. And I have the copies of the things that I -- I don't know whether you have --

CHAIRMAN MC CARTHY: Why don't you sit down, Ms. Devlin.

MS. DEVLIN: Okay.

CHAIRMAN MC CARTHY: Any Commissioners have questions of Ms. Devlin?

Do you want to respond?

MR. FOSSUM: Yes, I would like to.

CHAIRMAN MC CARTHY: Ms. Devlin's case seems to be based largely on former Deputy Attorney General Collins' letter.

MR. HIGHT: Mr. Chairman, if I could just interject for one second, the Attorney General is of the opinion and agrees with staff and supports this transaction.

There's another fact that the witness either doesn't understand or needs to be put on the record. The
State sold the bulk of this land in a patent, and all that was remaining is an easement, and that's what we're talking about here. I wanted to put that in perspective.

CHAIRMAN MC CARTHY: All right.

MR. FOSSUM: Your first question was as to the Attorney General's letter. The letter that was sent by Rob Collins to Patricia Snyder, representing Coultrup, was a response to a position letter that they had submitted claiming that there was no State interest and giving their legal arguments as to their position on the case.

The response letter from Mr. Collins, as I understand it, was a rebuttal of that, and putting on -- basically putting on the facts as he believed them to be and the legal positions that he believed applicable to the situation.

Those were his opinions as set forth in there. There are several of them that I agree with. There are several of them I don't agree with. He is no longer working on that case. It has been -- this information has all been turned over to Deputy Attorney General Nancy Saggese, who has reviewed all the information as well. And I'm sure that if there's any specific questions as to Mr. Collins' letter, we'd be happy to respond to them, either one of us.

MS. SAGGESE: Yes. What I have done is --
CHAIRMAN MC CARTHY: Identify yourself.

MS. SAGGESE: Oh. I'm Nancy Saggese, Deputy Attorney General.

I have reviewed this from the point of view of the State. If you'd like, I can give you a short analysis.

And this would be, rather than from the point of view of the previous owner or the developer, this is the State's case I believe.

This is a 1.7 acre parcel that is a portion of tidelands that were sold in 1901, and a tidelands patent for which -- for it was issued in 1903.

So, this is tidelands, but it was sold into private ownership in the early part of this century. But when tidelands are sold into private ownership, the State retains a public trust easement. In this case, we retain a claim of a public trust easement over this property.

As long ago as the early part of this century, in California Fish, and then more recently in the Line (phonetic) and Fogerty cases in Lake Tahoe, the California Supreme Court has told us that in cases where tidelands are in private ownership and subject to a public trust easement, the owner of the property can make any use of the property that he wishes. And it is up to the State, as
trustee, to make a determination whether or not this is consistent with public trust needs in the area.

In this case, it was the prior owner did desire to make residential use of the property. This is inconsistent with public trust uses. This is a position that we've taken.

In 1985, a letter requesting a position from the State was sent by the prior owner, and it asked, "What is the State's interest in this property?"

This was a requirement of the Coastal Commission. And, in fact, it was subject to the desire of the State Lands Commission to be given notice when development is planned on areas that may be subject to the public trust.

In 1985, the State Lands Commission's staff responded, saying that it appeared that this did not involve State land, and that no permit would be required.

The bottom line is that no objection was made to this proposed residential development. Again, in 1990, a letter was sent by State Lands Commission staff rescinding the earlier letter, saying, "Well, this does appear to be subject to a public trust easement." However, again, no objection was made to the development.

CHAIRMAN MCCARTHY: Objection by?

MS. SAGGESE: By the State. By the State Lands
Commission, by the Attorney General's Office; yet, at that time, the State was aware of the planned residential development for this parcel.

We believe that, because of California Fish, and Line, and Fogerty, we were under the duty to inform the owner that the proposed use was inconsistent with the trust needs in the area, and that the State objected to this development. We didn't do that.

I think that, for that reason -- and we are recommending the present exchange largely because of these circumstances driven by the action and inaction of the State with respect to this particular parcel.

In other words, if we -- if we take it from the position that there exists a public trust easement -- in other words, if we entered into litigation with the present owners over this property, and we won, and it was determined that a public trust easement does exist on this property, we would still be faced with the problem that 36 condominium units are built on this property; that the State had knowledge of the building of it and did nothing to stop it.

