APPEARANCES

COMMISSIONERS
Cruz M. Bustamante, Chairperson, also represented by Lorena Gonzalez
B. Timothy Gage, Director of Finance, represented by Annette Porini
Kathleen Connell, State Controller, also represented by Cindy Aronberg

STAFF
Paul Thayer, Executive Officer
Jack Rump, Chief Counsel
Curtis Fossum, Senior Staff Counsel
Kim Korhonen, Executive Secretary
Paul Mount
Jennifer Reischman
Jane Smith

ALSO PRESENT
Alan Hager, representing the Attorney General
Nancy Saggese, representing the Attorney General
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COMMISSIONER CONNELL: Call the meeting to order. Mr. Bustamante, the Lieutenant Governor, is delayed in an airline flight and so he will be here when he arrives. I don't want to keep the public waiting, so we'll begin the meeting.

May we have roll call, please.

SECRETARY KORHONEN: Kathleen Connell, State Controller, Member State Lands Commission, Lorena Gonzalez, alternate for the State Lands Commission, and Annette Porini also alternate State Lands Commission.

COMMISSIONER CONNELL: Thank you. May I have a motion to confirm the minutes of February the 5th?

ACTING COMMISSIONER PORINI: Move approval.

ACTING BOARD MEMBER GONZALEZ: Second.

COMMISSIONER CONNELL: Okay, it's been moved and seconded.

We are not on the Executive Officer's report.

EXECUTIVE OFFICER THAYER: Good morning, Madam Chair. In the interests of saving time, because I know we have a long meeting, I'd like to just discuss one item, which is to report on our progress with respect to our budget in the Legislature for the next fiscal year.

We've had our budget heard by both the Assembly and the Senate Subcommittees. Both of those Committees
reported out our budget. The primary new features there are confirmation, extension of funding for our grant lands program. And the audits I know are of great interest to the Commission conducted on our off-shore oil platforms and other production facilities, originally that's a two-year.

COMMISSIONER CONNELL: We were funded for that.

EXECUTIVE OFFICER THAYER: Yes, by both the subcommittees.

COMMISSIONER CONNELL: Excellent.

EXECUTIVE OFFICER THAYER: We are awaiting additional action on one element of your budget. We've asked for additional funding to address hazards in public waterways. These sometimes are dangerous to boaters, sometimes to members of the public. They consist of things like old abandoned pilings where we don't know what they are anymore. And yet it poses a hazard to the public who wants to recreate on their land.

So we have the request in for some money for that, and that's been postponed. In consideration that's been postponed until May, pending the May Revise to determine if there's sufficient funds available for that. But on the whole, the prospects looked good for everything else.

COMMISSIONER CONNELL: Excellent, thank you. Do
other members of the Commission have any questions regarding our budget?

Congratulations on making it through. I'm glad we're not asking for much, because we're spending too much, aren't we, Annette, on the energy, daily.

Is there anyone in the audience who wants to speak on an item on the consent calendar?

If not, then I'm going to take the remaining group of consent items up as a group for a single vote, and we will now proceed with that vote. May I have a motion that we approve everything on the consent calendar?

EXECUTIVE OFFICER THAYER: Madam Chair, there were -- staff wanted to withdraw one item, which is Item 100 for a future meeting. That has to do with a presentation on our progress on the audits, as I just mentioned. We have had a letter of opposition come in on Item 74 and 75. These are repair of the bluffs in Solana Beach. And therefore, according to our rules, we can't keep these on consent.

COMMISSIONER CONNELL: Okay, 74 and 75 and 100 need to be removed?

EXECUTIVE OFFICER THAYER: That's right. And we would propose to hear 74 and 75 today and 100 at a later date.

COMMISSIONER CONNELL: May I have a motion
that --

ACTING COMMISSIONER GONZALEZ: The Lieutenant Governor wanted to remove 109.

COMMISSIONER CONNELL: One hundred nine.

ACTING COMMISSIONER GONZALEZ: Venoco lease obligations.

COMMISSIONER CONNELL: All right. You have 74, 75, 100 and 109. Seventy-four, 75 and 109 will be heard today. Number 100 will be deferred till next time. May I have a motion to that effect?

ACTING COMMISSIONER PORINI: Move approval.

ACTING COMMISSIONER GONZALEZ: Second.

COMMISSIONER CONNELL: Okay. It's been moved and seconded. That has unanimous approval of the consent calendar.

That now takes us to the items on the regular calendar. Item 112 concerns the price of gas produced on the Long Beach unit. And, as you recall, the members of the public who are here, this subject was discussed at our last meeting. We asked staff to negotiate with the City to seek solutions to the disparity in prices.

Mr. Thayer, will you begin the staff presentation.

EXECUTIVE OFFICER THAYER: Thank you, Madam Chair. The staff is happy to report that we think we've
reached an agreement with the City that will benefit all concerned and will meet with the approval of the Commission. I'd like to call on Paul Mount of our staff to give the presentation.

COMMISSIONER CONNELL: I'm afraid, I can't see Mr. Mount because of my television set. Well, that's fine, I'll just avoid seeing you, Mr. Mount. No offense, I'll just look at whatever you have to put on the projection.

MR. MOUNT: Good morning, Commissioners. I'm Paul Mount with the State Lands Commission. I'm happy to report that we reached an agreement with the City of Long Beach concerning the dry gas pricing.

And let me review just briefly some of the events that have occurred in the past. The 1992 agreement provided that the dry gas was based on the Long Beach WACOG, the Weighted Average Cost Of Gas.

(Thereupon an overhead presentation was presented as follows.)

MR. MOUNT: Plus, there was a ten percent transportation component of that. There was some provisions in that '92 agreement to allow renegotiation of the gas price, which was triggered last fall.

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MR. MOUNT: What triggered that was the fact that
prices have increased dramatically since last fall. I note that the SoCal WACOG price, which is the bottom draft or the bottom line there, was much lower than the Long Beach WACOG beginning in November of last year, which caused great concern to the City and also the Commission.

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MR. MOUNT: In February we brought this issue to the Commission and there was a tentative agreement reached that the ten percent of the Long Beach WACOG was changed to half of the actual transportation costs. In other words, it wasn't based on ten percent of the WACOG, it was actually transportation costs, so we shared that 50/50.

The other one was that it was effective December 19th for a period until the Commission met again.

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MR. MOUNT: We now reached a new agreement. And the new agreement provides for a ceiling of $7.51 per MMBTU and a floor of $2.92 per MMBTU.

All savings on the price of tidelands gas will be passed on to Long Beach rate payers and this agreement will remain in effect until January 1st, 2003.

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MR. MOUNT: There was one slide missing in here. I went too fast. The agreement is retroactive to November 1st, 2000. The City will pay the State 100 percent of the
Southern California gas WACOG versus the Long Beach WACOG, which was a high price because of the cost of gas at the border and the transportation costs.

They will also pay to the State half the total transportation costs, which amounts to about 15 cents per MMBTU. And if rolling blackouts occurred, the State will agree to pay the City the difference between the spot market price and the southern California gas WACOG. The reason being is the Long Beach unit would be shut down. Gas would not be produced from the Long Beach unit, and the City would have to buy makeup gas from outside at a higher price if there's rolling blackouts.

COMMISSIONER CONNELL: I need to talk about that. If you're going to roll beyond this slide, we need to come back to this item. So please note that I have a question on that item.

MR. MOUNT: The one before this.

COMMISSIONER CONNELL: The one that you're just talking about, rolling blackouts. Do you want to complete your presentation or do you want us to ask questions as you go through, what would be best for you.

MR. MOUNT: That finishes my presentation.

COMMISSIONER CONNELL: Good. Let us talk about rolling blackouts an item that at least Annette and I are becoming increasingly familiar with. If we are projecting
34 days of rolling blackouts this summer, has anyone an
analysis of what the cost could be if the State is paying?

I have real serious concerns with this item being
part of the contract.

MR. MOUNT: We have done an analysis. Basically,
the reason this is part of the contract is because the
City is required to pay that to the Southern California
Gas Company in the event that they cannot meet their
customer's demands.

In other words, they need to purchase from SoCal
gas makeup gas that does not exist from the Long Beach
unit. So if there's a blackout that shuts down the Long
Beach unit, the City would have to go buy gas at a higher
price.

COMMISSIONER CONNELL: I'm aware of that. But
what are you anticipating to be the exposure to the State
here, since -- without trying to divulge confidential
information that I have on what we're paying now for gas
at the State level, I mean for energy at the State level,
I am very, very concerned what the exposure might be to
the State, particularly in an increasingly expensive spot
market with no cap on this.

I just don't really feel good about signing an
agreement today with no cap on what the State's exposure
is, particularly without a financial analysis. And I know
both Annette and I are privy to confidential information that we can't reveal in this meeting on spot market prices, but I think it's fair to say publicly that those markets have gone increasingly higher in the last two weeks. And I am very, very concerned what the exposure would be to the State here.

Do we have some idea of if you gave us the amount that you're currently paying in today's market and how much you thought you were going to purchase, we could run a financial analysis using the information that we have available, Annette, but I do think that we ought to have some sense of what the exposure is here.

EXECUTIVE OFFICER THAYER: Paul, Can you as well in answering that question, talk a little bit about the buffering that's available when there are short-term blackouts in terms of makeup gas and that kind of thing.

MR. MOUNT: The good news is that the blackouts only occur for about a period of an hour to two hours at the most. So that would have very little effect on the gas supplies to the City of Long Beach. If the blackouts, in fact, occurred for periods of 12 to 24 hours, there might be an impact, which we would have to assist the City in.

But because the blackouts are anticipated only to be an hour or two, it really should have no impact. And
this is only in the extreme case where blackouts occurred say more than 12 hours.

COMMISSIONER CONNELL: Is that written in the contract that we don't have to pay if it's a short-term blackout?

MR. MOUNT: We have to pay if they have to make up more than ten percent of their demand. And we --

COMMISSIONER CONNELL: Over a month or over a week?

MR. MOUNT: It's daily. It depends on what time of year. In the summer months, it could be over a month -- averaged over a month. In the winter months, it could be averaged over a day. It varies depending on the time of year and the gas supply.

So that the worst case would be in the winter months, when you have a blackout for 12 hours, we might have some exposure there, which could amount to maybe $5,000 to $10,000, let's say on the order of.

In the summer months, when we can average over a longer period of time, the exposure is almost nil, because we can average over a longer period of time and also the amount that they have to make up can be reduced so that they only need to have 75 percent of their supply. The other 25 percent they can vary and not have to pay a penalty.
It gets somewhat complicated. And I'm not prepared at this meeting yet to talk about the complications of it, but we can tell you that our exposure is minimal because of the fact that the outages will be short, and it should not really impact the overall.

COMMISSIONER CONNELL: Have you had this clause analyzed by the Department of Water Resources?

MR. MOUNT: No, we have not.

COMMISSIONER CONNELL: I think we need to do that, Paul. We're in daily contact with the Department of Water Resources, and I realize that a lot of this information, unfortunately and I certainly don't fault our staff here, has not been made public. So it is very difficult for you to be aware of some of the concerns that I and I think the Governor might share here.

But I do believe that to begin with that you're going to see a concentration of blackouts within a couple of months this summer. So contrary to your belief that it might not trigger a market exposure for the State, it will because we are anticipating these blackouts are going to be in a concentrated period of time this summer.

And so if you're doing it on a monthly basis, these 34 days that we're talking about are going to be extended through a period of three to four months, so that you would have a significant number of those days within a
period of a month conceivably. In fact, they could all be
within a couple of two or three months.

And there is a huge difference between what the
spot market prices are and now what the spot market prices
are anticipated to be by DWR as we move into the summer
months. And I just have to have a sense of what we're
talking about here before I finalize an agreement. I am
very, very concerned that we know what we're talking about
in terms of long-term exposure.

And now is this a multi-year contract?

MR. MOUNT: It only goes until the year January
2002, so it's only two years.

COMMISSIONER CONNELL: During the highest part of
the energy crisis.

EXECUTIVE OFFICER THAYER: What I would propose
if you would like us to look into that further and
certainly you're right, you and the representative from
Finance, have information perhaps we weren't privy to, but
we could continue the interim measure, which I think
before --

COMMISSIONER CONNELL: I want to acknowledge
Mayor O'Neill. Thank you for joining us. Do you want to
come forward, at some point, and offer your comments? I'm
sorry, I just noticed you in the audience.

LONG BEACH MAYOR O'NEILL: Yes, that's fine.
EXECUTIVE OFFICER THAYER: If we were to put this over until June, but continue the interim arrangement that the Commission had approved in February, I think the savings to the City would be fairly similar to what this deal is.

COMMISSIONER CONNELL: I don't want to do anything to penalize the City. This is not the City's problem, let me assure you, Mayor O'Neill. I appreciate that. On the other hand, I don't want to sit here today and take action on an item where we don't have an understanding of the financial impact to the State. And I am very concerned that we write this contract in a way that we are aware of some cap for the State as we move through the summer months.

ACTING COMMISSIONER PORINI: That's fine with me. I just want to see if our staff has already done an analysis of the gas spot market?

MR. MOUNT: Yes, we have.

ACTING COMMISSIONER PORINI: So you do have an analysis of what the spot market is?

MR. MOUNT: Yes, we've done it for a number of different projects, so we do have an understanding of that. The real issue was that we weren't going to be shut down long enough to really significantly impact the supply of gas to the City. And therefore, given that assumption
that it would be no longer than two hours, we didn't feel
that we would have to pay this at all, even if over a
month's period we had three, four, five shutdowns.

The worst case scenario shows that we would still
generate enough gas from the Long Beach unit not to
trigger the penalties.

COMMISSIONER CONNELL: Does the fire in last
night's refinery affect this at all?

MR. MOUNT: It has no effect except that we do
supply oil to the refinery. And if, for some reason, the
refinery cannot take the oil and we cannot move it to
another location, we would have to, in fact, reduce
production from the Long Beach unit. I can't really
specifically answer the question yet, because we don't
have enough information, but it's possible that we would
have to curtail some production at Long Beach because of
the refinery fire, but we just don't know that yet.

COMMISSIONER CONNELL: For those of you who are
not southern Californians, we had a very significant fire
that began yesterday afternoon at the TOSCO Refinery. And
unfortunately it burned for a period of time, so I don't
know what the losses are yet in that refinery or what
impact that's going to have on the markets. There's been
some initial discussion.

I would have no problem approving, on an interim
basis, the, you know, continuing an interim arrangement. I just think that we need further analysis on the financing, and I think we ought to do this under constructive understanding what the ceiling is that the State might hold.

I mean the gas shortages here now are becoming almost as serious a problem as some of the electricity shortages, as we move into peak pricing periods on gas. By the way, this Commission was prophetic in announcing in this very room a year ago, if you remember we had a discussion on gas prices, and we thought they would go up to $3 a gallon. Then I recall looking at that -- of course, that was not something we wanted to encourage people to believe at that time, but it appears that we are approaching our worst case scenario, that was in one of your staff reports then I believe.

Are there any other questions the Commission has of the staff report? I want to thank you for a very detailed report.

EXECUTIVE OFFICER THAYER: I would be -- of course, I'm sure the Commission wants to hear from the City, but I believe the interim solutions we're talking about here, continuing an interim arrangement, affords a similar savings to the City, but perhaps the Mayor and her staff can respond.
COMMISSIONER CONNELL: Yes, I do believe, Mayor O'Neill is here and we also have two other individuals who have asked to speak here today. If you would like to come forward Mayor, and then I believe Henry -- I know, I'm going to ruin your name Henry Taboada; is that correct?

LONG BEACH CITY MANAGER TABOADA: Taboada.

COMMISSIONER CONNELL: Okay, sorry. I apologize. And also we have -- that's it. I think those are the two that we will recognize, if you want to come forward.

LONG BEACH MAYOR O'NEILL: Good morning. Thank you very much. Actually, I came to say congratulations to all of us over what happened last February at the meeting that we had. And I was very much impressed, I must say, with the understanding of the problem that we had in the City of Long Beach, at the time that our prices had quadrupled.

And right at the meeting it was determined that the State Lands staff would work with the City staff in coming to an understanding. And there was an agreement that we reached back through November, I believe it was. And I'm here to actually thank you for this leadership, because our staff, Chris Garner, worked diligently with your staff in coming to this agreement and to this arrangement.

And it's my understanding that this agreement has
been reached by the staff. I do understand the question that you asked today, and we are here to say that we desperately need to have a decision on this. If you continue with the understanding that we had in February until your June meeting, that is understandable and I also -- that's something that we can live with, but the agreement that was reached is something that we are all in agreement with. And I am very pleased with the leadership that you showed in taking action on that in February.

COMMISSIONER CONNELL: Thank you. And I apologize for the uncertainty that this might impose on the City. I just feel that we need to.

LONG BEACH MAYOR O'NEILL: If we continue with what our understanding is, we just needed immediate relief, and you were the first group that gave us that immediate relief. And it was something that we really could hang our hat on to go further with our concerns for our residents, because it has been a disaster for us.

Thank you very much.

COMMISSIONER CONNELL: Thank you.

Now, let's make sure that this is on a meeting in June. It doesn't require consent. We have a variety of reasons to have a meeting in June, so this is just another reason for doing so. But I would urge you -- I'm not looking for you. I was looking for --
EXECUTIVE OFFICER THAYER: Paul is right there.

COMMISSIONER CONNELL: Paul, I would urge you to discuss with the Department of Water Resources, because they're now beginning to run some analysis, too, on the gas situation. And if you have any problems getting their support or their cooperation, you can either call the Department of Finance or our offices, because we're in daily contact with them, and we encourage them to meet openly with you and to share information, so that your report can be as complete as possible.

MR. MOUNT: Very fine.

ACTING COMMISSIONER PORINI: Do we need to take any action to continue the agreement? Do you need any formal action?

EXECUTIVE OFFICER THAYER: Why don't we do it, just to make sure, because I don't have --

COMMISSIONER CONNELL: Well, then I will ask for a motion. Annette, would you put that into a motion, please.

ACTING COMMISSIONER PORINI: Yes. I would move that we continue our interim agreement with the City of Long Beach until our next meeting.

ACTING COMMISSIONER GONZALEZ: Second.

COMMISSIONER CONNELL: It has now been moved and seconded and that then passes with a unanimous action of
All right. Mr. Thayer, Item 114 is off calendar; is that correct?

EXECUTIVE OFFICER THAYER: That's right.

COMMISSIONER CONNELL: We are then moving to Item 115, which is a local -- Oh, I'm sorry 113. Item 113 is annual plan and budget for Long Beach. And staff if you will begin your presentation on this item.

EXECUTIVE OFFICER THAYER: Thank you, Madam Chair. And once again Paul Mount will make the presentation on this item.

(Thereupon and overhead presentation was presented as follows.)

MR. MOUNT: There's two approvals required here. One is for the five-year program plan, and then another approval is required for the one-year annual plan. That was established by the Optimized Waterflood Agreement back in '92.

So Long Beach has submitted to the State a program for total expenditures and net income for the Long Beach unit for the next five years. In front of you, you see that program. That forecast is $17 for oil price and $5 per MCL for gas price.

And also the forecast includes an FY '01 to '02. The assumption is that a power plant would be built to
power the Long Beach unit. However, we, at this time, do not anticipate that to be the case. It would require that all parties agree to build a power plant, if, in fact, we do.

So if we do not build the power plant, that net income for FY '01 and '02 will increase approximately $28 million, so that will have more revenue and income for that year.

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MR. MOUNT: Then based on the five-year program plan, the one-year plan was established, and it just reflects the numbers that were in the five year plan. We think it's a good plan. It provides for expenditures that protect the environment and safety in the Long Beach unit and always provides the State and other unit participants revenue for the next five years.

Are there any questions?

COMMISSIONER CONNELL: You know, it's my understanding that this is only a partial review of the budget, is that correct, that it only deals with the construction of the gas fired electric generating facility, Paul?

EXECUTIVE OFFICER THAYER: This particular proposal is for the entire budget for the whole Long Beach unit. Contained within that budget, though, is a
provision for the gas powered plant, electrical generation facility. And so what we're proposing that the Commission do is only approve that part of the budget that deals with the rest of the operation of the unit, but not to approve -- to, in fact, modify the budget, but to require further Commission approval of any power plant expenditures.

COMMISSIONER CONNELL: Good, because that was my question. I think that we still have some unanswered questions, as I read the materials.

EXECUTIVE OFFICER THAYER: That's correct.

COMMISSIONER CONNELL: I think the other Commission members probably had concluded the same thing. So we have the staff recommendation. Can you repeat the staff recommendation?

MR. MOUNT: The staff recommendation is to approve the five-year program plan and also the Long Beach unit annual plan.

EXECUTIVE OFFICER THAYER: With those changes.

MR. MOUNT: With the provision that all parties must agree to expend monies for the purchase and building of a power plant.

COMMISSIONER CONNELL: Are there any public comments?

Beverly, did you wish to be acknowledged on this
LONG BEACH MAYOR O'NEILL: No, thank you.

COMMISSIONER CONNELL: Any other members of the public who wish to be acknowledged on this item?

If not, then I would -- is there discussion by the Board?

ACTING COMMISSIONER PORINI: No.

COMMISSIONER CONNELL: Then I would like a motion.

ACTING COMMISSIONER GONZALEZ: I would move to accept the staff's recommendation.

ACTING COMMISSIONER PORINI: Second.

COMMISSIONER CONNELL: It's been moved and seconded. And that's a unanimous decision of the Board.

Then we are now on Item 114. And 114, City of Long Beach.

EXECUTIVE OFFICER THAYER: Item 114, is expressly focused on the Long Beach power plant. And staff therefore would like to withdraw that, because we don't believe we're ready to make a recommendation to the Commission.

COMMISSIONER CONNELL: Excellent.

Number 115. We are now on San Diego, San Diego Unified Port District. And this is consideration of a contract for acquisition of a parking lot for the
Convention Center by the San Diego Unified Port District within the City of San Diego.

And we have a number of people that I believe want to speak on this item as well. If we could begin with staff recommendation.

EXECUTIVE OFFICER THAYER: Thank you, Madam Chair. And Curtis Fossum, staff attorney, will make the presentation for the Commission.

COMMISSIONER CONNELL: I appreciate that.

SENIOR STAFF COUNSEL FOSSUM: Good morning, Commissioners. The contract before, a purchase and sale agreement, dated February 8th of 2000, was submitted to the Commission staff for review on February 22nd of 2000. This is the fifth time the Port has brought an agreement to the Commission that proposes the expenditure of Port trust revenues to acquire land in support of Port operations. Another acquisition project involving the expansion of Lindbergh Field is being reviewed by staff and will be presented to you in a few months.

The statutory criteria for review of this proposal are three-fold. First, that the contract is consistent with the terms of the grant. Second, that the income from the property be deposited to an appropriate trust fund. And third, that the contract is in the best interests of the State.
The San Diego Convention Center is being expanded nearly double in capacity. It's been open only ten years and yet it's already served seven million guests and generated over $4 billion in regional economic benefits. It was selected for the second year in a row as one of the top three convention centers in the world by Europe's largest meetings industry publication.

When completed, the convention center is expected to support 6,000 jobs and have a $1.5 billion annual impact on the regional economy. The need for additional parking facilities arises from an unanticipated shortfall. The 1995 EIR for the convention center expansion project did anticipate a shortfall of parking, that at certain times it would exceed 2,000 vehicles. The 1995 EIR identified anticipated parking deficits on as many as 115 days out of the year.

The expansion project eliminated 1,700 spots that were on the convention center site. When the EIR was drafted, there was a mitigation parking plan that was adopted that identified a number of existing parking facilities in the vicinity of the convention center that would be available. However, since '95 a significant change has taken place in the neighborhood of the convention center that has eliminated one-third of those spaces.
In November 1998 voters in San Diego approved a memorandum of understanding between the City and the Padres organization, which provides for the construction and operation of a new downtown baseball park and development of an area of San Diego directly across the street from the convention center. This is shown on your Exhibit B in the agenda. And for the audience the redevelopment area is this area in San Diego.

COMMISSIONER CONNELL: Could you actually go through the geographic boundaries of these various sites. I would like to see the proximity of the convention center to the ballpark and the relationship of both of those to the proposed parking.

SENIOR STAFF COUNSEL FOSSUM: Right. The existing convention center, you can just see the corner of it here on this graph, and the expansion, which is doubling the size, is this area in here. The ballpark redevelopment area is outlined in this entire area here. The ballpark itself is located here and the parking lots, the subject of this calendar item, are right here. It's four city blocks right at that location.

Also, on the photograph here, you'll notice that this is the convention center expansion site. The parking area is here and the Port's waterfront is along here. The two closest hotels on Port property, the Hyatt is located
here and the Marriott right adjacent to it. The distance between those two lots -- excuse me, those two hotels and the entrance to this convention center expansion is roughly the same distance to the parking lots. Approximately 2,200 feet for the parking lots, 2,000 feet to the Marriott and 3,000 feet to the Hyatt, I believe.

The effect of the redevelopment has eliminated many of the parking facilities identified for the expanded convention center. Of the 28 lots that were open in March of 1999, only eight are expected to remain open when the convention center expansion is operative in six months.

The City approached the Port with a request to assist in this redevelopment project by participating with a commitment of $21 million for land acquisition and infrastructure costs including public parking. The negotiations between the Port and the City began in late 1998 and lasted until early 2000, when the City and Port approved the contract that is before you today.

After the submittal in February of last year, your staff requested additional information from the Port in order to try and fully understand this transaction and determine whether it meets the legal criteria for approval.

In addition to information from the Port, staff also has received and reviewed information submitted from
representatives of former Port Commissioner Harvey Furgatch. The agreement before you is a relatively complex contract involving elements of price, phased payments, partial satisfaction, title exceptions, environmental remediation obligations, liability, indemnification and repurchase rights.

