APPEARANCES

COMMISSIONERS
Cruz M. Bustamante, Chairperson
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
Paul Mount
Jeff Planck
Jim Porter
Alan Scott
Lynda Smallwoos
Kirk Walker

ALSO PRESENT
Alan Hager, representing the Attorney General
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CHAIRPERSON BUSTAMANTE: I'll call the meeting to order.

EXECUTIVE OFFICER THAYER: Could we have some silence in the room, we're going to get started. If you could take your seats, please.

CHAIRPERSON BUSTAMANTE: All the representatives of the Commission are present. And we're joined today by Cindy Aronberg representing the State Controller, and Annette Porini the Chief Deputy Director of the Department of Finance.

We'll deviate from the first item of business for a moment. And in light of all the activities that took place last week, although there have been many moments of silence, I'd like to ask for one more, please.

(Thereupon a moment of silence happened.)

CHAIRPERSON BUSTAMANTE: Thank you.

May I have a motion to approve the minutes?

ACTING COMMISSIONER ARONBERG: Move approval.

ACTING COMMISSIONER PORINI: Second.

CHAIRPERSON BUSTAMANTE: Minutes are approved unanimously. Next order of business is the Executive Officer's Report.

Mr. Thayer.

EXECUTIVE OFFICER THAYER: Thank you, Mr.
Chairman. Good morning Mr. Chair and members of the Commission. I don't have that many items really to report this morning. I would like to note that I think things went fairly well on Tuesday with respect to our own staff. As you were probably aware as with other state agencies, we were directed by the Governor to send all nonessential people home.

However, such with respect to our staff concerning with oil operations, some of those remained at work on Tuesday checking with the oil terminals and oil platforms to make sure everything was proceeding accordingly there.

I think there's -- we all like to learn from real drills like this. And I think the one thing that we'll probably do is put in some kind of voice message machine, because our staff was a little uncertain when they went home on Tuesday whether or not there were supposed to report back on Wednesday. And so I think the one thing we noted is that we needed some sort of central way of conveying information to our staff, and we're going to come up with someway to do that.

Other than that, I don't have anything else to report on, other than also to announce the results of some of the legislation that I know members were interested in. There were three bills in particular that were taken up by
the Legislature and passed all three of them on Friday. One was the cruise ship terminal of San Francisco, bill AB 1839 that's been sent to the Governor for signature. The AB 93, which establishes an airport authority for San Diego and transfers the airport operation from the existing port to that authority, that also was passed by the Legislature and sent to the Governor. And finally, AB 1, Senator Alpert's bill that would establish a Rigs to Reefs program, was also passed by both the House and the Senate to the Governor.

And that would conclude my report.

CHAIRPERSON BUSTAMANTE: Are there any items to take off consent?

EXECUTIVE OFFICER THAYER: Yes, there's one item, Item 17.

CHAIRPERSON BUSTAMANTE: And the reason?

EXECUTIVE OFFICER THAYER: Seventeen, that was an item that the Coast Guard, which is the applicant, asked us to take it off. So that will be heard at a future meeting?

CHAIRPERSON BUSTAMANTE: Any others?

EXECUTIVE OFFICER THAYER: That's all that we have at the moment. I believe there are some speaker slips in for two of the items.

CHAIRPERSON BUSTAMANTE: Is there any members
that have any items to be taken off.

    ACTING COMMISSIONER PORINI: I do have an item. Item 65, the Department Finance just hasn't been able to complete their work on that.

    CHAIRPERSON BUSTAMANTE: Sixty-five. So there will be Item number 17 and number 65.

    EXECUTIVE OFFICER THAYER: Yes.

    CHAIRPERSON BUSTAMANTE: Any other requests for taking off consent. Would that be to be seen today or to be postponed?

    ACTING COMMISSIONER PORINI: If we could postpone it to our next meeting.

    CHAIRPERSON BUSTAMANTE: Okay, so 17 and 65 will be postponed to the next meeting.

    Motion on that?

    EXECUTIVE OFFICER THAYER: The one other -- I think there are two slips or several slips, speaker's slips, indicating people who wanted to speak, and those should probably be removed. I think they're on Items 82 and 84. I'm sorry, if that hasn't been.

    CHAIRPERSON BUSTAMANTE: Eighty-two or 92?

    EXECUTIVE OFFICER THAYER: Eighty-two.

    CHAIRPERSON BUSTAMANTE: I don't show anything on the speaker slips. I see 15, only if it's taken off consent and that's the only one I have.
EXECUTIVE OFFICER THAYER: Then I might -- I've spoken with the representative from Senator O'Connell's office before we started the meeting and she indicated that she and one other person wanted to speak. You might ask if anybody in the audience would want to speak on any of those items.

Yes, here we have 82 and 84.

CHAIRPERSON BUSTAMANTE: Okay, move that from the consent to the regular calendar. Okay, the motion would be moving 17 and 65 to postpone it and item 82 and 84 to regular.

Could I have a motion?

ACTING COMMISSIONER ARONBERG: I have a question on 65. Is there any reason for the postponement, the Controller is quite anxious to get this item moving and under way?

ACTING COMMISSIONER PORINI: Yes. As I stated earlier, the Department of Finance just has not been unable to complete our work on it and it requires both Section 2267 in the BCP and just because of the end of the legislative session we've been unable to complete that work.

ACTING COMMISSIONER ARONBERG: Is there any time line on when it might be done?

ACTING COMMISSIONER PORINI: Well, BCP's were
just due on Friday, so I believe we'd have our work
completed by our next meeting.

ACTING COMMISSIONER ARONBERG: Okay, thank you.
CHAIRPERSON BUSTAMANTE: Is there a motion?
ACTING COMMISSIONER PORINI: Move approval of the
consent calendars, with the exceptions of Items 17 and 65,
which will be deferred until our next meeting and Items 82
and 84, which we'll hear later in the morning on the
calendar.

CHAIRPERSON BUSTAMANTE: Is there a second?
ACTING COMMISSIONER ARONBERG: Second.
CHAIRPERSON BUSTAMANTE: Let the record show that
it passed unanimously.
Off to the regular calendar.
Item number 88, Consideration of Adoption of the
Policy on the Public Trust.
Mr. Thayer, we'll come back to 82 and 84?
EXECUTIVE OFFICER THAYER: Yes, sir.
CHAIRPERSON BUSTAMANTE: So I think the first
item on regular discussion scheduled is Item number 88?
EXECUTIVE OFFICER THAYER: Yes, Mr. Chair. This
is an item that was requested to be put on the calendar by
the Commission. The Commission wanted to review the
public trust doctrine, which is the primary common law
basis for many of the Commission's decisions and for us to
develop a policy that will express that doctrine and
provide guidance to the Commission, applicant's that come
before the Commission and local governments that
administer the grants of tide and submerged lands that
have been made by the Legislature.

The Commission staff has worked closely with the
Attorney General's office in developing this policy. That
policy is included as Exhibit A in this calendar item.
We've also worked with the Attorney General's office. In
fact, that office is primarily responsible for developing
the background paper, Exhibit B. I think Jack Rump will
continue the presentation. We have both Commission staff
and Attorney General's staff that would like to explain
that policy.

CHIEF COUNSEL RUMP: Yes. If you remember at
your last meeting, you asked staff and the Attorney
General's office to research further the importance of the
public trust, particularly the legal principles involved
in helping pull together the policy. Perhaps it would
state clearly what the Commission's goals and objectives
are and their respective roles.

We have with us today someone who has worked with
the Attorney General's office for many years, Jan Stevens,
and who has also written a lot of the articles and teaches
extensively on this subject. So perhaps the best way to
get started is to have Jan have a presentation so you have a background. And certainly we'll be available to answer questions that arise.

MR. STEVENS: Thank you, Governor and members, January Stevens. I'm formally an Assistant Deputy Attorney General and I had the pleasure of working with this Commission for about ten years and struggling through some of the labyrinthian intricacies of administering the public trust, which, of course, is the Commission's primary responsibility among the State agencies of California.

The Commission is the trustee of the public trust doctrine designated by the Legislature responsible for all trust in the ungranted lands of the State, and for a considerable fee, of supervision over the granted ones.

So I have appreciated the Commission's stalwart efforts through the years. I think Mono Lake was a particular example of the role that it had to play in preserving California's waters, as well as many developments on the coastline in southern and northern California as well.

Since then, I've taught part time and done some work for the Attorney General's office, and I appreciate the chance to come back and talk about the trust in general.
I think the two important things about the trust that struck me through the years are that it's extremely old and it's extremely amorphous. It's a common law doctrine that really is based in Roman and Spanish medieval law that was accepted in England in the middle ages. And it's based on a --

CHAIRPERSON BUSTAMANTE: We're not going to go back that far are we?

(Laughter.)

MR. STEVENS: I realize your time is limited.

(Laughter.)

CHAIRPERSON BUSTAMANTE: A few centuries.

(Laughter.)

MR. STEVENS: I would be happy to talk about other drafters of the trust.

(Laughter.)

MR. STEVENS: -- but I understand you may have some limitations here, and I appreciate it. And if you finish before I do, please let me know.

(Laughter.)

CHAIRPERSON BUSTAMANTE: I think we have.

(Laughter.)

MR. STEVENS: Okay. Basically, I guess the two things really that have struck me are that it is a universally adopted doctrine, which is accepted in every
society. And that in California it's one that's also rooted in and supported by both federal and State constitutional provisions.

So it's something more than a mere common law doctrine that can be altered as well by courts or the Legislature. The second thing is that the Commission really channels -- is channeled in administering the trust by the legislation, which provide guidance to it, and which the legislature has the power to adopt as the ultimate arbiter of the public trust.

So, basically, it's a common law doctrine described as antediluvian by some courts, but nevertheless, one which still has considerable validity, holding in effect that the tidelands and the submerged lands of California are held in trust for the people of the State for purposes of Commerce, navigation and fisheries, and in more recent years, as the Supreme Court has said, for purposes such as ecological preservation, recreation and other appropriate water oriented uses.

So the public trust basically arose in the United States as a limitation on alienation. The 19th Century was a century in which the primary disposition of the public lands was to be for privatization, something which has been pushed several times later, but nevertheless was the prevailing doctrine.
And tidelands, among other lands of the public, were subject to purported dispositions in all sorts. Probably the primary case was the Illinois Central Case, in which the entire Chicago waterfront was conveyed by the Legislature to the Illinois Central Railroad. The Legislature had second thoughts and purported to revoke the trust, and the US Supreme Court laid down a rule which is applicable in California and has been implemented by the Legislature as well as the Commission, and that is that these waters are held in trust for the people so that they may enjoy their navigation, carrying on commerce and use them free from the interference of private parties.

And the language of the court and other courts in dealing with this in the 19th Century is impressive, I think, because it portrays a determination and an indignation over purported abdications by the Legislature of the people's rights in its public waters.

The earlier case in which Illinois Central was based said that, "The State cannot consistently with nature and the Constitution of a well ordered society make such a direct and absolute grant. It would be a grievance which could never be long born by a free people." And this was 30 years after the revolution.

Justice Field in the Illinois Central case said, "It is inconceivable that the Legislature could divest the
State of the control and management of the harbor and
invest it in a private corporation."

This is a subject of concern to the whole people
of the State. While certain improvements can be made in
the navigation and waters and commerce, docks, piers and
other purposes are appropriate for improvement under the
public trust doctrine. The parcels can't be disposed of
if there is any detriment to the public interest in the
land and the waters remaining.

So basically California entered the 20th Century
subject to the Illinois central rule and adopted it early
on. The California Legislature, like other legislatures,
was bent on disposing of the public lands and the
tidelands. And at the beginning of the century a
tidelands grant running the whole length of the State
essentially was challenged in People versus California
Fish Company, which held that the Legislature could not be
presumed to intended to convey title to all of the
tidelands without retaining a public trust over them.
This was simply inconceivable and possibly invalid.

This did not mean, as Justice Field had said in
Illinois Central, "That certain improvement can be made,"
that ports can be developed, that piers can be built, that
small parcels can be disposed of and freed of the trust if
it's done in furtherance of an overall plan for
improvement of public trust purposes.

In the 20th century, two things happened. One is that the courts recognized that the trust extends beyond commerce, and the principles of the 19th Century, commerce navigation and fisheries, and it does extend to environmental purposes and preservation. And these are things to which the trust lands can be dedicated as well.

The second thing is that the concept of multiple development was looked at and was approved. Perhaps, one of the best examples really was in a Wisconsin case, in which there was a plan for improving an entire lake by filling part of it, building park lands, and at the same time providing navigation in other areas. The Court upheld this on the basis that public bodies were going to retain control of the entire area. Even though the lake was going to be diminished, it was a small parcel compared with the whole portion of the Lake.

No one use of the lake was going to be greatly impaired or destroyed, and that the Legislature could probably determine that the public could enjoy lesser uses of some things, such as waterskiing and swimming in favor of other things as part of this overall improvement plan.

Now, in California, of course, the courts have dealt with propriety of trust uses in a number of different ways, and you still have some before you now.
increasing complexity and greater sophistication.

But the Appellate courts have upheld developments which encourage the public and provide for utilization of the tidelands and the coast lands for trust-related purposes, such as enjoying the water. The court has upheld restaurants, parking lots and other commercial developments of that sort, which draw the public to the waterfront and provide convenience for the public in that extent.

The Legislature or its designee, the Lands Commission, does also have the ability to prioritize trust uses. Obviously, there are some trust uses, such as marinas, which may be incompatible with others, such as nature watching areas. These are hard choices that have to be made. The Supreme Court has held, for instance, that a bridge, a highway bridge, could be built over an navigable river even if it destroys navigation for a wide variety of water craft, because this is simply the kind of decision and prioritization that has to be made.

If there was any bright line, I think it is based on the principle of inalienability that these lands cannot be placed beyond the ability of future Legislatures or Lands Commissions to deal with them in light of the changing nature of trust needs.

The California court has also said in National
Audubon, that this is a continuing duty of supervision, and, in essence, that trust lands are not subject to being frozen into a particular type of a use, but that they can be evaluated. And the purposes to which they can be put can be changed by the Commission or by the Legislature to suit additional needs.

The last thing, I guess, is the idea that the Commission travels down a channel, which is established by the Legislature. And legislative prioritization and legislative guides are provided. For instance, the exchange statute, Public Resources Code 6307 is basically a reflection and a detailed implementation of what Justice Field said in 1892 about the public trust nature of the Chicago waterfront and Lake Michigan, that certain lands can be exchanged if they meet the principles of equal value and if other factors are provided.

Compensation is another factor, which appeared in Illinois Central. If good faith improvements are constructed on property and the State chooses to exercise the trust to change the use of that property, compensation may be appropriate, and the Legislature has determined by statute in much greater detail what the circumstances are for that kind of thing.

The Legislature has prioritized trusts in a number of ways, Fish and Game Code 5937 is a great example
which the Court has implemented as saying that this means water cannot be used in a manner so as to destroy or impair the fisheries below dams.

The Legislature has established some commissions and administrative bodies, which have been construed as also implementing trust doctrines, the BCDC in San Francisco Bay, to some extent the Coastal Commission implements the trust. But basically the Lands Commission is the body at which the buck stops. And it's the Lands Commission determination of nongranted lands that really -- to which the Legislature has delegated this kind of function.

CHAIRPERSON BUSTAMANTE: As you mentioned the Legislature can change, by statute, any of those provisions.

MR. STEVENS: That's right.

CHAIRPERSON BUSTAMANTE: Except where it runs into Constitutional conflicts.

CHAIRPERSON BUSTAMANTE: Except when it amounts to an abdication of the trust over an entire body of water or a purpose which conceivably is entirely inconsistent with the trust. And this, I think, is based on several constitutional principles. There's been a great debate over --

CHAIRPERSON BUSTAMANTE: Maybe we can go through
just one or two of them.

MR. STEVENS: Okay. In California, Article 10, Sections 3 and 4, which provide for the public's right to access to the navigable waters and which can place limitations on the extent to which these can be sold, even if the trust remains upon it.

The gift clause is another constitutional provision which has been invoked in a number of cases here and elsewhere, say that basically the State cannot make a gift of a valuable asset of this sort by making a grant, which is irrevocable and beyond its control.

And under the Federal Constitution, the admissions clause has been construed as placing this limitation on the Legislature and perhaps even on State Constitutional drafters on the basis that the State promised, as a condition of its admission, to keep its waters navigable forever free.

CHAIRPERSON BUSTAMANTE: Thank you.

Mr. Thayer.

EXECUTIVE OFFICER THAYER: This concludes staff's presentation. Jan Stevens, as we've indicated, is a long time scholar in this field and he has reviewed along with other the Attorney General's -- Deputy Attorney General's the draft policy that's before you for adoption.

We believe that that policy represents well the
overall goal and mission and responsibilities of the State
Lands Commission and we would recommend that you adopt it.

CHAIRPERSON BUSTAMANTE: Thank you. And thank
you, Jan. I think that you've laid out for the people who
are here and who are watching this the complexities of the
public trust. As we started getting into the issue last
meeting, it was clear that we needed to find some process
by which we can make determinations, so that the policy is
intact and that future Commissions would have something
for reference.

I think that the effort that's been made here, I
think, does that. I think it both talks about the
complexity as well as the need for balancing. It talks
about how you just cannot give away the public trust and
there are various specific items that can and cannot be
done within this doctrine. I appreciate the thoroughness
of the review.

I also wanted to say thank you to Long Beach for
allowing themselves to be the first. I apologize. And
yet I'm glad that we were able to have something that
prompted this activity. So sorry for being the first Long
Beach, but we, I believe, will now have a policy that will
guide future Commissions. Although there was a delay, I
think that we've been able to come to an appropriate
accommodation to ensure that all perspective clients in
the future understand exactly what we're dealing with and clearly understand the legislative process now and we hopefully will have an opportunity to be able to move forward on these kind of activities in the future with an understanding of what we can and cannot do.

Is there any comment by any of the Members?

Okay.

EXECUTIVE OFFICER THAYER: I think there are several members in the audience that have submitted slips that wish to speak on this matter.

CHAIRPERSON BUSTAMANTE: On Item 88?

On Item 88, I have Douglas Wong.

MR. WONG: Thank you very much, Lieutenant Governor and Honorable Members of the Commission. Ladies and gentlemen, good afternoon. My name is Douglas Wong. I'm Executive Director of the Port of San Francisco. It is truly an honor to be here this morning. On half of the Port and the City and County of San Francisco, we'd like to thank State Lands staff for their professionalism and their due diligence in assisting San Francisco on trust matters of statewide significance.

Paul Thayer, Dave Plummer, Blake Stevenson and their staff have been instrumental in public trust matters involving the Ferry Building, Pier 1, Mission Bay, leading to significant enhancements of public access, ferry berths
and other trust assets in the city and county of San Francisco.