We would still be in the position of having a public trust easement under fully developed property, and we would have to be asking ourselves -- what is the value of it? What is the utility of it? And that's the
position that we took and that we started from in this case.

We didn't discount particularly, although we took into consideration, the fact that the developer -- the owner disputes that these were ever tidelands in the first place. They also dispute that a public trust easement could still exist because of intervening legal agreements that have taken place in the past.

But we took that under consideration, but came up with -- even if there is still a public trust easement on this property and we think that that case is winnable, that that is a good case, we would still be left with a public trust easement under 36 condominium units, and what is the value of that claim -- of that easement to the public?

What is the present utility? What is the future utility? And we decided that, under the circumstances, that we should recommend an exchange of this claim of the public trust easement for -- this would be $110,000 that would be deposed into the Kapiloff Land Bank.

Now, this is a little different from the traditional 6307 exchange, which we still feel that we fit within, because it's not a simultaneous land-for-land transaction. But Kapiloff gives us the added dimension of allowing the land acquisition to be delayed until a
suitable parcel is found. In this case, we believe that the $110,000 can be pooled with other money in the Kapiloff Land Bank and used to acquire a suitable public trust parcel that can be presently utilized by the public.

And for that reason, we are recommending that the exchange be approved.

CHAIRMAN MC CARthy: On the date of construction, what would the value of the easement have been had no construction occurred?

MS. SAGGESE: Had no construction occurred? It would have been much more valuable, because other uses may have been made of the property. The State could have said, "We think that there are trust needs in the property for beaches, for parking, for recreational activities and might have been able to prevent development.

CHAIRMAN MC CARthy: Had we agreed to sell the land to the developer, what would we have exacted as a price?

MS. SAGGESE: The value of the claim of easement without development? I don't think we have had an appraisal --

CHAIRMAN MC CARthy: If the parcel was actually filled, and bulkheaded, and has existed as a parking area, and had other structures on it since about early 1960s, this is really a redevelopment is what took place in the last couple of years. So, if the State would have had to
look to see what kind of improvements that had already been and constructed on at that time, and I have no idea what the value of those improvements had been, whether utilities existed, the fill, bulkheading, and so forth.

If the State had exercised its easement to take possession of the property for -- say a parking lot or something, the State would still have had to pay for those lawful improvements that had been constructed at that time. So, we would have had to come up with money to do that basically.

MS. DEVLIN: Mr. McCarthy, I can --

(Thereupon, Ms. Devlin continued to speak, overtalking the Chairman's initial words.)

CHAIRMAN MCCARTHY: Excuse me --

MS. DEVLIN: I was just going to tell you what --

CHAIRMAN MCCARTHY: Just a second, please. We'll get back to you.

Quite frequently, I've seen where our staff, when it sees that the State might have a title interest in such a proposed local development, will intervene with an application to the city planning commission or whoever the appropriate agency is.

Why did that not occur?

MR. FOSSUM: I believe this is an anomaly, Mr. Chairman, and for some reason or other, unexplicably,
the staff did not object. And when asked specifically
the questions that the Coastal Commission had put in the
land-use plan for the area, as Ms. Saggese stated, we
received a letter from the agent of the developer that
asked specifically the questions the Coastal Commission
put forward. And that is, "Were State Lands involved
or public trust lands involved?" You know, basically,
do we object to this project.

And our response was that, it does not appear
to involve State land and no permit from the Commission
will be required.

And our concern is that, given that letter
in response to the specificity of the question submitted
to us, we had our opportunity; we did not take our
opportunity. City permits, coastal permits were issued
for the property, and it was developed.

MS. DEVLIN: May I speak --

MR. FOSSUM: And I did listen last night. I
received quite a bit of information yesterday by overnight
mail from Marilyn Willsie, including an audiotape of the
Coastal Commission hearings back in 1984 on the land-use
plan and the land implementation plan.

And I was up till after midnight listening to
those. And those tapes reflect that there was some
opposition at the meeting to this development. But a
significant amount of the homeowners in the area saw it as a -- as a positive redevelopment. They thought that the existing parking lot looked like a huge car lot. They said that the condos would actually enhance the area.