The lots involved are located -- the walking distance that I mentioned before, the 2,200 feet, is approximately a ten to 15 minute walk.

COMMISSIONER CONNELL: From the convention center to the parking lot?

SENIOR STAFF COUNSEL FOSSUM: From the expanded convention center. Because the convention center has two wings, the existing convention center, its entrance is here. The eastern convention center, the expanded one, is in this area and that is approximately 2,200 feet from the parking.

COMMISSIONER CONNELL: How is the City proposing to get people there? Are they going to be running a shuttle facility?

SENIOR STAFF COUNSEL FOSSUM: I think there's the discussion of a shuttle possibility. This is an overflow parking facility. There will be closer parking, except much of the closer parking -- part of the problem is the convention center will be opening very soon. The
redevelopment project may take many years. There may be additional parking facilities that are going to be needed.

In fact, the Port has notified me that they are looking for additional parking above and beyond this 800 space lot that is before you today, because they expect additional parking needs. There's a hotel planned, that you can see on this particular diagram here, that is not, at this point in time, gone forward. There would be substantial parking available there, but that's probably quite a few years away.

There are something in the neighborhood of 8,000 parking spaces in this general vicinity proposed when the redevelopment project is complete, but that could be years away. And so clearly there is a shortfall that the Port anticipates that this lot would be used for. In addition, they have identified other needs that they may have for the lots in staging for the convention center. So that is part of their application to us as well as general parking for the convention center itself, which would include other uses such as staging.

COMMISSIONER CONNELL: May I ask a series of questions, at this point? Are you completed with your staff report?

SENIOR STAFF COUNSEL FOSSUM: Absolutely. I'm not completed, but I'd be happy to answer any questions.
COMMISSIONER CONNELL: Well, why don't you complete your report and then I will open it up for questions by myself and members of the Commission.

SENIOR STAFF COUNSEL FOSSUM: Fine. The Port characterizes the proposed acquisition as essential to support the expanded convention center. The expansion of the convention center is intended to enhance the use of Port's visitors serving facilities and increase the economic and utility value of the Port properties resulting in numerous public benefits.

The staff's review of information included in the EIRs and appraisal, survey information, hazardous material site reports, and other studies and information submitted both pro and con.

The primary issue involves the effect of restrictions on title to value and utility. These issues go to the fundamental question of whether the transaction is in the best interests of the State. Based upon staff analysis, this acquisition would not qualify as economically desirable solely from an income capitalization approach.

The Port appraiser's sales comparison approach also does not fully support the transaction in the purchase and sale agreement. The most recent information from the Port describes the lot as containing 233,762
square feet. However, the appraisal assumes that the
lands acquired will total 318,309 square feet, which is a
36 percent greater area.

The purchase and sale agreement allows for
certain title exceptions and CC&Rs that could severely
devalue the property. This includes provisions relating
to the MOU between the City and the Padres. For example,
the provision that all game and event day net revenues go
to the Padres, and that the first $250,000 of net revenues
from other days be placed into a capital reserve fund,
could eliminate any income to the Port.

As a result of disagreement with the methodology
and conclusions contained in the Port's appraisal, staff
conducted an independent analysis, which determined that
the highest and best use of the property if unencumbered
by the title and use restrictions in the MOU, free and
clear of environmental conditions that exceed regulatory
thresholds and available for immediate development
consistent with the legally permissible uses with high
density development, with a value as much as $22,075,000.

Staff has also estimated that the market value of
the fee simple of the property encumbered by the title and
restrictions of the MOU is only $12.4 million. How the
property will be managed to benefit the convention center
and what income is anticipated to be generated goes both
to the issues of utility to the convention center and income to the Port.

Therefore, staff sought information, as had been suggested by Mr. Furgatch, on the proposed operating agreement or lease. Last month the Port conveyed a draft letter of intent outlining the proposed convention center parking lot lease. The staff takes exception to the provision in the proposed lease, which gives the exclusive use to the Padres during 125 days of home games and events.

It is therefore staff's conclusion that the proposed acquisition as provided in the February 8th purchase and sale agreement and the draft letter of intent involving the proposed lease agreement should not be approved as submitted. This is because of the problems with utility and value.

However, staff recommends approval of a modified purchase and sale agreement together with a lease or other operating agreement that provides sufficient detail to understand the full costs and benefits of the transaction. In order to find that the subject contract is in compliance with the review requirements of PRC Section of 6702, staff recommends Commission approval that would incorporate the following elements in a revised contract:

Conveyance of title to the property shall not be
encumbered by CC&Rs related to limitations on use. It
shall be delivered to the Port by the City as an operating
parking lot and the price shall be no more than $21
million. The provision that provides for exclusive use by
the Padres during home games and events shall be
eliminated. Any right to repurchase the property within
five years by the City shall include a CPI adjustment in
addition to the $21 million.

Should the Port desire to use the property for a
different use or to sell it, then the City shall be
responsible to either remediate the site to a level
consistent with its highest and best use or purchase the
property at the remediated value or compensate the Port
for the diminution in value from the highest and best use.

The Port shall be responsible for the first $1
million in remediation costs for a value diminution.
There shall be no parking validation agreements which
result in reducing the Port's income. There shall be no
$250,000 annual payment into a capital reserve fund out of
gross revenues or net revenues due to the Port as
described in the MOU. The parking lot shall be operated
so that they open for the general public parking. The use
of the lots may be restricted to parking use only during
game days and not more than ten event days. And finally,
the terms of any agreement for use of the subject lots
shall not exclude members of the public from using the lots for accessing the convention center or any other Port public trust properties.

That completes the staff's recommendation. And I'm available to respond to any questions you have.

COMMISSIONER CONNELL: Okay. This is a very complex matter. And I'm going to now suggest that in order to have a clear understanding of some of the issues, that we go through every one of the conditions that you're asking us to consider in order to modify. It sounds to me like we're rewriting the entire legal agreement in order to get to a point of comfort here. And I want to make sure that we understand the significance of every one of these conditions and how we arrived at value, because there seems to be a huge difference in our understanding of value of this land and that of the City and the Padres.

And, of course, our interests here, let me remind the public, are to make sure that this land area is getting the highest and best use from the viewpoint of the Port and the State of California. The State of California is a surrogate trustee for the Port here, and that is our interest. So our interests might be different from both the City and clearly different from that of the Padres.

And we always try to respect the need for a city to define its own land use, but when it relates to Port
geography, then we need to be protective of the State and particularly concerned about the precedent nature of any of our agreements up and down the coast. If we do this for the City of San Diego, Mayor O'Neill might find this is a great idea for the City of Long Beach or the City of Los Angeles might choose to pattern a future agreement under a similar kind of definition.

So we need to make sure that whatever we do here today not only stands a full review locally as to the agreement as to price and use, but also will withstand whatever is done statewide and other agreements as it relates to this type of land for use as a parking lot.

Let me begin with an opening question. We have a number of people who want to speak today and I will recognize all of you before we entertain any motions, so rest assured, we're not going to move through this item quickly.

I am concerned what would the status have been or what would the staff recommendation have been here, Curtis, if we had not a Padres ball field and we just had the convention center?

SENIOR STAFF COUNSEL FOSSUM: I would assume that the staff's recommendation would be to approve a parking lot that if it was needed by the San Diego Unified Port District -- in fact, they fully acknowledge that this is
not their first choice as far as a parking lot. They would have preferred closer parking. However, because of the redevelopment project, it's the closest available surface parking that can be located, and I just read an article in the paper last week where one of the Port Commissioners said if you can find us a closer parking lot, we'll buy it, but we tried and we can't locate one.

So I think the point is is that this is not going to be a primary parking lot for the convention center, but it is a parking lot that they identify as needed for their overflow parking needs. There may be, in fact, times -- I mean, what I mentioned to you about it being one of the top three convention centers in the world, I just found that this weekend going over the -- on the web site for the convention center to find out more information about it. It is a highly beneficial convention center to the region down there, and they do have needs that they have identified, as far as the Port's concern that this is the best they could do in the market that's down there at this time. And that's what their response is to that issue.

COMMISSIONER CONNELL: Well, when did the second stage of the convention center -- what was the action of the City in that regard, didn't they require parking on site?

SENIOR STAFF COUNSEL FOSSUM: Absolutely. They
P had a very interesting response to the mitigation needs in the EIR. They came up with a parking program. And the parking program identified, I think, maybe a couple dozen different parking lots in the San Diego area that the owners of, by letter agreement, said that they would make available to the convention center when they had needs for parking.

However, many of those, the majority of those probably, I would venture, have been eliminated in the last five years, because of the expansion not only of the ballpark, but the redevelopment project that's going around, and parking is no longer the highest and best use, if you will, in that area, because there are so many anticipated valuable properties that are being proposed for development for hotels. There's a hotel that's just being approved, I believe, it's a Westin, in fact, just like we're here right here at this location, which is right across the street from the convention center that went for a very high price, I believe, and somebody probably from the Port could identify it. But the value of it was nearly astronomical as far as values down their.

The prices of these properties are being driven up. And so we took a look at it, the staff of the Commission took a look at this from the standpoint of what is this piece of property worth for development potential,
knowing that this may not always be the parking lot that the Port will need. There may be other developments that take place in the future, and they may be able to turn this around and use it for additional purposes or convey it to other parties in the future. And if economically that makes sense, then we analyzed that.

And so that's how I actually -- we came to the conclusion that the value of the property did exceed, potentially did exceed $22 million.

COMMISSIONER CONNELL: Well, if we were not using it as a parking lot, what would the Port propose that they use it for?

SENIOR STAFF COUNSEL FOSSUM: Well, again, from an investment standpoint, if they did acquire this property and in a few years it was no longer needed for parking purposes, they could put it on the market presumably for a highest and best use. It could be offices, at that time, or it could be residences. It could be a lot of things. They themselves probably would not develop, I would venture, because it is a distance from the rest of the Port property, but it does have the potential for generating future income.

COMMISSIONER CONNELL: The only reason they're about to acquire this is because they need the overflow parking then for the convention center?
SENIOR STAFF COUNSEL FOSSUM: That's their motivation. They expressed it to us.

COMMISSIONER CONNELL: At what time did the discussion with the Padres regarding this piece of land occur historically?

SENIOR STAFF COUNSEL FOSSUM: The newspaper reports --

COMMISSIONER CONNELL: Was the City discussing using this land for parking related to the Padres' expansion for cars or the Port?

SENIOR STAFF COUNSEL FOSSUM: The Environmental Impact Report for the Padres identifies it also as parking for their needs. And it's pretty clear that if a parking structure is constructed in that location during baseball season it's likely to be heavily used by the Padres. And, in fact, the Port is considering leasing it to the Padres for operational purposes.

However, as we point out in the staff report, our conditions that we are recommending for your restriction on this title would ensure that it's available for the rest of the public and particularly the convention center attendees and those using Port property, so that it wouldn't be designed in a way that makes it not usable for the convention center and focused on the Padres, if you will.
COMMISSIONER CONNELL: I appreciate that, but my question was more directed at the historical time line here.

SENIOR STAFF COUNSEL FOSSUM: The time line --

COMMISSIONER CONNELL: Who considered the use of this property first as a parking lot? Was it the City, in its negotiation with the Padres or was it the Port in its discussion of the need to expand parking at the convention center?

SENIOR STAFF COUNSEL FOSSUM: I believe that whoever did the redevelopment project area design identified it as a parking area. And the Port in negotiating with the City and the Padres -- well, not with the Padres, with the City in trying to locate acceptable parking, this was identified by the parties ultimately as being the area that was available. And the other areas were not put on the table or -- I don't know the details of it.

COMMISSIONER CONNELL: So the redevelopment plan designated this as a parking area, correct?

SENIOR STAFF COUNSEL FOSSUM: I believe that's the case.

COMMISSIONER CONNELL: That was when? What was the year of that?

SENIOR STAFF COUNSEL FOSSUM: I'm afraid I'm not
able to answer that.

COMMISSIONER CONNELL: And that subsequent to that the City began negotiating with the Padres and discussed uses of this?

SENIOR STAFF COUNSEL FOSSUM: The City and the Padres negotiated a Memorandum Of Understanding in 1998 when they were looking at moving the Padres to the downtown area. And although I'm not all that familiar with the sequence of events in that redevelopment, the electors in the City approved this redevelopment project, this MOU between the City and the Padres, and the redevelopment agency of the City and the Center City Development Corporation in November of 1998.

And about that time, once that had been designed, then they began negotiations with the Port. And, frankly, if that redevelopment project had not been approved by the voters, the Port probably would not have needed this parking lot because the parking lot that --

COMMISSIONER CONNELL: When was that?

SENIOR STAFF COUNSEL FOSSUM: November of '98, because the parking lots that had been --

COMMISSIONER CONNELL: But that was subsequent to the discussion with the Padres?

SENIOR STAFF COUNSEL FOSSUM: I don't know. It's kind of a chicken and an egg a little bit.
COMMISSIONER CONNELL: Is there anyone here from the City?

Would you sign up to speak because we're going to need to get the City's perspective on this time line.

SENIOR STAFF COUNSEL FOSSUM: I believe what happened was that the voters had turned down, in the past, various proposals for ballparks. This particular vote in the City of San Diego, had it not been approved by the people of the City, there might not have been additional parking needs for the convention center, because the redevelopment project has, in fact, post-1995 when the parking plan was established, has now taken away those identified parking needs, available parking areas that would have been available had the redevelopment project not gone forward.

So in a sense, the Port kind of got squeezed, because they had a plan for parking, but it got eliminated because of the redevelopment project.

COMMISSIONER CONNELL: I'm beginning to understand this now. Is it fair to say historically -- and hopefully the City representative when he speaks will verify the time line being, basically the formation of a redevelopment plan. The redevelopment plan was approved by the voters. And, at some point, the City began negotiating with the Padres for expansion or location of
the Park to that downtown location?

SENIOR STAFF COUNSEL FOSSUM: I think they probably negotiated it prior to the election.

COMMISSIONER CONNELL: At about the same time conterminous with that discussion was a decision of the convention center authority to expand their convention center?

SENIOR STAFF COUNSEL FOSSUM: They had established that three years previous.

COMMISSIONER CONNELL: And what did they think they were going to do for parking then? They were going to take some of the land in the redevelopment area?

SENIOR STAFF COUNSEL FOSSUM: They were -- I would say they were fortunate if you look at it from the standpoint of obligations and compliance with obligations and that they -- fortunate in a sense, maybe unfortunate ultimately, but fortunate in the sense that they did not have their own parking identified. What they had were commitments from private parking operators that they said we will have parking available for you when you bring conventions to town, and when you have trade shows and so forth. And we'll be happy to have your people come down here and we'll give you maps on how to get to our parking facilities. And what happened was that land became more valuable after 1995, and so it was eliminated.
COMMISSIONER CONNELL: So that was the development of the Westin Hotel, et cetera.

Okay, fine, I think we understand that sequence. Then we get into the question of level of criteria for approval. You kind of glossed over that. What are the legal criteria that we must review as Commission Members prior to approving this type of action?

SENIOR STAFF COUNSEL FOSSUM: Well, in the Public Resources Code there is a sequence of Sections 6701 through 6707 I believe or 6, 6702(b) is the section that lays out what that criteria is. And the criteria is basically that the project is supposed to be consistent with the statute underwhich the lands are to be held. The type of use, for example, is parking a trust use?

Secondly, that revenues that are generated and go to the Port will be put into a Port trust account, and so those revenues will be used for other trust purposes.

And finally, a standard that gives a lot of leeway, frankly, to those of you who are in the position of making decisions is it's in the best interests of the State.

In the California Code of Regulations, there's a few more details that lay out the kind of issues that the Commission is to look at. And the staff report goes over those, if I can find it.
COMMISSIONER CONNELL: Has the Attorney General reviewed this contract?

ASSISTANT ATTORNEY GENERAL HAGER: Contract?

CONNELL: I mean the agreement we're discussing today?

ASSISTANT ATTORNEY GENERAL HAGER: The calendar item, yes.

COMMISSIONER CONNELL: Did you agree to the conditions?

ASSISTANT ATTORNEY GENERAL HAGER: Yes.

COMMISSIONER CONNELL: You are comfortable with these conditions from a legal viewpoint, you feel it meets the criteria?

ASSISTANT ATTORNEY GENERAL HAGER: Yes.

COMMISSIONER CONNELL: So you are recommending this today?

ASSISTANT ATTORNEY GENERAL HAGER: Yes.

COMMISSIONER CONNELL: Go ahead.

SENIOR STAFF COUNSEL FOSSUM: In the Section 2802 of the California Code of Regulations, just on page five of your staff report, there's a list of a half a dozen items that the Commission is used to analyzing whether the use is consistent with 6702.

And we certainly looked at all of those. And staff did, and I think we've addressed those in the staff
report. The economic viability clearly was one that we were struggling with from the standpoint of the type of information that the Port had submitted to us in their appraisal, and we found that we could not support their appraisal, so our independent analysis was used to determine what the highest and best uses would be of the property, and what the value of the property would be if we had to go out and purchase it, for example.

COMMISSIONER CONNELL: I would actually prefer, Paul, as I've noted before, is that we always do our own economic analysis. I think we should always be independent of any groups that come before this Commission, whether it's the City or a private entity, so that we cannot be accused of just duplicating their work. We certainly have a capacity at the State level to do our own economic analysis.

EXECUTIVE OFFICER THAYER: And that's why we have appraisers on staff, certified appraisers, who look very carefully at this, so we would be able to offer the Commission an independent perspective on this.

SENIOR STAFF COUNSEL FOSSUM: They are available to respond to your questions if they get into that level of detail.

COMMISSIONER CONNELL: I think we should get into that level of detail. I think it's important to establish
a public record here on value today.  

    We'll move on, Curtis.

SENIOR STAFF COUNSEL FOSSUM: Yes.

COMMISSIONER CONNELL: We're now on appropriate 

    for development mix.

SENIOR STAFF COUNSEL FOSSUM: Right, and given 

    that the City of San Diego has come up with this 

    redevelopment area, as the staff report reflects, I 

    believe this is appropriate for a developmental mix, the 

    parking lot is. It's conducive to public access. That's 

    certainly the motivation for the Port is to provide an 

    area that will allow the public to access its public trust 

    lands by parking on this lot.

    Environmental protection, we believe that that's 

    satisfied. And, again, the other wise and best interests 

    of the State is certainly kind of the amorphous decision 

    making that comes with looking at the project as a whole. 

    So the staff's conclusion is that as modified by the 

    recommendations that you'll find in the proposed findings 

    by the Commission, that a contract that included those 

    provisions would, in fact, comply with all those elements 

    of both the Code of Regulations as well as the Public 

    Resources Code.

    COMMISSIONER CONNELL: That then brings us -- 

    does everyone on the Commission understand the legal
criteria for approval? Do they have any questions?

All right, then I think we should move to the conditions that you've outlined. You've outlined all of them in some detail and rather quickly. Let's go through each one of them now, if we can. And let's go through them in some detail, so that we understand why we feel these conditions are important if we move forward today, should the Board decide to move forward today on modifying the agreement in proposing a modified agreement here.

Let's start with the appraisal, if we can.

SENIOR STAFF COUNSEL FOSSUM: On the purchase --

COMMISSIONER CONNELL: Well, actually, before I do that, maybe it would be appropriate to take a five-minute break and then call upon all of the local people, first, and then we will go through all of the requests for speaking.

We have a number of people who wish to address the Commission. I want to entertain all of you in adequate time, so why don't we take a five-minute break here. We'll come back and we will begin with a public discussion by all of those who have been kind enough to submit requests to speak. And then we will go back into our discussion on some of the conditions that you want to outline, Curtis.

SENIOR STAFF COUNSEL FOSSUM: Thank you.
COMMISSIONER CONNELL: Thank you.

(Thereupon a brief recess was taken.)

COMMISSIONER CONNELL: I'll call the meeting back to order.

I would like to try to engage everyone from the public that is here first, and then we will go from the public testimony back into a discussion of the specifics of the staff recommendation and modifications of the agreement as they were proposed. I would like to just announce to members of the audience, the reason I am wearing a green ribbon today and a pin is that this is National Victim's Rights week across the country.

And I sit as a Member of the Board of Control with the Governor. And this is a very important day in the Capitol. Unfortunately, I cannot be there. And I told them I would wear these pins today, because we do each year in Sacramento, at the Capitol, a ceremony honoring all of those who have become victims of crime in California.

For those of you who don't know, the Board of Control was established by the Legislature some time ago and provides financial support for victims of crime, for psychological support, for medical support if they have been injured and need to be at a hospital and receive medical care, funeral expenses for families whose members
have been taken away from them by a result of crime.

So it's a very important program that we support
here in the State, and I think it behooves us all to show
respect for those who have been unfortunately
disadvantaged by crime in their immediate families. So
it's something that we, as the Board of Control, support
each year as an annual celebration of those families who
have been victimized by crime.

Now, I'd like to move now back into the agenda.
And we are going to call upon representatives of the Port
and the City, and we also have, I believe, Craig Brown
here today. Craig, would you come forward and identify
yourself for the record and then I'm going to start with
the representatives of the Port, David Chapman and Frank
Urtasun, I hope that's correct. Is that correct?

MR. URTASUN: Urtasun, yes.

COMMISSIONER CONNELL: Thank you. And then we
will go to Leslie, if we may, for the City.

MR. BROWN: Thank you, Madam Chair. I'm Craig
Brown and I represent Mr. Furgatch on this issue.

By and large, we agree with much of what you've
heard this morning. We probably come to a slightly
different conclusion, however.

One of the key events I want to talk about just
briefly, because it kind of sets the stage for this, is
the election that was pending in November of '98 to
approve this project. Low and behold shortly before that
election, the project came up $21 million short. And, in
fact, there was an agreement in late October for the Port
to fill that gap with infrastructure improvements.

You're going to find throughout this that the $21
million number is consistent even though many of the
details change. For example, in September of 1999 the
parking lots were $14 million of the contribution and
there were some other items totaling seven million for $21
million. In October of '99 the other improvements were
dropped, the parking lots became worth $21 million.

Given that background, I want to talk about how
useful these particular lots are to the Port, at least in
your view. The Port attracts major conventions. It makes
commitments five, seven years in advance to these
convention holders. Obviously, a key item of negotiation
is how much parking is available.

So these fringe parking lots fill the need for
big conventions committed five to seven years in advance
sometimes. The Padres' schedule is put out a year in
advance, so how is this going to be resolved when the Port
wants to commit five to seven years in advance these
parking lots to some convention holder, yet they can't
tell whether the Padres are going to need them.
Second, the Port had a study done by a company called ACE Parking -- excuse me, the Port had a study done by ACE Parking, who concluded they were too remote, that a shuttle service would be needed, and that a shuttle service was economically prohibitive. That was their consultants.

COMMISSIONER CONNELL: And this is the Port?

MR. BROWN: This is the Port's consultant ACE Parking. It said, "The location of these surface lots are too far away from the convention center to attract convention center visitors or employee's without the use of a shuttle. Implementing a shuttle system is economically prohibitive." That was their consultant.

By the way, in addition to being -- good morning, Governor.

COMMISSIONER CONNELL: I would just like to reference the fact the Lieutenant Governor is now with us. Mr. Bustamante, we are on an extended discussion of Item 115, the Port of San Diego. We're taking public testimony.

MR. BROWN: Good morning.

COMMISSIONER CONNELL: You were on the shuttle system.

MR. BROWN: Yeah, the shuttle is cost prohibitive. There's also, as you might note, some active
railroad tracks between these lots. And the convention
center is obviously making them even more unattractive.
There are other lots closer. They may have been
designated for other purposes in the redevelopment plan,
but there are clearly other lots closer that are not now
built upon.

Finally, on this particular point, the lots are
in the City's urban plan for use as a sports arena. And
at least as brought to the Commission, the City retains
the right to take them back. In other words, the Port
needs them, but if the City wants them for a sports arena,
they go back. Now, your staff has proposed a modification
on the price, but I think it gets to the fundamental issue
of how valuable these lots are to the Port, if they're, in
fact, willing to give them back to the City upon their
call.

COMMISSIONER CONNELL: How does that work again,
Craig?

MR. BROWN: As we understand the agreement, the
City retains the rights to repurchase these lots. The
City's urban plan for this area has these lots designated
a site of a sports arena. So Madam Chair, what I'm trying
to speak is the value of these particular lots to the
Port. If they're so valuable, why are they willing to
give them back up.
Your staff has more than adequately discussed value. I'm not going to repeat their remarks. We agree with everything they said on that.

In conclusion, the real issue is is this project ready for prime time, should you vote on it today and delegate it to the staff as a ministerial duty?

First, as you heard from the staff, the size of the lot was reported eight days ago to you as substantially smaller than the Port reported to your staff in July of 2000, 36 percent I believe was the number your staff cited. If you don't know the size, how do you know the value.

The methodology for the appraisal was questioned by staff. We agree with that. There's at least two pieces of pending litigation, one brought by the Port itself to validate the actions. You know, they were quite controversial in the past. Mr. Furgatch has a lawsuit that was argued in the District Court of Appeals just recently that at least has a reasonable chance of prevailing based on some other court decisions.

Finally, they are proposing to use rental car revenue as part of this package. Those rental car fees were put on to build a parking structure. We're not sure that a tailgate lot for the Padres is the same thing as a parking structure.
Finally, you've got a lease that's in draft. You don't even have a lease agreement before you that is complete. The project has been under negotiations for at least two years, and yet you don't even have a complete lease agreement. In fact, a 1999 version of the lease that we obtained under Public Records Act or a court case I'm not sure which, was far more complete and far more detailed than the lease that's before you today in our judgment.

Therefore, our conclusion is that we recommend that you accept the staff recommendation to deny. We think the staff conditions are absolutely reasonable, but we think it belongs back with you. If there's a decision to spend $21 million of trust money, it longs back with this Commission. It gives the public another chance to deal with it. It is a complex transaction. With all due respect to staff, we think it belongs back with you.