We in San Francisco support the policy and we look forward to a continuing and fruitful working relationship with the Commission in carrying out our duty as trustee/grantees. Thank you very much.

CHAIRPERSON BUSTAMANTE: Thank you.

We also have Norm Ryan.

MR. RYAN: Lieutenant Governor, Honorable Members of the Commission, staff, and audience, my name is Norm Ryan. I'm a resident of the City of Long Beach. I also am a public finance banker, managing director for Morgan Securities.

My understanding of the land uses tends to be limited to CFD's, melo rooses, assessment districts, things of that nature. One of the things that we've encountered, that has caused a lot of headache in BCFDs in the State of California is loose definitions.

In the proposal, on Item 88, they talk about an exchange of equal or greater value, but they don't necessarily define what that is. Language like that in the past in regards to CFDs, assessments districts and so on have allowed developers and local authorities to play with the numbers.

I think that if you were to adopt this item, you
might want to consider an amendment to stipulate exactly who determines what the value is. If you decide that anybody petitioning you can hire their own appraiser, let's say, then I would suggest that you then consider how the regular private sector conducts their business. When you're buying a piece of property, you don't rely on the seller's appraisal of what the property is worth. You won't go out and hire it yourself.

And is the value an appraisal, an assessment and as-is bulk value. You know, using general terms, I think will invite future headaches. If you weren't using more specific and exact language, if not amended, then I would recommend that you not adopt Item number 88.

Thank you.

CHAIRPERSON BUSTAMANTE: Paul, would you like to talk about that.

EXECUTIVE OFFICER THAYER: Yes, sir. Thank you. Two things. First, I think the policy replicates what's in the statute, and the statute provides that standard alone. Ultimately, the arbiter of that is the Lands Commission. And, as I know you're aware, we have independent appraisers on our staff, Registered Appraisers, and we do not accept the appraisal of applicant's without review and frequently conducting our own appraisal. And we've done that on Queensway Bay, the
item that's coming up.

CHAIRPERSON BUSTAMANTE: What happens in a situation where there's a very, very specific, very complicated piece of property, do we bid out and get other appraisals, do we seek out --

EXECUTIVE OFFICER THAYER: We have the expertise on staff. This is of such great importance to the Lands Commission and its worth, that we not accept cart blanch the applicant's reputation of the value of the land. We believe it's important, just as we have surveyors, we didn't accept the boundary description that's certainly made by applicants for these kinds of proposals. We have professional staff that are registered and certified to provide that independent expertise to the Commission.

CHAIRPERSON BUSTAMANTE: Thank you. Mayor Beverly O'Neill.

LONG BEACH MAYOR O'NEILL: I'm speaking 89.

CHAIRPERSON BUSTAMANTE: Okay. Up at the top it says 88. Thank you. Thank you, Mayor.

And Cantrell, do you wish to speak on 88?

MS. CANTRELL: Good morning, Commissioners. Ann Cantrell, Long Beach, California. I thank you for this report today, because there's been a lot of confusion about what is allowed under the public trust doctrine.

There was one comment that was made by Mr.
Stevens, which I wanted to clarify. I think he indicated that California Law, Article 10 says that you can't sell the land even if the trust has been lifted; is that correct?

EXECUTIVE OFFICER THAYER: He is in the back of the room and can respond to that.

CHAIRPERSON BUSTAMANTE: Mr. Stevens. We'd appreciate it if you could be here for this.

MR. STEVENS: I'm sorry. Yes.

MS. CANTRELL: Did you hear my question?

MR. STEVENS: Lands in which the trust has been lifted, can they be sold?

MS. CANTRELL: Yes.

MR. STEVENS: I think they have been very often.

If the trust has been terminated, effectively all the findings have been made by the Legislature, this is something that my colleague, Mr. Hager and Mr. Rump as well, I think could answer. And it's my understanding that that indeed could be one of the purposes for lifting the trust.

MS. CANTRELL: I'm sorry. What was it you said about Article 10, I must have misunderstood you?

MR. STEVENS: Well, that imposes a general prohibition on transfer of lands within a certain distance from incorporated cities. And I think the Legislature has
also adopted a statute subsequent, which prohibits the
sale of all tidelands. So it's a little more complicated
than the initial question.

As an abstract matter, lands which are not
subject to the public trust can be sold by the State, if
the Legislature provides for their sale.

MS. CANTRELL: So after the trust is lifted, then
the lands can be sold?

MR. STEVENS: Yes, but they do have to meet the
limitations that are in Article 10 and presently in the
Public Resources Code.

MS. CANTRELL: Thank you very much.

MR. STEVENS: Not too many sales are going to
take place.

CHAIRPERSON BUSTAMANTE: Okay.

Don May.

MR. MAY: Thank you very much, Mr. Chairman and
Commissioners. My name is Don May representing California
Earth Corps. And I'm delighted to -- I think you should
be honored to have Mr. Stevens here as an eminent
authority. I certainly would not dare to question
anything he says.

However, looking at the Exhibit B that's before
you and particularly the Section 8, which is the matter of
concern before us today, one of the things that is missing
here is the criteria for exchanges of land. And one of those, in fact, the major one is this needs to be done to settle boundary and title disputes. And absent that, it is very, very rare to have ever allowed an exchange of land. So perhaps a little more there looking at that criteria.

The other is that the exchange must be consistent with the original purchases -- the original purposes of the 1911 Trust agreements. That is to say, and from your report, the very situation where the abandonment of public trust is consistent with the purposes of trusts, Section 6307 authorizes the Commission to exchange land of equal value of the best interests of the State for improvement of navigation, aid in reclamation, flood control purposes, enhanced configuration of shoreline for improvement of water and upland, on navigable river sloughs, streams, lakes, estuaries, streets so forth and will not substantially refer to the right of navigation of fishing.

Those are the constraints under which you can consider a swap of land. Further, and I think it's important that the land --

CHAIRPERSON BUSTAMANTE: Wait a minute, is that the issues that are being raised are not covered in the policy?

MR. MAY: Those issues are not.
CHAIRPERSON BUSTAMANTE: Staff, are those issues not being covered?

EXECUTIVE OFFICER THAYER: I think the policy covers, generally, all aspects of the public trust doctrine. We don't get into details about how we implement all aspects of it.

That's absolutely correct, but there is a discussion in the background paper, which specifically mentions that Section 6307, which Mr. May refers.

CHAIRPERSON BUSTAMANTE: So the reference is to the specificity in the policy as a generic statement.

EXECUTIVE OFFICER THAYER: That's right.

CHAIRPERSON BUSTAMANTE: But it's covered in the background paper.

EXECUTIVE OFFICER THAYER: That's right.

CHAIRPERSON BUSTAMANTE: So it's not that it wasn't thought of.

MR. MAY: Yes. For those very rare cases in which boundary disputes and title disagreements arise, you are going to have some very little -- in fact, the Legislature has very little latitude in how it approaches those.

The other thing which is not covered here is when you do an exchange of land, the land which is exchanged, which the State receives has to be available for public
trust uses and not constrained for something else.

And, in fact -- and it goes on to look at all of
the -- list all of those uses. I might just point out
that active recreation use is not amongst them. You may
not use exchanged lands for active recreation, a soccer
field is not a fishing area. So that with those
amendments to cover and define that area exactly, we would
be in full agreement with both Exhibit A and Exhibit B and
would urge your adoption.

Thank you.

EXECUTIVE OFFICER THAYER: On the latter point,
there is a distinction between kinds of recreational uses
that can occur on public trust lands. And the document
does make reference, not -- to this distinction not with
respect just to recreation, but generally in terms of
uses, that the uses cannot be strictly local in nature.

So, for example, if a building ballpark is one
where there's been some controversy and there's some
question about whether or not that's an appropriate use,
because it only serves the local population, it doesn't
serve statewide visitors that kind of thing.

So recreation is certainly an allowable use of
public trust lands, but there some restrictions as to the
types of recreation that can go on there.

CHAIRPERSON BUSTAMANTE: And how specific do we
have to have that in the policy?

EXECUTIVE OFFICER THAYER: I don't think we need to go through each type of use that's allowable under the public trust doctrine to describe exactly how it is. Instead, we spoke more generally and said, number one, recreation is an allowable use, but we also said that strictly local uses are not allowable, and in combination that addresses the issue that Mr. May raised.

He's quite correct in saying that not all recreational uses are permitted.

CHAIRPERSON BUSTAMANTE: Thank you, sir.

Rod Chisessi.

MR. CHISESSI: I'm waiving on my request to speak and reserving it for Item 89.

Thank you.

CHAIRPERSON BUSTAMANTE: All right. Don May.

That was just him, right.

Richard Dongell.

MR. DONGELL: Dongell, yes. Mr. Chairman, I'd like to waive my time to speak on this item.

Thank you very much.

CHAIRPERSON BUSTAMANTE: Lester Denevan.

I was hoping for another waiver.

(Laughter.)

CHAIRPERSON BUSTAMANTE: Welcome.
MR. DENEVAN: Lester Denevan, City of Long Beach. I was very interested to hear the statements by the Deputy Attorney General of the State concerning the Commission as trustees for the tidelands. And so it's really interesting that a $120 million project in Long Beach was allowed to go forward without even notification of the Lands Commission.

Now, this was only brought up two years ago by myself. And I think as trustee, you should be having oversight, at least of these larger projects.

The City has --

CHAIRPERSON BUSTAMANTE: Before we go on. We've not had any notification of our discussions of this project? I thought we've -- in the last several meetings that we've raised this agenda item, I thought we've noticed the meetings properly.

EXECUTIVE OFFICER THAYER: We, of course, have been working on this for about a year and a half since Mr. Denevan brought it to our attention.

CHAIRPERSON BUSTAMANTE: Hasn't Mr. Denevan appeared before this body at least two or three times?

EXECUTIVE OFFICER THAYER: Yes, sir.

CHAIRPERSON BUSTAMANTE: So there has been prior notice of this meeting of all of these activities of this policy and this project.
MR. DENEVAN: For this project, you're addressing I understand from your staff is the theaters and the book store and Cost Plus. And I think that you have to look at the entire project, which envelopes many, many acres of the downtown shoreline. And that's necessary so you can judge in total context of which is being developed on the tidelands.

If the City moves forward with this project, they're going to take a substantial portion of former recreational space for commercial development, and you should have some idea about the relationship of the different projects. For example, also your Deputy Attorney General --

CHAIRPERSON BUSTAMANTE: Mr. Denevan, are you here to talk about the Queensway Bay Project?

MR. DENEVAN: Yes, but also I want to address the question up and down the State of the question of say there's a permitted use of hotels. And I've talked to Mr. Fossum and he has said that it's a permitted use. I said, well, say there's a beach up the coast, they wanted to build a second hotel, a third hotel, a fourth hotel, they can do it.

Finally, the recreational uses are crowded out. I'd like you to imagine that you are trustees of the Golden Gate Park in San Francisco. I think you would be
ready to go ahead and build two or three hotels in Golden Gate Park. How about 8, 10, 20 or 40 plus a Cost Plus? That will accomplish public access to show a park or to Golden Gate Park.

CHAIRPERSON BUSTAMANTE: Mr. Denevan, I know that you're a strong advocate on behalf of your community. I would like, if we're going to be addressing this particular policy, if you could address your concerns to the policy itself. Is there a section in the policy that -- or are you just disagreeing with the entire policy?

MR. DENEVAN: I think it should be clarified what your responsibilities are for these major projects which have never been presented to you. There have been some in the past, why not in cases like this, if you in deed are the trustee. This should be necessary legislation that you have authority and you don't have to sit back, and the City will not even have the courtesy to notify you of what's going on.

Thank you.

CHAIRPERSON BUSTAMANTE: Thank you, Mr. Denevan. Is there any staff comment?

EXECUTIVE OFFICER THAYER: No. As we've discussed before, the Legislature in granting these tidelands under these circumstances to local governments
has set up different rules and in most cases they do not require direct notification of us when the local government is going forward with the project, because, in fact, they're standing in our sted. They're like the local State Lands Commission. It's their responsibility to decide to pick between public trust uses.

We do receive notification frequently in the form of CEQA consultation where we have an opportunity to find out early on, and we've established now a free person granted lands program for the last year or so, where we try and work cooperatively so that things aren't being done in a vacuum.

So the law does not give us the direct role. Nonetheless, we see that in our general oversight role, we want to continue to work with local government and, in fact, share information early on, which I think is what Mr. Denevan is urging.

CHAIRPERSON BUSTAMANTE: I think Mr. Denevan is urging that anything that is happening on the land in which we are responsible, we should be made aware of it before it happens.

EXECUTIVE OFFICER THAYER: And the present law does not -- the grant which transferred the property from us -- or from the Lands Commission's jurisdiction to local governments does not provide for that. It gives
independence to local governments to proceed.

CHAIRPERSON BUSTAMANTE: That's by statute?

EXECUTIVE OFFICER THAYER: That's by statute.

CHAIRPERSON BUSTAMANTE: All right. I guess we'll have to run some legislation, Mr. Denevan.

(Laughter.)

Traci Wilson KleeKamp.

Did I do the last name okay?

MS. WILSON-KLEEKAMP: You did great. Traci Wilson-KleeKamp. Good morning, how are you all?

I would like to continue on with what Mr. Denevan was saying in terms of when you have a large project that's going on, that's got a lot of -- that's been going on maybe eight or ten years, a lot of obstacles come up, the market changes and whatnot, and the uses or the different elements of the project are changing, I think that the public who's supposed to benefit from this project should have someone that's providing some oversight, since they are talking about public lands.

The other thing I'm concerned about, since I'm a mom and I care about kids, and I care about open space and recreation is that how do you decide that when there is a local master plan established for recreation that the State's public benefit supercedes the local city's benefits for recreation.
In other words, how do you decide that the people of California deserve to get passive recreation over a part of town that has historically not had adequate recreation, not had adequate open space, has poverty and not a lively local economy, and they've been promised park land and football fields and all that you, and you provide a swap on a piece of property that they were promised was going to be active recreation?

So I think that, again, there needs to be some oversight in that, whose needs come first, the local area or the State? And I think that's a little arbitrary, who enforces it?

CHAIRPERSON BUSTAMANTE: Well, as far as the swap is concerned, it was on a piece of property that its value had diminished substantially as a result of the project. The swap was for a piece of property that was furthest away and would not have been, had any kind of site activity, would not have been open space. It's on the second floor of a facility.

And what we did was that we swapped a piece of property that was of minimal value for a piece of property that we believe is of extensive value for the State, both locally and for all the citizens of the State of California.

In addition, we were able to direct over $600,000
toward the rehabin of a marsh land and a wetland area
that we believe also enhanced open space for the State of
California.

MS. WILSON-KLEEKAMP: Well, I have a few
questions you. Number one, I thought that that grant for
the $600,000 had expired in 1997?

CHAIRPERSON BUSTAMANTE: We have established
that.

MS. WILSON-KLEEKAMP: And the other part I didn't
understand is how do you determine that the parcels that
are on Queensway Bay, which I think you're talking about,
in terms of value, are less valuable than the parcels that
you're supposedly swapping? And what does that have to do
with the fact that there was a master plan for recreation
or there was promised active recreation?

In other words, I understand you're saying --

CHAIRPERSON BUSTAMANTE: We're just dealing with
our part. And in our part --

MS. WILSON-KLEEKAMP: I'm just saying that you're
arbitrarily deciding that that recreational use is not
necessary. And I'm asking what is your definition, your
criteria for deciding that you guys don't need active
recreational area?

CHAIRPERSON BUSTAMANTE: It must be an assessed
value of the properties to just find out to make sure that
the value of the property that we were giving up versus
what we were taking control of. In other words, that
was -- not taking control of, but being put into the
public trust was of more value than just in terms of
dollars.

And then the size of the property is substantial.
If you were to see a map, you would see the substantial
nature of the properties that we're talking about, versus
that area which is up against a roadway, is the furthest
point away from the water, is substantially more like open
space and more potentially a recreation than that very
small piece of property could have been.

We're not talking about the entire Queensway Bay
project. We're talking about that piece that we swapped,
which is a very small piece.

MS. WILSON-KLEEKAMP: I can't tell what the
difference is between the piece you're swapping and the
parcel -- the pieces that are all surrounding it. They're
all the same to me.

CHAIRPERSON BUSTAMANTE: We can provide that
information to you after the meeting.

MS. WILSON-KLEEKAMP: Well, as far as I'm
concerned, the tidelands are priceless pieces of land, so
I'm also not understanding how you determine what their
value is. They're not supposed to be purchased and you --
the City is using their own appraiser, I don't understand how you come up on the valuation.

CHAIRPERSON BUSTAMANTE: We did our own. But you can also talk in the next item, if you're opposed to it.

MS. WILSON-KLEEKAMP: Okay, thank you.

CHAIRPERSON BUSTAMANTE: Christopher Johnson.

MR. JOHNSON: Thank you. I choose to waive my comments.

CHAIRPERSON BUSTAMANTE: Bry Laurie Myown.

Did I say that correctly?

MS. MYOWN: Yes, thank you.

Thank you, Lieutenant Governor. I don't mind you using Long Beach as an example at all. I'm grateful for the opportunity to have the public trust explained to us. I have never heard of it until quite recently.

And, like Mr. May, I believe I urge adoption of this item. Because I think it has been so differently interpreted than I would interpret it on behalf of Item 89, I do have a couple of questions.

In a mixed-use development, in Exhibit B, there is some language about any permanent structure serving the public's rights of access to the beach and not serving financial -- and not providing financial incentives to make the rest of the project work. And I apologize if I'm mixing up items here, it's really hard to distinguish the
two agenda items.

But if the purpose of an exchange is to exchange out uses that you had determined would not serve the public trust and yet what remains in is all of the capital improvements and parking structure that the City intends to sell bonds to build, it seems to me there would have to be some sort of pro rata, some commensurate reduction in the parking, roadways, et cetera, because they are now really serving those uses that you have determined were not serving the public trust.

CHAIRPERSON BUSTAMANTE: I think those are issues for the next item.

MS. MYOWN: Okay. Another question is, again because of Item 89 since the land that you want to bring back in is immediately adjacent to the port and by a freeway, which we all know probably needs to be improved and enlarged, is a transportation use that serves the port a use to which that land could be put in the future under a public trust doctrine, would that be a public trust use?

And if not, would such a freeway improvement on what is now being planned as park space be an issue where State or federal legislation would trump the public trust use?

CHAIRPERSON BUSTAMANTE: Again, I believe that those are issues on the next item. This item is regarding
the overall policy. Have you had a chance to take a look
at the policy?