And the big selling point apparently to the Coastal staff, which recommended the approval, and the Commission that voted unanimously for it, was that there would be benefits to navigation and the environment in the area, in that part of the deal was they were going to rehabilitate the marina, put in pump-out stations for sewage that was a problem in the area; dedication of public access and beach areas, and so forth. And that seemed to be very convincing to the Commission.

They did put in the requirement that the State Lands Commission be contacted and that a letter be obtained. And the developers did that in the following year, 1985.

So, there apparently is compliance.

CHAIRMAN MC CARTHY: Our response is the one you cited a moment ago.

MR. FOSSUM: That's correct.

There was an exchange done on this -- involving the Huntington Harbour area in 1960, between the Commission and the property owners at that time. The argument of the
The Commission staff and the Attorney General staff do not believe that to be the case. We believe that virtually all of the Huntington Harbour area that was in the tideland patent still remains subject to the public trust, which probably includes hundreds of residences in the area worth -- I'd hate to say.

And I doubt seriously that the Commission is in the position to -- to exercise an easement in those areas from a financial standpoint or otherwise. However, we will look very carefully at any development, redevelopment or development, that is proposed to take place in the future.

And I think Ms. Devlin alluded to the fact that the Coastal Commission was very concerned about that as well when they did vote the land-use plan amendment, which provided for changing the recreational designation of the area to residential. They were concerned that there be preservation of the remaining areas for recreational purposes, and it would require going back to the Coastal Commission, as well as the city, to change the additional areas that are looked at as a Phase 2 in her. We've already been approached by the title company
in that area. And I expect that they will make offers
to the Commission to deal with the problems in that area.

We will certainly give that our thorough
analysis, and you can expect they won't get another letter
from the staff like the '85 letter.

CHAIRMAN MC CARTHY: Can you tell me what was the
actual date of the construction of the 36 condominiums?

MS. SAGGESE: I think it was -- it was 1990,
completed in 1991.

MS. DEVLIN: I think that's --

CHAIRMAN MC CARTHY: Well, it's all right. We'll
get that in a minute. Thank you. That's your
best recollection.

MS. SAGGESE: I think so.

CHAIRMAN MC CARTHY: Any questions?

COMMISSIONER BURTON: There's one point that
Ms. Devlin brought up that hasn't been addressed, and
that is that there is pending an appeal to the State
Supreme Court or U.S. Supreme Court. I'm not sure.

MS. DEVLIN: State.

CHAIRMAN MC CARTHY: State.

COMMISSIONER BURTON: State Supreme Court.

And I guess I'd like some indication of -- she's asking
that we delay any action until the Supreme Court has
taken action.
MS. SAGGESE: Yes, they --

COMMISSIONER BURTON: I'd like some comm'it

on that.

MS. SAGGESE: There is an action pending. There

are many issues. I guess they're mostly the earthquake

issue that Ms. Devlin spoke of. However, they lost in

the California Court of Appeal, and they have presently

pending a request that the California Supreme Court hear

their case. The only problem with that -- the question

for us -- is what is the impact on the public trust

easement?

That issue is very tangentially before the

court, and I question what utility it would be to wait

for the court to decide. Because even if these homeowners

win their case -- if the court takes it, and it then

decides in their favor, the California Supreme Court --

we still are left with the situation of a public trust

easement underneath 36 condominium units.

And unless the court decides to require them to

tear them down, we have to see that as a practical

problem.

CHAIRMAN MC CARTHY: I think the options -- we're

not a party right now.

MS. SAGGESE: We're not a party right now.

CHAIRMAN MC CARTHY: The options were that there
might be some additional coastal lands which the developer
could be required to give in exchange or a greater dollar
value in compensation for having developed on a public
easement. I didn't get a sense that anybody is really
proposing at this point that the 36 condos or the material
part of that be torn down.

MR. FOSSUM: I think that is exactly what they're
proposing, Mr. Chairman.

CHAIRMAN MC CARTHY: Is that what you're proposing,
Ms. Devlin?

MS. DEVLIN: I would leave that to go to the
court. What we --

CHAIRMAN MC CARTHY: Wait, wait, wait, just one
question at a time. Are you proposing that?

MS. DEVLIN: I don't know -- I don't know what
the court will do.

CHAIRMAN MC CARTHY: Never mind the court.