COMMISSIONER CONNELL: So you are -- let me make sure I understand, you are in agreement with the general tone of the modifications suggested by our staff, but you would prefer, what, Craig, that --

MR. BROWN: That they work the details out. There's lots of conditions. I would be surprised if they're all going to be as clear as they are in the staff report when they're negotiated and put into a lease. And
that given the fact that the complexity and the size, that I'll be back before you, so that people like Mr. Furgatch and others can come in here, make a case before this $21 million of trust funds are committed.

COMMISSIONER CONNELL: Fine. I just wanted to make sure that I understand what you were saying.

CHAIRPERSON BUSTAMANTE: Craig, if you're looking at this thing, I mean, the convention center seems to need more parking. And it seems to me that with or without a sports arena, or however that affects what's taking place here, wouldn't you think that the Port involved with this activity should be taking place anyway? I mean shouldn't they just be going through this, as a matter of course, with or without a sports arena?

MR. BROWN: With or without those conditions, Lieutenant Governor, I think it's proper for -- it would be appropriate for them to acquire some parking, whether this is the right lot or not is a matter of question. Value is a matter of question. But more significantly, if they need to solve their parking problem, why would there be a condition that allows the City to take these lots back when they want them for whatever other use they want.

In other words, this is not a long-term fix to the Port's parking problem. It's only a long-term fix if the City never demands the lots back. Yet, one of the
conditions of the agreement before you is the City can
take the lots back.

COMMISSIONER CONNELL: Well, why did you put
those conditions in there?

EXECUTIVE OFFICER THAYER: That wasn't our
condition to begin with. It was a condition the City put
on the deal. The City is actually acquiring these lots.
They're the ones that are doing eminent domain to acquire
them. And they had a number of conditions they wanted to
put on the sale, then on to the Port for parking.

Our conditions strip away most of those, the deed
restrictions in terms of uses and that sort of thing that
accept that deal with value. Our remedy for this
particular one, in which the City for just five years,
it's not forever, but for five years, the City retained
the right to buy it back. They wanted to be able to do
that at the purchase price of $21 million. We thought
that was inappropriate, because the value of the property
will go up. And so our conditions say no, you have to at
least pay CPI on top of that. And then after five years,
the Port doesn't have to sell it back.

COMMISSIONER CONNELL: Cruz, let me just continue
this line of questioning, because we started this earlier.
I'm a little concerned this didn't come out in the staff
discussion. I'm concerned because we are making a
judgment here that we need this land for parking for the
Port, for the convention center expansion. Now, the
convention center is not going to go away. It's going to
stay there, this second expansion of the convention center
will be permanent.

So if we felt that we needed these lots in order
to enhance our parking activity at the convention center,
and that's the action that underlines our decision today,
that this is a direct relationship to a Port activity,
i.e. the convention center, then why would we want to be
in a position of allowing the City to ever be able to
recapture this lot? I don't understand the thinking
there.

EXECUTIVE OFFICER THAYER: I think --
COMMISSIONER CONNELL: It undermines the basic
argument we're making.

EXECUTIVE OFFICER THAYER: I think, again, it
wasn't a deal that was worked out by staff. And I think
the Port should respond to your question, but my
understanding of what the Port's response would be is that
these lots are the closest ones left that can be used for
parking. They run some risk that the City may repurchase
them, in which case the Port's not out any money. They
got their money back and they're back to where they would
be. If they didn't go forward with this deal, they would
have to look for other parking. They believe that the
other parking that might be available is even further out.

They would rather buy this property subject to a
potential that it be repurchased, but have these lots at
the closest proximity to the convention center as a
potential alternative and run the risk of having them
bought back than saying no to this deal and then
automatically having to look further and giving up on this
potential deal.

COMMISSIONER CONNELL: Well, did they try to
negotiate this condition?

EXECUTIVE OFFICER THAYER: I believe they did. I
think you should ask that of the Port.

CHAIRPERSON BUSTAMANTE: Which is a good segue
way because we have David Chapman who is the attorney up
next and perhaps you can come up. Craig, is there
anything else you'd like to say before you step down?

MR. BROWN: No, Lieutenant Governor. I think the
key point is it's the $21 million to fill the gap. That's
what it was before. It's what we believe it still is.

CHAIRPERSON BUSTAMANTE: Thank you.

MR. CHAPMAN: Thank you, Members of the
Commission and staff. My name is David Chapman. I'm the
attorney for the Port of San Diego.

I made notes on a number of comments that were
made earlier and I'd like to address each one of them, but
maybe I should start with the one before you right now,
which is the repurchase issue. And it might be useful --
first of all, the observation is correct by Mr. Thayer
that these were -- this and other provisions of the
agreement were requirements of the City of San Diego.
They were negotiated heavily.

The Port would have preferred this provision not
be in the agreement, but this is the basis upon which
these lots, which are very important to us, can be
acquired. It might be useful to read the actual
provisions of the agreement, however, with respect to this
item, Section 12 of the purchase agreement and it
commences with language I'll read as follows.

"The parties," that is the City and the Port,
"acknowledge that the law presently applicable to the
purchaser, the Port, prohibits purchaser from selling,
disposing or otherwise conveying the lots after it
acquires them."

The point there the present lot does not permit
the Port to sell these lots back after it's acquired them.
That's acknowledged in the agreement and the City
understands it.

The law would have to change in order for this
provision to be implemented, and it's entirely unclear
whether that would ever occur.

COMMISSIONER CONNELL: What law has changed?

MR. CHAPMAN: The law that governs the Port of San Diego, which presently prohibits us from selling land that we own.

COMMISSIONER CONNELL: So you're saying that even if we put this condition in that, the City can retroactively take back this land, that we wouldn't be in a position to -- that the Port wouldn't be in a position to sell it?

MR. CHAPMAN: The provision in the agreement is a conditional right the City has. And the condition precedent to its implementation would be a change in State law.

CHAIRPERSON BUSTAMANTE: Well, why would you set up something that sounds like it's going to be a court case?

MR. CHAPMAN: It won't be a court case. It would be a matter for the Legislature. Unless the Legislature changes the law, we will not be able to resell the land to the City. The City understands that. And the resale provision in the agreement expressly acknowledges that.

CHAIRPERSON BUSTAMANTE: So if the City understands that, then why is the provision in there?

MR. CHAPMAN: The City insisted that not
withstanding that constraint that they would like the opportunity if, in fact, at some point in the future the law changed.

CHAIRPERSON BUSTAMANTE: Okay. If the law changed.

MR. CHAPMAN: If the law changed.

ACTING COMMISSIONER PORINI: Maybe the City can comment on that.

COMMISSIONER CONNELL: Yes, I think the City should comment on that.

CHAIRPERSON BUSTAMANTE: Where's the City? Why don't you come on up and just on this point, so we can finish this point off. While you're coming up, now my understanding is that any restrictions on the property, including this five years, would have the overall effect of lessening the value of the land, if there are other restrictions on it.

Now, this for me, is an important point, because I don't know if the property is of substantial value, if there are -- if you have the ability of being able to take back or sell back or, you know, I think this is a very important point here, not because of anything other than just the total value of the property itself. So maybe the City could respond and then you could follow up.

MR. GERARD: Thank you, Members of the
Commission. My name is Leslie Gerard. I'm an Assistant City Attorney for the City of San Diego. At the time we negotiated this agreement, we fully understood and understand today the restrictions on the ability of the Port to sell surplus land. In order to sell surplus land, as I understand it, there has to be a finding that it's no longer needed for trust purposes.

We knew that. We understood it. What we anticipated or designed by this provision was to anticipate perhaps an exchange of properties, if we decided in the course of our land use planning for the area, that we wanted to build something there. And, yes, Mr. Brown is correct, the current land use plan shows it reserved for a future sports arena. I'll just point that given our experience with the ballpark and the stadium, it's going to be years before we build another sports facility in San Diego.

If we wanted those lots for some land use planning purpose, the idea would be we would have to identify some land that the Port would be willing to exchange of equal value. And I think the idea was that we would identify some land -- maybe, we'd have to go out and get it by eminent domain and then that land would then be available for parking to serve the convention center.

But we fully understand, and I don't believe the
provision reads that we have an absolute right to demand
that if we write a check for 21 plus million dollars, we
can get the property back the day after the transaction.

CHAIRPERSON BUSTAMANTE: Well, that's not the way
it seems like staff interpreted it, because they
immediately began the process of talking about CPI and the
whole process of buybacks.

MR. GERARD: If you look at the actual language
of the agreement, I believe it talks about a reacquisition
right not a repurchase right, but we fully understand the
limitations of the Port District Act. And we're not going
to march into court and ask a court to --

CHAIRPERSON BUSTAMANTE: What is the staff
response to that?

EXECUTIVE OFFICER THAYER: I think I'd like
Curtis respond to some of this because it's legal, but,
yes, I neglected to say and should have mentioned that
there is this restriction that could create trouble for
repurchase by the City.

Staff concentrated on the Port value of it,
because it seemed like the most important part of this
deal is whether or not it was worth $21 million. And
this, in effect, in that present value of the $21 million
purchase, if you're having to sell it four or five years
down the road at $21 million, is less than $21 million.
The net result would be that that would be a diminution in value, so we wanted to make sure the Port was getting its value for $21 million.

CHAIRPERSON BUSTAMANTE: And without encumbrances is the staff's position that the property then is worth the $21 million?

EXECUTIVE OFFICER THAYER: In fact, our appraisers ended up saying that the upper range of worth there was a little over 22 million. So, yes.

COMMISSIONER CONNELL: What's the lower range?

EXECUTIVE OFFICER THAYER: I'd have to ask our appraisers to find out. It's $17,500,00.

COMMISSIONER CONNELL: Well, that's a huge difference between $17,500,000 and $21 million.

EXECUTIVE OFFICER THAYER: And even the $22 million, and correct me if I'm wrong on this, reflects an estimate. The highest and best use is probably apartment buildings, and we calculated the number of units that would be placed on this area of property, and how much those units would sell for.

We didn't pick the highest prices for apartment buildings, because we understand in that area they might not have a maximum sale. So our maximum range there is not unrealistic. We cut that down to what they theoretically could have been if you were saying well, in
someplace in San Diego we've sold apartments for such and such value, it was a higher value than what's estimated here. We said how much could you sell them right here? And that's the upper range is $22 million, but it's a realistic estimate.

CHAIRPERSON BUSTAMANTE: So the higher range is for apartments and the lower range is for?

EXECUTIVE OFFICER THAYER: I think for --

SENIOR STAFF COUNSEL FOSSUM: Lower density apartments.

CHAIRPERSON BUSTAMANTE: What's the appraisal for parking?

SENIOR STAFF COUNSEL FOSSUM: Twelve four, if it's restricted. It has to do with the restriction on the land.

CHAIRPERSON BUSTAMANTE: Without restrictions.

SENIOR STAFF COUNSEL FOSSUM: Well, the property -- it's the property value itself as land that we were looking at, what's the potential value. If you were a developer and you went and bought this piece of property and put apartments on it, what kind of rate of return would you expect to find on your investment, and what would you be willing to pay for the property for that investment.

And that's how the values basically were reached
at the 17 to 22 figure. If you looked at it as a restricted use where the only thing you could ever put on this piece of property was parking, staff's estimate of value on that was $12.4 million.

And Paul is correct on the CPI adjustment, because there was the provision that if the law was -- if the Legislature enacted and said it's okay for the Port to swap lands or sell these lands to the City, because we found a higher and better use for them and the Legislature stepped in, we still thought that there ought to be an adjustment to the $21 million in the repurchase price so that it reflects some kind of a return on investment to the Port. And that's why --

CHAIRPERSON BUSTAMANTE: So if we were to have this five year clause in which an exchange of property would take place, are we going to exchange a $21 million property that we're purchasing for seventeen five?

SENIOR STAFF COUNSEL FOSSUM: Absolutely not. It would be 21 plus the CPI.

COMMISSIONER CONNELL: Well, I don't know that that's what you can conclude. I mean, what you're doing --

CHAIRPERSON BUSTAMANTE: Is that's what's guaranteed in the document?

SENIOR STAFF COUNSEL FOSSUM: I believe that's
the way the restriction is written that if the Port were
to reconvey -- say four years from now the Legislature
said, you know, we really think --

CHAIRPERSON BUSTAMANTE: No, exchange. Assuming
that the --

SENIOR STAFF COUNSEL FOSSUM: Either. If the
Legislature authorized either a sale to the City or an
exchange of the property for other property with the City,
we would -- the Commission's approval would require it as
recommended.

CHAIRPERSON BUSTAMANTE: It would be a minimum 21
plus CPI.

SENIOR STAFF COUNSEL FOSSUM: And if it's past
the five years and they did, it would have to go by an
appraised value, and again a minimum. So if the value had
just dropped, you know, off the charts and it turned out
being worth $10 million, repurchase price would still be
$21 million. So the Port would not lose any money, but
there's an escalation of value, if it goes up to 40, the
Port gets 40.

COMMISSIONER CONNELL: You're telling me we've
established a floor of $21 million dollar?

SENIOR STAFF COUNSEL FOSSUM: Yes, I believe
that's correct.

CHAIRPERSON BUSTAMANTE: Anything else on this
point? Would you like to hear from the appraiser?

ACTING COMMISSIONER PORINI: After we've heard all the testimony.

COMMISSIONER CONNELL: I would like to hear about the shuttle system being prohibitive. You know, the Port study that the shuttle system to this parking lot is prohibitive. I mean, it seems to me that asking tourists to walk this distance to an outlying lot fails to provide the kind of support that we want for our -- you know, that the City would want for its convention center.

Why is it prohibitive, and how do you anticipate people would be able to use this facility then if they're going to have to have walk?

MR. CHAPMAN: Well, I think there are a number of responses to that. It is true that an early study done by ACE Parking, a consultant to the Port District, did conclude that these -- the location of these lots was undesirable and would be problematic to serve the parking requirements of the convention center. That study was done at or around the time we commenced the evaluation of alternatives that were available to us for parking to serve the convention center in our discussions with the City.

ACTING COMMISSIONER PORINI: What year would that be?
MR. CHAPMAN: Pardon me?

ACTING COMMISSIONER PORINI: What year?

MR. CHAPMAN: Early '99.

The Port is not making this transaction. No one can make this transaction unilaterally. No one can identify the parking and obtain the parking that would serve the convention center unilaterally. The Port district cannot do that unilaterally. We have to deal with the landscape and the reality of the geography of this area.

We negotiated intensively with the City of San Diego for alternative locations. We examined with other parties alternative locations. The need for parking for the convention center is unquestioned, as Mr. Fossum addressed. There is a woeful lack of adequate parking because of the redevelopment in this area that is already occurring even though the ballpark is not proceeding. And the convention center needs parking.

Are these the best parking lots for the convention center that we would like to be able to obtain? They clearly are not.

Are they the only parking lots that we can obtain to serve the requirements of the convention center?

They clearly are.

There will be difficulties. They will not be
preferred, but as your staff report indicated, the

distance of these parking lots from the entrance to the
eastern portion of the expanded convention center is no
greater than, and with respect to the Hyatt, more than
1,000 feet less than the distance that one would have to
walk as an attendee at a convention from one of the
existing convention center hotels to the convention
center.

CHAIRPERSON BUSTAMANTE: Thank you. Any other
points? You said you had some.

MR. CHAPMAN: Well, there were a number of issues
that were raised.

CHAIRPERSON BUSTAMANTE: Hold on a minute? Did
you have any more?

COMMISSIONER CONNELL: I just had one question on
that, Mr. Chair. You concluded on the time line that this
was 1999 or your discussion of the shuttle parking. When
did you get involved in looking at this land as an
alternative to parking arrangements?

MR. CHAPMAN: It would be in '99.

COMMISSIONER CONNELL: In 1999?

MR. CHAPMAN: Right, that's when we started to
examine what alternatives were available to us.

COMMISSIONER CONNELL: Did you do that
independent of the City or did the City come to you?
MR. CHAPMAN: No, we did it independently. I think we've dealt with the repurchase issue. There was some suggestion by the earlier speaker that there's a problem with these lots related to the fact that commitments are made to conventions coming into the area many years in advance. Whereas, the schedule for the ball games is only one year in advance. And the reality, as I understand it, that while commitments for conventions in the future are made, one does not get to the level of detail of identifying for individual conventions where the participants are going to park.

The assumption is that parking will be available to serve the requirements of the convention center, not that special entitlements will be granted seven years in advance in any particular parking facilities. These lots will be available. The problem will be if they're not available. In that case, we've got a convention center that cannot adequately park the events that will be coming to it.

There was a suggestion that closer lots are available. We tried hard to find closer lots. There are none available to us closer than these.

CHAIRPERSON BUSTAMANTE: Okay.

MR. CHAPMAN: I believe --

CHAIRPERSON BUSTAMANTE: We have a question here.
COMMISSIONER CONNELL: Yes. Who gets priority then? How does this parking arrangement work? We spend $21 million, the Port, to purchase these parking lots, how much priority is determined? I mean the Padres sit down on their schedule of events and they say they need the activity at a certain point in time. My question to you is how do we assure that the public, being the convention center public, gets priority at that table? How does that work in the lease negotiation or the purchase agreement?

MR. CHAPMAN: I think we're fairly tightly constricted with the conditions that are proposed by your staff. But the answer to the question is that we are acquiring the property encumbered. We would prefer it to be unencumbered, but we are acquiring the property subject to the encumbrance of the arrangement made between the City and the Padres, to which we were not a party. And that that encumbrance, as it's narrowed down considerably by the conditions that your staff has proposed, will give rights to the Padres to the lots only on days when they are having games, essentially 81 days a year. And then only for an appropriate period before and after the actual game.

In all other events, other than very limited numbers of days, which will certainly be less than ten, I would expect for special events, even in all other
respects the lots will be available for public parking, that is to serve the requirements of the convention center. And they will be designed in such a way as to not impair the ability of the convention center to use them for staging, staging of trucks and buses, which is a significant problem also.

This is a very densely developed, and will be more densely developed area which severely constrains on the ability to serve all of the needs that are going on down there.

COMMISSIONER CONNELL: So what will you do in the part of the time you don't have these parking lots available? I mean, you figure 90 days out of 360, that's 25 percent of the time that you can conceivably assume that we will have no use of the parking lot? What do you do on those occasions?

MR. CHAPMAN: Well, with respect I think you overstate the burden. The number of days is roughly correct. The Padres might like to think it would be a little more if they're more successful than they have been recently, but that doesn't appear likely in the near term.

COMMISSIONER CONNELL: Well, we wish them well, all of our California teams.

(Laughter.)

MR. CHAPMAN: Well, the Padres may need more than
the rest.

(Laughter.)

COMMISSIONER CONNELL: If there are Padres' representative here note for the record that was not a statement by an elected official.

(Laughter.)

CHAIRPERSON BUSTAMANTE: Can we go over points that absolutely have to be corrected for the record.

MR. CHAPMAN: I think the only one that I'd like to respond is the one that Commissioner Connell just raised.

Let's use the number of 90 days. We are told by the Padres and by the City representatives by virtue of how they're arrangements are working, all but perhaps ten to 15 days a year will be evening games. So --

COMMISSIONER CONNELL: Will be what?

MR. CHAPMAN: Evening, night games. There will be relatively few day games. The number of day games will, for the most part, occur on Sundays. The number of day games that will occur during the week, I would not want to represent to you a number except to say that it will certainly be less than ten a year we are told.

And we think that while that's clearly less than perfect, make no mistake, we would prefer to have the lots available for convention center parking all of the time,
every day of the year. They will not be, but the burden on them will be mostly in the evening, which will be less impactful to the events going on at the convention center. And during those days where there are conflicts, we will simply have a tighter parking situation than we would prefer.

COMMISSIONER CONNELL: Thank you.

CHAIRPERSON BUSTAMANTE: Do you receive revenue from the Padres?

MR. CHAPMAN: The Padres will get the revenue during those game day events that are occurring where they're operating the lots.

CHAIRPERSON BUSTAMANTE: You will receive nothing?

MR. CHAPMAN: At that point, we believe not, although they effectively now -- we will receive all the other revenues.

COMMISSIONER CONNELL: So they get the revenues on the day they operate the lot. That was part of the City agreement as well.

MR. CHAPMAN: That's a function of the MOU between the City and the Padres that serves as a burden on our acquisition of the property's encumbrance.

CHAIRPERSON BUSTAMANTE: My guess is anytime you're going to have major facilities for mixed uses,
there's going to be a bit of an overlap. Would you -- I mean on something of some kind somewhere, it seems like you're using a major facility for more than one purpose and have very little overlap, in this particular case. As much as you'd like to have no encumbrance on it.

MR. CHAPMAN: We concur.

CHAIRPERSON BUSTAMANTE: Okay. Do we have anything else?

MR. CHAPMAN: That's all, I'm sorry.

COMMISSIONER CONNELL: I had two other points that were raised by Craig Brown and I'd like your response to them, so that we have them on the record. I think that would be helpful.

CHAIRPERSON BUSTAMANTE: Please, go ahead.

COMMISSIONER CONNELL: We now understand the repurchase agreement by the City. And we've gone through that. Let's go through the difference in understanding the size of the parking lot, and then your response to the fact that the lease agreement is in draft.

MR. CHAPMAN: With respect to the size of the lots, the certain acquisition we will have, and it's reflected in the square footage that's in your staff report, the 233,000 square feet will be the actual lots themselves. At the time the appraisal was conducted, and at this time, there remains uncertainty with respect to
square footage of the streets that bisect the four lots both east and west and north and south.

Discussions are continuing with the City with respect to street closures. We have hopes that at least one of the streets will be closed, although perhaps not vacated. If that occurs, an arrangement at no additional cost to the Port will be included to allow that area to be added to the parking lot area, so we will get additional benefit at no additional cost.

Greater benefit if both streets are closed, but unfortunately we had hoped that that would be resolved. With both streets being closed leading to the higher square footage in time for this meeting that has not been resolved, and it is only prudent for you to consider the transaction based on the four lots themselves, that's the lower square footage. Although, we anticipate that you can't make your decision based on our anticipation that we will get greater benefit as those decisions are made with regard to the streets.

COMMISSIONER CONNELL: And the lease agreement and draft.

MR. CHAPMAN: The lease agreement, we had engaged the Padres in negotiations once we concluded the agreement with the City. We moved along the way toward a lease agreement. There was nothing concluded. We had several
drafts put together. There was no inclusive agreement. We had a conversation with our bond counsel, because our agreement with the Padres -- or with the City, pardon me, provides that the agreement will conclude only if we are successful in issuing a bond secured by the proceeds from the rental car transaction fee that we are presently collecting, that is designed to defray impacts of rental cars on parking in the convention center area, that there were problems with the way we were headed. And that we ultimately concluded that it would not be prudent to proceed with an arrangement with the Padres until we knew that we had your approval of our agreement and we knew terms of that approval.

I think the staff report before you, the recommendation that you're going to be asked to approve and that we would hope you would approve, reflects the wisdom of that course. Any agreement we would have concluded with the Padres would have to be renegotiated substantially. And now we will have guidance as to what that agreement should look like.

COMMISSIONER CONNELL: Are you prepared to bring your final agreement with the Padres back before this board?

MR. CHAPMAN: If it were your pleasure, we would. We do concur and would hope you would approve the staff
recommendation, which would allow that review with the guidance set forth and the conditions to be done by the Executive Director just in the interests of time, but obviously we'll defer to your decision in that regard.

CHAIRPERSON BUSTAMANTE: Next up, we --

SENIOR STAFF COUNSEL FOSSUM: Mr. Chair, if I could, Curtis Fossum, senior staff counsel. I would like to make a couple of points of clarification from what was just stated as to what the staff reports recommendations would require.

If you look on page 16, Item G there, "The parking lot shall be operated so that they are open for general public parking and not the exclusive use of the Padres."

Only the issue of the use of the lots during game days is restricted to parking. So on other than game days, the lots can be used for other purposes that the Port may have of the property, the staging and so forth. So there's really no restriction on public parking at all. If you or I or any member here wants to go and use those lots, whether to go to the convention center, event or a Padres game they're open for public parking.

What's different is that you may pay more on a Padres day game. And that basically would affect the value of -- it could impact on what the individual who's
attending one of those things pays, but they're still open. You can go out and park at the facility any time you would like. It's going to be open for general public parking.

CHAIRPERSON BUSTAMANTE: Okay.

COMMISSIONER CONNELL: Is that your understanding?

MR. CHAPMAN: Yes, it is. And I apologize for misstating the effect of the staff recommendation. We understand that. The Padres have been informed of the conditions that are proposed for the approval. They understand they will have to live with them. That's fine with us. And I believe, although we haven't concluded any arrangement, that the City would have no objection to that.

COMMISSIONER CONNELL: So you are not going to exclude people if they don't have a Padres' ticket in hand when they get to that parking lot?

MR. CHAPMAN: Absolutely not. There was never any intention of requiring a passport of any sort for entrance to this parking lot.

CHAIRPERSON BUSTAMANTE: Is the Chairman of the Port here? Frank, do you want to add anything here or do you feel like you have to add anything?

MR. URTASUN: Mr. Chairman, I'm hesitant, as
Chairman of the Board, to get involved in the discussion amongst attorneys, but I just wanted to stand before you to say I want to thank staff for the work that they've done. They've exhausted all efforts in looking at this transaction.

While I have not taken this matter back before the Board of Port Commissioners on the modified recommendations of staff, I believe that we can live with those modifications as staff has presented them to you.

CHAIRPERSON BUSTAMANTE: Okay. Leslie -- I'm sorry.

COMMISSIONER CONNELL: Paul, did you want to say something?