MS. MYOWN: Yes, I have read both and my question
is in this policy statement. It is not clear to me if
public transportation uses that serves the Port would be
within the aegis of this policy statement?

CHAIRPERSON BUSTAMANTE: Paul.

EXECUTIVE OFFICER THAYER: In general -- I'm
going to ask for some backstopping from the attorneys. In
general, my understanding is the facilities that assist
the Port in conducting commerce, which is one of the
public trusts uses, would be consistent with the trust.
And as Jan Stevens indicated in his own presentation and
at least one circumstance, a bridge was found to be
consistent with the trust even though it interfered with
other trust uses. It was a case of prioritization as to
which particular trust use was most important in that
environment.

And the policy, which we presented to you for
your adoption, recognizes that, that there are sometimes
hard choices to be made, and if the Commission had both
some flexibility and some ability to choose between
mutually exclusive uses.

MS. MYOWN: So regardless of the currently stated
use of that land that's discussed in Item 89, the
Commission could prioritize in the future a freeway improvement there that would serve the Port would be an allowed use; is that correct?

EXECUTIVE OFFICER THAYER: Well, the first entity that would review a new use there would be the City. The City will have a long-term lease from us and in all likelihood legislation will be enacted to transfer the property newly coming into the trust to the City for its management, just as the legislature has done with all of the other tide and submerged lands in the State.

CHAIRPERSON BUSTAMANTE: Mr. Hager.

ASSISTANT ATTORNEY GENERAL HAGER: Yes. The comment that I would like to make that the decision as to which of several proper trust uses in this case is left to the trust grantee, which is the City of Long Beach.

MS. MYOWN: Thank you very much.

CHAIRPERSON BUSTAMANTE: I have two others here, but it looks like they scratched it out and replaced it with 89, so I'm going to assume that we're done. Is there someone?

Yes, ma'am please come up. State your name for the record.

MS. MANN: My name is Diana Mann, and I promise to be real quick.

I'm going to borrow this for one second. I have
a couple of quick questions. While you're talking about public access, does that mean paid public access or free public access?

EXECUTIVE OFFICER THAYER: I think Ms. Mann is referring to, Jan, your comments about public access and, you know, Article 10 of the Constitution. Is there any distinction between free or paid public access?

MR. STEVENS: No, I don't think so really.

MS. MANN: Okay, I think that needs to be kind of clarified. And then I'd like to address your values. You talk about the land value purchased and you have those going out there and measuring it and determining what it is. If you're a little kid, and you -- what kind of values do you have? And if you don't have the resources to play in a park and the park disappears and it's not available to you, then you're talking about the value of that land to the community.

And I think that there's a big discrepancy in your value system, if you don't value open space and park land and our valuable resource.

Add I'd like to hold this up, if you can see this. Okay, one of the things that Mr. Stevens said was that your responsibility for public trust is ongoing. Well, if it's ongoing, what's this going to be like in another 50 years? This is a mess. I don't want to punish
you. I don't want to punish the -- what's the saying that
you punish the sons for the sins of the father.

But we've got a real serious problem here,
because what happened and what's missing out of Mr.
Stevens' report is the fact that we have a responsibility
to protect our natural resources. And that as far as
California is concerned our wetlands are diminished beyond
that land. You all know that. Our wildlife is diminished
and sick and ill. And we have an obligation to protect
that.

And one development after the other going into
the action of destruction is not protecting our tidelands.
So if you continue -- as you continue, we're going to be
deeper and deeper in trouble. And I think that there has
to be some sort of a provisions in there to protect
resources for the future children's children.

And then just very quickly, I'd like to mention
that it says that, "The Constitution is a policy of
conservation and protection of the state lands and waters
for the benefit of all citizens recognizing that the
State's wetlands, estuaries and beaches are apart of its
common heritage." Okay, we lost ours.

And there's another little thing I'd like to
read. This is -- and I'm not an attorney, I'm just a kid
on the block that is real concerned about our environment.
And I tell you what, going through the trust -- the public trust doctrine wasn't a fun thing, but I did extract some information out there that says that we're missing the boat.

It says here, "The State's Constitution has recognition of public rights with the respect to the shore and other natural resources is not self-executing, but must be carried into effect by legislation," which you had mentioned before.

So where are we with this? I mean, you know, with the future, does the Legislature decide every time a city makes a super stupid decision about their waterfront properties, what is it that the public does?

Anybody got an answer to that?

CHAIRPERSON BUSTAMANTE: I think you have to deal with the Legislature. When they make a change in the actions or in the authority or in the parameters of the public trust, they have that ability to do so to a certain extent. Anything else beyond that, I guess the people have to either go to court or deal with their legislators.

MS. MANN: You know, that's not fair, you know.

CHAIRPERSON BUSTAMANTE: It's the system.

MS. MANN: What's you're job? I mean your job is to implement all this stuff, you know. And if it's the public, every time we turn around, do you know how many
cases that the citizens of Long Beach have against -- the City of Long Beach is taking our parks. You know, it's over and over and over again. And, you know, we don't have the financial resources. And I Chair an organization called Ecolink. We're a coalition of environmental organizations and we're linked to citizens all up and down our coast. And we're all trying our damndest to protect our coast, and we can't afford one litigation after another. I mean come on you guys, you're not helping us out a bit.

CHAIRPERSON BUSTAMANTE: I think within the parameters of the responsibilities that we have, I think that to go from the very beginning of your comments, you said that we don't understand the difference between a value that's been placed on a dollar value and that of a child. I'd say you're wrong. If you were to look at what we did within the parameters -- I understand you --

MS. MANN: What's this? What's this, do you value your --

CHAIRPERSON BUSTAMANTE: We have enhanced that.

MS. MANN: Enhanced it by whose standards?

CHAIRPERSON BUSTAMANTE: I think by any objective standard if you were to look at it and you were to see how much space we put into open space -- if you were to see --

MS. MANN: Okay, don't go there, don't go there,
because we're going to talk about that in 89, right?

(Laughter.)

MS. MANN: So we don't want to go there right now.

CHAIRPERSON BUSTAMANTE: So then let's --

MS. MANN: Right now we're talking about the big picture and what your job is and what your responsibility is and what this is. This is federal law that says you have to protect this land.

CHAIRPERSON BUSTAMANTE: Have you read the policy, our policy?

MS. MANN: I couldn't open it up in my --

CHAIRPERSON BUSTAMANTE: It's a very short document, and I would recommend that you read it and you listen to the total explanation of what just took place a few moments ago with respect to the entire --

MS. MANN: I heard Mr. Stevens.

CHAIRPERSON BUSTAMANTE: You heard Mr. Stevens. If you were to look at the policy, and if you could find discrepancies within our policy and that explanation, we are open to changing that, but you're not giving us any. I understand the passion, and I hear what you're saying, but if you have a change in the policy that we have, I'd be open to reviewing that, to discussing it, to changing it, but you're not giving us anything at this point.
MS. MANN: I asked you about the protection of wildlife, estuaries and how about air quality, could you protect the air quality?

CHAIRPERSON BUSTAMANTE: I believe all these issues are addressed in the policy.

MS. MANN: In the policy. Honest to God cross your heart it's in there, so I can count on you to protect it.

CHAIRPERSON BUSTAMANTE: Yes, ma'am.

MS. MANN: Thank you.

Anyone else?

Seeing none, any other comments from staff?

EXECUTIVE OFFICER THAYER: No, sir.

CHAIRPERSON BUSTAMANTE: Mr. Stevens, any other comments?

MR. STEVENS: No, thank you, Governor. I think the two documents here are very thoughtful, well-considered and well done, and they really cover the basis that were addressed by the speakers here along with existing law.

CHAIRPERSON BUSTAMANTE: Thank you. Any comments from the Commissioners?

Any questions, concerns?

Is there a motion?

ACTING COMMISSIONER PORINI: Move approval of the
policy before us.

CHAIRPERSON BUSTAMANTE: Is there a second?

ACTING COMMISSIONER ARONBERG: Second.

CHAIRPERSON BUSTAMANTE: Showing a first and a second, a motion and a second, let's show that the motion passed unanimously.

We move on to Item Number 89. Why don't we -- the Controller has asked us to hold off on Item number 89 until she arrives. She'll be here in a moment. And so if we could go onto the next item, we will come back to 89.

EXECUTIVE OFFICER THAYER: Yes. Lieutenant Governor, Item 90 will be heard at a future meeting at the request of the General Services Administration. This has to do with the Downey Facility.

CHAIRPERSON BUSTAMANTE: Number 90 is off, postponed.

EXECUTIVE OFFICER THAYER: Number 91 is in the same situation. The Port of San Diego has asked us to hear that at a future meeting.

CHAIRPERSON BUSTAMANTE: Postponed, so numbers 90 and 91 are postponed to a future meeting.

EXECUTIVE OFFICER THAYER: Item 92, Consideration of a report entitled the, "Shoreline Protective Structures..." It includes a recommended staff policy -- excuse me, Commission policy. And Alan Scott from the
Land Management Division will make the presentation on this.

MR. SCOTT: Good morning, Mr. Chairman and Members of the Commission. I'm Alan Scott, a regional manager of the Commission's Land Management Division. I'm here to present information on calendar Item number 92, which is the item concerning shoreline protective structures.

At the Commission's meeting of November 27th, 2000, members of the public and Commissioners expressed concerns regarding the practices of the Commission in issuing leases for protective structures as a means of controlling shoreline erosion.

The Commission asked staff to investigate and report back on whether it was appropriate to continue issuing Coastal Protective Structural leases that did not require monetary rent. Also, questions were asked about the impact of continued construction of protective structures on the shore.

I'd like to mention two recent events that emphasized the statewide importance and timeliness of the Commission's concern. Earlier this year, the State Department of Boating and Waterways announced awards of $10 million in grant monies allocated to the nine -- in the 2000/2001 State budget, which was distributed to
cities and counties throughout the State to implement sand
nourishment projects and shore zone related studies.
Also, the State Resources Agency on March the 29th, 2001
released its draft policy on coastal erosion planning and
response and background material.

After receiving input from the public at seven
public meetings held throughout the State, the draft
policy is being revised to reflect comments received at
those meetings. The proposed new policy will guide and
coordinate the activities of the various State Resources
Agencies with jurisdiction over projects that affect
coastal erosion, planning and response.

Staff has prepared a background report and it is
before you today. The report was prepared in April of
this year and copies have been distributed to more than
100 interested parties. The report has also been made
available on the Commission's web site.

In preparing this report, staff utilized existing
scientific research and published works dealing with
shoreline erosion processes and the physical impact of
shoreline erosion of the con -- on shoreline erosion of
the construction of protective structures.

The report identifies three methods used to
control shoreline erosion, protective structures,
genерally of concrete or rock construction, beach
enhancement usually sand replenishment projects and land-use planning, sometimes referred to as plant and treat.

The report provides information to the Commission that indicates the most common type of shoreline protective structure is a seawall or rock revetment constructed to protect adjacent private property. The report provides information on the other alternatives to hard protective structures and assesses their impacts to the shoreline.

Staff analysis of the beach enhancement and land-use planning alternatives shows that a greater degree of government involvement is required because of the substantial cost of these types of projects, and because these projects will, of necessity, occupy large areas covering multiple ownership.

Some dispute exists in the scientific community as to how seawalls and other hard structures impact the erosion process along the coast. However, there appears to be general agreement that soft structure solutions primarily sand replenishment projects, are the preferred method of shoreline protection, having a lesser impact on natural shoreline processes.

The calendar item which is presented in this report also discusses the Commission's concern regarding
what consideration is appropriate for the use of public
property occupied by structures that are for the
protection of private property. The past practices of the
Commission has generally been to issue loses for coastal
protective structures to both private parties and public
agencies in consideration of the public benefit including
public health and safety.

Public benefit is a consideration for a lease --
as a consideration for a lease is provided for in the
Commission's regulations as an alternative to the payment
of monetary rent. Staff processes coastal protective
structural leases on a case-by-case basis in order to
determine what consideration is appropriate considering
the specific circumstances of the proposed project and in
accordance with the Commission's existing regulations.

In the past, staff has usually recommended that
rent not be charged for private shoreline protective
structures because of the potential public benefit they
provide. The additional protection they provide to
existing public structures, such as adjacent roads, public
access ways and utilities at no cost to the public is one
of those benefits in evaluating it.

In this calendar item, staff provides several
recommendations for consideration by the Commission.
Adoption of these recommendations would require the
imposition of rent where public benefit from coastal private shoreline protective structures could not be demonstrated. Adoption of these recommendations would cause staff to look more carefully at whether a shoreline protective structure was actually more intended to benefit private development.

The recommended actions also would direct staff to continue to work cooperatively with other agencies, work with applicants to encourage projects that will not occupy public property, promote the use of soft structure solutions where feasible and continue to mitigate adverse impacts to the public trusts.

This concludes my presentation and I'll remain available for questions.

CHAIRPERSON BUSTAMANTE: Thank you. Any questions by any of the Members?

The idea of this or the justice of this came because as a manager of tidelands and of certain public trust lands, we are allowing certain kinds of activity to take place. We are permitting those activities to take place.

And in the permitting of those activities, we are incurring costs as a State. And those costs, in many cases, are not being received by those who are benefiting directly from them. As I heard your report, I heard that
there was various activities, various kinds of solutions. My guess is that that would depend, in part, not only on the kinds of structures but also the kinds of geology and the other kinds of factors of the actual property itself, and the experiences that we've had in the past in terms of whether we had to, in fact, provide some kind of sand replenishment or other kinds of activities.

So our experiences, and although it would be nice to be able to have a policy that just generically said this is what we're going to do each and every time, the geography, the experiences, the kinds of facilities will all require interpretation by staff and will require some sense of what the community benefit is versus private benefit.

I've had a chance to look at the policy. It appears that you cover those points, and it seems to me that what we are attempting to do is trying to be more effective managers of that coast land. So I appreciate the presentation.

Is there any other comments by your staff or members?

I'm looking for a motion. Is there a motion?

ACTING COMMISSIONER PORINI: Move approval.

EXECUTIVE OFFICER THAYER: Mr. Chairman, we have two requests to speak, I believe, on this.
CHAIRPERSON BUSTAMANTE: I'm sorry. On item number 92?

EXECUTIVE OFFICER THAYER: Yes, sir.

CHAIRPERSON BUSTAMANTE: I missed it. Do you have those names there.

EXECUTIVE OFFICER THAYER: Let me bring this up to you.

Bob Trettin. Is there a Bob Trettin here?

MR. TRETTIN: Yes.

CHAIRPERSON BUSTAMANTE: Would you like to speak on this item, sir?

MR. TRETTIN: Yes, I would.

CHAIRPERSON BUSTAMANTE: And Walt Crampton, you're on deck.

MR. TRETTIN: Good morning, Honorable Lieutenant Governor and Members of the Commission. My name is Bob Trettin, and I am a planning consultant representing more than 400 coastal bluff top home owners in San Diego county.

Before I start my presentation, I'd also like to compliment the staff on the report they prepared in April. I thought it was one of the most concise reports, because sometimes these things can run hundreds of pages, but it was one of the most concise encapsulations of the history of sand loss on our beaches and the various activities.
that are ongoing currently to restore sand to the beaches
and on coastal bluff protection structures and when
they're needed.

During the past decade, I've had the opportunity
to obtain approximately 50 local and State permits for
single-family homeowners who needed to provide coastal
bluff protection adjacent to their properties. During the
same period of time, I've witnessed more than a dozen
properties in a foreclosure, as homeowners without the
financial means to protect their property were forced to
leave it. And many other instances, particularly among
retired seniors, those who have the equity to qualify for
loans sufficient to cover the exorbitant cost of coastal
bluff protection certainly didn't have the means to pay
the loans off.

So they fixed it and then they sold their homes,
and left an area that many of them have lived in for
decades, neighbors, churches, other local involvements,
but they didn't have a choice.

Your staff has outlined, quite well, I think, the
reason behind identifying coastal bluff protection in most
cases as a public benefit.

The scenarios I've just outlined speak to how
difficult it already is for many homeowners to protect the
bluffs and the significant consequences that can occur
both for public safety and from a financial standpoint if protection isn't provided.

Last year, a young woman on the Encinitas Beach died tragically as a segment of the bluff failed in seconds. There was virtually no warning and there was not time for her to jump up and move to safety. Coastal bluff protection dramatically increases the safety of those that are using our public beaches.

The private provision of coastal bluff protection also dramatically reduces the financial impact on the general fund of local jurisdictions. The City of Encinitas has already funded such protection of public access points, and at least in one case at a point where a public street terminates at the coastal bluff. This is to protect the street and utility lines and so forth.

In a number of instances, where I've represented home owners, had they not be given coastal bluff protection permits, with the resulting failure that would have taken their house, would have extended to Neptune Avenue, which is the coastal street along Encinitas.

No city, even with State or federal assistance, could easily assume the financial burden of protecting public infrastructure by constructing a bluff protection along miles of shoreline. While protecting their homes, bluff top property owners provide an enormous public
benefit, that shouldn't be discouraged or discounted.

On behalf of all those who own homes, I would urge you to retain your present lease policy, reviewing carefully in areas where there might need to be a rent assessed, where there isn't a public benefit, I can certainly understand.

But in most cases where you have coastal access roads and utilities immediately adjacent to coastal access homes, the City would be building this and it would be required regardless. As the bluffs are failing in natural as your staff report indicates, some one is going to have to build a seawall, and it's going to be for public safety and it's going to be for private infrastructure.

So, in my opinion, I would hope that you would consider Alternative 1 as the best ongoing continuing solution with the instruction that your staff continue to bring those items forward or identify those items where they cannot perceive a public benefit.

Thank you very much.

CHAIRPERSON BUSTAMANTE: Thank you.

My understanding is that in this, Paul, that this is an affirmation not only of what you said, but also it's an effort to try to identify those that we have not focused on and to make sure that we are in the process of dealing with not only protecting our own public resources,
but making sure that future developments have, in the case
where it's purely a private development, and has benefit
only to the private sector, that we, in fact, do have some
kind of lease or we have some kind of cost whenever we
provide certain services to those developments; isn't that
correct?

EXECUTIVE OFFICER THAYER: I think the Chair has
appropriately summarized what we're getting at here. And
particularly in your earlier comments, some of the
situations that the past speakers spoke of would have to
be reviewed carefully. And as you indicated, each
shoreline protective device situation is unique. And much
of the public trust requires judgment on the part of the
Commission and its staff to decide when to charge rent,
when to reduce that rent.

And, of course, we want to make clear that
nothing in what we're proposing would prohibit the
Commission from, in fact, approving a shoreline protective
device, so that private development, public development
would be protected. We're merely talking about whether or
not, as you indicated, private use of public land should
involve compensation to the public.