MS. DEVLIN: Uh-huh.

CHAIRMAN MC CARTHY: Are you proposing that?

MS. DEVLIN: Well, the -- one of the buildings
I feel encroaches on the Alquist-Priolo -- on the new and
active branch of the Newport-Inglewood Fault, and morally
and ethically -- I cannot --

CHAIRMAN MC CARTHY: I-- your answer that part --

MS. DEVLIN: Well, for that one --
CHAIRMAN MC CARTHY: -- part of the structure to be torn down?

MS. DEVLIN: One, on that one building, yes --
CHAIRMAN MC CARTHY: All right.
MS. DEVLIN: -- because morally and ethically. I don't know whether it will ever occur.

CHAIRMAN MC CARTHY: I got my answer.
MS. DEVLIN: That's how I feel.
CHAIRMAN MC CARTHY: Thank you.
MR. HIGHT: Mr. Chairman, an important part is that the Commission is not a party to the litigation that is the subject of the appeal to the U.S. Supreme Court (sic). That's an action against the --
CHAIRMAN MC CARTHY: State Supreme Court.
MR. HIGHT: Yeah, the State Supreme Court. That's an action that's against the City of --
MR. FOSSUM: Huntington Beach.
MR. HIGHT: -- Huntington Beach.
CHAIRMAN MC CARTHY: Any other questions from members of the Commission?
COMMISSIONER TUCKER: Well, I don't see a reason to wait. It seems to me, particularly after today's discussion -- and, of course, this is the in a democracy, is that it requires that you discuss your case in public.

After today, we don't have a case. I mean, after
what's been said here today in public -- and I'm not criticizing anyone for saying it -- we don't have a claim. I mean, what could we go to court and say? We've already conceded publicly, because of the requirements, you know, we've explained this to you in public, et cetera, that we don't have a claim.

We couldn't go to court and defend something, and turn around and say, "Well, forget what we said in public. We were just, you know, kind of huffing and puffing, and we really do have a claim. We don't have a claim.

We've already said that we created a situation, for whatever reason -- there may have been good reasons -- upon which the developer could reasonably rely in proceeding. And that's the end of our claim, it seems to me.

It seems to me, not that we don't have a public trust easement, but that, you know, we don't have a defense to their claim that they reasonably relied on us. It is now a matter of public record. So, I don't see anything for us to do now, except to say it's good that we got from $60,000 to $110,000.

It's good that, you know, we're more aware of what's going on in this area so that we can try and perhaps proceed differently. And, you know, I'm not
conceding that what happened in '85, that may have been
the right response under all of the circumstances. We
don't know what was going on there, you know, why that
particular response occurred, et cetera.

There may have been a good reason. But that's
irrelevant. The point is now, it seems to me, that we're
in a situation where we have conceded that we don't have
a defense to their defense that they reasonably relied on
what we told them.

And so, we should take what we can get. And
whatever the Supreme Court does is not going to change
any of the facts that have been presented here today and
any of the concessions that we've made.

So, I don't see any reason to wait. I think that
we have spent an extraordinary amount of time on this
matter. We've given the people in the community
tremendous opportunities to be heard more than any agency
would normally do, which is good.

We have devoted a lot of staff time to this.
We reinvented the wheel three or four times now. It seems
to me we ought to be able to close this.

CHAIRMAN MC CARYTHY: We have one more witness.

Ms. Devlin, we've really given you more time
by far than anybody else.

MS. DEVLIN: Yes, I know you have, but could I
just say, in the letter from attorney Collins, he talks about the 1985 letter, and he says the term "State Land," however, refers to State fee-owned land, without reference to the public trust easement. He said it was an incomplete letter. And could I just tell you something about this Supreme Court -- the city has in their specific plan, they said that Mr. Coultrup had to get a letter from the State Lands Commission, and he didn't get that letter for a new CUP.

So, if it went back to the city, the city could demand that he get that letter. And now, of course, he couldn't get the letter, 'cause it is State lands.

I just wanted to rebut, you know, a little bit what they said.

CHAIRMAN MC CARTHY: Thank you.

MS. DEVLIN: (Interjecting) By the way, I did ask this -- I did call Leilie Grimes and asked him to file with us, and he said the State has no money to do things on this. And then I felt --

(Thereupon, Chairman McCarthy attempted to speak, but Ms. Devlin interjected.)