EXECUTIVE OFFICER THAYER: I was just going to add a small clarification which was although the Port staff has represented to us right along that they didn't expect that, at some time, the parking lot attendants would require tickets to show that you were attending the game day, nonetheless, some of the documents specifically say that the Padres would have exclusive use of these parking lots. And that led to the staff condition here to ensure that that wouldn't occur. So that we believe the only impact of the Padres use of the parking lot would be one of competition for available spaces.

So if your convention center starts at 9:00
o'clock with some session, all the convention center people can show up there and park and if there aren't spaces available when the Padres games start at 12:00, then that's the effect of that. It's whoever gets there first. And in a practical matter, I suspect it would be the convention center uses that will get there first.

CHAIRPERSON BUSTAMANTE: Okay.

MR. GERARD: Thank you. My name is Leslie Gerard, again, Assistant City Attorney for the City of San Diego. And I'd be happy to try to respond to any, questions but I just would like to --

CHAIRPERSON BUSTAMANTE: Just tell us what you think you have to tell us.

MR. GERARD: I want to point out something that I think was touched upon by Mr. Fossum. And the City really wears kind of two hats in this context. We have a redevelopment project that we want to implement, and it's a very important redevelopment project. It is generating parking needs. It is also gobbling up available land to provide for parking.

The other hat we wear is we operate the convention center, although we subcontract that out to the convention center corporation. But by agreement with the Port, we operate the convention center. We see a definite need for parking to serve the convention center expansion.
Remember, the expansion does not have parking below grade like the original center does. The expansion does not. And as was reported by staff, the available parking in the area is being gobbled up because of the redevelopment that's going on.

And with regard to the distance, I would point out that I have gone -- this is my own personal experience. I have gone to events at the convention center and I have had to park at the Hyatt or I've had to park at other facilities that are a distance away, because the on-site parking is not available. It is not a burden to walk, for example, from the Hyatt Tower to the convention center. It's rather quite close.

Personally, the idea of a shuttle makes absolutely no sense, because if you can look at the diagram, it isn't that far of a walk. It would be a nice pleasant walk to the expansion, which these lots will be designed to serve.

So the City of San Diego saw an opportunity here to, yes, provide parking for the convention center expansion, which is a burden on the Port. And yet, at the same time, because shared parking is a good idea, because you don't want empty parking spots, that the parking would be available to serve the redevelopment project, in general, when it is not being used for convention center
parking.

So we propose to you that this is a marvelous opportunity, especially given the severe escalation in prices that we are experiencing in trying to acquire the land necessary for the redevelopment project.

It was pointed out that the acquisition for the hotel lots on the westside of the ballpark, I think if you extrapolate those prices to the parking lot, you would get a value in excess of $30 million for these lots. And as development goes east, I, with all confidence, would be able to state to you that the value of these lots will sky-rocket. With the commercial/residential development, the value of these lots will make a $21 million dollar sale value a bargain by today's standard.

CHAIRPERSON BUSTAMANTE: Thank you.

COMMISSIONER CONNELL: Are you telling me we can arbitrage?

MR. GERARD: I am not an expert on whether the State or the Port can arbitrage, but if you wanted to sell them to us in the future, I'm not sure it would make economic sense for us to buy them back from you.

CHAIRPERSON BUSTAMANTE: I just want to make sure that anymore predictions aren't made because the Controller, I'm sure, is very prepared to be able to pick you up on every single point.
(Laughter.)

COMMISSIONER CONNELL: Which is my responsibility for the State.

CHAIRPERSON BUSTAMANTE: Yes, ma'am, it is.

MR. GERARD: Thank you very much. And I do appreciate the time that staff has put into this. I have been in conversations with them, and I appreciate their efforts. Thank you very much. We support your approval of this project.

CHAIRPERSON BUSTAMANTE: Thank you, Madam Controller, for the complete review. We appreciate it. Is there any other questions or concerns? Any other items from staff on this issue?

Has the action to deny the original proposal been taken up yet?

EXECUTIVE OFFICER THAYER: No.

CHAIRPERSON BUSTAMANTE: It would be appropriate then to receive a motion to that effect.

CHAIRPERSON BUSTAMANTE: Is there a motion?

ACTING COMMISSIONER PORINI: Let me ask for clarification. I apologize, I had to leave the table for a moment. The action would be two-fold, first to deny the original proposal and then to adopt the modifications stated in staff's recommendation?

CHAIRPERSON BUSTAMANTE: Yes. Like I said, it
could all be made in one motion.

EXECUTIVE OFFICER THAYER: Certainly. And there's actually, when you read it, the recommendation to the Commission. There are other sort of more boilerplate ones dealing with CEQA and this kind of thing, and normally it's done all in one vote, but you can bifurcate them.

ACTING COMMISSIONER PORINI: So moved.

CHAIRPERSON BUSTAMANTE: And the motion has been made. Is there a second?

COMMISSIONER CONNELL: I'll second that.

CHAIRPERSON BUSTAMANTE: Okay, let the record reflect that the motion is made, seconded and is approved unanimously by the Board.

EXECUTIVE OFFICER THAYER: Thank you.

Now, item 116 was pulled; is that correct?

EXECUTIVE OFFICER THAYER: No decision was made on that yet as I understand. You may wish to do that or direct staff to do some additional work on that?

COMMISSIONER CONNELL: May I suggest, Mr. Chair, Mayor O'Neill is in the audience and she has been very patient. We have one of her items, maybe we could go to her item.

CHAIRPERSON BUSTAMANTE: Which item is she here for?
COMMISSIONER CONNELL: It's 117. You might be take that out of order.

CHAIRPERSON BUSTAMANTE: That's going to be a long one. Yeah, I don't mind at all. Why don't we take a five-minute break and then come back to that and we'll come directly to that item okay.

(Thereupon a brief recess was taken.)

CHAIRPERSON BUSTAMANTE: We're back in session and we are going to be taking up Item number 117. And those who are in support of the project -- let's see, it doesn't say here on these items who's in support and who's in opposition. Could we then get all those who are in support of the project to lineup against that wall over there. And Madam Mayor, would you like to start us off. Welcome.

LONG BEACH MAYOR O'NEILL: Thank you very much. It's nice to be back to this august body. I thank you very much for it. I feel like this is almost Long Beach day, there have been so many agenda items.

Members of the Commission, Mr. Chairman, I thank you for your actual monitoring of Long Beach's use and development of the tidelands. And we feel that we are proud of our record of maintaining the tidelands, making them usable and attractive for the people of California.

As you know, Long Beach has changed a great deal
in the last eight years. And our focus, now that we have
lost the Navy and we had downsizing with aerospace, our
focus is on the downtown waterfront, is on tourism and
that's one of the three Ts of our recovery, we have
tourism, trade and technology.

We have a beautiful waterfront. We maintain six
miles of public beach and our bike path is part of the
regional bike trail system. The project that's before you
today has been in some phase of planning since I became
Mayor in 1994. And this is the final piece in the
waterfront development, that's been on the agenda of our
Council over 20 times since I have become Mayor.

Queensway Bay is designed to be a major visitor
destination in this region, this area. It already
includes within its 300 acres a convention center, the
Queen Mary, Rainbow Harbor, Shoreline Park and the Long
Beach Aquarium of the Pacific.

We're now about to break ground on the final
phase of Queensway Bay, which is 18 acres of commercial
development on the waterfront, and this will complete the
visitor destination.

I know that it has been studied by staff. We
appreciate that study. We have spent $40 million on
Rainbow Harbor and the infrastructure improvements to
prepare for this development. This is not a new idea. It
has been with the Coastal Commission I think eight times. It has been in front of you -- this is the, I think, last audit that we hope that we go through. So I thank you and your staff for the opportunity to review the land use at the Queensway Bay. And I hope you will agree with me that our focus has been to bring visitors to the tidelands, which is consistent with tidelands law, and I thank you very much for the opportunity to speak to you.

CHAIRPERSON BUSTAMANTE: Any comments from the members?

COMMISSIONER CONNELL: Yes, I requested that audit and I am just delighted to see the expectation that the Queensway Bay project was being managed appropriately, has been fulfilled, and that we have a clean audit report, I think, which helped the Mayor and her defenses against those who always want to criticize the activities of these developments.

I personally, as you know, Mayor, have experienced Queensway Bay. I bicycle down there.

LONG BEACH MAYOR O'NEILL: Yes, you told me you bike down there.

COMMISSIONER CONNELL: I want to clarify for the record, I didn't bicycle from LA down to Long Beach.

(Laughter.)

COMMISSIONER CONNELL: I bicycled once I got to
Long Beach, Beverly, around the development and through a large part of the adjacent area. I am not of the athletic caliber to bicycle down there easily at least. But it has certainly come a long way from what it once was.

LONG BEACH MAYOR O'NEILL: Yes, it is a beautiful area. We're very proud of our city.

COMMISSIONER CONNELL: You should be congratulated on it.

LONG BEACH MAYOR O'NEILL: Thank you.

CHAIRPERSON BUSTAMANTE: Thank you, Madam Mayor.

Staff, do you want to make your presentation?

EXECUTIVE OFFICER THAYER: Certainly. I'll try and be brief, but I wanted to introduce -- the point of this item is two-fold. One is to introduce the report to you that was prepared in response to the Commission's concerns over issues raised by citizens last year. The second purpose of the audit report is to consider whether or not additional audits should occur at Long Beach.

As you recall, last year several citizens showed up during the public comment period at several Commission meetings and raised issues concerning primarily whether or not this project that the Mayor referred, the Queensway Bay project, was consistent with the public trust grant, the grant by the Legislature of tide and submerged lands to the city and the public trust doctrine.
In response, we had a workshop last July. It lasted about seven hours, forty-five people showed up and testified. There was extensive comment both pro and con with respect to the Queensway Bay project, and then the overall management of the tide and submerged lands by Long Beach. We've also received a number of letters.

CHAIRPERSON BUSTAMANTE: And all those pro and con are on the record?

EXECUTIVE OFFICER THAYER: Absolutely. And, in fact, the report I think that was distributed contains the transcript so that all the comments we received are available to the Commissioners and anybody else in the public.

CHAIRPERSON BUSTAMANTE: I wanted that stated again for the record.

COMMISSIONER CONNELL: Did you note that on our web site? Can we refer people to -- do we have on our web site a list of all of our publications from our public meetings. I think it would be very helpful.

EXECUTIVE OFFICER THAYER: Yes. This report is on the web site.

COMMISSIONER CONNELL: Excellent. Thank you.

EXECUTIVE OFFICER THAYER: But, yes, we try and put reports that are of great importance to people on the web site, so that they'll have access as you've requested.
The staff report contains an overall analysis of the tidelands management of Long Beach, the legislative grant history, the City's jurisdiction and what our jurisdiction is, what our remaining jurisdiction is and a list of the citizens' concerns.

The second half of the report is actually sort of an item by item response to the main concerns that were listed. We took questions, pretty much verbatim from the workshop, and then tried to respond to them. And then, finally, as I indicated, there's a number of appendices including the public transcript as well as some other letters in response to these issues.

We have three types of issues generally that were raised. One is whether or not the uses at Long Beach are consistent with the legislative grant, some of the commenters had some concerns that perhaps Parks should -- only Parks should be allowed or harbor uses only. And they had particular concerns with some of the uses that were proposed in the Queensway Bay project.

The second general issue of concern was whether or not Long Beach was properly managing their tidelands in a larger sense, whether it was a good idea to bring the Queen Mary, what kind of deals that have been setup with hotels there, what were the legal arrangements and the financial arrangements for the convention center and the
The third aspect that was discussed by some of the commenters were various aspects of Long Beach management, which didn't really touch on the jurisdiction of the State Lands Commission. For example, they discussed the placement park policies, the National Parks Service, and Coastal Commission, debris in the harbor area, redevelopment policies, that kind of thing. That's a third category that was mentioned in the workshop.

The report that I mentioned, the staff report, contains the results of the staff research and analysis of these concerns. The analysis found that the legislative grant and amendments do authorize most, if not all, of the full panoply of public trust uses, which are generally allowed on trust lands under the jurisdiction of the Commission.

The report also noted that legitimate uses of public trust lands at Long Beach include the parks and wildlife habitat advocated by many of the people who spoke at the workshop, but that the uses allowed there are also included inside the museum, aquarium, boating facilities, et cetera.

And finally, the trust lands can also contain what are called incidental uses, not also necessarily trust uses themselves, but are necessary for the full
public enjoyment of the trust lands. And example of that includes things like restrooms or hotels or restaurants and other visitor's certain uses.

  Most other ports up and down the coast have these uses, have approved these uses whether it's San Diego or LA or in the Bay Area.

  The movie theaters that are proposed here at Queensway Bay are fairly unusual for tidelands as outlined in the report. Due to the unique circumstances at Queensway Bay, we think they are consistent with public trust and they're a fundamental part of the overall project.

  Staff also found that Long Beach had made some changes for funding projects, like the aquarium and some of the hotels that may require use of trusts in the general funds that could also be used for other purposes. And these choices that were made, that were not inconsistent with the grant, are the public trust doctrine.

  The report also details with respect to the jurisdictions of the City and Commission, this is important to understand what are the City's responsibilities and what are the Commission's responsibilities with respect to management of these lands.
In general, the City has been granted management of these lands by the Legislature. And basically, it's their responsibility to make choices among the different competing public trust uses. The State Lands Commission does retain oversight generally over these Long Beach trust lands as it does over any other granted lands.

And I think the office of the Attorney General had written a memo, which is quoted in this report, that I wanted to just mention briefly, which describes what remaining authority there is with the Lands Commission.

This is on page 8, "The Lands Commission has the authority, although not the general duty, to systematically investigate, audit and review the administration of all tidelands granted.

"The State Lands Commission's supervisory authority includes the power to seek corrective measures by grantees. However, the State Lands Commission shall not ordinarily purport to substitute its judgement over that of the local grantee."

And the final point, "Except in the most flagrant cases, the nature of enforcement action of the State Lands
Commission is a matter of discretion. All accusations or information of a serious character coming from a responsible source may warrant further staff inquiry or investigation, particularly when they fall into categories of fraud, collusion et cetera."

We think that the staff report carries out the responsibilities that are outlined in this Attorney General's memo, which describes what the Commission should and shouldn't be doing with respect to oversight.

The Commission's remedies are also somewhat limited. Should it find fault with what's going on here, it can generally take several different courses of action. One, it could advise the City of its concerns, and, in fact, request the City make changes to its management. It could suggest grant amendments to the Legislature, wherein the legislative grant to the City could be constrictive or expanded to address the concerns, or it could file suit to overturn some of the City's decisions.

And these remedies actually are very similar to the ones that were available to the general public, who also might go to the Legislature and ask for changes, also might sue, also might note their concerns to the City.
In Long Beach, in particular, State law does also require the Commission to approve city expenditures of tide and submerged lands oil and gas revenue, with the one expressed area of the law keeps the Commission involved with day-to-day kinds of decisions.

In conclusion, the Commission staff has thoroughly investigated the concerns that were raised at the workshop and by the members of the public before the Commission last fall to determine if there's been any abuse of discretion in Long Beach's management of the tide and submerged lands. The time and effort put into this matter by those concerned, the members of the public, evidenced their sincerity and conviction of those citizens in bringing their concerns to the Commission.

Their collected vision for what this City's water plant should look like appears also to be consistent with the tidelands. However, the City has chosen different but equally valid uses for the waterfront. And therefore, the staff concludes that the uses proposed or that are occurring at Long Beach are consistent with the Legislative grant. And Long Beach has not mismanaged its tidelands and has not deferred revenues to nontrust purposes.

With respect to the third category of issues raised, allegations concerning matters not directly within
the Commission's jurisdiction, the Commission sent letters to the different agencies that were involved in these other issues notifying them of the concerns that we raised. And we have not heard of further issues that these other agencies had with those problems, but we wanted to make sure that if they were brought to our attention, that they would be passed on to the appropriate agency for resolution. I think copies of those letters are also in your appendix and staff report.

Before concluding, I'd like to acknowledge the work put into this report by the Commission staff. Some of them worked now a year on this project, notably the sand and lands team of Jennifer Reischman and Grace Scott, Curtis Fossum of our staff and Nancy Saggese to my right from the Attorney General's office helped with the legal analysis. And they're available to answer questions as they come up.

That concludes staff presentation.

CHAIRPERSON BUSTAMANTE: Lorena. I tried all the subtle ways.

(Laughter.)

CHAIRPERSON BUSTAMANTE: Any other questions?
ACTING COMMISSIONER PORINI: No.
CHAIRPERSON BUSTAMANTE: Okay. We can start with the support side. We're going to have to make sure --
let's see there is 1, 2, 3, 4, 5, 6, 7 -- it looks like there's about 15 folks here. What I want to do is I want to limit -- I want to limit people. I don't want to limit the numbers and I don't know exactly how to limit either the support or opposition, so what I think I'm going to do is I'm going to put a 20-minute limit on each side. You guys can figure out how long you want to speak and who speaks, but both on the support and opposition. I'm going to limit both sides to 20 minutes.

MR. KORTHOFF: Mr. Chairman, I'm just a member of the general public. I just want to make my speech. I don't want to be included in the 20-minute side.

CHAIRPERSON BUSTAMANTE: You're not in support or opposition?

MR. KORTHOFF: I'm in opposition.

CHAIRPERSON BUSTAMANTE: We're going to leave it in the 20-minute period of time.

MR. KORTHOFF: I just want to speak three minutes.

CHAIRPERSON BUSTAMANTE: There's nothing that says you get three minutes here.

MR. KORTHOFF: It says on the agenda.

CHAIRPERSON BUSTAMANTE: The agenda says three minutes?

All right, then I will stand corrected, sir. And everybody who speaks, since it's on the agenda, will be
getting their three minutes.

Sir, could you state your name for the record?

MR. KORTHOF: Doug Korthof, K-o-r-t-h-o-f.

CHAIRPERSON BUSTAMANTE: He'll be coming back to speak.

Okay, please go ahead.

LONG BEACH CITY MANAGER TABOADA: Thank you, Mr. Chairman, members of the Commission, Henry Taboada City Manager for the City of Long Beach and I'll be brief.

I think the Mayor's statements and those of the staff report were very comprehensive, conclusive and in support of the City's position that we, in fact, are safeguarding the trust and are operating it in an effective and lawful manner. I would only add that the Queensway Bay development project, which is the smallest part of the Queensway Bay 300-acre project, it's an 18-acre project, we view as the critical mass for that development project.

And that critical mass is what brings people to the project and therefore brings it to the entire Queensway Bay area, and, in fact, is what exposes the maximum number of people to the City's waterfront and to the coastal access issues that are being addressed.

We look at the Queensway Bay development project then as the critical mass for the entire Queensway Bay
project and one which brings, again, the maximum number of people to the Queen Mary, to the aquarium, the convention center, to Shoreline Village, which, again, increases the access to the coast and to the waterfront for all of the city's visitors.

And, in fact, it is, as the Mayor stated, one of our keystones of our economic recovery from base closure and aerospace downsizing.

So that really is what I would add to this discussion, and simply support the staff recommendation that you take no further action on this matter.

Thank you.

MS. KRAMER: Good morning. Thank you for the opportunity to speak to you this morning. My name is Lovetta Kramer and I'm Vice President of the Queen Mary, located at the southwest end of Queensway Bay in Long Beach.

As you may know, the Queen Mary was brought to Long Beach in 1967 to revitalize the shoreline of Long Beach and to stimulate tourism. Since the arrival of the Queen Mary, we have seen the development of the Long Beach Marina, Shoreline Village, the expanded and refurbished Long Beach Convention and Entertainment Center, Long Beach Aquarium of the Pacific and the construction of a Hyatt, Hilton, Renaissance and Westin hotels along the coastline.
of Long Beach.

The final piece in the puzzle is the development of the Queensway Bay project. The Queen Mary is in full support of the Queensway Bay plan and the completion of the title plans along our coastline. We encourage the Coastal Commission to support and approve of this integral part of the City of Long Beach's coastal development plan.

Queensway Bay will provide another opportunity for residents and visitors to come to Long Beach and appreciate the ambiance of our coastline and our shoreline.

Once again, thank you.

MR. McCABE: Chairman Bustamante, Commissioners, My name is Jim McCabe, Deputy City Attorney for the City of Long Beach. You've heard from enough lawyers today, I won't tax you further with that contribution.

But, again, our proposed development that is at issue here is in support of the tidelands, brings visitors to the tidelands and brings economic viability to the several tidelands projects, the aquarium, the Queensway Bay, the commercial Rainbow Harbor as part of Queensway Bay. And I won't tax you with my legal analysis. If any of the comments from the opposing parties should raise any issues for you, I'd be happy to address them.

Thank you very much.
CHAIRPERSON BUSTAMANTE: Okay, Thank you.

Opposition. We need you up against that right wall again. I apologize, if these had that they were in support or opposition, I could better manage those. Could you give me your name, please.

Ann Denison, Long Beach.

CHAIRPERSON BUSTAMANTE: Please, go ahead.

MS. DENISON: We were at this hearing and many citizens who joined their voices with us first want to thank you for your effort to investigate what is occurring in the Long Beach tidelands, especially as it relates to Queensway Bay and the commercial project that has been proposed by the trustee of these lands, the City of Long Beach.

However, we believe this preliminary report, although extensive in its scope and information is incomplete or inaccurate and many essential facts and aspects, leading its staff authors to what we believe are flawed conclusions and unjustified recommendations under the law.

Based upon our preliminary analysis and inquiry, since receiving the report within the past ten days, we would like to make three points in this regard.

First, with your information contained in this report and your investigation thus far, we feel strongly
that evidence exists that the actions either taken or proposed by the City of Long Beach in relation to various projects within State tidelands Queensway Bay are illegal under local and State laws.

These illegalities relate to the authorized use of the lands under local laws and State grants into the financing of the project within these lands, which apparently places State and City general obligation at risk, contrary to State Constitutional Law and State voter approved legislation relating to approval of a debt as per Proposition 13.

Second, within the context of the projects and actions mentioned in this report, there have been severe abuses of discretion under their mandate as trustees under the State grant of tidelands, for example, the trustees acting as fiduciary officers of this city and trust have failed to perform realistic or authentic due diligence in regards to projects or financing. Their many abuses are only now under scrutiny and extreme project failure, that is the aquarium, coming to light and having to be dealt with publicly.

Due diligence reports upon which hundreds of millions of dollars of bonds were based and sold, and which after two short years have proven to be 90 percent off of projections, two and a half million in attendance
projected, 250,000 actual. These are not mistakes. These are manipulations or abuses of discretion warranting your action as responsible overseers of State interest.

Third, the proposed development of Queensway Bay is an unauthorized use under state tidelands grant. The report recommends no action in regard to the Queensway Bay project, based upon a conclusion that the commercial use proposed by this trust is incidental to authorized use and recreation under the State tidelands grants.

In fact, this is the first interpretation or opinion of the case that is being issued in a report to use. The City trustee has put nothing in writing nor has it responded to pertinent conditions placed upon it by other State agencies and board's coastal commerce.

In actuality, the policy and design of the City for the use of the property is to create a commercial project that extends the commercial downtown into the available lands. Recreation has never been discussed, included or bragged about either by the staff or trustees. The trustees' actions in investments in recreation have been to remove or keep them away from the area. Rather, economic development in the context of downtown development has been their focus, motivation and source of pride.

This project, much like any other commercial
development, consists of 500,000 square feet not including four acres of eight-story parking structure of restaurants, movies and retail shops that are not in any way unique to tidelands or water usage nor incidental to any other uses. Commercial is the usage and as such is not authorized under the State grant tidelands.

CHAIRPERSON BUSTAMANTE: Thirty seconds.

MS. DENISON: In fact, authorization such as parks and open space are being removed and being legally replaced. This project utilizes precious land that was one of Long Beach's and one of California's prime heritage. The beach deserves to be utilized according to these legislative authorized possibilities and not a place to build another shopping center.

Thank you.

CHAIRPERSON BUSTAMANTE: Thank you, ma'am.

Next, somebody.

MR. KORTHOF: I'm Doug Korthof from Seal Beach.

CHAIRPERSON BUSTAMANTE: Thank you.

MR. KORTHOF: I wish to respond to some of the statements made by the officials of Long Beach.

First, the recovery plan for Long Beach is not relevant to the tidelands trust. That's an economics issue. Economics are not, in my view or in the view of the Coastal Commission when they judge projects, the
economic viability of one part of a project in order to do something good for the habitat in another part is not relevant.

Similarly here, the economic health of Long Beach is not relevant to the sacred grant of tidelands trust, which is important to all the people of California.

Secondly, when they say that it is essential to Long Beach and its ambiance and the Honorable Commissioners stated that Long Beach is much better than it was, let me take you back to a time when there was, in fact, in Long Beach a beach. And if you went to Long Beach, you could actually go to Long Beach and there was habitat. There wasn't trash.

Development was confined to the city portion of the city. And this could be the case again, if the State tidelands trust is honored, if the grant of tidelands is honored, then the city would have to pull out of these lands it has illegally, in my view, taken over for purposes that are not related to beachfront ocean or harbor uses.

Now, they stated that tourism is essential, that the purpose of these structures and this project is to drive tourism to Long Beach. What are the tourists going there for? They're going for a convention center. Now, what does the Convention Center have to do with the beach?
They're going for a marina. Well, if they're going for the marina, that's realistic, that's part of the associated uses. The marinas and harbors are fine.

They're going there for a hotel. They're going for stores, shops, specialty shops. Those are not incidental uses. Those are destination uses. And, as such, they are prohibited under the sacred grant and tidelands trust, which is, as you know, the tidelands is owned by the people of California and is administered by the State Lands Commission and has been granted to the City of Long Beach to do whatever it's going to do with it.

Now, when they talk about economic viability of Long Beach, you need to think about the fact that Long Beach has a long record of living off the oil money and not doing well economically. The original downtown of Long Beach was composed of small shops, older people, a lot of sailors used to come in, there was aerospace.