So I think all of the factors that the gentleman
raised would be considered in developing a staff
recommendation to bring to the Commission.
CHAIRPERSON BUSTAMANTE: Mr. Crampton.

MR. CRAMPTON: Good morning, Lieutenant Governor and Members of the Commission. My name is Walter Crampton. I'm a geotechnical coastal engineer practicing in San Diego and more or less I'm also before you this morning representing 930 bluff top home owners in Solano Beach. I've worked with your staff on numerous occasions over the years. And, although, they have maintained a lower profile than the Coastal Commission staff, I have always been very impressed with their dedication to protecting the interest of State's sovereign tidelands.

I've read the staff report on the protective structures and it plans to be a well balanced overview of the complex project. And I commend your staff on that report.

I come to speak before you this morning really because I'm genuinely troubled over the recent fairly aggressive posture that the Surf Riders Foundation has taken with regard to seawalls. They would have you believe that by not allowing seawalls, the sandy beaches that once existed along the southern California shoreline would return. They want it to return to the natural conditions and they want you to make it so.

As a coastal engineer I unequivocally guarantee to you that along the California shoreline where you have
millions of people today living within the now urban coastal watershed extending up the coastal ranges at times 50 miles landward out to the coast, that they have eliminated that possibility.

That is unless you renourish beaches and replace what the many dams, flood control facilities and other actions that manifest has affected within this urban watershed. In the ocean side today there's a 30 million cubic yard deficit. And yet in San Diego alone sand mining in the last 60 years has removed over 100 million cubic yards of sand that was originally destined for this State's beaches.

The bluff top property owners did not contribute to the problem that exists in northern San Diego county today. Yes, in retrospect, their homes could have been set further back from the bluff tops to forestall the problems that exist, but even if they have, you would still have no sandy beaches today, you would still have these major coastal bluff failures, the beach going public would still be at risk, and other bluff top group improvements would eventually become imperiled, requiring you still to do something in the future.

As your staff report stated, approximately 80 percent of the California coast lives within 30 miles of the coastline. And of those 80 percent, myself included,
we have contributed to what is today a totally urbanized coastal watershed. We, as a society, have done much to the California coast, presumably for the benefit of the many, but to the detriment of the coastline itself.

We cannot go back to the natural conditions that existed a century ago, even though a few have you believe we could. There are three general responses to coastal erosion; retreat from the shore, armor the coast, or nourish the beaches. The choice of a response strategy will, or at least should, depend upon a number of factors including socioeconomic and environmental conditions.

The retreat option is the preferred option for undeveloped or sparsely developed areas. For highly developed areas, such as virtually all of southern California, the abandonment option is not politically realistic or economically viable.

The value of this beachfront property often approaches several hundred million dollars per mile of coastline. And beach nourishment provides protective beaches and is an economic boon for tourism. However, seawalls are still often needed to back the beach when insufficient beach is available to provide that service.

The Surf Riders Foundation for some reason today wants to eliminate all seawalls. More surprisingly is their lack of interest in supporting beach restoration
efforts. Their mantra is more one of let's get back to nature. But the conflicting societal interest, presumably for the benefit of this State, has really neglected our shoreline.

Private citizens and municipalities alike are increasingly finding it necessary to protect their properties than protect both private and public improvements, many of which are critical to well-being of this coastal State. The State Lands Commission has jurisdiction over the State's sovereign tidelands, and the Commission has an interest in protecting those -- this resource and for that I commend you.

Having practiced coastal engineering in San Diego and in southern California for over 30 years, I'd like to make a few observations. That to begin with when I studied at Scripps Institute 30 years ago, my professor, Dr. Inman was concerned and wrote about at the time societal impacts in the urbanizing coastal watershed that they remove sand from what was now the literal cell, and they were removing sand from the beaches and saying that it was really the loss of sand due to upland development that created the need for seawalls. Seawalls did not cause a loss of sand. It's real the form.

When you hear people like Orrin Pilton on the east coast a geology professor from Duke University, when
he speaks about the serious problems of seawalls on the
eastern seaboard. And the Surf Riders like to quote Dr.
Pilton because they like what he has to say. But please
remember that the east coast is very different from the
west coast. They have a trailing edge coastline. We have
a leading edge coastline. They have literally miles of
shallow lands that can, in fact, experience considerable
erosion. We do not. We have coastal bluffs. They do
not. Our bluffs are fairly resistant to erosion. Their
coastline erodes quite a bit.

In California, since the 1940's, our total
urbanization has completely eliminated a source of sand
that we, in the past, have benefited from. When you deal
with these seawalls that are now being constructed, the
Coastal Commission and the Corps of Engineers is currently
charging a sand mitigation fee. As a coastal engineer, I
support that sand mitigation fee. And for a 50-foot wide
bluff top property, it amounts to about $20,000. There
are already significant fees paid for the rights for
private homeowners and public entities to protect their
properties. There are significant fees already being
paid.

And lastly, I'd like to point out that when you
speak to the State Lands jurisdiction, if additional fees
were paid and additional impediments were made, there
would be significant disputes over that ambulatory line that finds the State's jurisdiction. It happens to be the mean high tideland or 2.01 foot. But the reality is that today with the current policy, many consultants, myself included, we're very happy to work with the State and not dispute the jurisdiction, but to merely agree to the leases because they are not adjudicating the boundary, they're merely agreeing to work together.

It is in this spirit of cooperation that the private interests and public interests are best worded. I would propose to you that coastal property owners who are spending literally millions of dollars to protect their property are providing a much bigger benefit to the State of California than The Surf Riders Foundation who is actively today opposed to something that I believe is inherently very good for California.

I would strongly encourage you not to provide additional impediments to coastal protection.

Thank you, very much.

CHAIRPERSON BUSTAMANTE: Staff, Alternatives 2 and 3, would any of that which is in the recommended policies prohibit in our determination of a sand replenishment case, for example, that it is not the construction or the private development on that spot above the cliffs, but rather a different locale that is, say, up
on either north or south of that facility that is causing
the problems of sand replenishment?

Would there be anything to prohibit from all the
different complexities that were just expressed by the
speaker to be taken into account when staff is making an
assessment?

EXECUTIVE OFFICER THAYER: Not at all. And, in
fact, I think we would agree with much of what the witness
stated, except that there is at least some evidence that
seawalls themselves cause a further diminution of the sand
at the beach, but our studies indicate that, in fact, the
loss of sand from sand mining or dams, the other causes he
mentioned, in fact, would probably be the primary cause of
loss of sand.

But nonetheless, we're not -- the staff policy
more deals with impacts where we can show them and
charging rent where it can be shown that the private
property owners, using public land to protect private
property.

So to some extent the causes of erosion are
important with respect to deciding whether or not any
mitigation needs to be done, but aren't significant with
respect to deciding whether or not to charge rent.

CHAIRPERSON BUSTAMANTE: Is the onus on staff or
is the onus on the property owners to show that there has
been some kind of a problem that must be dealt with by the State, and therefore we must then charge additional fees?

EXECUTIVE OFFICER THAYER: The Coastal Commission charges its fee to anybody who is putting in shoreline protective devices. I think in northern San Diego county, I may have the boundaries of that not entirely correct, but they use that money to purchase additional sand or take other measures to improve the beaches that kind of a thing.

With our own mitigation measures, I think it's up to staff to determine, in fact, what the impacts to the public trust uses are, and we're experts in that. With respect to rent, the hard decision will be the one that the applicant -- or the speaker referred to which is determining where the boundary line is.

But where we can show that public land is being occupied by this project of primarily private benefit, then the new policy would have us look more closely at that issue in determining whether or not rent should be charged.

Often the nexus for this becomes when they seek a Coastal Commission permit. And the Coastal Commission has a policy you have to demonstrate that you own the property or you have a right to use the property where your project is going to be located. And they frequently turn to us
for advice as to where the boundary line is.

CHAIRPERSON BUSTAMANTE: Madam Controller.

COMMISSIONER CONNELL: Yes, I apologize for coming in late. Let me just share with the audience, I sit on a number of boards, and we had a very important retirement board, which, in fact, is still going on right now. You can imagine with the market activity this morning, we are deeply concerned about the -- in fact, the pension funds of many of you as well as local governments. And so I apologize for my extended delay.

This issue is of great importance, I think, to the Commission. And I appreciate your delaying it till I got here. I thought that all of your staff recommendations were worthy of serious consideration, and I would be prepared to adopt a number of them this morning quite honestly.

I guess, I'm somewhere in between the surf rider groups and the groups that represent the private homeowners here. I do think that we need to do additional work to determine the impact that deals with loss of sand on the beach.

On the other hand, I don't think that's our primary role here as the Lands Commission. But I did like your idea -- I'd like you to speak to your staff recommendation, I believe it was number 6, Paul, about
establishing a special fund to deposit the impact fees and allocate those funds to make improvements. I thought that was important.

I also think number 5 is important pertaining to consultants who identify the impacts that are occurring, the loss of beach use, et cetera. I think that would be very helpful, and I'd like you to speak specifically to both of those.

EXECUTIVE OFFICER THAYER: Early on when we were working on this project, we looked very closely at how we could best mitigate impacts that might come from shoreline protective devices. In many cases, some of those impacts are already addressed by other agencies, Fish And Game, for example, usually requires through CEQA that habitat impacts be addressed. The Coastal Commission already has a mitigation fee for sand supply in at least one part of the State.

But we also talked to several different researchers, one in San Diego, I'm trying to think, perhaps, UC Irvine for the other one, to determine what kind of study could be done to attach a monetary value to public trust impacts, because that would be the simplest thing to do. A lot of these projects are small enough. It's sort of difficult to require a new stairway or something like that.
And, basically, we were informed that the kind of study that would stand up in court in terms of establishing a nexus between impacts and an amount of money paid would probably cost in excess of a million dollars. And that's --

COMMISSIONER CONNELL: The study would?

EXECUTIVE OFFICER THAYER: The study would.

COMMISSIONER CONNELL: Well, I can see the Department of Finance would frown on that. I can't even get the Bologna Study out.

EXECUTIVE OFFICER THAYER: And the problem is that it's very hard to give an evaluation to what is it worth when some member of the public can't use the beach at sunset because there's a shoreline protective device there or, you know, during high tides the beach is narrower this kind of thing. It's just very difficult to value that.

The other situation is the one that the Chair described, which is that physically the coastline looks so different in so many different parts of the State, so you couldn't do just one study and say oh, along this beach we'll do this. Well, that might be valid for that beach, but it wouldn't be valid for any others. So although we went down that road pretty far in terms of trying to find out someway that we could establish a mitigation fee like
the Coastal Commission has for sand, a much more identifiable cost, I should say. It's very much easier to define how much sand is going to be lost and what the cost is to replace it, we ended up deciding we could not legally, defensively come up with a mitigation fee that the Commission could impose and be able to --

COMMISSIONER CONNELL: You know, I would move the staff recommendation, but I would like to have a timetable on it, Mr. Chair, because I think we need to move fast on this issue. We're sitting here without a policy. I think it would be helpful to do that and complete the EIR on a timetable, and then get the shell mounds out. So I would like to -- aren't we on 93?

I'm sorry, we're on 92. I'm confused again. I still want the staff recommendation on 92, my apology.

CHAIRPERSON BUSTAMANTE: That would be Alternatives number 2 and 3, I believe?

EXECUTIVE OFFICER THAYER: Yes. And to summarize, that would require us to look much more carefully at whether or not rent should be charged where a shoreline protective device is on public property and it's primarily benefiting private development.

And the second part of that recommendation is that we look to see if there are unmitigated impacts to public trust uses.
And the third part of it was to continue our work
with the Coastal Commission and a more cooperative work to
look to actually locate these seawalls inland of our
public trust lands.

CHAIRPERSON BUSTAMANTE: I received a request to
speak by one other member of the audience Don May, and
then we'll go to a motion.

MR. MAY: My name is Don May for California Earth
Corps. I'll be extremely brief, Mr. Chairman, but our
corporate attorney, Charles Post, who is also one of the
co-founders of the Surf Riders Foundation, has been in
substantial discussion with your staff about the
implications of the public trust doctrine to protecting
sand.

And in view of the former discussion about the
public trust doctrine, it's extremely important. And I'm
also one of Dr. Pilton's students. And I shouldn't -- I
respect him enormously. He's the leading proponent of
processes along the coast.

But you will find his arguments every bit as
supportive of -- critical of structures and whatnot along
the coast, as your witness presented.

So I certainly concur with all the statements of
Mr. Thayer and -- except that I do believe that you need
to find there is a nexus between sand borings and do
divert sand offshore. And if you can, in fact, make a financial connection, and I think it's incumbent under the public trust doctrine that this Commission pursue that vigorously.

Thank you very much.

CHAIRPERSON BUSTAMANTE: Thank you, Mr. May. A motion has been made, alternatives two and three.

Is there a second?

ACTING COMMISSIONER PORINI: I'll second.

CHAIRPERSON BUSTAMANTE: Seeing as there is a motion and a second, let the record show that the motion has passed unanimously.

Go back to Item 89, which we passed over earlier, Controller, so that you might be able to come back.

COMMISSIONER CONNELL: Thank you, and I appreciate that.

CHAIRPERSON BUSTAMANTE: There has been a request for a brief break. Let's have a break for five minutes and then we'll take up Item number 89.

(Thereupon a recess was taken.)

EXECUTIVE OFFICER THAYER: If people could find their seats, we're about ready to get going again.

CHAIRPERSON BUSTAMANTE: This is Item number 89, which has had tremendous discussion at a previous meeting.
And we have 12 requests to speak, and so I am going to limit each person. I would hope that they would do it voluntarily, but in most cases people get to a point where they cannot always say everything that we want to say, and you know, there are certain limits. So I'm going to ask if there is a group of people who either are for or against and that would like to either aggregate their comments into one individual or a couple of people, we might be able to work out something where they could make a longer statement, but if not -- do I see any volunteers to aggregate?

If not, then what we're going to do is we're going to limit everybody to three minutes in order to be able to speak. Even at three minutes, it's going to be past noon before just the speakers end up completing. And I'm going to ask staff to go ahead and start and we will begin with, when the speaking comes up so that you're in -- you understand where you're going to be at Ann, Cantrell, Rod Chisessi, and Lester Denevan. Those will be the first three members who will speak and then we will announce the others following that.

Staff, your report, please.

EXECUTIVE OFFICER THAYER: Thank you, Mr. Chairman. I'll be making the staff presentation on this item.
The Commission is already fairly aware of the proposed project here Queensway Bay. We've heard comments from the public as well as some presentations that were made at the last meeting.

At that last meeting, as requested by Long Beach citizens, the Commission reviewed this project. The Commission has expressed doubts about the consistency of some elements of the project with the public trust doctrine in terms of the legislative grant. These uses included the movie theaters, a health spa, a Cost Plus Imports and a bookstore.

The Commission directed staff to work with the City to try to develop alternatives that would address this issue. I'd like to review what we have done since that last meeting and then the proposal that's before you today. Since that meeting, Commission and City staff reviewed several alternatives to resolve the issue of Queensway Bay. Two principle options emerged, the City could eliminate from the project the uses that could be inconsistent with the public trust or the Commission could approve the land exchange they would lift the public trust from the sites of the questionable uses and impose it on other lands suitable for trust use.

The City reviewed its marketing and financial feasibility study for the project, and determined that it
could not support the first option. In the City's view, the questionable uses were a vital part of the project and helped make other trust uses, like the aquarium viable.

Commission staff reviewed the legal requirements for lifting the trust from the sites of questionable uses which would be required for an exchange. Because of the distance of the sites from the waterfront, the fact that they were caught off from the water by Shoreline Drive and the fact that the sites have been unused for over 20 years led staff to believe that these parcels were not acceptable for public trust uses, the primary test for lifting the trust.

After that initial go round, the staffs of the two agencies then agreed to pursue the land exchange option and look for sites to exchange for the Queensway Bay parcels designated in these public trust lands.

The City owned lands along the Los Angeles River seemed the most appropriate for the exchange. For past few years all levels of government have focused on developing habitat and recreational areas along the river. Two years ago, the Legislature recognized the statewide values of the restored river by establishing the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy.

The State Coastal Conservancy and the Southern
California Wetlands Recovery Project have made grants to purchase and restore lands along the liver. This July Congresswoman Hilda Solic proposed legislation to study making this area into a national park.

The river itself is not public trust land, because it was sold during the California Spanish era. However, it obtains trust values and these multi-level efforts are highly consistent with and promote the public trust.

After considering several different combinations of parcels and rejecting one because of evaluation problems, the Commission and City staff settled on parcels that are in the proposal before you. They are shown in Exhibit A in the staff report and in a larger scale map over to the Commission's left.

This map is poorly put up on the screen here for the audience, but what we're looking at are exchanging parcels at Queensway Bay here outlined in red. And I think it shows up more clearly in your binder. For parcels along the river up here one between or actually two between northbound and southbound lanes of Shoreline Drive and then on either side of Shoemaker Bridge up here.

These parcels along the LA River seemed particularly appropriate for public trust designation. The Coastal Conservancy has already sponsored a study to
evaluate whether these parcels could be restored as wetlands. There's a regional bike path that runs along The LA River, right along the levee here. The adjacent Shoemaker parcels have a potential to be recreationally developed to complement that bike path.

The Shoreline Drive parcel, the one between the north and southbound lanes up there is already landscaped, but is presently cut off from public access. Again, actually either the Shoemaker parcels or the adjacent Cesar Chavez Park, which is just to the right, just to the east right in there, would complement either are for recreation, open space or habitat purposes.

In spite of the public trust value of the Los Angeles River parcels, they could not be exchanged for the Queensway Bay parcels, unless the Commission can make all of the findings required by law. The trust value of the Los Angeles River parcels, we believe, that test has been met, but however the river parcels also must be at least equal to our exceed in value the Queensway Bay parcels in which the trust would be lifted.

To make that necessary determination or to gather the evidence for it, our boundary determination officers and appraisers had to evaluate the condition of dozens of lots that comprise each of the river parcels. Again, we're looking at specific parcels. However, there are
many, many lots within those. And we had to view the title and the deeds for each of those to ensure that there weren't any liens or encumbrances that diminished the value of those lots.

On a square footage basis, there's no doubt that the Queensway Bay parcels down here are worth more money than each square foot up there.

The appraisers also deducted $1.3 million because this parcel right in here is cutoff from public access and that's the amount of money that was determined was going to be necessary to put up pedestrian access or other public access into that area. So we wanted to diminish the valuation of that parcel to reflect its street value for public trust purposes.

Given all these factors provide the necessary value to balance the Queensway Bay parcels about ten acres of land were included in the river parcels, so more than three times the amount of land that's being given up at Queensway Bay.