MS. DEVLIN: -- the man, you know, he committed fraud. You're saying if he commits fraud, it's okay?

CHAIRMAN MC CARTHY: You've been a good advocate for your side of the street. Thank you, Ms. Devlin.
MS. DEVLIN: Can I give you some of my papers?

CHAIRMAN MCCARTHY: You can leave whatever you'd like us to make part of the case.

Patricia Snyder?

MS. SNYDER: Yes. Thank you.

CHAIRMAN MCCARTHY: You'll take Ms. Devlin's seat.

MS. SNYDER: Thank you.

(Thereupon, there was a pause while Ms. Devlin cleared her papers from the witness table.)

MS. SNYDER: I'm Patricia Snyder in behalf of Destiny II Corporation. And I have very little to add, other than to say that everything that has been addressed here by Ms. Willsie and Ms. Devlin has been considered, and it was taken into account when we were making our analysis. And I believe it was also taken into account when the State Lands and the Attorney General were making their analyses. And unless there are any further questions, I don't have anything further.

CHAIRMAN MCCARTHY: Do either of the Commissioners have any questions of Ms. Snyder?

Thank you, Ms. Snyder.

Does Mr. Coultrup wish to make any testimony?

We're not asking that you do it. We just want to know if
you wish to do that.

MR. COULTRUP: Yes, thank you.

MR. FOSSUM: Mr. Chairman, I'd like to make one statement. The analysis -- the information that was presented to us by Barbara Devlin and Marilyn Willsie and their attorneys was taken into consideration.

The case evaluation, however, did not take into consideration the pending litigation, because we didn't feel we were a party to that litigation, and we didn't feel it would affect the suit.

So, at the time the evaluation was done, their case was still pending. They had not lost in a court of appeal. That was not given any influence either way on our case at that time.

CHAIRMAN MC CARTHY: Mr. Coultrup.

MR. COULTRUP. Thank you. I appreciate the opportunity to address. I haven't had a word to say for about a year now. And I want to just say that we're a local builder, a local family builder. We make our living locally.

And it's a terrible thing, the accusations that people like Ms. Devlin can make. They are nontruths, unfounded. We've been vindicated and supported by every single level of government along the way, including the courts.
She may believe some of the things she says, but I think it's based on emotion and not fact, and they twisted it. It's unfortunate we've all been put through this.

With that, enough said. It's been a very long, major, drawn-out process. I appreciate your support.

CHAIRMAN MC CARTHY: Thank you, Mr. Coultrup. Staff have any further comment?

EXECUTIVE OFFICER WARREN: No. Under all the circumstances, the staff stands by its recommendation to you.

CHAIRMAN MC CARTHY: Commissioners have any further comment? Do I hear a motion?

COMMISSIONER TUCKER: So moved.

COMMISSIONER BURTON: Second.

CHAIRMAN MC CARTHY: All right. Commission adopts the recommendation.

EXECUTIVE OFFICER WARREN: Thank you very much, Mr. Chairman.

CHAIRMAN MC CARTHY: That concludes today's agenda.

MR. HIGHT: Excuse me, Mr. Chairman. I have one item on the notice.

CHAIRMAN MC CARTHY: Before we finish the meeting, Mr. Hight.
MR. HIGHT: Yes. I'd like to report that in the executive session, the Commission discussed the litigation -- State Lands Commission vs. the County of Contra Costa, and report to you that we have a successful completion of that litigation.

We have received letters of assurance from the county and from the attorneys for the respective developers that site-specific environmental impact reports will be done on two future projects, and that the notices of determination will be out very shortly. And this is the goal of the Commission sought to achieve in the litigation.

CHAIRMAN MC CARTHY: And you'll put those letters into the --

MR. HIGHT: And we'll put those letters into the record today.

CHAIRMAN MC CARTHY: All right. Thank you. With that, this Commission meeting is completed. (Thereupon, the meeting was adjourned at 11:30 a.m.)

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CERTIFICATE OF SHORTHAND REPORTER

I, Nadine J. Parks, a 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 by me in shorthand writing, and thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of February, 1992.

[Signature]

Nadine J. Parks
Shorthand Reporter

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