Those little small shops were the subject of redevelopment back in the sixties and seventies, where they completely destroyed, gutted and tore out the downtown. Instead of fixing the downtown buildings, which is where development should be, you shouldn't move your buildings to the coast, you should keep your buildings a little bit offset from the coast, instead of fixing these buildings, instead of supporting small merchants, they
came in with the redevelopment agency and bought them all out and destroyed the downtown in the process and kept building out into the ocean as if the record of sale here in the central city is going to be somehow fixed when they build closer to the ocean and out into the ocean as they continue to fill-in the harbor and do more shenanigans with the harbor expansion.

And in conclusion, I wish that you would not consider this staff report as final because we don't. We wish that you would continue the audit. And if you don't, I think the people of the State of California will be vastly disappointed in you. We expect that when you go to the beach, there's going to be a beach, not moving theaters. We expect when you go to the beach, you're going to be able to go into the water and not be inundated with sewage and trash. That's what we require. People that live on the ocean shore have this responsibility, and Long Beach has not met up to it.

CHAIRPERSON BUSTAMANTE: Thank you, sir. He raises a question about the Coastal Commission. Has this been before the Coastal Commission, staff?

MR. KORTHOFF: Can I briefly expand on that? As a matter of --

CHAIRPERSON BUSTAMANTE: I'm asking the staff a question. You can stay there for a minute if you'd like.
Just wait a minute.

EXECUTIVE OFFICER THAYER: Let me confirm with Jennifer, who worked on this, but my understanding is that the master plan for the port was amended for the city. Jennifer, do you want to -- yes, please, and that the Coastal Commission approved it.

MS. REISCHMAN: Jennifer Reischman, staff of your Commission.

The EIR was done in 1994 and the Coastal Commission certified that EIR as an LCP amendment for the City of Long Beach. When this project came to the Coastal Commission back in 1998/1999 initially, the Coastal Commission put various conditions on the City for the City to determine that this project was in conformance with the granting statutes.

And the City did comply with those and those conditions have been met and accepted by the Coastal Commission.

CHAIRPERSON BUSTAMANTE: So when was that that it was accepted by the Coastal Commission specifically?

MS. REISCHMAN: Specifically, those --

CHAIRPERSON BUSTAMANTE: Was it this last year, this year?

MS. REISCHMAN: They were -- there were three conditions and they were accepted, I believe, in 1999 and
CHAIRPERSON BUSTAMANTE: Was this particular piece included in that?

MS. REISCHMAN: Yes.

CHAIRPERSON BUSTAMANTE: Okay.

COMMISSIONER CONNELL: What were those conditions?

MS. REISCHMAN: The first condition was that the project, the Queensway Bay Phase 2, that's the issue here, was in conformance with the granting statutes, and the City of Long Beach had to submit a letter to the executive Director of the Coastal Commission stating that these uses were in conformance with granting statutes.

The other condition was in terms of a public parking lot, and it was the same condition placed on the City that the parking lot was consistent with the granting statutes. And the third condition was actually placed on the staff of the State Lands Commission, stating that the subdivision for this 18-acres, in terms of financing, was consistent with the public trust doctrine and the granting statutes.

CHAIRPERSON BUSTAMANTE: Thank you.

MR. DENEVAN: My name is Lester Denevan, citizen of Long Beach. I want to ask for ten minutes to speak on this issue for which I'll give you the reasons. First of
all, in January of last year, I initially raised this
question.

CHAIRPERSON BUSTAMANTE: I'm sorry I have to ask
who is speaking on it?

MR. DENEVAN: Pardon?

CHAIRPERSON BUSTAMANTE: You'd like to ask who is
speaking on it?

MR. DENEVAN: I'd like to speak for ten minutes.

I'm a city planner is my background. I'm addressing
technical issue, which I can't address in three minutes.

CHAIRPERSON BUSTAMANTE: I've allowed those
speakers to give the time they've been allowed to give,
which is the three minutes, so you have three minutes,
sir.

MS. DENISON: It takes three minutes to do the
handouts. I can't even enter these on the record?

CHAIRPERSON BUSTAMANTE: You can submit them for
the record.

MS. DENISON: In any context at all or just put
them on your desk?

CHAIRPERSON BUSTAMANTE: You can do it anyway
you'd like.

MS. DENISON: Well, the matter is that you cannot
act on these handouts and this information unless you sit
down and read through my materials. Also, you had eight
months to prepare your report. We had ten days to
respond. I have a letter which is half completed. I
didn't have enough time to address all those issues in
this letter. I'm asking just, respectfully, to be allowed
ten minutes to speak.

CHAIRPERSON BUSTAMANTE: Okay. I'm not going to
allow you ten minutes to speak, sir. What you can do is
you can pass out those items. All the discussion that
we're having right now will not be counted against you.
If you'd like to pass out documents, we can have staff
help in passing out documents, so that either I have them
here in front of me and the staff has them in front of
them, so that time will not be taken off of your time to
speak.

MR. DENEVAN: Well, I'll be addressing these
quickly. I'll try to very quickly go through my report,
but I have to refer to these before I can pass them out.

CHAIRPERSON BUSTAMANTE: So we'll get them after
you speak then.

MR. DENEVAN: Yes. There's a key issue involved
here and that is what is called incidental uses, and that
term has been used a number of times in this report. And
there's a question of what is incidental use.

And the question is, which of the primary uses
proposed in the Queensway Bay project, is it commercial
uses or park uses?

So in the total context of this report and the LCP, we have four office buildings already built. We have another one accommodated in the local coastal program. We have a Hyatt hotel. We have a planned additional hotel in the Queensway Bay. We have Shoreline Village. We have 500,000 square feet of retail streets and parking to accommodate commercial uses.

That is incidental to what? I'll leave that to the staff when I complete my statements.

I think that to be credible you should look into the matter of how many acres of commercial versus how many acres of parks. We didn't have 133 acres of parks in 1955.

Going on as fast as I can, this brings me to the question of Lands Commission responsibilities for a sufficient oversight and due diligence. Sufficient oversight, if you make a decision today based on information just put on your desk or do you take it back and study it with due diligence.

I do have a handout concerning some of these matters. I have a paper that I prepared in 1975 on park acreage. So I have documentation, the city does not, on a number of these issues. So another problem is that the City has not done an adequate job on authentication of
some of their statements. I was going to speak on the
Queen Mary fiasco, because of the fact that there are some
analogies between Queensway Bay -- the Queensway Bay
project.

Queensway in -- oh, about 1980, there were
millions of dollars spent on the Queen Mary but similar
uses are proposed in the Queensway Bay project. And the
City was challenge by the State Attorney General, who
recommended taking the City to court on that. So here is
a potential of deja vu all over again, because we have
similar uses. And also the question of predominance of
use. Is it parks, museums or commercial development.

I have the material here, which I'll pass out at
the end of my conclusion. I don't have time to go into
this in detail about the Queen Mary, I'll move on.

The redevelopment plan, I have a map which I'll
pass along. This is a redevelopment plan for the
Queensway Bay area and adjoining privately owned land.
The State of California requires conformity between the
redevelopment plan and the zoning and the general plan.
Now, if you read the map, it says it here in regard to
these major sites along Tina Avenue. There is a legend
here and it says recreation, public activities and related
facilities. That includes 500,000 square feet of retail
uses. I'll pass it along to the staff.
Moving on to the Environmental Impact Report.
The Environmental Impact Report provided for an increase
of about ten acres of park space. In fact, the City
has -- and is experiencing a loss of 9.57 acres. The City
has not authenticated their numbers. I can authenticate
my numbers, which I got from the California Department of
Parks and Recreation. These are called 6(f)3 maps. They
show the existing parks, parks to be taken, parks to be
replaced. These are down to a scale of one one-hundredth
of an acre boundaries and all the information on those
parcels. Simple addition and subtraction, was there a
gain or a loss in park acreage?

I think this is a very important issue, though,
because the Environmental Impact Report is effective and
you are a quote, "responsible agency." That's the legal
term, "responsible agency." So look at these things and
save the audit recommendation until you've seen my
materials, the material of other people, give me my time
to complete my letter. I was up till 4:00 a.m. this
morning trying to complete it, a ten-day deadline since I
got the public notice.

So I'll have to conclude then with the handouts,
and I hope you will study these very carefully and not
make a hasty decision. All I ask is to continue the
public hearing till next time, take these items under
consideration, take into consideration that there are people in all these that have not fully responded to these issues, and that we need more time to prepare our response. You had eight months, we had ten days.

Thank you.

COMMISSIONER CONNELL: May I ask a question, Mr. Chair? When did the public receive information about the staff report, was it ten days?

EXECUTIVE OFFICER THAYER: I believe that we mailed copies to all of the people who showed up at the workshop. They would have gotten them about ten days ago, yes. And the other thing I should mention is that throughout this process, we've received several letters from Mr. Denevan and considered them in preparing the staff report. He spoke at the workshop. In fact, the workshop was over and I volunteered to stay longer in order to hear him out. He had extensive comments at that point.

And since that time, we've probably received about ten letters from him that we've used in preparing the report. We believe we've responded to the issues that he's raised in those letters, particularly for example on the parks issue. One of the appendices of the report consists of the letters that were written back and forth between the City and the State Department of Parks and Rec
and the United States Department of Interior dealing with some of the concerns about whether or not there was adequate park replacement that was occurring.

So we believe we're fairly familiar with the concerns that Mr. Denevan has over this long period of correspondence.

COMMISSIONER CONNELL: Well, Mr. Denevan. This issue that you raise of having inadequate time is an issue that I hear frequently. I sit on over 50 boards and there is always this concern of the public, and I certainly appreciate it and respect your need to respond in a timely fashion.

My only question here is the need to take action at some point to move this forward. And I am not the one to determine here today what is an adequate amount of time for the public to have reviewed this. How long was our staff report on this matter?

EXECUTIVE OFFICER THAYER: This is the volume here. Most of it consists of the appendix. The staff report is 42 pages.

CHAIRPERSON BUSTAMANTE: Any other questions?

Thank you, sir.

MR. DENEVAN: Can I leave you with one question on the redevelopment plan. Could I have a response from staff of the Commission on what that redevelopment plan
sends for Long Beach?

CHAIRPERSON BUSTAMANTE: It sounds like a pretty encompassing question. Could you be a little bit more specific, if you want us to --

MR. DENEVAN: Well, of course there's a simple map which is readily interpreted. It has a legend. I have an accompanying letter, which goes into more detail explaining the situation. I did go to the Redevelopment Agency last November and I asked for a copy of the redevelopment plan, which has been amended from time to time.

And so I got this packet and then I said well --

CHAIRPERSON BUSTAMANTE: We need to focus on the question, sir. What is your question specifically?

MR. DENEVAN: Okay, well then the question is why is the city contradicting its own redevelopment plan, because we have the evidence in front of you. And there is the State law that requires conformity with the general plan. That is a major legal issue to be challenged in court.

CHAIRPERSON BUSTAMANTE: Does the staff have any evidence of there being a conflict between the redevelopment and general plans?

MS. REISCHMAN: No, The LCP sees those plans. And the Queensway Bay plan was an amendment certified by
the Coastal Commission to the LCP in 1980.

CHAIRPERSON BUSTAMANTE: Thank you.

MR. DENEVAN: That doesn't overrule State law.

Take a look at it, that's all I ask.

CHAIRPERSON BUSTAMANTE: In terms of the public trust document?

MR. DENEVAN: Well, in terms of your responsibility for oversight, and that involves looking into these matters of actually half a dozen things of which have taken place and are taking place illegally. That's your responsibility. The buck stops there.

CHAIRPERSON BUSTAMANTE: Correct. Thank you, sir.

MS. STOKER: Hello. My name is Adrea Stoker, and I live in Long Beach, and I'm going to speak of flagrant abuses that require an audit of the Queensway Bay.

I'm going to speak on revenue bonds in the tidelands projects in conjunction with the sale of 117 million of revenue bonds by the Aquarium of the Pacific. The city of Long Beach acting as a trustee of the State tidelands fund hypothecated the fund for 20 years as backing for a new nonprofit corporation bonds.

This nonprofit corporation had no assets or track record. This method of financing an authorization of sale of revenue bonds was approved on the same day the method
and amount was presented to the public for the first time. Up to that point, only admission revenues to the aquarium would be used to back the bonds.

Significant preparation and decisions had been made out of the public's view. The lawsuit against all citizens and entities including the State of California was made that day. The process and the means of decision making constituted a gross disregard of the public and public interests and was a clear abuse of discretion.

In committing the tidelands funds as collateral, it was required by the bond houses to also receive the resolution of the Port of Long Beach to commit harbor revenue funds for 20 years also as a portion of that collateral. Ten percent of net proceeds of the harbor revenue bonds could be transferred to the tidelands funds, but this is not an automatic pass through.

They are not permitted to be hypothecated by the City of Long Beach without the consent of the Legislature under the Constitution of the State of California. This was done, however, in violation of the State Constitution. It also violated the City Charter of the City of Long Beach and the laws of the State of California, which would be governing actions of committing future legislators to certain financial arrangements.

The City immediately filed suit to prevent later
actions against it and the bond, including against the State of California through what is known as a validation suit. When no one responded, mainly because the Court accepted the City's plea -- nobody responded because of insufficient notice, the Court accepted the City's plea and entered a judgment. This locked any legal attempts to address any issues at a later date. And it was not Freedland versus the City of Long Beach. In fact, it was the City of Long Beach versus all.

The City set the precedent of using the tidelands funds for committing sufficient funds to back the bonds.

CHAIRPERSON BUSTAMANTE: One minute.

MS. STOKER: Hmm?

CHAIRPERSON BUSTAMANTE: You have one minute left.

MS. STOKER: Something was going on here, which only became known when all the information was released to the public following a vote of the trustees. Because of the validation case and the judgement against all of the issues, our chance to bring legal actions were dismissed.

It protected the bond holders and the City from a lawsuit. We believe the action is illegal and can still cause the State of California to be liable in a case brought by the bond holders. The situation gets much worse when you pull out of bond reserves to pay the
interest and principal. To face the music of the bond holders would expose their actions and cause significant loss of services to the public.

To remedy this situation, the city agrees to pull $134 million of revenue bonds, restating the collateral of a nonprofit bond including commitment of tidelands funds and harbor revenues with one additional caveat. The City of Long Beach would do whatever necessary to make the tidelands funds whole, so that all bond commitments would be paid. This clearly places the City's general fund at risk for the bond payments. This makes the bond a general obligation bond and not a revenue bond.

The voters of Long Beach, the only body capable of authorizing such a debt, were not asked to approve nor did they vote on this action. This is clearly a violation of the spirit and purpose of Proposition 13, which gave voters control over future bond and indebtedness against the general fund of the City.

This back-door method used by the trustees can also be readily identified in the $47.5 million of revenue bonds authorized for construction of a parking garage on the Queensway Bay project. In fact, the report clearly spells out the illegal action in the City, on page 20 of the report, bulletin .4 in answer to question eight reads that the City's general fund shall contribute up to 1.69
CHAIRPERSON BUSTAMANTE: Ma'am, I don't mean to interrupt you, but you've already been at five minutes, could you please wrap up.

MS. STOKER: All right, yes. These facts are significant omissions to the report. Please audit.

Thank you.

CHAIRPERSON BUSTAMANTE: That was a quick wrap up.

COMMISSIONER CONNELL: May I just mention something, Cruz. We are not here today, in my view at least, I'd like confirmation of the Attorney General and staff on this, to comment on the revenue bond, general bond issuance of the City of Long Beach. This is a matter that is before the City of Long Beach and its various entities.

We are here today simply to review the tidelands trust. Now, if you have concerns about the issuance of the debt by the City of Long Beach rather it be revenue or general fund backed, that is really a discrete issue that cannot be presented before this board, just so that you understand the limitations of this board.

We do not comment on bond indebtedness of cities throughout California as we deal with their tidelands
matters; is that not correct, Attorney General?

ASSISTANT ATTORNEY GENERAL SAGGESE: That's correct.

COMMISSIONER CONNELL: Yes, we don't have that discretion.

MS. STOKER: What Commission do I go to?

COMMISSIONER CONNELL: Well, Attorney General, do you have any suggestions here?

ACTING COMMISSIONER PORINI: The Treasurer's office does monitor the issuance of bonds throughout the cities and counties, so that might be the appropriate place.

COMMISSIONER CONNELL: You might want to check with the State Treasurer's office to see whether they have, indeed, done a complete review of this matter. They were given a somewhat limited authority though, I think, in that. Following Orange County, I don't think they have any pervasive authority to monitor, do you?

I think it's very limited. I think it's limited to debt service coverage not to anything else.

CHAIRPERSON BUSTAMANTE: Can we get at least some kind of segment, so we do not have to go through a whole process at this particular point. Can staff and the Attorney General's office say if they know any improprieties in the letting of the bonds?
COMMISSIONER CONNELL: They wouldn't have examined it.

ASSISTANT ATTORNEY GENERAL SAGGESE: I did not examine that issue.

EXECUTIVE OFFICER THAYER: Jennifer, you looked through some of these, right?

MS. REISCHMAN: I looked into specifically the bonds and how --

CHAIRPERSON BUSTAMANTE: This is not the first time this issue was raised, is that correct?

EXECUTIVE OFFICER THAYER: That's correct.

CHAIRPERSON BUSTAMANTE: And so we did look into it?

MS. REISCHMAN: I looked at the bonds in relation to the tidelands trust fund and not specifically the City's aspect and jurisdiction.

CHAIRPERSON BUSTAMANTE: So then maybe you can provide -- I'm sorry, Ms. Stoker, Adrea Stoker, perhaps you can give her a place where she might be able to raise the issue.

MS. REISCHMAN: I will look into that for you.

CHAIRPERSON BUSTAMANTE: Okay, thank you.

Thank you, Ms. Stoker.

MS. MANN: Good afternoon. My name is Diana Mann, and I chair an organization in Long Beach called ECO
Link. And we're a coalition of environmental organizations and members of the Sierra Club, Audubon, Surf Rider, the Friends of the Colorado Lagoon, Friend's of the San Gabriel River, et cetera, et cetera, et cetera, et cetera.

And all these groups combined represent about 10,000 plus individuals in the City of Long Beach and we're really cranky about having a shopping mall built at the Queensway Bay. That was not the intent when there was a proposition passed, I believe that was Proposition A.

Proposition A passed in 1960 by -- approximately 60 percent of the people of Long Beach indicated that -- here's the -- you have a copy of the measure in this document, but what you don't have is you don't have the argument for it.

The argument for it says interesting things like "blessed with the natural resources of the ocean" and also "unusual beauty", et cetera, of the area. And putting a shopping mall, which you can put anywhere, on top of -- in the State -- on a beach front is just super stupid.

But I'd like to just point out that the measure included the building of parks and open space and noncommercial recreation allowed as authorized under the State Lands grants. No part of this law has ever been changed by a subsequent vote of the people as required by
the Charter of the City of Long Beach.

Prop A is still a law in Long Beach. Park open spaces are the predominant approved uses. The trustees are not following the law as approved by the voters. Rather, they are doing everything in their power to circumvent it.

It looks to me that the people -- all these folks I'm talking to you about are pretty cranky, and we're trying to stop the project. And every time we look under rocks we find oodles of things that are inappropriate and illegal. And we're trying to bring this to your attention so you will possibly do an audit to actually clear up a lot of these things.

An illegal and abusive discretion is clearly within the purview of the State Lands Commission to address through an audit, litigation or other avenues that may be necessary.

The second thing I wanted to address is the Coastal Permit. Condition number 25 requires that the applicant provide written documentation to the Executive Director, including specific citation of the relevant sections of the applicable State tidelands grant.

In fact, no legal opinion or document regarding the authorization used was ever submitted to the Commission. In a November 5th, 1999 letter hereby
submitted into the record, which staff notes is in compliance of this condition, merely deals with the ability of this trust to lease the property. That's it, just lease the property.

This is clearly an omission of the applicant trustee and in violation of conditions placed by the State Commission. Such a violation should be viewed as an abuse of discretion.

And I've got one more quick one. The use of funds for the Queensway Bay development. This was just another example of what I think that should be looked into. In the report, the trustee's staff indicated that these funds were interest in oil money -- with interest on the oil money mandated by the City for restoration of the Queen Mary upon turnover of the ship from the port to the City.

In fact, the funds we're designated because the ship, especially the hull, was an extremist based upon several inspections. Grant consideration of this condition was expressed by the City that it did not have the funds to fix it, and the Port should be responsible prior to the turnover.

Evidently, the ship was not in such bad shape since it has been over eight years since the turnover and the funds have not been spent nor the ship fixed.
Instead, the fund was used as a slush fund for planning projects other than the restoration of the Queen Mary, a trust asset paid for 230 times over by the people of California and documented in this report.

Only an out-of-court settlement granted the people from knowing just how much indiscretion was associated with the Queen Mary development.

CHAIRPERSON BUSTAMANTE: Thirty seconds.

MS. MANN: This should be listed under serious abuse of discretion, taking from the harbor fund and used a slush fund for this and several other projects.

And that's my conclusion. And, please, I'd like to recommend that this is terribly incomplete, terribly incomplete. And we're not going to go away and we're going to continue to hammer this until we get some sort of justice, okay.

And if I was a bird and a fish and anyone else, you would have my vote, too, so I just want to put that out there. The habitat is being hurt by this, too.

CHAIRPERSON BUSTAMANTE: Thank you.

COMMISSIONER CONNELL: Mr. Chair, I have a couple of questions for staff. Help us understand, what is the definition under state law for the use of commercial or the application of commercial uses to a tidelands area. I realize this is somewhat of a gray area, but I would like
to have clarification of how far apart from the use of marine related matters or uses can we go?

EXECUTIVE OFFICER THAYER: I'd like to defer to the Attorney General's office on that, since Nancy has worked in this field. This has been her area of expertise for years, and included some specific topics that were in Long Beach.

ASSISTANT ATTORNEY GENERAL SAGGESE: The principle of necessarily incidental is what we're talking about. It's true that the public trust doctrines speak in terms of commerce, navigation and fishery. But along about the late 1950s and early 1960s, the courts were asked to decide what else might be allowed on tidelands. And the courts upheld that, since the object is to bring the public to the shoreline that uses can be made of the property that is ancillary to their complete enjoyment of the property. And they have specifically stated that restaurants and hotels and in the case of Martin versus Smith, shops and parking areas.

CHAIRPERSON BUSTAMANTE: Has a theater ever been considered to be an ancillary use?

ASSISTANT ATTORNEY GENERAL SAGGESE: Not to my knowledge.

COMMISSIONER CONNELL: So this is paving new ground?
ASSISTANT ATTORNEY GENERAL SAGGESE: It would be.

COMMISSIONER CONNELL: Well, I can see how restaurants obviously support tourism. Tell me, as an attorney, how you have concluded that movie theaters do?

ASSISTANT ATTORNEY GENERAL SAGGESE: Well, movie theaters in and of themselves probably would not, so the analysis really focused on the entire Queensway Bay development plan. And in that context, looking at the number of acres, looking at where they're situated, looking at the fact that they are not on the waterfront and looking at the fact that they are public, they draw the public to the area, and all of those things together in this particular case brought us to the conclusion that they were an integral part of the development plan and would be consistent with the trust.

If this were the only feature of it or a mass of just theater complexes, they probably wouldn't pass.

COMMISSIONER CONNELL: Maybe --

CHAIRPERSON BUSTAMANTE: It's not on shore?

ASSISTANT ATTORNEY GENERAL SAGGESE: No, it's across a four lane highway upland from the shore.

MS. MANN: May I make a comment as far as that movie theater that they can't lease the property. I mean, they couldn't make their leases and the reason why that theater is so important is because without it, they
wouldn't get any leases either. And then all these theaters went bankrupt and they went oh, my gosh what are we going to do now, so they went and found another one. It's an independent theater to go in there, because they can't lease that property.

COMMISSIONER CONNELL: Is that the Edwards theater chain that went bankrupt?

MS. MANN: Several theaters went bankrupt.

CHAIRPERSON BUSTAMANTE: Where's the four lane highway?

EXECUTIVE OFFICER THAYER: It is right here.

COMMISSIONER CONNELL: Can you go over and show with your finger. Maybe this is impossible.

MR. PALKER: Commissioners, I don't have a speaker's slip. I represent the developers and can address many of the questions that are raised and I can do it now or after the other speakers.

CHAIRPERSON BUSTAMANTE: We're in the opposition and you want to speak in opposition?

MR. PALKER: No, I'd rather not.

(Laughter.)

MS. MANN: Please, I'll give you my three minutes.

MR. PALKER: I can answer those questions at the time you want to.
EXECUTIVE OFFICER THAYER: This is the four lane road right here.

CHAIRPERSON BUSTAMANTE: What is your name, sir?

MR. PALKER: Tony Palker with Developers Diversified.

COMMISSIONER CONNELL: What were you saying, Paul?

EXECUTIVE OFFICER THAYER: I think this is the four lane road right here. It's Shoreline Drive, what's the name of it? Shoreline Drive. And then the restaurants and such are proposed along this area here. The movie theater is in this area over here.

CHAIRPERSON BUSTAMANTE: On the other side away from the shore?

EXECUTIVE OFFICER THAYER: Yeah, here's the water right here. So we have restaurants along here, then you cross this road, and this is going --

CHAIRPERSON BUSTAMANTE: So is it four or six lanes?

EXECUTIVE OFFICER THAYER: Six.

COMMISSIONER CONNELL: Well, does it really matter whether it's four or six lanes? Well, let me approach it from a different viewpoint. Is it tidelands land?