We've determined after appraising these two different sets of parcels that the parcels that will come into the public trust exceed the value of the Queensway Bay parcels by over a half a million dollars. The Commission staff was also concerned, of course, about potential toxic contamination of the river parcels. This
whole area has been urban for some period of time in, and
a variety uses have gone on. It's not in the best
interests of the State to accept these parcels in the
State ownership and just in terms of the liability.

A level one toxic review was conducted and did
not generally uncover potential contamination. One area
was mentioned as a former site of a gas station and that's
kind of down in the southern portion here of the shoreline
drive parcel.

This area was excluded from the exchange, so that
we wouldn't have to worry about that. In addition, the
terms of the exchange agreement require that the City will
indemnify the State for any contamination that is later
uncovered.

In conclusion, we believe this exchange is a good
deal for the State and a good deal for the State's public.
It lifts the trusts from long, vacant unused lands that
have been isolated from the water. It attaches the trust
to parcels along and near the Los Angeles River. These
parcels have public trust value and a potential for
contributing to the regional State and national effort to
restore the LA River.

They exceed the monetary value of the Queensway
Bay sites, where the trust will be lifted. However, I
should know note that as presently constituted, this
agreement would not go forward if the developer backed out. However, this in any event this would be a good exchange for the State.

As an ancillary matter, I need to also point out that we're aware that the Commissioners at the last meeting expressed an interest in promoting the Los Cerritos wetlands acquisition and restoration. The City has submitted by letter to assisting that effort in whatever way possible.

A picture of that wetlands, by the way, is shown right here. Some of that area is pretty good wetlands right now, but a big area is still in oil production and will take significant restoration to perform as good wetlands, again.

We've also discussed with the Wildlife Conservation Board the State agency that's taking the lead on this project, the Los Cerritos project, of contributing the $605,000 that's presently in the Cap Wealth Fund which was placed there as a result of a land exchange in Long Beach, previously approved by the Commission.

We've received a memo from the Conservancy's Board Executive Director welcoming our participation and we will bring this allocation of funds to the Commission for approval at a later meeting.

This concludes our staff presentation. We
recommend the Commission approve the motion discussed in the back of the staff report. I'd be happy to answer any questions we also have with us today the appraiser that worked on this project particular questions about that. And Curtis Fossum, the attorney, worked on the legal side of it here as well.

CHAIRPERSON BUSTAMANTE: Thank you, Paul. I know that in the initial presentation of this, I was very concerned about whether or not we could meet the public trust in moving something forward. And I know that in trying to configure this, this deal that there had to be some methods so that the public trust would be benefited in a major way.

If I'm hearing you right, based on the previous information on the public trust, that the City of Long Beach moves forward on a project that because it is operating within the parameters of the public trust, that's the first thing.

The second thing is that it was voted upon on a 6 to 1 volt by the council there. And it is bringing to us a project in which we were looking to enhance the public trust in a swap of a very small piece of property that we believe would diminish from the kind of project that was being suggested.

And therefore, we had properties that were
diminished, although they were in the public trust, they were diminished and we were looking to enhance the public trust in some type of a swap of some type. Meeting all the requirements, you said that we have increased the public trust, not only in terms of land size by three times, also by a $500,000 net asset value, as well as the earmarking or $605,000 specifically for the Los Cerritos wetlands.

And my understanding is that that last piece the audubon society has expressed support for that portion of this activity; is that correct?

EXECUTIVE OFFICER THAYER: I understand that they're very interested in the Los Cerritos project going forward.

CHAIRPERSON BUSTAMANTE: I believe we have a letter on file.

And what we are trying to ensure is that we are not setting a precedent with regard to a public trust doctrine by just swapping out land whenever it is convenient, but that in this particular case, it made some real sense in trying to ensure that the public trust along with the appraisal that you completed, that diminished the property value by just over a million dollars in order to be able to get public access. All of those factors, along with the potential pollution of those areas were all taken
into account on this particular property.

EXECUTIVE OFFICER THAYER: That's correct. We have done -- this is not a precedent. We've done these exchanges in other circumstances. The Commission may recall that we did one in San Diego involving a BF Goodrich property. And doing it created an opportunity for the Port with a larger parcel, a more concise parcel to enhance public trust uses there.

We're likely to do it in the future. It's something that the Commission does, I'd say, once or twice a year on average. We, of course, have to look for opportunities like this where they present themselves, because this land is controlled by the local government. Even though, we feel that a swap like this is in the best public interest, we can't do it unilaterally unless the City has something like a development proposal as this one, where we have the opportunity to lift the trust in exchange for better public trust value.

CHAIRPERSON BUSTAMANTE: Now, in the event that the City and the developer does not move forward on their project, does that then the mean the $605,000 would not go toward the mitigation?

EXECUTIVE OFFICER THAYER: That's within the discretion of the Chair -- or, excuse me, within the discretion of the Commission to decide how to spend that
money. And, of course, we could spend it in Los Cerritos
should it choose to do so.

CHAIRPERSON BUSTAMANTE: Okay. What about the
exchange of the property?

EXECUTIVE OFFICER THAYER: The exchange of
property, again, it's up to the Commission as to how we
want to structure this. The discussions with the City so
far have been along the lines that if this development
does not go forward, then the exchange will not occur.

However, it's within the discretion of the
Commission to require a more absolute agreement, such that
if the Commission believes that this is a good deal for
the public trust and for the State of California, it could
approve this with a requirement that there be a binding
agreement on both the City and the Commission.

CHAIRPERSON BUSTAMANTE: What would be the reason
not to do that, I mean, from our perspective?

EXECUTIVE OFFICER THAYER: The only reason might
be that once -- if a different developer comes in with
different plans, we may need to do an additional exchange.
However, if we're able to obtain terms similar to this
one, that wouldn't be bad for the State either, in that
this particular agreement has been set up in a way that it
does not rely on this development to make --

CHAIRPERSON BUSTAMANTE: Well, $605,000, I think,
you know, has to come under the jurisdiction of the
Commission. It is under the jurisdiction of the
Commission.

EXECUTIVE OFFICER THAYER: Yes.

CHAIRPERSON BUSTAMANTE: Why don't we hear
from -- unless there's questions by members?

ACTING COMMISSIONER PORINI: At some point, I
would like to hear the appraiser walk through that
process.

CHAIRPERSON BUSTAMANTE: Do you want to do that
now?

ACTING COMMISSIONER PORINI: Sure.

MR. PORTER: Good afternoon. Jim Porter. I'm a
staff appraiser with the Lands Commission.

CHAIRPERSON BUSTAMANTE: We're requesting a quick
run through.

MR. PORTER: Sure. I was asked to provide an
appraisal of the fee simple value of the market value of
the property in question.

I did that by applying traditional appraisal
methods on the sales comparison approach. I went out and
searched for market data of recent sales transactions of
similar properties in the market area. I made a
determination of the highest and best use. And after
assembling all my market data, looked at the range of
values, I selected the best available comparable property for each property in question, and concluded an estimate of value.

And that's kind of the quick and easy answer for you. If you'd like something more specific.

CHAIRPERSON BUSTAMANTE: Do you want more detail?

ACTING COMMISSIONER PORINI: No, I think that's fine. Thank you.

CHAIRPERSON BUSTAMANTE: We'll start with the speakers. Again, we need to limit ourselves in order to be able to allow everybody to be able to speak on this issue. Ann Cantrell, Rod Chisessi and Lester Denevan. Please, all three come up. You can speak one after the other.

MS. CANTRELL: Good morning. Ann Cantrell. And I'd like to address your attention to Exhibit A, which is also up here. Parcel 1 and 2, which has been referred to as Los Angeles River property is what I refer to as the freeway median property, because the freeway off ramps and on-ramps run on each side of this.

There is no public access to this land. That was why in the appraiser's evaluation they subtracted $1,305,000 from the value of it.

In talking to Mr. Thayer, I was told, well, the City could put in a bridge across or the freeway could be
moved. I'll pause for laughter here.

A letter from our city engineer, Mr. Shikata, indicates that neither one of those options could be done for a million dollars, and he suggested putting in a signal here so that people could cross across the freeway and get to this land, which is being referred to as part of Cesar Chavez Park.

It has been included as part of Cesar Chavez Park in the City recreation rage, but there has not been any access to it. There is still not going to be any access to it. To have any value for recreation and access for the public of California to get there, I think you should wait until there is some access before considering this as a swap.

The portion immediately to the north of that, which is wetlands, possibly, this is not going to be wetlands, because there's no access to water, but the one north of that can be perhaps restored wetlands. We're getting a study done to see if it can be wetlands. Both of these areas are already city owned property. We can already make them public park or wetlands, assuming, of course, that the little strip along that wetlands, which belongs to the railroad, which keeps access to the water, from happening, if we get the land from the railroad, then perhaps we can restore this wetlands.
I'd also like to address the Queensway Bay parcel north of Shoreline. You'll notice that there in red on your map, Exhibit A, are the only portions of this 14 acres that are going to be swapped. The reason for that swap was because those are where they want to put nonpublic trust uses, the movie theatre, the day spa, et cetera.

If this is indeed worthless land, no longer tidelands, no longer tidelands use, then the whole 14 acres is not tidelands or usable tidelands, and you should be swapping the whole 14 acres not spot zoning this.

Today Mr. Stevens said that the buck stops here at the State Lands Commission. You shouldn't wait till the Legislature decides whether this should go through or not. This is your determination. And you were concerned in April about this being a precedent setting issue. This is going to make it even more precedent setting. If you allow a swap like this in Long Beach, every city up and down the coast that wants to put some nonpublic trust -- some nonpublic trust use to their tidelands will look for a land swap.

Thank you.

CHAIRPERSON BUSTAMANTE: Thank you.

COMMISSIONER CONNELL: Can I ask a question as he's moving forward. Let's review again how we're going
to get access to this site.

EXECUTIVE OFFICER THAYER: This site may very well require -- we expect it to require some kind of improvement for access to the area, a pedestrian bridge, another off lane along north or southbound Shoreline Drive, but that's why we diminished the value of it.

COMMISSIONER CONNELL: Yeah. Well, where are we going to get the money to grant the access. I'd hate to own property that no one can get access to.

EXECUTIVE OFFICER THAYER: It would be up to the City at that point to decide whether or not they wanted to improve it. Just as it is right now, they have this piece of land, which they're not using for public use. It's landscape only. But again in terms of it's value to the public trust, we diminished it to reflect the cost of those improvements, so that we're not giving the total market value in recognition of this property.

COMMISSIONER CONNELL: So this then has shifted from our responsibility to theirs, is what you're saying?

EXECUTIVE OFFICER THAYER: Well, it's like any other piece of tidelands where it's up to the local government to decide the best way to improve it. And it would be up to the City to decide how they wanted to make the improvements to use this. In the same way that the other tidelands --
COMMISSIONER CONNELL: What would it most naturally be used for?

EXECUTIVE OFFICER THAYER: It could be used for a park with that Shoreline connection. Actually, the existing Cesar Chavez Park runs along one of those northbound lanes. And what they've done is they've put a small berm in there, and a bridge -- not a bridge, and a fence to prevent safety problems with users of Cesar Chavez. They probably have to do the same thing with this strip here.

COMMISSIONER CONNELL: Thank you.

MR. CHISESSI: Lieutenant Governor and Members of the Commissioner my name is Rod Chisessi. I represent the developer who is working on the commercial portion of Queensway Bay.

I want to speak just to one point there. A discussion came up a moment ago about whether or not this item would be escrowed, if you will, pending the developer's completion of the project. So I wanted you to be able to hear from the developer and tell you where we are in terms of moving forward with this project. We've been working with the City here now for about three years on this project, and we've master planned the commercial project that's in keeping with the City's master plan for this particular portion of the overall Queensway Bay.
We are, in terms of planning, we have selected our contractor. We have drawn working drawings with our architect, which are now probably 80 percent of those plans have been in the City for quite some time being plan checked. I'm coming up on needing only five percent, 20,000 square feet to meet my preleasing requirements to secure my financing both my equity and my debt.

And I assure you that with your assistance today, that we will be probably moving forward with this project sometime in December. In fact, I think we'll take a precursor step here later on this month to move a major sewer line that's currently on the site over where it needs to be in the street right of way, that will allow us to even further accelerate the project.

So we're poised and ready to go. I just wanted to give you that assurance, if you had any question about the developer's efforts.

CHAIRPERSON BUSTAMANTE: Okay, thank you.
MR. CHISESSI: Thank you very much.
CHAIRPERSON BUSTAMANTE: Mr. Denevan.
MR. DENEVAN: Lester Denevan, resident of Long Beach. You might recall at your meeting of April 24th this year that the Coastal -- or the Lands Commission staff stated that there was no public investment in this
project. However, in 1964 the Lands Commission approved $10 million to create this site, that's 113 acres. The $10 million perhaps would be worth $50 million today.

So the plan was approved and there were conditions attached by the Lands Commission, quote, "To be subject to the conditions, however, that the work conformed to essential details to the plans and background material heretofore submitted."

I refer you to Minute Item number 27 of October 22, 1964. I've passed this around. I believe you have copies of my letter. There's a map. There's a photograph and there is also a copy of the minutes of the Lands Commission meeting of 1964.

Now, the Lands Commission has jurisdiction over this project, but not only that, the Lands Commission has conditions which are attached, and it is your responsibility to see that those conditions are carried out.

So I want the staff to reply to this question of, and the Commission itself, do you have authority to enforce your own conditions.

Going on, very gratefully, to the matter of the change in the plans, since 1995, at which time there was an Environmental Impact Report, that the plan has changed in substantial ways.
For example, the lot coverage has been increased, the events park was to have had 12 acres; if you go out there, you'll find four acres; Shoreline Park, the EIR called for 36 acres they've provided 23 acres. So the Lands Commission should be looking at this entire project today requested of maybe three parcels, you should be looking at the entire project in total context.

So what I'm recommended is that you defer this project until the City can prepare a new EIR, until the City can present a plan to you of the total project and the total plan, so you can see everything in context.

And then I think that we deserve to abide by the CEQA, the California Environmental Quality Act. I have a list of 18 major changes in the project and I can authenticate all my statements. I'll leave this for your staff and members of the Commission, please.

Thank you.

CHAIRPERSON BUSTAMANTE: Thank you.
Richard Dungell, Christopher Johnson.

MR. JOHNSON: I'm Christopher Johnson I'm waiving my time.

MR. DUNGELL: Mr. Chairman, this is Rick Dungell. We represent the legal counsel to the developer. And in the interests of moving things along we will pass along our time to the City of Long Beach. However, we'd reserve
a small portion of our time if needed at the end.

Thank you.

CHAIRPERSON BUSTAMANTE: Thank you.

Norm Ryan.

MR. RYAN: Lieutenant Governor, Commission
Members, staff and audience, my name is Norm Ryan. I'm a
resident of Long Beach. I also make my living in the
public finance sector. I got a really nifty degree from
UCLA.

COMMISSIONER CONNELL: We all appreciate that as
alumni.

(Laughter.)

MR. RYAN: I just want to sort of warn you that
if you affect any promises and those promises have been
made, part and parcel to any assessment of the land that
you're about to get or the land that you're about to give
away, the City, as a resident, has made tons of promises
to us and has no problem with breaking them.

To you, they'll take a different form. They will
most likely say gosh, you know, funds are scarce and we
really had planned on doing this, but you know how it is.
This is what you can expect.

If you go forward and accept this swap, I would
think that you, you know, maybe aiding and abetting fraud
is a strong word, so maybe aiding and abetting pretend, is
pretend that the aquarium and this project, as you said, they were complementary, will create the synergy that will attract 90 million people to that facility.

It is pretend to stand in the middle of a median and say well, this is worth the oceanview property that we're about to swap out. From a resident of Long Beach, it's almost pretend to say that that some of the property won't be expanded for freeway usage or port usage, won't, in fact, happen and you have traded out a recreational plan for basically industrial purposes.

The appraisal seems to me the ultimate pretend. We have had to scratch and beg for every piece of information that we've gotten. I've had to rely on the appraisals done RP Lauren and Associates for the City. And if there are other appraisals that were going on, it would have been nice if the public could have had that so that could be part of our argument and our testimony to you.

But if the staff is concurring with RP Lauren and Associates appraisal, then I love the way that they arrive at the $16 million figure.

CHAIRPERSON BUSTAMANTE: Of course, since you asked that question is staff agreeing with the appraisal?

EXECUTIVE OFFICER THAYER: Absolutely not. And our staff appraisal came up with different figures,
particularly for the Queensway Bay parcel, and valued it more highly than the City did. As a result of the surplus that we've identified, over half a million dollars, it's less than a surplus that the City came up with. So we, in essence, sharpened our pencils and decided that the values were not what the City had represented.

MR. RYAN: It is unfortunate that we were not allowed to scrutinize that as we were the City's report. And I'd love to, to be able to find out how, for instance, if they have done -- if they used the same residual value formulas that this appraiser used in figuring $175 per square foot. And then said well, this is what it costs, that should build it, plus the profit margin. What's left must be, you know, the $16 million value for whatever 15, or 20 or whatever you came up with.

I would suggest and make a recommendation to you that the best way of doing the comp on this property is to look at the adjacent piece of property that the City is already trying to bond. There's currently a $43 million bond of authorization for the 75,000 square feet. Now, if you use the same formulation that these people did, on residual value, you come up with $586 per square, so -- yeah, about $570 a square foot.

But now the documents say a substantial portion of that money will be used for that. Okay, let's say it's
half. That still comes up to $286 a square foot as opposed to the $175 that they started out with.

You know, clearly a substantial increase over 16 million. In this case, put it somewhere in the neighborhood of 24 or 25. I don't know if your appraisal concurs with that number, but I'm just simply giving an alternate method, using the City's same logic.

I am strongly opposed to this project. The biggest promise to us that would not use one dime of taxpayer dollars, and now we are committed to a million and a half a year, for what I consider to be a fiasco. I live in Long Beach. I'm almost getting used to the fiascoes. And if this going to be your first one, welcome.

CHAIRPERSON BUSTAMANTE: Any comments?

COMMISSIONER CONNELL: I have a couple questions here. This land raises the issue again of the appraisal. And the appraisal techniques. Is there a reason why we didn't do residual value and why we did the alternative approach that we did on the appraisal?

EXECUTIVE OFFICER THAYER: Let me ask Jim Porter to respond to that.

MR. PORTER: First of all, the property in question is a vacant parcel. And under it's highest and best use, it could be used for a number of different
possible developments. I felt that the sales comparison approach using other sales of vacant land was preferable in this case. And actually most of my valuation was based on the sale of a parcel a block away that sold for under $20 a foot just in 1999.

COMMISSIONER CONNELL: But that had access.

MR. PORTER: No, I thought we were talking about the Queensway Bay Project.

COMMISSIONER CONNELL: No, I'm talking about ours.

MR. PORTER: Then, in that case I have no idea.

EXECUTIVE OFFICER THAYER: Well, just explain the process you used for evaluating the --

COMMISSIONER CONNELL: Didn't you just tell us you valued the Los Angeles River parcel?

MR. PORTER: Yes, using a sales comparison approach, looking at other sales of vacant land similar zoning and similar past use.

COMMISSIONER CONNELL: Yes. But the point is they had access.

MR. PORTER: In this case, actually, it turned out we, I think, Mr. Thayer mentioned we were getting a lot of information as this process was going along and a lot of things came in during the end of the project. And it turns out that we do actually have access to along the
southern part of the median property for quite a distance there on the part --

COMMISSIONER CONNELL: Can you show us exactly where this access is existing because we're getting contradictory statements here.

MR. PORTER: This parcel right here from approximately 3rd Street down has the ability to have access, public access now. This is a city owned property, and there are no restrictions along there to the best of my knowledge.

COMMISSIONER CONNELL: You mean, it has the ability, does that mean that there's a barrier there?

MR. PORTER: Well, there's a curb but there's no deeded restrictions, so there's no reason why there couldn't be a legal access there. That's my understanding.

EXECUTIVE OFFICER THAYER: Whereas there are CalTrans restrictions for access from the other portions of the north and south Shoreline Drive right?

MR. PORTER: Well, I think CalTrans' authority stop here at the bridge, but I believe that there are deeded restrictions along this way.

COMMISSIONER CONNELL: Does the freeway -- can you use your pointer to show us where the freeway travel is, where does the free way go?
MR. PORTER: It comes down here down the bridge and the southbound runs right along there. This is the northbound lane here.

SENIOR STAFF COUNSEL FOSSUM: This is southbound.

COMMISSIONER CONNELL: So is this the property completely surrounded by freeways?

MR. PORTER: Well, both of those are limited access multi-lane thoroughfares.

COMMISSIONER CONNELL: Well, I guess my question here is, if I may approach the map here, this property here has a freeway going down here. Does it have a freeway also that goes all the way down here or does it end?

MR. PORTER: It's a ramp that goes over it.

SENIOR STAFF COUNSEL FOSSUM: These ramps are the onramps these are the offramps of the freeway.

COMMISSIONER CONNELL: Right. And this onramp here how high up is that onramp.

MR. PORTER: It's at street grade there. It does start to change as moves down.

SENIOR STAFF COUNSEL FOSSUM: It elevates up in this area and this one comes down here.

COMMISSIONER CONNELL: So how are we getting access to our property?

SENIOR STAFF COUNSEL FOSSUM: There is legal
access.

MR. PORTER: There is legal access right along that street.

COMMISSIONER CONNELL: Well, I understand legally. I'm trying to figure out structurally how does somebody walk from wherever in the community to our property.

EXECUTIVE OFFICER THAYER: There would be two ways to do it, one what be to build an offramp is the wrong word, but really a turning lane, because you can stands at Cesar Chavez park, which you can see --

SENIOR STAFF COUNSEL FOSSUM: This is from here to here.

EXECUTIVE OFFICER THAYER: -- right there, and you can right across the lanes there, the two lanes, and see into this divider, so there's no geographic separation in elevation.

COMMISSIONER CONNELL: No, I'm asking the question. I'm a pedestrian --

SENIOR STAFF COUNSEL FOSSUM: Right now you can't.

COMMISSIONER CONNELL: -- and I am standing here or here, how do I get across to this land?

EXECUTIVE OFFICER THAYER: You cannot get across it now. The only way to get across is to either build the
pedestrian bridge, which we're talking about, which is why the $1.3 million reduction was made or to construct -- to drive there and construct an offramp -- not an offramp but a turning lane on the northbound -- no, the other one on the other side.

SENIOR STAFF COUNSEL FOSSUM: Well, vehicles can turn in there right now. There is probably a non legal city -- probably city vehicles go out and maintain this area come in and drive in this way right here.

EXECUTIVE OFFICER THAYER: But all of these would have to be improved before the public could use that property.

COMMISSIONER CONNELL: But if we to use say a soccer field or little league field or Pop Warner fields or whatever we would tend to use this for, which obviously we have needs for all of these things in a growing urban area or whatever else might be used, my question is how do people safely access the site and where do they park, you know -- I mean there's no point in our getting land that we cannot use ever. I'm trying to answer this question in my own mind today.

EXECUTIVE OFFICER THAYER: Yes.

CHAIRPERSON BUSTAMANTE: Well, there is access but there is no improvements?

EXECUTIVE OFFICER THAYER: That's correct.
There's legal access, but there aren't any improvements, that the Controller has identified, would be necessary for intensive public use here, absolutely. And that's why we made the deduction on the valuation.

COMMISSIONER CONNELL: So we have legal access, but that doesn't help me as a citizen of Long Beach or as a potential user of the site. I mean, I'm not looking at a piece of paper. I'm trying to get over to that piece of land, I need to know how I do that.

Now, we've had this situation in southern California, and explaining the Bologna Wetlands, so I'm particularly attuned to this issue. And if there is a barrier that exists there now, then we need to surmount that barrier or we have to channel underneath it or we have to do something to get people to use that site eventually.

EXECUTIVE OFFICER THAYER: Absolutely.

COMMISSIONER CONNELL: You know, I know am supportive of what Long Beach, as a city wants to do, but on the other hand, I do not wish to accept, as a trade property that we cannot get to. So I need to have an understanding today that we are going to be accepting a piece of property that accessed, not legally, but physically. And I need to have a sense of what it costs to access that side and who's going to pay for that.
I mean, we're in the middle of a phenomenal retrenchment of our financial resources here at the State. And I am very concerned that we not think that we are going to step forward and do this, because as I'm sure Annette will tell you, we are watching every one of our financial resources for very carefully at this point.

So I would like to have this site used soon. I mean if we're going to take is an exchange for the other property, then we should have someway of either giving it to a nonprofit group or a public trust or someone and they need to be able to know what the cost will be of accessing it.

So that's the question that I'm asking, where is it likely to gain access -- well, if you're talking about a pedestrian bridge then where do those people park? I mean, they have to park somewhere if they're leaving their cars on the other side to get over the pedestrian bridge and then that limits the use.

I mean, a pedestrian0 bridge as we found out in the Bologna wetlands, which we found out recently in Santa Monica, limits the use of the land on the other side, because, you know, you can't bring certain things over with you.

CHAIRPERSON BUSTAMANTE: Is there soccer fields or baseball fields or anything on the property Queensway
Bay Project?

EXECUTIVE OFFICER THAYER: No. They are undeveloped at this point. They're very analogous to, you know, the bare naked public trust lands that are conveyed to local entities, and then it's up to those entities to plan and construct these improvements. There would probably have to be restrooms in the long run put into this strip. There are a variety of things that would need to be done.

COMMISSIONER CONNELL: Have you talked to well, I guess, the City of Long Beach Mayor can address this, you know, about their willingness to make a commitment of some kind of resources so that we can get this developed?

EXECUTIVE OFFICER THAYER: We have not talked to them, because again the ultimate plan for this would have to be develop, once it's public trust lands. There are also State resources that the southern California Wetlands Restoration Project has made grants of, I think, about $2 million for restoration acquisition, a little bit further to the north here. The City has already obtained, I think it's $300,000 for the wetlands study that is referred to by one of the other previous witnesses.

There are a variety of resources that could be brought into play, much as they are for Los Cerritos right now, where, again --
COMMISSIONER CONNELL: Well, when we get there, I'm sure they're going to be talking. I am concerned that we not have a gift of -- or an exchange of land here that whoever sits on this Commission five years from now is confronted with the fact that it hasn't -- we still don't have access, and it's still not being used.

I mean, it's imperative we to use this -- I used the soccer and little league and football analogies largely because there's such a limited amount of space in any community for those. But a wetlands is another use. I mean I'm not trying to define what the use is. It's not my role to do that. But I am concerned that we have some advocacy here from the Board about a timetable for making this site available for public use.

CHAIRPERSON BUSTAMANTE: Why don't we bring the City up. Mayor, why don't you and then Deputy City Attorney or whoever you believe will help.

LONG BEACH MAYOR O'NEILL: May I make my presentation and then the City Manager and then we can answer some of the questions that have been raised.

CHAIRPERSON BUSTAMANTE: Sure.

LONG BEACH MAYOR O'NEILL: Lieutenant Governor, Commissioners, thank you very much for the opportunity to appear before you again on this issue. After the last State Lands meeting -- I'm Beverly O'Neill, Mayor of the...
City of Long Beach.

After the State Lands meeting on April 24th, some of the Commissioners expressed concern about some of the uses proposed for Queensway Bay Project. The City Manager and I met with Lieutenant Governor Bustamante to get some guidance on the objectives of the City and how the concerns of the Commissioners might be reconciled.

We received valuable direction and the Lieutenant Governor was very helpful in arranging a follow-up session with his staff and that of the Commission staff.

There has been a long and complex negotiating process since that time. However, the fact is that our two staffs were able to come up with a final agreement on the terms of this transaction. And I must say we're very grateful to Paul Thayer and his staff who have worked long and diligently to get us to this point and I know that the Long Beach project has been very time consuming.

I was also happen to note that the Commission's own staff report provides a historical background when in 1992 the City started a major citizens planning process to create the Queensway Bay Development Plan. At that time, the Mayor and the City Council appointed 23 citizens as representatives from all areas of the City to work on this development plan.

Your staff report goes on to describe a planning
effort that from my experience was the most sustained and broad based an inclusive of any development proposal that we have formulated in the City of Long Beach.

Today's elements of the Queensway Bay Plan development are fully consistent with the objectives of that plan approved in 1994. After a series of delays, we were advised last week that the developer is scheduling a groundbreaking on this long overdue project. Your authorization of this exchange will effectively remove the last remaining impediment to long awaited groundbreaking and I request your support of this transaction.

And I'd like to just end by saying we work with the State Lands Commission on many issues. Because we are a coastal city, we have a very active California port, and we have Department of Oil properties.

And so I value highly the cordial and productive working relationship that the City has enjoyed with this Commission and staff during my time of office. And I believe that the action before you provides testimony to the strength of that relationship.

And I do appreciate your stewardship in being thorough in making sure that we have followed all of the requirements required by the State Lands Commission. There have been many issues brought up and questions about access, and I think they are included in the City
Manager's report, and then we would like to have any/questions that you might have.

LONG BEACH CITY MANAGER TABOADA: March Chairman,
Lieutenant Governor, Members of the Commission Henry
Toboada. I'm the City's City Manager. And I'll forego my
presentation, because I think that the issues before us
are of more importance than simply restating what was
already on the record.

I thought, though, that the staff report on the
public trust doctrine was very instructive for all of us,
and I commend your leadership in bringing that forward,
because I think that ambiguity needs to be dealt with and
we certainly will value that doctrine as a guideline for
us in the future.

With regard to access, it is an important issue
and it's one that we've struggled with as a city with how
we would utilize that particular park land effectively.
And when we were planning Cesar Chavez park that was one
of the issues that we were confronted with.

And while it is, in fact, as you will note, the
means to which access to the 710 freeway. The 710 freeway
doesn't start till right there. That's were the State's
freeway system terminates.

Everything here along both sides of Cesar Chavez
Park is really city owned streets that can be signalized,
if necessary, for providing access. We don't think that's
the superior option, but it's one that we can certainly
take a look at.

Also, when we were planning Queensway Bay and the
aquarium project, for instance, we noticed that if you
passed by this that you wouldn't be able to get back on
and turn around until you were up the Pacific Coast
Highway. We built right here a turnaround, right here,
just south of the parcel in question and we can examine
that. And there is access, believe it or not, underneath
here to that particular parcel, if we could, you know,
when we get ready to start to develop that.

With regard to the City Engineer and our Public
Works Director's report on what it would cost to provide
access with an overpass or something of that sort, and
that a million dollars was not a feasible number, that was
with regard to the automobile traffic not pedestrian
and/or bike trails.

As your staff will advise you, this land here,
because of its new State trust designation, will really be
limited in use as to what type of recreation will be
available there. And things like Little League and soccer
fields and volley ball courts and those kind of things are
not right now considered acceptable uses on that parcel.

The uses that are deemed to be acceptable by your
staff on that parcel are things like picnic benches, bike trails and paths of recreation uses.

Commissioner Connell brings up a good point about where people would park. With a pedestrian overpass from Cesar Chavez across to there, with a bike trail that would connect along the bike trail system long the LA River, certainly that would be one way to access that parcel for passive recreation.

There is also sufficient parking at Chavez's Park and it's just a short walk across an overhead and an overpass could be constructed.

With regard to the City's commitment to that structure, we have always contemplated that that parcel of land that is now basically bound by what we call city streets, that we would have to deal with that. And so as I suggested either with the turnaround or the use of a pedestrian bike trail bridge, which we would fund, not at the State's obligation, but certainly as the city's obligation as part of our capital program, we commit to you that that is, in fact, part of our workplan and that we would commit to do that in a reasonable time period.

I stand ready to answer any other questions that you may have about this project.

COMMISSIONER CONNELL: Yes. I have a number of questions. First, I'd like to go back to the comment of
the uses and the restraint on the uses. Paul, can you
comment on that.

EXECUTIVE OFFICER THAYER: Yes. This is the
boundary between different recreational uses that I
discussed earlier with respect to what's allowed on public
trust lands and what's not. And, basically, this revolves
around the principle that public trust lands are supposed
to be used for greater than local import, so they provide
visitor serving facilities or the types of facilities that
would be used by people coming from other parts of the
State or other parts of the region.

So there is some problem with having recreational
facilities that serves strictly a municipal use. They're
not considered to be the same as a municipal park. This
has broader implications. And so the exact uses usually
require a lot of discussion and makes changes from place
to place, but that's the issues.

COMMISSIONER CONNELL: By why would anyone want
to sit there and have a picnic. What is the view from
that location?

MS. CANTRELL: The freeway.

COMMISSIONER CONNELL: Pardon me?

MS. CANTRELL: The freeway.

LONG BEACH CITY MANAGER TOBOADA: Commissioner
again, I state that while it may look like a freeway,
LONG BEACH CITY MANAGER TOBOADA: I'll excuse my colleagues from Long Beach. There was a real consideration right here as to how people would access onto the two sides of the park that are now divided by a street that becomes an onramp up here to the 710 Freeway.

We constructed a signal and we now have a signalized intersection that connects this part of the park with this part of the park. So it is something that is not the most ideal situation, but it's one that works well, both sides of the park are equally used and people travel back and forth safely from one end to the other.

We envision that this would be the third part of the park that would be similarly configured, either through a signalized intersection, through an overpass, even a tunnel, perhaps, that's another issue -- aspect that we haven't considered or, as I pointed out, before a turnaround like we have here, could be constructed up here as well.

COMMISSIONER CONNELL: Well, and I appreciate that. There are really three issues in any land use decision, the one is value, the other is access and the third, of course, is use.

Now we've established value. Our appraiser has
done that for us.

LONG BEACH CITY MANAGER TOBOADA: And it's been discounted for that condition.

COMMISSIONER CONNELL: Right. So we are now on access and use. And it seems to me that we ought to hear some sense of timing of the City's willingness to put forth whatever you're going to do to grant access to the site, whether it's a tunnel, as you've just expressed, whether it's a bridge, whether it's signalizing your local streets. And, I mean, this is not -- you know, I'm really not in a position to define what you may chose do that. That's your local option.

My question is, are there resources, are they identified clearly in your budget? If we were to go back to Long Beach and hold a Commission meeting, would we find that the residents of Long Beach feel that there has been adequate consideration of eventually being able to transform this property, which will now be available to you for greater public use. That's my question.

LONG BEACH CITY MANAGER TOBOADA: It's part of our planning for the overall development of the entire area and we don't have specific capital projects to develop much of it. We don't have specific funding to acquire some of the property that we're looking to acquire up in this area and along in here, but certainly that is
part of our workplan and something that we're committed to as a city.

If you need that kind of guarantee, I can't give you that, because I'm not empowered by my City Council to do that. But certainly they have seriously looked at it in the development of Cesar Chavez Park, that eventually it would be a much larger facility than is currently there now. And it would make no sense to leave this property isolated and not part of the total complex.

CHAIRPERSON BUSTAMANTE: Could you describe for the Commission what this property is now?

LONG BEACH CITY MANAGER TOBOADA: That particular property?

CHAIRPERSON BUSTAMANTE: Queensway Bay Project area. No, the Queensway Project.

LONG BEACH CITY MANAGER TOBOADA: The Queensway Bay Project area right now is a parking lot, that is used by the --

CHAIRPERSON BUSTAMANTE: Is it a grassy parking lot, is it a dirt parking lot?

LONG BEACH CITY MANAGER TOBOADA: It is asphalt, sir.

CHAIRPERSON BUSTAMANTE: It's an asphalt parking lot.

LONG BEACH CITY MANAGER TOBOADA: That's correct.
CHAIRPERSON BUSTAMANTE: How many acres?

LONG BEACH CITY MANAGER TOBOADA: Approximately 14 acres at this location, and eight acres at this location.

CHAIRPERSON BUSTAMANTE: So the area that we're talking about on the other side of that large roadway --

LONG BEACH CITY MANAGER TOBOADA: Six lane freeway.

CHAIRPERSON BUSTAMANTE: Well, it's a six-lane road. And it's on the other side of the water area, is the area that we're talking about?

LONG BEACH CITY MANAGER TOBOADA: That's correct, sir.

CHAIRPERSON BUSTAMANTE: And this is a paved parking lot.

LONG BEACH CITY MANAGER TOBOADA: That's correct.

CHAIRPERSON BUSTAMANTE: So if you were sitting there, you would see that six-lane road?

LONG BEACH CITY MANAGER TOBOADA: And other structures.

CHAIRPERSON BUSTAMANTE: Okay. So we're talking about, you said, 14 acres?

LONG BEACH CITY MANAGER TOBOADA: I believe that's the size of that parcel.

CHAIRPERSON BUSTAMANTE: So 14 acres of asphalt
parking, is what we're talking about, right?

LONG BEACH CITY MANAGER TOBOADA: That's correct.

CHAIRPERSON BUSTAMANTE: Any other questions?

COMMISSIONER CONNELL: So going back to the budget. The budget has a capital budget. And your municipal budget has a capital budget category, right?

LONG BEACH CITY MANAGER TOBOADA: That's correct.