EXECUTIVE OFFICER THAYER: Yes.
COMMISSIONER CONNELL: Well, isn't the question then if it's tidelands land whether or not we have the same requirement, whether it's got a road going through it or not? I mean, we faced this issue in the Ballona Wetlands, so I'm particularly informed about the fact that it doesn't matter whether there's a road going through it or not. We recently had that legal argument before the courts in California in the Ballona Wetlands.

CHAIRPERSON BUSTAMANTE: Why do we have a six lane road through tidelands?

COMMISSIONER CONNELL: Well, that's a good question.

EXECUTIVE OFFICER THAYER: Well, roads are frequently accepted in most port areas, for example for transportation --

CHAIRPERSON BUSTAMANTE: Six lane roads?

EXECUTIVE OFFICER THAYER: Well, if that's what's necessary to deal with the traffic situation in the area. In fact, actually I think highways are considered -- highway bridges are considered trust uses, uses for the commerce and navigation.

And I think the other analogy would be the Controller is absolutely right, that there are restrictions on uses of applied tidelands no matter where they are. But where their incidental uses are often
prohibited or you don't want to have them there is when they're displacing actual trust uses.

So for example, if there was a boat yard there that was required somewhere and someone was proposing to put in a restaurant there, then you could only have one or the other, because it would belong on the shore, the boat yard had to be there. Then the public trust use, you know, in most needs studies would prevail. You would approve the boat yard there.

But that does not mean that in inland areas where other public trust uses aren't suitable, because it's not along the waterfront, that you can't look more carefully because it's an incidental use and it may help to promote the use of the actual waterfront.

COMMISSIONER CONNELL: So we don't have to make a find that there would have been a better use, for example, a park or anything else when we approve this.

EXECUTIVE OFFICER THAYER: Well, I think the first thing, of course, you don't -- the action before the Commission today is not approval or nonapproval. We have a staff report which kind of looks at the situation and then the Commission can decide what direction it wants to go after that.

If this is before the Commission to decide one way or another, then it might very well have to look at
that question about what's the most valid use there, but
in fact that's the city's decision is to decide, you know,
which is the use that's most appropriate. What is a
legitimate purview for the Commission is whether or not
the City has chosen a use that's entirely prohibited by
law, and that's what I think some of the witnesses are
saying is that they believe some of this is inconsistent
with the trust document or trust grant and that's what
we're talking through here.

MR. McCAE: Commissioners, Jim McCabe, Deputy
City Attorney, if this would be an appropriate time?

MR. MAY: Point of order, Mr. Chairman. Is this
a debate? Are we going to cross examine?

CHAIRPERSON BUSTAMANTE: What is it you're
asking?

MR. McCAE: I thought I might be able to clarify
some of the --

CHAIRPERSON BUSTAMANTE: What?

MR. McCAE: Some of the issues we've been
talking about.

CHAIRPERSON BUSTAMANTE: Let's go ahead and do
the other speakers.

MR. McCAE: That's fine.

MS. CANTRELL: Good afternoon. Ann Cantrell, I'm
Conservation Chair of the local Audubon Society, and I was
born in Long Beach, as I like to say, when it was a Long Beach. There was 11 miles of Long Beach and now there are less than six.

Maybe what would help is if you would look at Exhibit 6. I guess we're not the only ones that haven't had a chance to really go through this report. You have to put a blank page under the first overview so that you can see what the map looked like.

Back in 1964 when this tidelands was filled, you'll see Ocean Boulevard up at the north and all this area was filled with land, it was tidelands that was filled. And as has already been told to you, the people of Long Beach had voted to put an elongated park along this area. It was to be a passive park, a promenade.

The next overview will show you what has happened in 1980, when the swimming lagoon and the Shoreline Village was there. And Shoreline Park is the area that is right adjacent -- it says downtown harbor. Right north of that was a park called Shoreline Park.

The City has taken over 20 acres of this park. That's where the aquarium is now smack dab in the middle of it and the parking garage. And they say that they have mitigated this by putting an events park across the bay at the Queen Mary.

Our argument is that this is not one for one
mitigation of equal value, that the people that live in downtown Long Beach have to go clear across the Queensway Bay, as you can see on your exhibit, that's that white -- Queensway Bridge, that's that white bridge that goes across to where the Queen Mary is.

One of our arguments is that there has not been mitigation for the land that was taken. They dredged the lagoon. They took the tidelands out and they have created a new tidelands at the mouth of the LA River as mitigation.

So when you're told that this is to bring people to the tidelands, what they're going to see is not ocean. They're going to see boat harbors. They're going to see restaurants. They're going to see a movie theater. And by the way, Edwards theater pulled out. Another theater was up for lease, it pulled out. Now, we have a third theater that is supposed to be the quote "anchor" for this commercial development.

IMAX is no longer in the picture. When the staff had the hearing in July, they were told that IMAX was a part of this development. They are not a part of the development. And I could see where it might have a little bit of connection with the ocean if you had movies there, educational movies.

But what we have now are just plain old movies.
It's a tourist trap. It is not -- maybe restaurants and hotels are incidental uses for the tidelands, but this is 18 acres of commercial use. All that red that you see up there is commercial use. You'll see that there's very little green left for the parks, and that is why we are asking you to do a real audit.

This staff report, although very complete, all their answers came from the City. They didn't do any research of their own that I can determine. They didn't look into things that have been brought up today. And I think that this project is doomed for failure, and we would like you to help us save the last bit of our shoreline.

Thank you.

(Applause.)

CHAIRPERSON BUSTAMANTE: Thank you.

COMMISSIONER CONNELL: Mr. Chair, may I ask a question, again, of staff and the Attorney General. Where else in the State have we approved or are there tidelands where there are commercial movie theaters built on the tidelands property?

EXECUTIVE OFFICER THAYER: There are no others. I think as we indicated earlier, this would be a first time there. And we do not -- you know, in most circumstances, we would not be in favor of them, but we
believe it's an elemental part of this project that it makes this project work all the other public trust uses.

There are other kinds of developments like that in other places where an incidental use in one place is not an incidental use in another place. It wouldn't be approved. It's not limited to movie theaters in terms of things. Sometimes things require a particular context if they're going to be permitted.

So, no, this would be a first time for this. And it's not likely to be easily found consistent with the trusts anywhere else. You'd have to have all the same elements that are the case here, where there's 300 plus acres, where the side is removed from -- the waterfront is not easily accessible to the waterfront and therefore it does not displace other public trust uses.

COMMISSIONER CONNELL: Well, would you consider a park a public trust use?

EXECUTIVE OFFICER THAYER: Absolutely.

COMMISSIONER CONNELL: Does it displace that?

EXECUTIVE OFFICER THAYER: Yes, it does, but of course, the further inland you get the less maritime this is, but you're right we could put a park there.

COMMISSIONER CONNELL: I just came back from a short visit to San Francisco with my young son and we enjoyed the development of the piers there. I'm trying to
recall, I can't think of -- although there's tremendous commercial development along those piers, as you know, in San Francisco, I don't think that any of those are movie theaters. I think there's a video arcade at one point. There's lots of food and restaurants, which are, of course, needed given the numbers of tourism. There's the aquarium. They have an underwater aquarium now. There's the boats to Alcatraz.

I'm trying to think of any other commercial -- I don't believe there -- are there, Attorney General?

ASSISTANT ATTORNEY GENERAL SAGGESE: No, there are not.

CHAIRPERSON BUSTAMANTE: There's a wax museum and there's about 47 shops that sell T-shirts and sweat shirts.

(Laughter.)

COMMISSIONER CONNELL: But they're not on the tidelands. They're across the street.

CHAIRPERSON BUSTAMANTE: Oh, across the street.

ASSISTANT ATTORNEY GENERAL SAGGESE: There are no movie theater's there.

COMMISSIONER CONNELL: In San Diego, are there any?

ASSISTANT ATTORNEY GENERAL SAGGESE: No.

COMMISSIONER CONNELL: There are not any in LA, I
know that for a fact, because we're struggling in LA. The reason I raise this question is because I know, having met recently with the harbor group in LA that they are very anxious to find a way to regenerate the Ports of Call, it's called, the harbor in LA. And as you are probably aware, they have fallen on bad economic times as well.

So then does this become a precedent for the Port of LA to put movie theaters in its harbor area?

ASSISTANT ATTORNEY GENERAL SAGGESE: Only if they can fulfill the same context, you know, factually. If it is the same sort of a development acres wise, ratio wise, how many acres it would take up versus the rest of the development, where it's situated, how much of the rest of it is --

CHAIRPERSON BUSTAMANTE: Is there anything in the report that talks about this specifically and how rare a situation this would have to be?

ASSISTANT ATTORNEY GENERAL SAGGESE: It only says that in the context of this case, that it is found to be incidental.

CHAIRPERSON BUSTAMANTE: So there is no policy, there is no clear statement about how this is -- not only is it -- it is not to be viewed as precedent-setting, but that it is a rare -- there's nothing in the report that says anything like that, is that right?
EXECUTIVE OFFICER THAYER: I think the paragraph on page 15, the largest paragraph two-thirds of the way down discusses this most extensively and notes that such uses are not traditionally public trust uses. Where they also may be necessarily incidental to promote public trust, the specific context for them in the Queensway Bay Development Plan leads staff to conclude they are not barred.

CHAIRPERSON BUSTAMANTE: Is there any swap? I know that in many cases when we're putting together something where you have something that is not as valuable in terms of a main mission that there is often times some kind of swap of property or land or something that gives us the ability of being able to enhance the public trust at the same time giving up a less valuable property that is perhaps commercially viable, but not as viable for the public trust? Has something like that been looked at here?

EXECUTIVE OFFICER THAYER: I don't think it has.

CHAIRPERSON BUSTAMANTE: I'm sorry, sir. We'll get you in as soon as we're done here. Thank you for waiting.

SENIOR STAFF COUNSEL FOSSUM: In fact, we have had that done right on this property itself, Mr. Chairman.

CHAIRPERSON BUSTAMANTE: What about with this
particular piece of --

SENIOR STAFF COUNSEL FOSSUM: Well, if I can allude to it, the road if you see in here, the tidelands boundary has actually been modified at the request of the City of Long Beach. The State Lands Commission, when they moved the street here in order to modify the traffic in that area, another piece of fill tidelands was cutoff and it would have been behind a second layer of streets, if you will.

And the Commission, a few years ago, accepted title for that property from the City of Long Beach and exchanged it with the adjacent developer on this side, and in exchange got a piece that's in this corner right here. I'm sorry about the shaking.

CHAIRPERSON BUSTAMANTE: You're saying a deal was cut earlier that would have mitigated for all of the eventual commercial uses?

SENIOR STAFF COUNSEL FOSSUM: No. I'm saying that there have been times when a piece of property that was no longer needed for trust uses, was, in fact --

CHAIRPERSON BUSTAMANTE: Okay. Well, that's not the question.

SENIOR STAFF COUNSEL FOSSUM: -- bought for a piece that was.

CHAIRPERSON BUSTAMANTE: You're answering a
question I'm not asking. You're answering a question I'm not asking.

SENIOR STAFF COUNSEL FOSSUM: I'm sorry, I misunderstood your question.

CHAIRPERSON BUSTAMANTE: Well, the question is not whether we've ever done it ever in the universe. The question is have we done it, have we looked into it for this piece of property, for this new commercial use for the theater and what it does for other land that could enhance our public trust, that would be more valuable to us, but not as commercially viable to this particular project?

EXECUTIVE OFFICER THAYER: We have not looked at that. I don't believe the City has. The City, of course, can answer that.

CHAIRPERSON BUSTAMANTE: Okay, because we do that regularly, don't we?

EXECUTIVE OFFICER THAYER: We do it occasionally, yes.

CHAIRPERSON BUSTAMANTE: Well, what about the refinery plants in San Diego?

EXECUTIVE OFFICER THAYER: In San Diego?

CHAIRPERSON BUSTAMANTE: What about the -- we probably could go through the agenda and rip off quite a few different things where we attempt to try to find more
valuable land that enhances our effort that deals with public trust, and is often times something where we try to make this -- I believe that the term that was used for me was win, win, win, win, win. And this piece here seems to fall a little short of that.

But, I mean, if there was no deal cut earlier and we have a new deal on the table and the deal seems to have a piece of property here that perhaps you can say that since it's across a six lane highway on the other side, it is a part of the trust, then what does the trust get in trying to provide for a piece of that trust land that perhaps isn't as valuable as the public trust, because it's on the very edge of it? Yet, we don't seem to get anything for it except for giving up a piece of that trust land.

COMMISSIONER CONNELL: I'm not so sure -- if you look at your comment, I'd like to continue this suggestion on page 15.

EXECUTIVE OFFICER THAYER: Yes.

COMMISSIONER CONNELL: This is why I raised the discussion, Cruz. I mean, I'm not so sure that I understand the staff's comment here. It says, "necessarily incremental means that these uses are necessary to accommodate visitors to the public trust lands." How does a movie theater accommodate visitors to
1 public trust lands?

   EXECUTIVE OFFICER THAYER: They can occasionally be attractions as well as accommodating. So, for example, some of the restaurants, some of the hotels, there are people that are coming to stay there don't necessarily use the trust lands, but they often do use it, the same way with movie theaters.

   The people who go out to a restaurant who want to experience the tidelands there, may do that as part of an evening.

   COMMISSIONER CONNELL: Well, I can understand a movie theater like at Zion National Park, where they have -- of course, that is national land, so they are very protective of the land. But in any area immediately outside those national parks, the only kind of movie theater they allow is one that is an IMAX that shows movies related to the park.

   So I can see where if it was necessary to accommodate visitors to public trust lands, the movie would fall into that category if it enhanced the person's understanding of what they were seeing along the shoreline.

   But I want to understand how we get to the point of accommodating visitors to public trust lands with a movie theater. Now, if it's only an economic issue, I
have a problem with it.

(Applause.)

COMMISSIONER CONNELL: If it means that it's only done to protect the other uses there, I have a problem, not because of Long Beach, because I respect what has been done in Long Beach in Queens Bay, but because I'm concerned about the precedent nature that it reflects up and down the coast. And I can assure you that the next motion or the next movement in this direction will be the City of Los Angeles who we just finished winning a lawsuit -- or I should say negotiated a settlement with the use of their harbor trust funds already.

And that will be the next movement forward, because they have an absolutely failed Ports of Call that they're going to have to resuscitate.

EXECUTIVE OFFICER THAYER: There are ports up and down the state that are looking at issues like the one we're looking at here in terms of what development is appropriate and what isn't. And you're absolutely right, they're all looking at issues like office space, residential. We're hearing that both in San Diego and San Francisco. LA is looking at that preliminarily as well. So it's a constant battle to determine what the appropriate uses are, you're absolutely right.

COMMISSIONER CONNELL: Well, this is a very
critical issue then for the Commission that wasn't, I don't think, adequately spelled out here in this one line statement in your staff report. I do not want to be on record as to having voted for something where we use the term necessarily incremental and then find out that we've opened Pandora's box and that we have up and down the coast applications based on a precedent-making decision that we have on a one-line statement that isn't further defined here.

With no public policy, I am very concerned about what we do in that relationship. I am not prepared to take action today on a one-line statement that says is necessarily incremental without further definition of what that means.

I do not want to be in this position a year from now, where we have an application from the City of Los Angeles that says it's necessarily incremental also based on the economics of that project, because I know that area well and I know that will be the argument, and a fair argument, that the City of Los Angeles will put before this board. And I want to know how I say no to the City of Los Angeles and say yes to the City of Long Beach today. And without a public policy before me, how do I do that, Paul?

EXECUTIVE OFFICER THAYER: You know, again, I
think our response is that when we looked at it in the context of this particular development, we believe it to be incidental. That doesn't mean that it would be appropriate in other circumstances and it will be a case by case judgement in terms of the overall package of improving this. And that certainly that was the discussion that occurred before it was written in analyzing the situation.

CHAIRPERSON BUSTAMANTE: Well, I think that -- first of all, I think the issue of incidental or ancillary is, I think, an inappropriate established way of being able to deal with things that have not yet been done. I disagree that a movie theater meets that qualification. That's why I was thinking that in attempting to try to find something that allows us to be able to show that, in fact, that we are keeping the public trust in finding some property that enhances the tidelands area more than that piece of property.

That piece of property might enhance the economic conditions of what's taking place there. I think that the City of Long Beach is not only right but has probably an obligation in order to be able to attempt to figure out how to make that work economically. I think that staff has made a sincere effort in trying to establish those facts.
I think that what we've -- it kind of begs the question however, that since we're in a situation here where we're looking for the economic viability of a project, it really begs the question, how did we get ourselves in this situation in the first place?

And if we're adding a piece of commercial venture to a project for the purposes of allowing it to become economically viable, then we shouldn't have gotten ourselves into that situation in the first place. And so what we're doing is that we're compounding the problem here rather than trying to figure out how to mitigate the problem in a way that, in fact, gives us that win, win, win, win situation that we talked about at the very, very beginning of my tenure here on the State Lands Commission.

So, first of all, Madam Controller, I think that your concerns are not only valid, but I don't know that they got far enough. I don't know that a one-line sentence -- I mean, I think that they deal with the issue of ancillary. I think they deal with the issue of incidental. I think that what we're not dealing with is the bigger picture here. And I think you raise that point very clearly that how do you deal with LA and San Diego and some of the others in this situation?

I think that is the big picture here. We've kind
of stumbled our way into this thing. The City of Long Beach doing all that it possibly can to make this thing economically viable and, you know, frankly if I was in their position, I'd be doing the exact same thing.

And as staff, I think you bring us to a point here, where we have to make a decision on policy and on something that is of a greater, as was stated more eloquently than I earlier, by several of the people who spoke, by saying that we have a duty and a responsibility to protect the public's trust.

And I think that we've kind of like gone off a bit here, and we've gotten to a point where now what we're doing is that we're providing economic stability to pieces that we shouldn't be involved with perhaps in the first place if it's going to -- so I think that we weren't forward thinking enough, I think, in terms of trying to figure out perhaps at the time that we did it, maybe it was viable, maybe each and every phase that took place seems to make it even better.

But now we're adding clearly things that are not -- that are clearly commercially viable, but are not in line with the public trust. And we're stretching and bending and we're trying to wrap something around in a way that allows us to be able to deal with what clearly is a problem for the City of Long Beach.
And as much as I would like to be able to assist them on that, I think I have to side with the Controller that there is a problem here that we need to deal with and I think in a much greater fashion and, you know, I don't know that it's frankly, at this point, up to the staff to resolve. I don't know that it's up to the City of Long Beach to resolve.

I think, frankly, this is a public policy question that we're going to have to address as a board, and we're going to have to figure out exactly how we're going to do our job. I think that we've come to a juncture here that forces us to do that.

MR. McCabe: Would the Commission allow me to make a brief comment from a legal point of view on the questions that your --

COMMISSIONER CONNELL: Before you do that, I would like to just comment. I sit on another board, I believe Annette sits with me on that board, on one of the debt boards that is dealing with this issue and the public policy construction as well, which is the issue of redevelopment association's powers throughout California.

We are now having to redefine them as well. The economics have dramatically changed from 10, 15, 20 years ago. And what might have been viewed as an appropriate use then, has no longer been effective and viable as a
use. And we're finding that in redevelopment areas as well, where we allowed certain uses for the idea of making it economically viable to support revenue bonds, because our key there was at the beginning of the redevelopment law, was obviously to try to resurrect parts of cities that were decaying and not habitable.

And in willing to do that, we stretch further and further and further that line of what is an acceptable use. We're now finding that some of the things that we did are not working anyway, even though we stretched it. And some of these redevelopment projects that have movie theaters are in the same situation as Long Beach found themselves in with this recent decision by Edwards theater to close their chain.

I mean, it has affected redevelopment areas up and down the State, because they are, in fact, major uses in redevelopment areas that are not next to land.

What I'm suggesting here, Mr. Chair, is that we do an entire public policy review of this matter before we take action today. I am very concerned that we not do anything that limits this ability of this board to keep in mind the important environmental principle here for which we sit as Commissioners, and that is the protection of the limited amount of land. It is a finite amount of resources. And once it is gone, it is gone. And so I am
very concerned that we not set a precedent here that opens up the tidelands to ancillary uses that may not be the highest and best use of this land along the coastline. I mean, I do not want this to be happening in Santa Barbara, in Ventura County and other areas where they have run into difficulty and find that sandwiching a commercial use is an effective way of supporting a project.

On the other hand, I appreciate the need for cities to take care of their harbor-related uses if they have an economically viable project. I just think as we travel along the coast, many of us will see that there are other areas that are going to come in eager to use this as the vehicle for changing their own use of land along the coast.

CHAIRPERSON BUSTAMANTE: We're going to ask for a brief response, because we have spent a lot of time on this particular issue, if you'd like to add something, and then we're going to the last citizen that would like to speak.

MR. MCCABE: Absolutely, Mr. Chair. I want to assure the Commission from a legal point of view that --

CHAIRPERSON BUSTAMANTE: Your name.

MR. MCCABE: I'm sorry, James McCabe, Deputy City Attorney. I identified myself before. From a legal point
of view, there's no precedent setting value here at all. Everything that the Commission does, and the Commission can make that clear on a case by case basis, is on the particular facts brought before it, that this is a very small part of a commercial area, that that commercial area is, in turn, a very small part of a larger project.

I point out respectfully to the Commission as well, that on the question of parts and what is being taken away and what is being given, I have sat in meetings with the Department of the Interior and the State Department of Parks, where they made it very clear that we have, to their full satisfaction, since there was State funding involved, replaced park land with other park lands within the Queensway Bay project.

So I --

CHAIRPERSON BUSTAMANTE: I mean that's an important point here. Can you speak specifically to that?

MR. McCABE: Yes, I believe I can, your Honor. I beg your pardon, Commissioner.

CHAIRPERSON BUSTAMANTE: I appreciate the --

(Laughter.)

MR. McCABE: I'm out of my usual venue. I apologize.

CHAIRPERSON BUSTAMANTE: Can you be specific about that?
MR. McCabe: Surely. The park land that has been, as it were, taken away by this project, and perhaps, Mr. Thayer could speak more particularly to the exact number of acres, I don't have that material with me, that land was funded in part by federal money funneled through the State of California. And we have taken that park area and provided mitigation elsewhere. We have provided --

Chairperson Bustamante: Where was that mitigation, that's what I'm trying to get at?

MR. McCabe: Sure. The mitigation was in an events park created near the Queen Mary, especially for special events for all citizens.

Chairperson Bustamante: This was nontrust land that was now put into trust?

MR. McCabe: No, this was improvements made on land that was not previously park. Monies spent to --

Chairperson Bustamante: So it was money spent not land acquired?

MR. McCabe: That's correct. And that was previously Port land not available to park use at all. There was other Port land not available for parking at all that was made into a boat launch ramp for the general public, something that's a singular need in all coastal communities as you well know.

There was a wetlands mitigation area created on
the Wesley portion of what I call Queensway Bay.

CHAIRPERSON BUSTAMANTE: There's additional land?

MR. McCabe: This was money spent to create
wetlands where there weren't wetlands before, but they
weren't tidelands.

CHAIRPERSON BUSTAMANTE: Is that true?

EXECUTIVE OFFICER THAYER: I believe the Coastal
Commission required that. And, again, I refer you to the
back of the report here where the Park discusses a 1995
letter reviewing a 20-acre conversion. It's the very last
appendix to the report here where the Park discusses a 1995
letter reviewing a 20-acre conversion. It's the very last
appendix to the reports, number 11, a 1995 letter from the
Department of Interior approving this conversion of 20
acres followed up by a July 5, 2000 letter from the
Department of Parks and Rec noting that the conversion had
been approved since 1995 and specifically stating does the
City diligently comply with the terms and services
approval, including submission of their reports. The
condition will be complete and all complete, et cetera.

So the agency with oversight over this converging
issue, I'm specifically commenting on this, and we
believe --

CHAIRPERSON BUSTAMANTE: That's not what I was
looking for.

You know, I think, from my viewpoint, I think
you're right, the issue of ancillary is not precedent
setting. The issue of this kind of commercial venture, however, I believe is.

And, although, I could probably also make a strong case that a restaurant is also a commercial venture and probably under my definition probably wouldn't be acceptable, that there is already tremendous precedent set for this activity and that activity has already been, I guess, at this point, done. It's not something that I can comment or retract.

This is something, in fact, that we can now say that this is a completely new commercial venture, one of what could be a whole group of others that are similar to it that would in the future be considered. And so although ancillary has been established already with this particular kind of ancillary activity, I don't believe has, this is a little bit different twist on this issue.

So what I'd like to do is I'd like to go to the --

MR. McCABE: Sure. I'd suggest to the Commissioners that necessarily all projects bring a use or say they bring a use that hasn't been done before. Again, there is no precedent-setting value as such here. And the Commission can certainly make clear that since we're on such a critical time path here that this use will be allowed without precedent and subject to a commission
review of its overall policy standards on these kinds of
issues.

Thank you.

CHAIRPERSON BUSTAMANTE: I appreciate that. That
was not said and that was not stated in that same fashion
in this report. That would have given me a little bit
better feeling about this whole thing. However, I don't
think it covers it all. I mean, if you were to carve that
out of the public lands trust and replace it with another
piece that was more valuable, that would give me even
greater -- well, it would make me feel much better.

Why don't we go out to the last gentlemen and
he's been standing there very patiently for a long time.
Thank you, sir.

MR. MAY: Thank you, Mr. Chairman and
Commissioners. My name is Don May for the California
Earth Corps. And perhaps not too patiently, because I
would first like to respond to some of the issues that
we're just raised.

One of our Board members, Evan Gossage, who
operates our San Francisco office, in fact, is owner
operator of the Sausalito Marina, which is the subject of
the case that was quoted as precedential in here. Like
it's precedence Jack London square in Oakland, also
precedential, both had book stores, like the Barns and
Noble here. And the court records will show that that was raised and that this was a inseparable part of the project and it's a small part in both cases. The Court review will show that the book stores we're withdrawn as not being a visitor or added any ocean dependent, marina dependent type of usage. I would suggest that your own -- the cases cited by your staff are precedential and this one as well, and you should take a look at those.