COMMISSIONER CONNELL: And in that capital budget category, you have road improvements, et cetera. Do you have a Parks and Recreation component of the capital budget that specifically says Cesar Chavez Park and expansion at some point?

LONG BEACH CITY MANAGER TOBOADA: We have capital projects for Cesar Chavez Park, yes, but not any that deal with the issue that's being raised here today.

COMMISSIONER CONNELL: Thank you.

CHAIRPERSON BUSTAMANTE: Any questions?

ACTING COMMISSIONER PORINI: No.

CHAIRPERSON BUSTAMANTE: Okay, thank you. Please be available for any other questions.

Diana, is this Marin?

MS. MANN: Mann.

Again, I'll try not be argumentative or cranky, but there's some things in that I think you need to know. First of all, I think that since the dinosaurs were
babies, human beings are tribal and we work that way in communities, and we elect and we work with our tribal leaders.

And what's happened throughout the ages is that our tribal leaders have a tendency to make decisions based upon what's good for the tribal leaders and not for the tribe. And I think that this is a good example of what's happening here, is that, for instance, in the 1980's the citizens of Long Beach passed an ordinance that the Queensway Bay be an open space park. That is already park land that we are giving up for a shopping center.

Okay. So now if you look, I don't have that little thingy, but if you look across the street --

COMMISSIONER CONNELL: He'll assist you.

MS. MANN: There is a park right there. Right around in here, those buildings are going to be taken down. There's going to be a school there. And the school does not have -- they didn't plan enough park land for the kids to play. So what we're doing they're doing is they're talking away Cesar Chavez -- part of the park over here, and that's going to be sectioned off, and it's going to be not available to the public during school hours.

So if you look at this whole area, you look at this area, there's not a lot of open space, there's not a lot of park land, there's not a lot of recreation area for
kids, so what's happened is that we're losing our park land in Queensway Bay. We're losing our park land at Cesar Chavez Park, because of the situation I just described. And now we're getting park land over here, which we're losing the recreational value.

So what I'm trying to tell you is that this may be a good swap for the State Lands, maybe, maybe not, and it obviously is a good swap for the developer, and the tribal -- the folks that we've elected as City officials, but for the public at large this is not what we wanted. This is not a good deal.

I also wanted to tell that you in the 1980s the citizens passed an initiative. Now, I think when an initiative is passed doesn't it have to be changed by an initiative. So we've got something -- we have that to look for.

I wanted --

COMMISSIONER CONNELL: What did the initiative do?

MS. MANN: Pardon me?

COMMISSIONER CONNELL: When did the initiative do?

MS. MANN: It established that as a park land.

COMMISSIONER CONNELL: Which is the park land.

MS. MANN: The Queensway Bay.
Okay. And the Mayor spoke about the Citizens Advisory Board in 1982. Lester Denevan was on that advisory board, and it was not unanimous. It was very contentious. So I just wanted to let you know that that was kind of an issue there.

And as far as the responsible time period that you were mentioning about this public access, I would, if you're going to pass this today, I think it would be really helpful if you had specific a timeframe, because we've been led down the roads of path and it continues to get nowhere.

So I just wanted to mention all those things. And also the fact that, if all this is all going to happen, then I still think we need an EIR.

Okay, thank you very much.

CHAIRPERSON BUSTAMANTE: Thank you.

Don May and Bry Laurie Myown.

COMMISSIONER CONNELL: Paul, may I ask a question. Would it be easier to create a recreational area with visitor access in Queensway Bay area or in the proposed swap area?

EXECUTIVE OFFICER THAYER: I guess that's hard to answer. Certainly, there's better access to the parking area that the Lieutenant Governor identified as being the parking area right now. But in terms of having other
water-based amenities, as the public trust document
generally favors, the remoteness of the Queensway Bay
parcel is even further way from what's shown as a swimming
lagoon. And that's no longer a swimming lagoon, but in
the old plan that's what it was going to be.

Then the new parcels are going to come into the
trust from the LA River.

COMMISSIONER CONNELL: What's a swimming lagoon?
SENIOR STAFF COUNSEL FOSSUM: That was in the 1960
plan.

EXECUTIVE OFFICER THAYER: I'm sorry, this was
the old plan here and that's been now traded in for a more
boat oriented lagoon right here, but I mean the basic
point would be that this property is much closer to the LA
River bike path that kind of thing, and so there's more of
an opportunity to relate this to the water than this
parcel here.

So in terms of -- absolutely, in terms of
recreation areas, there may be some advantages in doing
this from a municipal perspective, but from a public trust
perspective, and the necessity of having some connecting
to water, we think this has the better opportunities
there.

MR. MAY: Yes, Mr. Chair, again, Commissioners.
Done May with the California Earth Corps. I have to take
just a second to comment about the swimming lagoon, which
is part of the park that Long Beach has had. When we put
in the Queen Mary, we had to do mitigation for the taking
of soft bottom habitat there, and that went next door.

And then it turned out there was going to be a
boat motel there, so the mitigation moved across to the
other way, where it turns out there was going to be a
Hyatt Hotel, so the mitigation moved over to Sleep Lagoon,
but that had to be modified for the Queensway Bay, so it
went to the swimming lagoon you see there. And then as
long as that changed again now, we have gone from the 40
odd acres we were supposed to get to five acres, which is
over here in the corner.

This is what's happened to us as we hit these
parcels that are swapped around, around, around and around
and the public never gets the use.

We have that situation here, again. What you
have before you is not only outside the criteria in the
statutes and case law, it's a spectacularly bad deal for
both the state and for the citizens of Long Beach. We
should point out why that is.

We did point out back in 1992 and '93 when this
was first considered that there was a problem with the
uses intended, that they were outside public trust
doctrine, particularly it seems they already looked at the
Disney Sea who was going to do a similar kind of thing and ran into the similar kind of problems and Disney Sea did not go forward, and it was pointed out back then that they were going down that same road.

So this is not new. This has been discussed by the City for a long time.

COMMISSIONER CONNELL: Where was the Disney project?

MR. MAY: The Disney project was looked as part of Pikes Project and across the wetlands on the other side of the river.

It's really a travesty to try an excise out the footprints of the offending uses from sovereign land, while developing the sounding tidelands in the legitimate public trust uses. It's insulting to all of us to declare inland public park, already protected, already funded for restoration with State funds as tideland uses and insist that some kind of public benefit has occurred.

It's impermissible to exchange tidelands status to a land dedicated to nonpublic trust use, and here, let me point out, that the intended use for that as an adjunct, in fact, it's already been counted as the acreage in Cesar Chavez Park is for school yard, soccer, active sports, things not public trust uses.

You can't do a swap to land that's already...
planned for nonpublic trust uses. You're precluding the very benefit that the State's is supposed to gain. There is no benefit here. If you did, in fact, the things that would allow equal access to that median strip, you block access to the rest of it.

Take another look here, if you move from the west side, move the freeway over to the east side, as was once considered, the only way you can put the onramp is through off of Shamika Bridge right down through the 6th Street parcel. Take your choice. Do you want to put a public -- use the 6th Street parcel or do you want to use the median strip. You can't use both.

I would also like to point out that fundamentally land swaps require legislative approval. That is the reason that you have Public Resources Code 6307. It points out only in rare cases may public trust be terminated and only where it's consistent with the purposes and needs of the original 1911 trust.

interfering the right of navigation of fishing? No.

You also can only use land swaps when it solves a title or boundary dispute. There's no title or boundary dispute here. What you have is a dispute with the developer that wants to use a nontrust land. The precedent next door with the old pipe property where the $605,000 came from that, in fact, was a small parcel where you, in fact, had a boundary problem that was resolved by that swap.

That's why $605,000 for .18 acres set the price of this land, do the math, 3.3 million back in 1992. That means you've understated the value of the Queensway Bay project by a factor of ten. At the same time you overestimated the value of the other hands.

You talk about Los Cerritos, we're heavily involved in Los Cerritos. And up and down the coast we've been involved in a lot of land purchases. Never has a conservancy or trust to the public land or any of the conservancies coastal conservancy agency or any other agencies had to pay more than $34,000, with the exception of the one parcel down at San Diego, where Edison paid $70,000, but that's because they saved seven and a half million by using the lands as a lay down area.

All other parcels we've paid way less than $34,000. You're paying too much.
Parcels are not of equal value. They're not of equal access. It's a parking lot there now, right. It's also -- it was supposed to be back in '93 when we all agreed on what this was going to be for. I should have brought up the beautiful picture that was on the EIR showing pedestrians strolling along the shoreline, a pedestrian oriented area, lots of picnic area, no uses which were not, with the exception of the theatre. There was a delightful place, a project that has substantially changed all the way along.

Long Beach indeed, more than any other California city, has lost we've lost 99 percent of our tidelands. Had originally had over 5,000 acres of trust lands, submerged lands salt water tidelands in Long Beach. We have 65 acres left. We're looking to lose more.

The acreage we're talking about over at Los Cerritos, by the way, is funded by $13 million we got from you folks from the State. Thank you very much. We greatly appreciate it and matching funds we obtained elsewhere, including $1.8 million that came from California Earth Corps. $605,000 is not needed over there. As matter of fact, the Trust For Public Land, the Wild Life Conservation Corps is the one that's involved now in the purchases. We can certainly use it, but already those funds are earmarked.
There is no overriding State benefit here. There certainly is an overriding State benefit in Queensway Bay project itself, but the parcels you're talking about trading for are ones that the Coastal Conservancy, we've been very involved in 6th Street looking for restoring land up and down the LA River, as the San Diego River. Those are commendable, wonderful, but they're already funded. The representatives of the Coastal Conservancy is here to talk about the CH2M Hill grant.

CH2M Hill has not yet determined, that's the purpose of the grant is to figure out what the best use of that land is. They are looking at wetlands, right, but preliminary comments indicate that they're a little pessimistic about that.

One of our folks, David Sundstrom did a study of what was supposed to go on that 6th -- what would best go on that 6th Street parcel and we got shot down on that. The same problems still remain. It's a very problematic area, not only the containment issue, the Union Pacific property and others. It just doesn't make sense to go forward on the 6th Street parcel until all these problems have been resolved.

It's very premature.

CHAIRPERSON BUSTAMANTE: Mr. May, would you sum up.
MR. MAY: I'll summarize. The Project, as you point out, is subject to CEQA. It requires an Environmental Impact Report for the same reason it requires legislative approval, because you haven't met all of those criteria.

You have the letter from our attorney regarding that. I won't go into that. Do please look at the letter from Jane Brown. It goes into all the CEQA violations that are proposed by this.

That's the reason that you do an EIR is to provide the reliable, factual data that form the basis of good public decisions. You don't have that data before you now. I would strongly urge that you require an EIR be performed now to come into conformance with CEQA. That will provide the information you need to make a good decision.

Thank you very much for your attention.

CHAIRPERSON BUSTAMANTE: Thank you. Mr. May. I know that I allowed you to speak much longer than three minutes, but I thought you were making very a thorough presentation and I didn't want to interrupt it. You did raise some issues I'd like to have staff respond to. The legislative approval. Does this require legislative approval?

EXECUTIVE OFFICER THAYER: No, it does not. The
Legislature enacted Section 6307 that delegated to the
Lands Commission the authority to do this.

CHAIRPERSON BUSTAMANTE: On the 1980 initiative, what part does that play in this process.

EXECUTIVE OFFICER THAYER: I think Mary Cow from our staff might now. Was that the proposition for funding?

MR. MAY: Yes. If I could --

CHAIRPERSON BUSTAMANTE: That's the one by the city, within the City of Long Beach?

MR. MAY: Yes, and it funded fill along with the Water Conservation Act.

COMMISSIONER CONNELL: What did the initiative say?

MR. MAY: I didn't bring a copy of it. It's on the back of your workplan. And if you look at Exhibit 9 of the workshop, it has a copy of that initiative.

EXECUTIVE OFFICER THAYER: It's my impression that was mostly an initiative to establish funding for the fill and the project down there, but I believe it also made reference to all of the uses that were permitted by the legislative grants, which are broad and include these, but.

Mr. McCabe do you have a copy of that?

LONG BEACH DEPUTY CITY ATTORNEY MCCABE: No, I
don't have one with me. You are correct --

CHAIRPERSON BUSTAMANTE: Why don't you come up to
the microphone please.

LONG BEACH DEPUTY CITY ATTORNEY McCabe: My name
is Jim McCabe, Deputy City Attorney, for the City of Long
Beach. The initiative that's being spoken of was an
initiative to use, as I recall, oil money for the purpose
of filling land, which you would then become tidelands.
They were references made to restrictions to
which it could be put, in the sense that it would be
tidelands. It would be put to tidelands purposes not
necessarily parks.

CHAIRPERSON BUSTAMANTE: So the initiative was to
use oil money for the fill.

LONG BEACH DEPUTY CITY ATTORNEY McCabe: That's
correct.

CHAIRPERSON BUSTAMANTE: There's nothing that
prescribed this to be used for any particular purpose?

LONG BEACH DEPUTY CITY ATTORNEY McCabe: Nothing
at all, other than, of course, when it hadn't been filled
over tidelands would thereafter be subject to the
tidelands restrictions and the tidelands uses.

CHAIRPERSON BUSTAMANTE: I see. There was one
other issue, Paul. And that is that the way that Mr. May
described this, that not meeting the various requirements
as he began to enumerate each and every one so that it did not meet that requirement. Is there a concern that we could withstand any kind of a lawsuit on our decision here?

EXECUTIVE OFFICER THAYER: We've heard for the last month that there -- longer than that, I think, that some of the opponents to the project are threatening litigation should the Commission approve this exchange. And so we brought in the Attorney General's Office to consult them with whether or not this project met the exchange requirements in 6307, as well as equally important requirements established in court, in case law, and also looked at the CEQA issue.

And it's our belief that what we're recommending to the Commission could withstand that action.

CHAIRPERSON BUSTAMANTE: Why don't we hear from the Attorney General's Office.

ASSISTANT ATTORNEY GENERAL HAGER: We would agree that we believe that it is within the statutory provisions authorizing an exchange. As to the CEQA matter, we believe it comes within the purview of section 21,080.11 of the Public Resources Code, which is CEQA, which grants and an exemption for these exchanges in matters. And that it's been the consistent practice of the Commission for any type of exchange like this to be -- to use that
exemption and that has not been challenged in the past.

COMMISSIONER CONNELL: I had a question, if I may.

CHAIRPERSON BUSTAMANTE: Please.

COMMISSIONER CONNELL: To follow-up on your questions which I think are right on point.

Paul, which of the basis for swaps mentioned by Mr. May, you listed a number of them, does staff believe we should be acting under today? I'd like to clarify that. I mean, if we are anticipating legal action against the Commission, I'd like to make sure we understand under what basis we're taking this action.

EXECUTIVE OFFICER THAYER: There are several different standards. The first and most important one is whether or not the land that is presently subject to the public trust should have the trust lifted. It's a very serious action. And for that, the test is generally whether it's usable or susceptible for use for public trust purposes.

And we believe that because it's cutoff from the water, it's separated as well by what's in essence a continuation of Shoreline Drive and that it's been unused for 20 years that it meets that requirement.

Then there are the broader requirements in terms of making a swap and lifting the trust, and they include
likes that the fill had to have been part of a broader plan for improving navigation or there are a couple of other criteria that are mentioned there.

We think the original fill here with its intent to establish the basins here meets that requirement. That it basically was establishing different kinds of public trusts use that could only occur if you enclose, what at one point, was going to be considered the swimming lagoon and now is used more broadly for boating.

It can't interfere with navigation or fishing. The lands that are going to be brought into the trust have to be susceptible to trust uses. Those are some of the --

Curtis, did you want to add anything?

SENIOR STAFF COUNSEL FOSSUM: Well, I do. I wanted to clarify one matter. They talked about the 1980 initiative. There was a 1960 initiative by the City, which talked about the fill that did take place subsequent to that.

This was the City's plan in 1960 which showed the swimming lagoon, that Paul referred to earlier. The changes have been significant since that 1960 master plan that the City adopted. They had a senior center down here in this area, and the rest of this area back here was actually proposed for private development, the whole Queensway area. Apparently, they were not aware of its
tidelands; trust status at the time back in 1960.

When the Commission approved the fill in 1964 for the ten plus million dollars, it was this area below a line in this area that was being approved by the Commission. And I think Mr. Denevan has referred to this in many instances both in writing and here today that the Commission had approved this fill, and therefore any subsequent action the Commission would have to approve.

Well, in fact, the fill did not involve the area of the Queensway Bay. That had been filled back in the 1950s and earlier as part of the development to the east.

So this has really been an area that's been filled for probably over 40 years. The uses of it have been almost nonexistent in the last 25 or so years. There are a lot of uses that it could be proposed for, but it has sat vacant. And as to the findings the Commission needs to make under Section 6307 and the provisions that the Supreme Court has set forth in there, they're all set forth I think clearly in the staff report. And as Paul pointed out, these areas were filled a long time ago as part of flood control, harbor improvement and development, that the findings that are -- I mean, those findings are relatively simple.

There will be no impact on navigation or fishing by transfer of these parcels out of the trust. And the
harbor is the primary thing that the Supreme Court and the
other courts in California have sought to protect when
there's an attempted conveyance out of the trust, is
waterfront or property that is necessary for those water
dependent uses.

What we have is a piece of property that's behind
this six-lane road an cut off about 550 feet at its
nearest point, from the water's in the way there.

CHAIRPERSON BUSTAMANTE: The parcels that are
outlined in read, does that mean that those were -- that
fill that took place in the 40s or 50s as you mentioned?

SENIOR STAFF COUNSEL FOSSUM: Yes. This area --
CHAIRPERSON BUSTAMANTE: Is that still subject to
all the public trust land?

SENIOR STAFF COUNSEL FOSSUM: Absolutely. The
Legislature in 1964 set this little blue line you can see
up here as the boundary between the City and the State,
because there was ongoing controversy at the time between
the City and the State as to where the boundary was.

However, prior to that, this area had been
litigated between the City and an upland property owner in
this area. And they had actually lost more.

So when the City redesigned its seaside road,
they cut off some tidelands and that's what initiated the
1991 swap that we are involved in that -- where the State
acquired this piece of property and gave us this property.

CHAIRPERSON BUSTAMANTE: So the purpose of the

distinction between where those upland wet areas are and

below that is to show that the initiative did the fill

below?

SENIOR STAFF COUNSEL FOSSUM: That's correct.

MR. DENEVAN: May I respond?

CHAIRPERSON BUSTAMANTE: Mr. Denevan.

MR. DENEVAN: Thank you, Mr. Chairman. Yes,

there was an initiative in 1960 concerning the expenditure

of tideland funds. And then in 1964, this went before the

State Lands Commission. Now, what they did in 1960 --

well, first they had the initiative and then the

initiative set forth the uses for this landfill area.