Second of all is with the issues that were just raised, it should be pointed out that the land swaps all involve tidelands. There is no gain to the public. There is no gain of public resource of sovereign land under that. There was, in fact, a taking. And not only that, but under the other agencies where part of the land was taken to the Queensway project under the Coastal Commission, which requires a four to one mitigation, they got less than a 1 to 1.

All the way around this there are significant issues that have been raised in terms of land use, which are not addressed by the staff, and that's the first thing that I would bring up.

Although, as the Mayor said --

CHAIRPERSON BUSTAMANTE: Do we start your three minutes now?

(Laughter.)
MR. MAY: Start my three minutes now. As the Mayor said in the last eight years there's been a great deal changed. That's true, the EIR in 1994 addressed a very different project. In fact, one which was pretty much within what we view as appropriate land uses.

Since then, if you look, for instance, at the movie theater that was just discussed, it draws not on tourists, but 60 percent, according to the documents on this, 60 percent would be drawn from the Pine Street Theater which is just up the street.

That's the City's problem. The City had a whole Pine Street investment revitalization program having at last got Pine Street pretty much at least close to break even, now seeks to undermine it by drawing off 60 percent of its customers to an adjacent, not land trust -- and not public trust type of uses.

We think that's entirely inappropriate and we agree with the Mayor that a whole lot has changed. On to my direct testimony, we do think --

CHAIRPERSON BUSTAMANTE: A minute and a half left.

MR. MAY: I'll really hurry. We thank you for convening the workshop and thank the staff for their report, but the one I would really like to make is the comments and, in fact, the narratives are not the staff's.
I'll introduce this. This is the answers to the
questions that your staff asked the party in interest.
The answers are from an interested party, the director of
the project. They are not staffed, if you look at this
and I'll give it to you, those will show both the
narratives on 12, where it starts out saying the City says
to the end of the narrative, and each of the questions as
pointed out there are directly written by the interested
party not the City Attorney and certainly not the City
Auditor, but the director of the project.

The responses that you got are the same ones
we've been getting. In fact, that was the motivation for
us asking for a workshop and an audit, and that is they
have three big problems.

Number one, they're not responsive. As you found
when you ask a question, you get an answer to a different
question. And as we pointed out that the several
stakeholders --

CHAIRPERSON BUSTAMANTE: Thirty seconds --

MR. MAY: Well, that's okay. The second one is
they're partially responsive and let me point out that
because this is direct financial error here, where this
says their response was that no tidelands funds were used.
In fact, some of the -- up in front of the city council,
and on up the aquarium shortfall would be made up. They
only answered half of it, they said we're looking at the options.

The option that they have looked at in front of the city council is to use tidelands funds to make up the aquarium shortfall. Second, the answer is that variance would direct official data in response to a simple question on page 38, is the convention center subsidized by the City?

The answer is, no, quote "Fiscal Year 2000 the profits placed $882,241 dollars in the tidelands fund." That's in direct opposition to the City auditor's report. It says it lost two and a half million dollars, taken from the tidelands fund.

You know, this is where you have three big errors. Number one, they don't answer the question, and this is not staff --

CHAIRPERSON BUSTAMANTE: We're now summarizing for the third time?

MR. MAY: We're summarizing. We're not --

CHAIRPERSON BUSTAMANTE: This is the longest three-minute presentation in history.

COMMISSIONER CONNELL: Similar to Bill Clinton's inaugural speech.

CHAIRPERSON BUSTAMANTE: Well, remember the first part of it is in response to the City Attorney.
We have the mayor who would like to come up and we have the developer, and I believe probably the assistant, I think, it was the City Attorney, that they all seem to want you.

Do the Members of the Commission have any questions of this last three-minute presentation?

Seeing none, thank you.

MR. MAY: Thank you, Mr. Chairman. Please read the whole thing, because there is significant omissions and errors that are directly made that must be addressed.

Thank you.

CHAIRPERSON BUSTAMANTE: Thank you. Madam Mayor.

LONG BEACH MAYOR O'NEILL: Thank you very much. I just -- the words that I actually want to say is that we, as a city, have tried very hard to cooperate with everything that you have asked us to do. I think we started last summer for really with some hearings on this issue in working with the staff and also with the Commission.

The problem that I find that I'm facing is that the City is not financially solvent. We have been dependant on so many other things that we cannot be dependent on anymore. Some of the problems that we're facing in that area are caused by the fact that the area is not developed.
We have gone through many trials with the developers in their own internal organizations. And I just need to know where we are with you. I don't know whether this is entirely precedent setting, when you're talking about theaters. I know that there are other areas that are going to be trying to develop the areas that they have and they feel the theaters bring people in and out.

I would not want it on water front. It's setback from it. But the problem that I have is, I don't know what you're really asking of us. Are we talking about months and months of time, more questions. I think that -- I have great respect for the people that spoke to you today, because they have a very great passion in what they believe in. I think if it weren't the theater, there would be other reasons not to develop that area whether it's a theater or whatever it is.

So I need to know, as a city, we are struggling. We have tried very hard to comply with everything that we needed till we are a landlocked city, and we are growing. And we're facing the same problems that California is, expanding, so we have neither land to expand in, so we either go up or out.

And I need direction from this body for where we go from here with that, because it's been probably over a year, and now we have a new element, which I respect that
you have. I don't see it in the same way you do, but I do
respect the fact that you have to face that.

    CHAIRPERSON BUSTAMANTE: I know that we have
required, as for a state for cities to go after retail
markets in order to have viability in their cities. That
is an issue that clearly is having a dramatic impact and
that's why -- it's having a dramatic impact and that's why
there is so much of an emphasis instead of on building of
homes and families in communities, we're seeing tremendous
shift to retail. And I understand that and that's --

    LONG BEACH MAYOR O'NEILL: We just had a shift
because we had to. We shifted because --

    CHAIRPERSON BUSTAMANTE: I understand that. And
I don't think that anybody here is questioning it, at
least I'm not questioning it. I think we have a different
issue, I think, before me. And it's not about your
management, and it's not about whether or not this --

    LONG BEACH MAYOR O'NEILL: I understand that.

    CHAIRPERSON BUSTAMANTE: This is something that
makes your project more economically feasible. And I
think, as I said earlier, if I were the Mayor, I mean, I
would be pushing this, you know, as strong as you are.

    The unfortunate thing for you is that the people
who spoke in opposition are right. You know, they raise
an issue here, from what I can tell being a lay person,
they raise an issue that this is an activity that is within the public trust.

And the Controller raises an even bigger issue as to are we going to continue to allow this in every jurisdiction that we're going to have review over, and allow this kind of activity to take place on public trust land. I don't know where we're at to be honest with you.

LONG BEACH MAYOR O'NEILL: And I think this is something you probably do need to --

CHAIRPERSON BUSTAMANTE: I don't know where we're at on this. I know that we've allowed the City -- we have been a co-conspirator in getting us to this point, allowing all this activity to take place. And now it's kind of like we're going to pull the rug out from underneath you, because you're trying to make something that we've allowed to do now, allow it to fold or become less viable.

LONG BEACH MAYOR O'NEILL: Is it because of the theater?

CHAIRPERSON BUSTAMANTE: I think that the theater is -- it is the theater. It is --

LONG BEACH MAYOR O'NEILL: If it weren't a theater, it would be all right?

CHAIRPERSON BUSTAMANTE: Well, it's not just the theater, it could be other like commercial ventures. I
don't know that I would have the same opinion if it was something else. I mean, it's kind of like if I saw it.

LONG BEACH MAYOR O'NEILL: I think up and down the coast, there may not be theaters, but there are book stores, there are restaurants, there are all the things that draw people.

CHAIRPERSON BUSTAMANTE: And I think that this issue brings -- the issue of the theater brings a whole new element to this whole equation. And I think it's something that we're going to have to deal with as a policy body on whether we're going to allow this.

When you say something is not precedent setting, and you do it anyway, it still is precedent setting. And the question is how do we do something, how do we assist you in allowing you to get through this phase, which I would like to figure out how to do, but still not set a whole new range of commercial activities that we would then allow in into this mix?

LONG BEACH MAYOR O'NEILL: But then that means with each proposal from wherever you were, you would have to see what everything was that was going in there, is that what you're saying or just not theaters?

CHAIRPERSON BUSTAMANTE: Yeah. No, it would be more than just theaters. It would be all kinds of things that have not been previously allowed that someone could
equate to this same kind of activity as a movie theater. It may not be a movie theater the next time. It may be something akin to movie theaters.

LONG BEACH MAYOR O'NEILL: But what's been allowed before is allowed now?

CHAIRPERSON BUSTAMANTE: Well, kind of, sort of. And sometimes it's not and sometimes it is, but why would we want to open up a whole new barrier.

LONG BEACH MAYOR O'NEILL: No. I'm not talking about theaters, I'm talking about --

CHAIRPERSON BUSTAMANTE: What's next, we're going to open up an IKEA.

LONG BEACH MAYOR O'NEILL: Somebody mentioned book stores. And if the bookstore is not good, does that mean that from today on there may not be one?

CHAIRPERSON BUSTAMANTE: A Wall-Mart will bring a lot of people down there too.

COMMISSIONER CONNELL: The Mayor is asking --

CHAIRPERSON BUSTAMANTE: I don't mean that to be disrespectful, but what's going to be next in terms of what -- and I know that this is not -- this is not Wall-Mart and so I don't want to take it to the limit of that comment, but it's still -- what is the next piece? It's only to dramatize, maybe over dramatize the point. What's the next piece that brings -- that's the part I'm
concerned with, Madam Mayor.

COMMISSIONER CONNELL: I'd like to try to assist the Mayor's question. I think it was a very fair question. I mean, I think that as Beverly knows, she sat on a commission I chaired on called SMART, which was an effort to try to change us away from a retail focus in cities and counties to one that was based on a more balanced land use. And Beverly has attempted to do that.

So when the Legislature failed to take action on the law that would have reallocated revenues to cities and counties so that they would be encouraged to do housing and more balanced development. And at the rate we're going spending money, that's probably not likely to happen because it means a net reduction to the State.

But I do think it's a fair question, how long is it going to take us to come to this conclusion? I am unprepared today though, Beverly, to vote for something that has a movie theater in it, largely because I think it becomes a question, for me, of whether or not the shopping center in a tidelands area is anymore appropriate than it is anywhere else. And I, you know --

LONG BEACH MAYOR O'NEILL: I think that's a misnomer, but it is a commercial development.

COMMISSIONER CONNELL: I think the commercial development is the least of my concerns. I think it's the
movie theater. I can support, as I saw in San Francisco, the kind of supported uses that were related to the use of the pier there.

But I think this is a whole new ground that we're breaking, and I am very leery of what it suggests. I mean, I can envision ten years from now if we go this route that we're going to have movie theaters up and down the coast and I see no way to prevent that, because if we allow it to occur in Long Beach, I think that the same kind of salient argument can be made as we look at tidelands property throughout California, and that is my concern. And that is why I've asked for the public policy here.

I have no disagreement with staff that there is not a management issue here. I am very comfortable as the Chief Auditor of the State to say there is not a management issue here. I want the citizens to understand that. There's not a financial issue here. That is a land use issue here which goes into an arena that we have not explored yet as a Commission.

And that is what has deeply concerned me in reading the report and looking at the location of these theaters. I am very, very concerned of what it suggests and I am not an attorney, and I often times benefited from the fact that I am not, because I think sometimes
attorneys are forced to look at things more narrowly. And I can understand why the attorney for Long Beach doesn't think it's precedent setting, but I can assure you from the political viewpoint, from the public policy viewpoint, it definitely is.

If we move on this matter today, and it becomes a reality where there are going to be movie theaters in Long Beach, it becomes a powerful argument for cities up and down the coast to place those kinds of uses in their tidal sands.

LONG BEACH MAYOR O'NEILL: May I just ask where we are then? I need some direction, are we talking about taking it back to staff, are we talking about looking at our plans again and bringing them back?

COMMISSIONER CONNELL: Paul, what are you suggesting?

EXECUTIVE OFFICER THAYER: Just as an idea for the Commission to consider, I think the City has been in this planning process for a long period of time. They've received approvals for a lot of their development already from a number of different agencies.

LONG BEACH MAYOR O'NEILL: Actually, it's been going on since I've been Mayor, but two years before that.

EXECUTIVE OFFICER THAYER: Certainly a long time. And I guess what I would propose is that there's two
issues before us, what do we do for Long Beach, how do we deal with the specific situations that they're in right now and get them through the planning process in a way that won't cause a precedent that the Commissioners are concerned about and how do we address the larger public policy issue, which, you know, as I indicated earlier you're absolutely right. This is the first maybe of a wave, and we're already getting staff consultations with the major courts.

San Francisco has a cruise ship proposal, which has some proposals in it that will raise the same kind of concerns. And so what I would like to do is try and arrange something before June that might take up the Lieutenant Governor on some of his ideas that there be a swap here and something else can be done so that this project might be able to go forward, but perhaps the public trust can benefit from additional lands obtained somewhere else in the form of a swap.

So there are other mechanisms, and there are maybe some that we don't know today, but that will prevent this kind of precedent from being set.

CHAIRPERSON BUSTAMANTE: You can also persuade, me, Paul, had there been able to been some effective argument that in the development of this, either this project or in other projects, that the City of Long Beach
has enhanced other areas of the public trust lands here. And that, in fact, they were doing it strictly for the mitigation of this particular use.

If we're able to somehow establish that someplace, that would go a long way to making me feel better about this process. But just the taking without any mitigation of any kind, I think is, you know, it's abrogating our responsibility here. So I really think --

LONG BEACH MAYOR O'NEILL: That's in addition to the theater situation.

CHAIRPERSON BUSTAMANTE: Well, no, it's the theater and what have we done in order to resolve that issue in terms of mitigating on behalf of the public trust.

LONG BEACH MAYOR O'NEILL: It's not the theater itself.

CHAIRPERSON BUSTAMANTE: The point was made earlier, would a project help or would a park help your project? Probably not. So if we're giving up something that could have been a park, what are we getting in return for an ancillary use of the public land of public trust lands. And so you're suggesting before the next meeting you could explore that with the City and the developer?

EXECUTIVE OFFICER THAYER: We'd like to explore a variety of options. I'm sure we can't think of them all
here today, but if there's someway that either the public
trust has its property exchanged for other properties or
other -- there may be other mechanisms we don't know.

But I think we've heard the Commission loud and
clear on this, and we would look for someway to deal with
this particular situation, and then I think we also have
to deal with the changing waterfront issues, and that may
appropriately be an oversight.

CHAIRPERSON BUSTAMANTE: I want to make sure that
the Mayor knows that, you know, we're not attempting to
put something on the table here at the last minute to try
to squeeze you for something else. That's not really the
intent here. We really do believe that there is a
responsibility for us to find some mitigation for what
we're giving up.

And they are right about several things, one of
which is that it's finite in terms of the land. And for
us to give up something, there needs to be something given
back. I know that last year --

LONG BEACH MAYOR O'NEILL: It was mitigated.

CHAIRPERSON BUSTAMANTE: -- there was four for
one. I don't know what we've accepted. My guess is that
we probably have accepted less than that in the past.
Let's find something of equal value. Let's find something
that we can have a win, win situation here.
LONG BEACH MAYOR O'NEILL: Our city manager has equal value.

CHAIRPERSON BUSTAMANTE: Can we go through this very quickly because I think we're at the end of this.

LONG BEACH CITY MANAGER TABOADA: City Manager Henry Taboada, City of Long Beach.

Commission members, what we are faced with here for the City of Long Beach as the Mayor has so eloquently stated is that we have timing considerations that make this a critical project for us, at this point in time, based on the market conditions, based on lease conditions, based on a whole set of factors that make it almost -- not acting today, almost undermines the project in its totality.

We've already gone through a situation where a theater that backed out of the project caused all of the other leases to have to be renegotiated based on having acquired another theater operator. So we already understand the mechanics of the project when we don't have the theater.

Mr. Palker who is the representative of the developer will state to you that the theaters comprise 70,000 square feet of second floor space below which are uses which we believe are consistent with tidelands uses. We have available to us in our tidelands account $600,000
worth of credit if we are able to secure additional
tidelands funds or tidelands property with that money.

    We've been unable to do that in the City of Long
Beach, because we have nowhere to go. As the Mayor
pointed out, we're fully built out. We have nowhere to go
to spend this $600,000 for any additional tidelands
property.

    I'm willing to offer up that $600,000 to buy
70,000 square feet or as much as that $600,000 will buy
anywhere in the State of California, anywhere where it can
be used because it sits unused in our treasury unable to
use it, because we have no property we can obtain that is
within the tidelands area that we don't already own.

    So we can't spend it. It's a credit that's due
us, because we gave land to the tidelands in that amount
and it was a swap that we did. And I think that if we
could do that, and also give us credit for the fact that
the theaters don't occupy ground floor space, then I think
we fashion a solution that would allow us to go forward
with our project and still not create the kind of
precedent that is being suggested here.

    CHAIRPERSON BUSTAMANTE: It's an interesting
proposal. The fact that it's not on the ground floor, I
don't know that that has any relevance, but I think it's
an interesting proposal. Unfortunately, you're stating as
you're offering it, there's nothing that we can use it for --

LONG BEACH CITY MANAGER TABOADA: In the City of Long Beach.

CHAIRPERSON BUSTAMANTE: -- unless -- in the City of Long Beach. So what would we use the $600,000 for if that was what we eventually ended up with a number anyway, which I don't know it is, but I mean would there be an enhancement of existing public trust land that currently doesn't have the kinds of amenities that a specific trust account could establish that would be administered by perhaps a local board? Would that be a way of -- I mean, I'm grasping a little bit here.

LONG BEACH CITY MANAGER TABOADA: If you want to keep it within the boundaries of the City of Long Beach, we could enhance currently owned State Lands property, which is not developed or is not improved.

EXECUTIVE OFFICER THAYER: This $650,000 that he's referencing actually came from a prior swap. It's not a new proposal dealing with this one. And, in fact, it had to do with a pipe, one of the exchanges that occurred that we talked about earlier.

And, basically, that money is supposed to be used to buy new trust lands, because old trust lands were lost. And so basically the mitigation cycle of the previous deal...
is not yet complete, and that that money is intended to be
used by --

CHAIRPERSON BUSTAMANTE: So it's nothing new.
EXECUTIVE OFFICER THAYER: We couldn't even
complete the last swap to figure out where to spend it.
LONG BEACH CITY MANAGER TABOADA: That's why I
offered to give it up to any person in California, where
it would make sense --
CHAIRPERSON BUSTAMANTE: Right, but that's 650
that we already have.
LONG BEACH CITY MANAGER TABOADA: But it is
$650,000 that is in the hands of the City's account for
the City of Long Beach.
COMMISSIONER CONNELL: But we don't end up net
ahead. We have an obligation it seems to me to mitigate
the last part.

SENIOR STAFF COUNSEL FOSSUM: It's not actually
in the City's account. It's in a Kapiloff land bank
account. The agreement provided -- the City identified
somewhere in the first ten years after the agreement that
the Commission would attempt to purchase that land, but I
believe the period of time has lapsed and the State can
already spend it anywhere in the State it wants.
LONG BEACH CITY MANAGER TABOADA: We have a
letter on file that gives us an extension on that
deadline, I believe which we can offer you.

CHAIRPERSON BUSTAMANTE: I'm not going to say
that, you know, it was not -- it was an interesting
proposal. That's the kind of creative thinking that I
would want to have. This one probably doesn't go far
enough, but, you know, we're looking for that kind of how
do we enhance the public lands. And we are giving up
something, and I think it's something in return, even if
it's a bank someplace, waiting for the opportunity, I
think that that's an important piece of trying to mitigate
for, you know, a use that is pretty -- for me, it's
outside ancillary.

LONG BEACH CITY MANAGER TABOADA: Again, we're
willing to do anything that makes sense to both this body
and --

CHAIRPERSON BUSTAMANTE: I appreciate that and
that works well with the staff's recommendation right now.

Yes, sir.

MR. PALKER: My name is Tony Palker, I represent
the developers of Diversified Realty. We are the
developer of the retail entertainment project. I'll try
to keep my points very brief and on point to the simple
question, does the Queensway Bay retail entertainment
project conform to the tidelands grant and the questions
that you have been discussing for the past hour or more.
First of all, I'd like to say that the property we are talking about, let's make it clear, is currently largely paved and fenced parking lot used from time to time for parking. It is largely inaccessible to the public.

The project itself, our project, represents 18 acres out of the entire 316 acres of the overall Queensway Bay master plan. Our project itself will only have a commercial coverage of approximately ten acres, meaning approximately ten of our 18 acres are covered by buildings, the remaining eight or so are essentially private, but open to the public. We have many requirements from the Coastal Commission to provide open areas to the public, such as a 17 and half thousand square foot public viewing deck on the second floor of the building to provide views of the water and access to the water that currently are not available.

We're providing bridges across shoreline drive to help link the downtown to the waterfront. So we have a large town plaza area in excess of an acre in size, while technically private, is part of the public area of the project, open and accessible to the public.

So we have a very large amount of property which is essentially open to the public to provide access to the public. The question that has been raised as to some of
the uses. I think, really what we have to do is look back as to what the modern interpretation of uses that are bringing people to the water.

Much of this site used to be the Pike Amusement Center, which brought many, many people to the water out of the greater Los Angeles area. The pike amusement zone was an appropriate used at a former era and other projects are appropriate to help bring people there today.

As I stated previously, most of this land is currently not available or usable to the public. We have done extensive market studies to determine how many people you will be able to now bring to the site and to the water. And we estimate that upon completion of this project, combined with the convention center on one side of us, and the aquarium on the other, there will be approximately seven and a half million people visiting the water.

Currently, we estimate there are about four million people at the convention center and the aquarium. In other words, because of the variety and totality of the uses, we will increase to, three and a half million more people will visit this small 18-acre site in concurrent use, because currently there is nowhere to go and nowhere to park.

CHAIRPERSON BUSTAMANTE: That raises a whole lot
of other issues, but, you know, some pretty serious
issues, so let's -- you know, let's not used the numbers
to overstate the case here. We know that the property
that we're talking about isn't the most valuable piece of
property in the whole trust lands, but the basic sticking
point here is that you are adding another type of
commercial venture, and the public trust is receiving
nothing for it.

So can you focus on that so that we can move
toward that because, you know, frankly I'm one who'd like
to be able to figure out how to do this, if we can figure
out how to enhance the public trust here.

MR. PALKER: If I understand what the question
is, is how the project will enhance the public's ability
to used and enjoy the shoreline asset. And if that is the
question, the variety of uses that we are contemplating,
which range from restaurants, shops and the cinema and the
IMAX and possibly a hotel use it is the mix of those uses
that together in the unique mix that is created, which
allows that to occur and allows -- it allows parking to be
built. It allows people to come to the water and provides
for these variety of uses.

It is not simply a used where you can look at
each one of the uses by itself as a discrete used and look
at that individual component. It is the combination. The
restaurants along the water are there, in part, because of
the cinema. The cinema, in part, feeds off of the retail,
and et cetera.

CHAIRPERSON BUSTAMANTE: I understand. You're
following the same sort of direction. Let me put you in a
different space. How does it provide more open space?
How does it enhance wetlands? How does it enhance
tidelands? How is it with any migration? How does it
help with species? How does it help with -- I mean, how
does doing this help those kinds of activities, not
bringing three million more people to an 18-acre site.
That has, I'm sure, some value, but it's not, I don't
think, the kind of public trust value that we were looking
for.

MR. PALKER: You've really, I think, raised two
issues. One is a natural environment, one is the built
environment. Issues that pertain to the natural
environment, such as habitat, wetlands and species, to be
quite honest, are issues that the current used of the
property was set in motion probably prior to the second
world war.

It's been paved for in excess of three decades.
So from the natural environment, what we would do in our
proposal or virtually any other proposal that I can
imagine on this property, even if it were to be a park, we
would not increase natural environment. As for a built environment, your question about providing more open space, as I stated previously, much of this project at least eight of the 18-acres does not include second floor space on essentially roof tops on buildings. It is going to be created as public open area.

And through the coastal permit, it very clearly states certain of these areas must be open to the general public. It is through this development that this open area will be created and amenities will be provided for the public.

COMMISSIONER CONNELL: I don't think anyone is denying that it would be an attractive development. The question is whether or not this is a used that is conducive to the tidelands trust requirements and whether or not these uses wouldn't be better off somewhere else in the city.

I mean there is no reason for those specific uses to be on the tidelands trust area if there is not a direct connection, in my opinion, to tidelands used And I'm not hearing you make that connection.

MR. PALKER: I think that maybe I have not made it clear as I've been on this project for three and a half years, and kind of viewed the overall connection. If I may step back with what our master planning approach was
to this before we talked about specific uses or tenants.

The intent was that at one-time Ocean Boulevard, if I can used this the pointer right here? Ocean Boulevard which was roughly located along this line here, Ocean Boulevard, which was historically the edge was pulled away from the waterfront, beginning I believe in the 1920s, through development of the Pike Amusement Zone, a series of piers, et cetera, on the property.

Essentially, what happened was the downtown CBD was disconnected from the water. Over time that area was filled, a large barrier of essentially an elevated freeway was built which has subsequently been taken down and the improvements along the edge were created.

Earlier in the planning process commencing in the early 1990s, the City with their design architect created an edge to the water as I've pointed out here trying to reestablish essentially a seawall, an edge on the water. That, however, left a substantial void between Ocean Boulevard and the edge of the water, a void which disconnected the downtown and disconnected people's access to the water and people largely were very uninterested in going to the water, because there was nothing. It was sort of in the middle of nowhere.

The attempt of the plan is to create a series of pedestrian roads, small vehicular routes, pedestrian foot
paths, open areas or gathering areas to relink the entire downtown area to the water, connecting essentially along two major spines. One is on Pine Avenue, which is the existing CBD going right down to the water's edge right here, and the second one is a more diagonal path, leading from essentially Pine and Seaside Way at the northwest corner of the convention center diagonally to the aquarium that was built.

So, essentially, there are two major pathways or connection points that our project represents that we are building as part of our project, including in that is a large pedestrian foot bridge over Shoreline Drive, which is a large barrier to the water.

Throughout that we have then created approximately 7 or 8 subparcels that surround these connections. And it is on those parcels that the buildings, the commercial establishments, if you will, are developed.

So essentially to ask to try to address that question, the overall concept of this plan from day one, since 1994 when the City started, since 1997 when we started, has been to reestablish the connection from Shoreline to Ocean. We have done that through a variety of infrastructures we're putting in.

COMMISSIONER CONNELL: And I understand that
would be an important priority for the City, but we are
sitting here as a Lands Commission, where our
responsibility is singularly to focus on protection of the
tidelands. So I still don't have any greater assurance
that anything you're proposing, while it may be viable in
terms of connecting the CBD to the shoreline, helps us
come to the difficult decision we have before us of
whether we are in deed enhancing and protecting the
tidelands.

And there's nothing in this project that you've
defined that does that.

CHAIRPERSON BUSTAMANTE: I think we're going to
have to bring this to a close. I'll let you go ahead and
speak.

MR. McCABE: I'll be brief and to the point.

I want to assure Commissioner Connell and the
Commission as a whole that this project brings a great
deal to the tidelands trust. It is common knowledge in
Long Beach that, and I believe with the Commission, that
the tidelands trust fund is perpetually short of money
these days. There is not enough money to do the repairs,
and infrastructure work that we would like to do.

We've spent $40 million on Rainbow Harbor with
money borrowed from the federal government. And we have
helped with the building of an aquarium on which some
nearly $200 million has been spent. Both of these projects will become a drain on the tidelands fund unless we can bring these people to the tidelands to provide rents and other benefits to the tidelands trust.

This is absolutely essential. We can't make a viable trust use of the aquarium, the Queen Mary, the Promenade, the Rainbow Lagoon without bringing these people in this way to this project.

Respectfully, we've been before the Commission for quite awhile on this issue and this is an enormous hardship on the City to call it into question at this point. I assure the Commission that we bring a lot to the trust fund.

Just on a procedural matter, do I take it that it may be the decision of the Commission to hold this matter over to a future time, may that be on the June calendar?

CHAIRPERSON BUSTAMANTE: At this point, it's very possible. I think that the Commissioners have to speak and try to come to some kind of a conclusion here as soon as all the testimony is done. I think that you are the last of that testimony.

MR. PALKER: If I could just answer Commissioner Connell's final question that she raised about specific land uses. If you go back to the mix, it is not dissimilar from Shoreline Village to the Embarcadero in
San Francisco. The Embarcadero of San Francisco and many of these other areas, many of these are really based upon those existing uses on the tidelands on the waters.

COMMISSIONER CONNELL: Yes, I agree. The Embarcadero has, you know, has an entirely different focus. It was done many, many years ago, and it was in the tip of the San Francisco area as you know. It was not -- it's not in anyway near the water in the way that your land would be. The Embarcadero is in the middle of the commercial district down on market.

MR. PALKER: I should have not used the term Embarcadero. I should have used the term Pier 39, Pier 45, Fisherman's Wharf that area of San Francisco.

CHAIRPERSON BUSTAMANTE: Okay. What's the pleasure of the Commissioners at this point?

COMMISSIONER CONNELL: Well, you know, I respect the time sensitivity here to the City, but I am certainly not willing to move forward on a matter that imposes this new precedent on other actions of the Board in the future at other locations throughout the State.

I don't know what we can do to resolve this matter within the next 30 days. I mean, I've listened to some very definite positions that appear to be far apart and I am concerned that we do give an up or down signal to the City of Long Beach certainly within a limited period
of time.

If there is no way to soften the suggested used I cannot move forward, Mr. Chair, on the idea of movie theaters in a tidelands trust. So I've got to hope that the staff, within the next 30 days, can come up with some innovative discussion of how we can deal with this matter, because, as it now stands, I certainly couldn't support it.

ACTING COMMISSIONER PORINI: That's fine. I, too, am concerned with the timeliness of the process and would encourage staff to keep Commissioners abreast of discussions that you have with the various participants as we go along.

CHAIRPERSON BUSTAMANTE: I think that makes this thing unanimous, Paul. You know there is, I believe, a tremendous need for the Commission itself to reflect just a little bit and to ask staff to come up with at least the draft of some policy with regard to this type of commercial used. There were a lot of charges that were leveled today, a full range of things, and I think that when you cut through it all, I think that we're facing an issue that's a very large public policy issue that we have to, in fact, face.

And so I would suggest that as you are involved with your discussions with the City developers that you
make every effort to figure out how we, in fact, in some kind of a different commercial used that we establish not only a precedent, but the right kind of precedent, that we -- if we're going to establish a precedent here, it's got to be one that, in fact, is either extremely so rare that it never takes place again or that it is in such a situation where the mitigation is appropriate to the kind of used that we're talking about.

In this particular case, I think that it's clear that it's on the very edge of public lands, but still on public lands. And so in order for us to be able to deal with this issue in what I think is a responsible fashion, we need to figure out how to deal with that as an entire public policy of this board, so when we're faced again, because we will be -- that we have some precedent that, in fact, makes sense as a precedent to have.

So I would hope that the sooner that you could do that with the City, the better, so that it doesn't prolong any activities. I feel very, very badly about the situation that I believe that we have been a part of to put them in this situation without giving them -- without ever indicating that this kind of activity would have this kind of reaction by the Commission, and for that I apologize.

However, we are also faced with a much larger
public policy issue here, and I think we have to resolve that before we move forward.

COMMISSIONER CONNELL: I'd like to suggest, Mr. Chair, that we put this on the June agenda. We are going to have a June meeting, because there are some other items that we deferred to June prior to your arriving at the meeting. So we will be having a June meeting. And I do think that this could go on the agenda for June. And if you could give us a status report, if you have not resolved or you're finding that there is no tenable compromise here, we need to know that and we need to so indicate as a Commission to the City of Long Beach. So I would like to have it slated as an action item so that if necessary we can take action if you reached a conclusion, whether it's positive or negative as it relates to the City of Long Beach. I think we need to position it as quickly as we can.

CHAIRPERSON BUSTAMANTE: I would echo that and I would basically tell all the sides that I think that we've clearly gotten a sense of the issues that are involved here, so this is not an opportunity to gen up, you know, 40 or 50 members, because by the next meeting, I'm going to have this changed, so that we can go into any new debate that's necessary without covering all the old ground.
I think that the opposition made the case very clear. I think it was very eloquent. I think that the City also has made their case. We have a responsibility to effectively deal with this in a public policy format. And I think that that's what we're hedging on, because that's what we have to come up with, so let's try to resolve this as an action item.

COMMISSIONER CONNELL: Do we need an actual motion on my part to make that action clear or is that just -- I think it's pretty clear.

CHAIRPERSON BUSTAMANTE: It is the unanimous consent of the Board that, in fact, we used this as an action item come June.

EXECUTIVE OFFICER THAYER: Let me just clarify what we're bringing back, because obviously the staff is going to, you know, we're going to carry out --

CHAIRPERSON BUSTAMANTE: One is hopefully a win, win, win, win. And the second is a policy in the establishment of having ancillary include anything remotely, like a movie theater or any other like kinds of situations, as to how we would deal with that in the future. And I'm glad I don't have to write the first draft.

EXECUTIVE OFFICER THAYER: We'll work with the Attorney General's office on that. Both issues are tough,
and I think that the first one we at least should have some idea. We should be able to fix it or we'll know that there's problems. And I think the problem that the City Manager illustrated about they're not being swapable land, indicates how difficult that's going to be nonetheless.

CHAIRPERSON BUSTAMANTE: Should there be some activity, what is the requirement of getting a sense of the Commission as to what they think that you're at least in the ballpark so that we don't get to June and nobody's heard about what's taking place, and then it's -- is there a requirement in terms of -- do we have to meet in that June meeting to actually hear any potential deal before we --

COMMISSIONER CONNELL: Yeah, I think that would be what would be needed. But I would just urge, and again, I think it's a matter of staff staying close to Board Members over the course of the next several weeks. I mean, if you present us with a report that is, you know, quite diverted from what we talked about today, it's not likely we're going to get to a Commission decision.

You can obviously brief individual board members throughout the course of the interim period between now and our June date without violating any State law. I would urge that you do so.

And that if you come up with some creative
solutions, you try it on the various board members and then you can get a sense of the tone of the Board, so you're not surprised by actions that may occur in the June meeting.

CHAIRPERSON BUSTAMANTE: Now, in terms of surprises that might occur in the public, at what point are those offered, should you have a staff recommendation, at what point is that then given to the public?

EXECUTIVE OFFICER THAYER: We generally try and get those reports down anywhere from a week to two weeks in advance. This one because we'll probably be negotiating this -- you know, we'll get it out as soon as we can. It's hard to do much sooner than that given the time.

CHAIRPERSON BUSTAMANTE: Let's shoot for a target of ten days, and I think anything less than that is not going to be well received, but I think we should shoot for a target since we're not -- although we may not be legally obligated, I think we have a responsibility, an obligation to get it out as quickly as we can, so let's shoot for a ten days target.

EXECUTIVE OFFICER THAYER: We will.

CHAIRPERSON BUSTAMANTE: Is there anything else by the members?

EXECUTIVE OFFICER THAYER: If I could just
respond to the second point that the Controller made or
that you made, in terms of eventually wanting to work out
a public policy on that, we might want to look at that on
a slightly larger --

COMMISSIONER CONNELL: Well, you're going to have
to look at a longer timetable. And I certainly appreciate
that. I mean I can think of, you know, a half dozen
circumstances up and down the coast where this issue is
going to become precedent setting in the next year.

CHAIRPERSON BUSTAMANTE: Why don't you make sure
you give the staff those specific items so that they take
a look at it.

EXECUTIVE OFFICER THAYER: Sure. And we'll stay
close with your offices as we develop that policy as well,
but that might not be ready for the June meeting.

CHAIRPERSON BUSTAMANTE: We better have a fairly
clear idea.

EXECUTIVE OFFICER THAYER: Certainly. But again,
I'm just aware of a number of different projects and it's
just going to take some analysis to figure out how we want
to respond to that.

CHAIRPERSON BUSTAMANTE: I understand. I think
in order to meet the City's requirements, I think we're
going to have to move very quickly on this, Paul.

EXECUTIVE OFFICER THAYER: I agree.
CHAIRPERSON BUSTAMANTE: Okay. What is the next item, since -- ma'am, did you --

MS. CANTRELL: I just heard Mr. Thayer say that he'd be talking about the developers and the City. I was wondering if the public is going to have any input?

(Applause.)

COMMISSIONER CONNELL: Certainly. Mr. Thayer always speaks to members of the public and that has always been the history of this Commission, so, of course, they will be speaking to you. They have been speaking to you on an ongoing basis, as you know, so they will certainly be encouraged to do that again.

CHAIRPERSON BUSTAMANTE: It may not be all 50 people, but I'm sure that all the folks who are here will have an opportunity to have input.

MS. MANN: Could the meeting be in the local area. My name is Diana Mann and I'd like to request that the meeting, the June meeting, be held in the local area, so that Long Beach public can attend.

CHAIRPERSON BUSTAMANTE: Where are we scheduled for the next meeting?

EXECUTIVE OFFICER THAYER: We don't have a particular location established yet. And I'm not sure -- there's going -- there might be a Tahoe item on the Calendar.
COMMISSIONER CONNELL: Let me just speak to that issue. That came up during the break before you arrived, Mr. Chair. We try to schedule meetings related to the geography of the concerns of residents. We had this meeting specifically scheduled here at my request, so that we could have all the southern California items before the Board.

Unfortunately, some of them have now been deferred to June, Veneco being one which is a Santa Barbara item. This one now being a second, but we also have a need to address northern California concerns. And the Lake Tahoe people, you know, have a concern to hear their matters before a board in northern California, so you know, we'll try to balance that. But just as a Commissioner, I can tell you we kind of group items with the sensitivity to having local residents.

Obviously, it was more convenient for you to come here today. Likewise, it would be very difficult for the Lake Tahoe people to travel to southern California, but that will be a decision of the staff.

EXECUTIVE OFFICER THAYER: We'll just look ahead.

CHAIRPERSON BUSTAMANTE: Thank you, ma'am.

So are we done with this item?

EXECUTIVE OFFICER THAYER: Yes. Is there any further action?
CHAIRPERSON BUSTAMANTE: Let's go to the next item.

COMMISSIONER CONNELL: No, I don't think there's any action. I think that you've done the audit. Now, we're pulling out of this audit. Fortunately, we did ask for the audit. I'm glad I, you know, pursued that. We have now had this more serious matter. I'm comfortable with the information on the audit. I think it has broached a number of issues that we're discussing today.

CHAIRPERSON BUSTAMANTE: Maybe we can have an amended version of the staff report at the June meeting as well, so that we can include all of the audit activity.

MS. MANN: Excuse me, this is a report. It's not an audit. I think we asked for an audit.

CHAIRPERSON BUSTAMANTE: This is a report on the audit.

MS. MANN: I don't think we've had an audit.

EXECUTIVE OFFICER THAYER: I think the staff believes that this constitutes a management audit. We looked at all the land uses that have been occurring and how they were dealt with.

CHAIRPERSON BUSTAMANTE: Okay. All right, thank you all. This will be moved to the June calendar.

The next item is, what item. Did we decide here, but was 104 --
EXECUTIVE OFFICER THAYER: I think we didn't decide actually it was going the do the shoreline protective. You had indicated, I think, that you thought about putting that over.

CHAIRPERSON BUSTAMANTE: So we're deferring Item 116.

Okay. If there's no --

EXECUTIVE OFFICER THAYER: The two remaining items that I have are 74 and 75 that deal with seawalls in San Diego and then 109. We weren't sure whether you're alternative path to 109 should be taken, which is the Venoco deferral to be taken off the consent calendar.

Do you want that heard now or in June?

CHAIRPERSON BUSTAMANTE: I think that we've already talked about in June. The representative of Venoco indicated that they were going to leave as a result of that postponement until June.

COMMISSIONER CONNELL: Actually, he's still here.

CHAIRPERSON BUSTAMANTE: We thought you'd left. We were going to -- we weren't going to backdoor you while you were gone.

In the meantime, you will pursue a review of all of the activities that are taking place and be able to come back to us with --

EXECUTIVE OFFICER THAYER: Some additional
information regarding on what Venoco has done to comply
with their present deferral requirement.

COMMISSIONER CONNELL: What are we doing on 74
and 75, I'm unclear? Are we deferring them?

CHAIRPERSON BUSTAMANTE: No, we were going to go
through 74 and 75.

EXECUTIVE OFFICER THAYER: Are you prepared for
that report?

CHAIRPERSON BUSTAMANTE: We are. Is there anyone
here? I don't have any requests to speak. Is there
anyone here that is interested as a member of the public
to speak on this issue?

Go ahead, staff report. Maybe we can do this one
quickly.

MS. SMITH: Good afternoon, Mr. Chairman and
members of the Commission. My name is Jane Smith. I'm a
public land management specialist with the Land Management
Division in Sacramento. I am here to present information
on Calendar items 74 and 75.

The project includes the filling of a seacave
approximately five feet in depth at the toe of the bluff
within an existing 15-foot high 74-foot long notch
overhang, and the construction of a two and one half foot
thick concrete seawall over the face of the fill.

The project extends across the northern half of
the bluff adjacent to 311 Pacific Avenue and across the entirety of the bluff adjacent to 319 Pacific Avenue in Solana Beach in San Diego County.

Each of you has been provided with a set of three photographs. The first photograph shows the sight before the seacave fill. The second photograph was taken during construction of the fill and the installation of soil nails to stabilize the upper bluff.

The third photograph is provided to show both the project site and the adjacent completed seawall to the south. At its meeting on December 19th, 2000, the City of Solana Beach, by unanimous vote, determined that an emergency existed and authorized the project.

On January 17th, 2001, staff of the California Coastal Commission issued emergency permit 6-01-001-G authorizing the filling of the seacave and the installation of the soil nails to be placed into the upper bluff for stabilization.

On January 25th, 2001 staff of the California State Lands Commission issued a letter of non-objection on to the applicants in order that the emergency work could be performed. Litigation has been filed in the Superior Court of the County of San Diego on behalf of Calbeach Advocates against the City of Solana Beach, its community development director and the applicants, Jonathan and Dawn
Corn and J. Harold and Ninni Scism, challenging the City's approval of the project as an emergency. That litigation is still pending.

On March 13th, 2001 the California Coastal Commission, by unanimous vote, authorized the work completed under the emergency permit and also authorized the construction of the seawall face. The Coastal Commission's permit contains several conditions, including the requirement that the applicants secure a lease from the California State Lands Commission, that the seawall notch fill be monitored annually to assure that the fill erodes at the same rate and retains similar color and texture as the natural bluff face, and that the applicant's pay an in-lieu mitigation fee in the amount of $18,772.

You have before you, I believe, written comments that have been submitted for the record by Jim Jaffee on behalf of Calbeach Advocates by Dr. Ronald Lucker and Robert Baker on behalf of the Solana Beach Coastal Preservation Association and from Bill and Linda Gabriel.

Based on the information that has been provided to staff and the approval of the project by both the City of Solana Beach and the California Coastal Commission, staff is recommending approval of Items 74 and 75 as presented.
I or other members of the Commission staff will be happy to answer any questions you may have. That concludes my presentation.

CHAIRPERSON BUSTAMANTE: Thank you. Where are those letters as you said that --

In the blue folders.

COMMISSIONER CONNELL: I have a question, if I may, to staff here. I am concerned about the sand and the impact that this construction of the seawall has had on the sand. I know that there was a concern originally by local beach advocates about this issue of causing a loss of public beach and that the sand was lost. Are they replacing the sand?

MS. SMITH: Are you asking are they replacing the sand?

COMMISSIONER CONNELL: Yes.

MS. SMITH: Well, I believe that that's the requirement that the Coastal Commission has made that requires them to pay the $18,772 into an in-lieu mitigation fee that could be used to acquire sand for the beach.

COMMISSIONER CONNELL: So that's already being done. We don't need to take action today to make sure that occurs?

MS. SMITH: That's a condition of the Coastal
Commission permit.

COMMISSIONER CONNELL: So if that is in deed required by the Coastal Commission, are there any other concerns that have been raised by adjacent property owners or by local residents that we need to be aware of prior to taking this action?

MS. SMITH: Well, I believe you have comments from Mr. Jaffee on behalf of Calbeach Advocates who have concerns about not only the City and the Coastal Commission, but the State Lands Commission's continued approval of these kinds of projects. I think their primary concern links to the fact that an Environmental Impact Report should be done.

While I don't believe that they are opposing the issuance of a lease for these projects, there are certain concerns that they would like to see imposed on the applicants. And the other letters that you have received in your packages are all from residents of Solana Beach, property owners, who are in support of the project.

COMMISSIONER CONNELL: Well, how could you do an EIR if it's an emergency circumstance?

EXECUTIVE OFFICER THAYER: I think that that's correct. It's difficult to do. And I think the real answers will come out when the City completes its EIR, which it is doing, on a shoreline erosion ordinance, which
it's proposing to adopt.
And that provides the venue where it can look at the impacts that are kind of up and down the coast there and are broader than just this particular project.

CHAIRPERSON BUSTAMANTE: That's what you do the EIR on, the individuals building --

COMMISSIONER CONNELL: Right. It certainly seems necessary to me that we allow these property owners to protect their property and to not allow further erosion of the bluff.

EXECUTIVE OFFICER THAYER: That's the issue.

CHAIRPERSON BUSTAMANTE: How did we get to a point where it was deemed an emergency? Who declared it so?

MS. SMITH: Well, I believe the City of Solana Beach, pursuant to a resolution that it issued at its meeting on December 19th, 2000, based on the testimony that the City Council heard, deemed that an emergency did exist, as well as staff of the Coastal Commission subsequent to the action on January 17th, 2001.

CHAIRPERSON BUSTAMANTE: And in the Coastal Commission's request for the mitigation fee, if that's the appropriate term, this mitigation, I mean the sand wall is going to be forever, so is the $18,770 an amount that they believe will last for a period of time that would equal
the length of the seawall?

   MS. SMITH: Well, I'm not exactly -- I'm not fully briefed on the Coastal Commission's mitigation fund. I know that they have a very complex formula that their staff utilizes in trying to calculate the area occupied by the structure, the amount of sand that is expected to be lost.

   And based on that formula, the Coastal Commission staff has developed, they have arrived at what they believe to be an appropriate dollar figure and that is the $18,772.

   CHAIRPERSON BUSTAMANTE: Seventy-two dollars, excuse me.

   Now, these seawall projects are taking place, and having to ensure that people's property is taken care of is an important thing to do. But I have a concern that by having these take place, there may be an aggravated effect of what's taking place along the coast. And I would hope that the EIR would address that, but I don't know that an EIR by the City of Solano is going to be the defining activity in which we should base our public policy.

   And my concern is that this is taking place in other ports along the coast. And so are we at a point at which any particular beach or the coast, as a whole, is being put in a situation where the mitigation of $18,772
is just not going to mitigate the actions that we are
providing in the aggregate?

And I know it wasn't said well, but I think you
know what I mean.

EXECUTIVE OFFICER THAYER: I think I get the
point or I hope I do. And I think the first thing I
should point out is the Coastal Commission I think only
has this mitigation fee policy set up in the San Diego
area, and that the money that -- I just spoke with Dwight
Sanders, who represents the Lands Commission at the
Coastal Commission Meetings, indicates that this is money
that goes to sandbag the local area government there for
regional projects.

This fee, in fact, isn't established for other
places up and down the coast and hasn't been used as a
solution by the Coastal Commission in other places.

COMMISSIONER CONNELL: What do they do there?

EXECUTIVE OFFICER THAYER: In other places the
location require offers to dedicate. So for example,

generally, the public ownership starts at a mean high
tideline or where the tide submerged lands starts. The

Coastal Commission will sometimes say, okay if you're

putting in a shoreline protective device, we're going the

require you dedicate the next 20 feet up the beach as

well.
And so in Malibu that's the most common thing, that there will be additional public access dedicated as a condition for approving shoreline protection to make up for that impact.

COMMISSIONER CONNELL: Can I ask a rather elementary question here, why does the City of Solana Beach or the City of San Diego continue to permit houses this close to the bluff that we have this kind of erosion problem, because I can envision that we're just going to have seawalls along the coast down there. I mean, what does that suggest about the judgment of the local planning department here?

CHAIRPERSON BUSTAMANTE: These are existing?

EXECUTIVE OFFICER THAYER: These are existing, but, you know, it's true up and down the coast, that in most places local governments would not deny a permit if there's some way it could be approved, but they don't allow for very much erosion.

COMMISSIONER CONNELL: Why don't we try to speak with the Coastal Commission about a broader policy here. I think we're missing an opportunity. I mean, I have no problem with this permit today because I really want to protect these homes.

I have a broader concern about why we are allowing cities throughout, you know, California to
continue to place homes in jeopardy. There was one down in Laguna Beach, as you know, just two weekends ago, which a whole number of homes slipped off the coast, I mean off the cliff into the land below. Not only is this risky for the public, who may be down below, unfortunately at the moment when these properties slip, but it's costly to the environment.

So I think we need to have a broader discussion with the Coastal Commission on what their role is in assuring that we have greater forward planning so that we don't have homes so close. And certainly if we're going to allow these seawalls, we should get something in return, because we talked about it earlier, Cruz. We seem to be giving away public, you know, authority here without much exchange for something in return for the private owners. Now, if they do that in Malibu --

CHAIRPERSON BUSTAMANTE: They also charge for right of way?

COMMISSIONER CONNELL: Why don't they do that in San Diego. Why would they do that in San Diego? Why would it be a proposal that would impact Malibu differently than San Diego?

EXECUTIVE OFFICER THAYER: The Commission is reviewing the different circumstances up and down the coast. Different solutions were better in different
places. It is true that the Coastal Act generally prohibits new development from occurring where it will, from the beginning, require shoreline protective devices.

So there are policies in place that try and prevent that from happening. But the flip side of that, of course, is the people who say that if you own a lot, you should be able to develop it. And there's a lot of pressure on them that way.

It's a much larger issue in our staff report which we'll take up again in June. We look at some of this. In fact, the Resources Agency recently issued a draft State policy, which is 20 or 30 pages long, that looks at the complexity of the issue. It involves things like sand supply that's cut off from the Coast because of dams constructed inland and sand no longer moves down the river. It involves a development approval that you're talking about.

COMMISSIONER CONNELL: I'll move approval of this item.

ACTING COMMISSIONER PORINI: Second.

CHAIRPERSON BUSTAMANTE: There is a motion and a second on approval of the staff recommendation on this item. Is there anything else that you have to tell us about this?

EXECUTIVE OFFICER THAYER: No, that will be the
end of your regular calendar and we'd be ready for closed session.

CHAIRPERSON BUSTAMANTE: Let the record show that the motion passes unanimously, and that we adjourn this part of the public meeting and go into closed session.

(Thereupon the California State Lands Commission meeting was adjourned at 2:30 p.m.)
CERTIFICATE OF REPORTER

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing California State Lands Commissioner meeting was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of May, 2001.

JAMES F. PETERS, CSR, RPR
Certified Shorthand Reporter.
License No. 10063