And the Lands Commission set conditions. In

other words, it was a conditioned permit by the Lands

Commission and it set forth a number of details. Now,

this was to be basically an original elongated park and a

few another other uses.

And so the site was created with public monies

and the entire site should be subject to your review.

CHAIRPERSON BUSTAMANTE: They've said it's under

public trust lands.

MR. DENEVAN: Yes.

CHAIRPERSON BUSTAMANTE: The entire area.
MR. DENEVAN: Yes. So we have a number of other uses. In fact, there are planned the LCP provides for hotels in the same area, and a number of others that are not before you today in this current project, but there are a number of uses.

And I think that, for example, the shoreline park is subject to four acres to be taken for commercial development. Now, you have the map in my packet that I sent out to you. Certainly, that and some of the other landfill is subject to those conditions.

And even if you only focus on those four acres, it would be very worthwhile to look at your conditions as established in your -- in the minutes that is set forth in your files. And I think it's completely untrue to say that this site is not -- the current project is not in this area of landfill.

Thank you.

CHAIRPERSON BUSTAMANTE: Thank you, sir.

We have two other speakers. Bry Laurie Myown, Traci Wilson KleeKamp.

MS. MYOWN: Thank you Lieutenant Governor and Madam Controller. Most of the items that I'm actually going to advocate on behalf of our -- continue my correspondence to you dated September 14th.

I'd like to think of myself, probably, as much of
an environmentalist as I'm sure everyone in this room
does, but it's not my area of expertise, and I really
appreciate all the education the public trust law you've
provided.

I work more in the area of protecting urban
neighborhoods. And in that realm, I think many of us
familiar with redevelopment in its forerunner urban
 renewal. I've noticed a disturbing trend where it seems
like you if you manage something badly enough and blighted
enough, that undervalues the and it become really
profitable the redevelopment according to a new plan.

So I'm very disturbed reading the background
section of the staff report which describes, and please
understand, I'm not speaking about any current
administration, but described about 3 quarters of the
century of how the City of Long Beach, under the
supervision of the State Lands Commission, everyone's
predecessors has pretty much squandered tidelands
reserves, destroyed its entertainment resources, destroyed
its historic resources in the tidelands, separated its
downtown from its waterfront, removed the beach portion of
the tidelands that it had, failed to reconnect the
downtown back to the waterfront according to the plan,
spend the land and water conservation on local park monies
on the parks that were asked for, or it implemented
significant portions of its LCP. This is the rationale for why we're doing this deal.

And in order to approve this, you are going to have to make a finding that the lands entrusted to the people of the State no longer served the purpose for which they were entrusted.

How did this come to be? A finding, speaking as someone unfamiliar with the law, making that finding in a civil court would be grounds for damages, making such a finding in a criminal court would be grounds for sentencing. Here is grounds for making a deal that could be the beginning of what some people have told you they think will set a precedent the state. Frankly, I think it will set a precedent for the rest of the tidelands in Long Beach.

So I'm very concerned about a condition of escrow that would undo this escrow if the current developer with the current plan does not go forward and complete all of it. Because our City Manager told us last Thursday night an option would be to sell the land and it would be infinitely more profitable without restrictions.

Now, since, as Mr. May pointed out, it's really difficult to separate the foot print of one property and its usefulness from the immediately adjacent land foot print, this would be a chain of events that would alienate
all of the tidelands from public ownership.

In that regard, I understand a lot of work has gone into doing this. And I'm a realist. I suspect it's going to happen today, so I would like to suggest some things that would, I think, make it more palatable to the public.

What we learn in Item 88 about the interest which public lands can be put to, as my letter requests, my City has plans to offer a $43 million bond offering to construct public improvements that would be largely parking facilities, roads and walkways, of which at least a third of it on a square footage basis of the lands you're trading out will be dedicated now not to bringing the public to enjoy public trust uses, but to bringing the public to enjoy and use the movie theater, big box retail and so forth that you are proposing to swap out.

Therefore, I mean, this is not a small or a temporary or an incidental part of the parking spaces and the public improvement, so I think they're going to have to be commensurately reduced, because they now would no longer would be serving public trust uses. So that is a condition that I think the staff report we heard on Item 88 would make necessary.

Otherwise, it's just a financial inducement, which the exhibit B for that report, I think, would have
argued against.

In addition, I also contest the appraisal. And I don't want to go into great length about it here. When Mr. Ryan was referring to an earlier appraisal the City had had only in connection with that POS for that bond offering, please understand that we have received no written information or even agendized items from our City of any local discussion of this item, until a meeting last week, which had three pages of background. And all the information we've seen has come from your staff in response to a Public Records Act request and we received it last Thursday, as our City has not responded timely to that same request.

But looking through the appraisal information, I have to not, again as a lay person, setting aside altogether what the City's appraiser did, I mean, I was very shocked to here Mr. Porter refer today to the process of finding comparables. The whole reason these are sovereign lands is that they're incomparably. We see there are literally no comparables, because public lands don't get sold.

So the value that you find through these lands right now is not the value that these lands will be when my city contemplates selling or doing something else with them. It would then be the only land that would meet such
a comparable standard.

However, going back to the $605,000 that you’re using today as your making a donation, that which was done a decade ago averages out to $77 a square foot for what you are, in this parcel, saying is, I believe, 22.

Now, looking at similar transactions that have been made across the state, and it appears to a lay person that there is no connection to any of these numbers. They’re all over the map.

Why? Well, they’re all politically motivated and publicly subsidized, in, I think, every instance you make such a transaction. There is no correlation to the private market.

As Mr. May pointed out the LA River parcels have already been funded. The funding has been obtained because they also under your stewardship have been so degraded by the Port use that what is of interest to them to our city has most been the grant applications, for their remediation and cleanup. And since the neighborhood lacks any recreation, grants were obtained for park use.

There is no assurance that the City will perform on creating that park for you anymore that it has in it’s On LCPS. So I think we need a performance guarantee or performance bond, as a condition of escrow, so that the State knows this land will be a park. What you get so far
Finally, and I mentioned this earlier, I just really want to be sure that this transfer, if it is made, will the escrow will dissolve, if the developer is not going to develop with all of this. This will not just alienate ownership in a manner that we can keep replicating all over. All of those things I think would make the escrow more advantageous for the State as well as for the people of Long Beach.

Thank you very much.

COMMISSIONER CONNELL: Mr. Chair, I'd like to follow up and ask for a staff response to that last question on the reality that, you know, if we take action today and there, for some reason, is not movement forward, financing doesn't occur or whatever, I mean, we certainly do not want to be in a situation where we have created a profitable advantage and we are seeing a flipping of land here. Mr. Thayer, how are you going to protect the Commission against that potential problem?

EXECUTIVE OFFICER THAYER: There's two public policy concerns here that are competing. And as we first contemplated this project, it seemed that we were looking at taking out these particular sites and not the larger area, because we're inherently conservative. We're not lifting the trust lightly. And although I think the
findings could be made to lift the trust from some of the
area that's in the immediate vicinity of where these are
on the same vicinity, the same findings could be made, we
chose to just look at the sites at the suspect uses alone.

And so as presently contemplated, in fact, if the
development did not go forward, the exchange would not
occur. However, the flip side of this and some of the
other Commissioners may want to comment on this as well,
that other side of this is if you leave this project out
of it entirely, this is -- We believe, at this point
having done all this work, and done the research on the
valuation and utility of the parcels that would be taken
out of the trust -- to the trust, and the utility of the
parcels that would be put into the trust, this is a good
deal for the State.

And so there's an argument that could be made and
it would be up to the Commission to decide that this would
be appropriate to go forward, whether or not the
development occurred or not, because at the end of the
day, the LA River parcels are greater value to the trust,
both from trust purposes and non-trust purposes than the
parcels we'd be giving up, whether or not they're
developed in a way at the present time.

COMMISSIONER CONNELL: Well, it may be a better
monetary value for the State, but let me just, as one
Commissioner, say emphatically I would not consider taking action today with the expectation this property becomes a poker chip in a land swap deal. I think that's abhorrent. It would be abhorrent in Long Beach. It would be abhorrent in Santa Barbara. It was abhorrent in downtown Los Angeles. And in a rare moment of unanimity, every candidate in the mayor's race stood up and came out against the project in downtown Los Angeles.

And I'm happy to say that as of last week that project has now been stopped and the property has been bought by the land trust based on that very issue of whether a swap was contemplated, and whether an excessive project was entertained by the new owner of the property. I do not want to be in that situation here, Paul.

I don't know how other Commissioners feel. I mean the only reason I would entertain going forward with this project is that it would enhance the purposes of urban renewal in Long Beach.

I certainly would not want it to be an ongoing game play where we have created artificial value that is then swapped for more artificial value to another developer downstream. That is not what I want to see happen.

So if this project does not go forward in the manner in which it is conceived, then I think we ought to
immediately be able to eliminate our support for the land trust transfer. I think that's what the woman was raising. And I want to know whether those protections are built into the staff recommendation. If they're not, I'd like to amend it to allow that to occur.

CHAIRPERSON BUSTAMANTE: How would you build that into the recommendation?

EXECUTIVE OFFICER THAYER: As we're presently contemplating, what we would do is end the escrow even though the change hasn't taken place if the present developer does not enter into a lease with the City, within six months of the closure of their exclusive rights to do so. By that I mean, I think it's DDR, are the initials of the developer, has an exclusive right to develop this parcel through May of next year, and then the City owns the plans after that period of time and can look for another developer to implement that project.

So, in discussions with the City, we have said if this project does not go forward, by January 1st, 2003, then the escrow is dissolved and the exchange doesn't take place.

COMMISSIONER CONNELL: Why January 1st, 2003? Why are we looking at a year and three months?

EXECUTIVE OFFICER THAYER: Because the developer has the right the go forward with this project until May
of next year and then the City has an additional six 
months the use the same plans and find another developer 
to implement the same plans, so that takes you up, I guess 
it would make it a little bit shorter, it would be 
whatever six months are after May of next year. It would 
take you to November, December, I guess, of 2003.

COMMISSIONER CONNELL: What do you mean, "use the 
same plans"?

EXECUTIVE OFFICER THAYER: The City -- I think if 
DDR does not go forward with the project, the City, I 
think, owns the plans for this development and can find 
another developer to use the same plans.

COMMISSIONER CONNELL: Would that come back to us 
for review?

EXECUTIVE OFFICER THAYER: No, because we 
normally wouldn't -- we only have review because of this 
exchange that's being proposed.

COMMISSIONER CONNELL: I mean, I don't know, I've 
had hundreds of millions of dollars of financing 
experience on real estate. I have never seen a 
developer -- substitute developer step in and be 
completely happy with the plans.

EXECUTIVE OFFICER THAYER: That's right.

COMMISSIONER CONNELL: So I guess, I'm a little 
confused here. What is the criteria or measurement by
which we are going to allow the City to continue forward on developing a project that changes in some measure or another from the initial plan that the approved or has been presented today?

EXECUTIVE OFFICER THAYER: Well, I think --

CHAIRPERSON BUSTAMANTE: We have a City representative.

LONG BEACH CITY MANAGER TOBOADA: Commissioners, Commissioner Connell, the way that we envision this and we have every expectation that this project will go forward with this developer, but we do have a termination clause in our development disposition agreement that gives the City the right to take over the entitlements to this project.

One way which it could be effected very easily would be for the City to step into the developer's shoes and simply hire a contractor/developer to build the project on our behalf. That is one way in which you can accomplish the same objective. So it's not -- like I say, it's a very unlikely scenario, but certainly we have contemplated that we have rights on this project, based on all of the investment of both the developer and the City, and that we would have an opportunity at the end of that period, should the developer not go forward, to be able to salvage this project in that way.
COMMISSIONER CONNELL: That doesn't answer my question. Let me again be very pointed in my question, and my question really, thank you anyway, is to my staff and to the Attorney General's office. I want to know what kinds of precautions, what kind of language we are using that specifically says if this project does not move forward and the City then ends up with a project, say, in May of 2002, what kind of assurance do we have as elected officials, at least two of us as elected officials on this Board, that we have not opened Pandora's Box, at that point, and we're not going the see a substantially amended project moving forward under the guise of an approval that we may choose to give today?

EXECUTIVE OFFICER THAYER: We do not have language that provides for that in the agreement now, because of these competing public policy considerations. However, if the Commission directs that that be so, there's no reason why we can't say that we're going to keep it in escrow and that we could enter into some sort of agreement with the City which would provide that the uses of these parcels which, after all, are city owned, so that they can commit to their uses, which are limited to the ones that caused us to consider the swap to begin with, that is the movie theatre.

COMMISSIONER CONNELL: Why do we even need to go
there? Why can't we make our approval to the City reflective of the time in which this current developer must use this parcel, and that our agreement expires if they do not use their agreement in May of 2003? That then -- or 2002. That then forces the City to come back with us and entertain a discussion with us about what other uses may or may not be contemplated. And if they wish to move forward on another development with someone else, you know, I'm willing to entertain it at that point, but I do not want this to be in play. I do not want this to go on beyond what we have now spent an extended amount of time understanding.

My fear is that it may change in its substance, and I certainly do not, in any way, cast aspersions on the current leadership of the City of Long Beach, but we do not know what we're going to have in the future and I am very, very concerned about this.

LONG BEACH CITY MANAGER TOBOADA: Commissioner, one guarantee that you have is that the entitlement process that would change this project would take far longer than the six months that we contemplated doing the same project. There's no way we could do it through a redesigned, refinanced, re-entitled project in a six-month period. We would simply step into the developer's shoes. That's all we could do.
There's no way this project could change without going through an entire -- we just need that time frame to be able to go back to our council and share with them their options, so that they can express --

COMMISSIONER CONNELL: Do you know a single circumstance, perhaps I'm not as knowledgeable as you, and we audit all the redevelopment agencies in California, so I think I've visited most of them. But I don't know of a single circumstance where a City has walked in and taken over the primary responsibility for a project of this magnitude.

LONG BEACH CITY MANAGER TOBOADA: We did a design and build on the aquarium, just that way.

COMMISSIONER CONNELL: That was a single use. That was the aquarium.

LONG BEACH CITY MANAGER TOBOADA: It is still an entitled project.

COMMISSIONER CONNELL: This is a multi-use project.

LONG BEACH CITY MANAGER TOBOADA: That is correct, but it is entitled.

COMMISSIONER CONNELL: Can you think of another circumstance where that has occurred?

LONG BEACH CITY MANAGER TOBOADA: Not the one that we managed.
COMMISSIONER CONNELL: And on a single-use project, the aquarium.

LONG BEACH CITY MANAGER TOBOADA: Well, an aquarium, a harbor, a parking structure.

COMMISSIONER CONNELL: Single use.

LONG BEACH CITY MANAGER TOBOADA: Well, it's all used for that bring people down to the waterfront.

COMMISSIONER CONNELL: That's different than this use.

LONG BEACH CITY MANAGER TOBOADA: I don't disagree with that.

EXECUTIVE OFFICER THAYER: If the Commission would like, then the Controller's direction could be implemented in the agreement, so that it would require DDR and perhaps some sort of reasonable extension that would be dependant upon a development that occurs the same as we're now facing.

CHAIRPERSON BUSTAMANTE: I think the majority of the Board would prefer to have that type of --

EXECUTIVE OFFICER THAYER: Well, make sure that's in the agreement.

MS. MYOWN: Madam Controller, one of our concerns is given the changes and the length that this project has taken, it's very easy for us -- and changes in the economy, it's very easy for us to imagine going forward in the phased or partial way. And so I'm not sure how a
protection tied to a time certain would address that.

What if we were to learn right before the
current contract period expires that they're now breaking it into
phases and building one use of it, but they've lost
another tenant et cetera, then where are we?

COMMISSIONER CONNELL: Well, I'm not familiar
with the phases of the project. Although I have visited
the project site, and I've been fortunate to get briefed
by the developer on this project, perhaps the developer
can respond to that. I don't know how the project breaks
down in phases or how he's moving it through the zoning
process.

MS. MYOWN: My question would be what if they
broke it down into phases because of changes in the
leasing economy or in other words, it's been supposed to
start for a long time as one phase and it hasn't, so what
would happen if during the contract period they elected
the start a portion of it, and where would we then be?

EXECUTIVE OFFICER THAYER: I'm not sure if the
phases matter as much as the ultimate uses that are going
to go on the property that we're swapping out here. And I
think as a result to respect the Controller and the rest
of the Commission's concerns that we may want to take one
or two steps further than just establishing by a date
certain, because if it takes awhile or if they suddenly
start construction in May and then they end up switching
the uses, we haven't really met the goals that you're
after.

And so I'm thinking we need to sit down and have
some sort of agreement with the City or something that
would provide at least for some foreseeable future, unless
they come back to the Commission that those uses that
we're doing the swap for are the only ones that the sites
can be used for.

Now, four years down the road, of course, things
change and we don't want to set up an agreement that would
be impossible. But for the near term, that would seem to
carry out what you're interested in doing.

COMMISSIONER CONNELL: Certainly, it is the
intent of my initial concern, and I'm relieved to hear
that other members of the Commission agree with me in that
regard, and I can't sit here and function as a draft's
person today, and come up with that language, but I am
very, very concerned that we look with great attention and
I've heard from the City in all of my conversations with
them that they are resolute about moving this forward
quickly.

Now, this is a very uncertain world we live in as
we have seen by these tragic events over the last week and
one can never project what's going to happen, but given
the City's leadership commitment to this and the
developers, evidently their commitment and financial
resources, one has to assume this is going to move
forward.

If it doesn't, however, and that small percentage
of unlikelihood that it would not, I want us to be
absolutely protected as a Commission that has granted this
opportunity to a city. And I see the developer is
standing there, maybe he can address the phasing issue.

CHAIRPERSON BUSTAMANTE: I think the staff
responded to the phasing issues as long as they maintain
within the kind of activities that they were specifically
allowed to participate in, that whether they phase it in
or they went all at one time, as long as they stayed
within those parameters, I think it would be complete.

COMMISSIONER CONNELL: I guess the question would
be what would they be using the land for in the interim,
which is what you were referring to, Paul.

MR. CHISESSI: Well, I don't anticipate a phasing
program, at this point. That's not the there may not be
one single free-standing building that comes along a
little bit later. We have not completed all of our
leasing, but the way we anticipate today is that we would
build a project that would open up, if we did start,
approximately in December, as I said. We'd open up in
April of 2003, approximately.

So there really isn't a phasing plan per se
slated for the project at this time.

CHAIRPERSON BUSTAMANTE: We have one more
speaker.


Chairman and Commissioners, thank you for addressing the
issue of what would happen if the property or the deal
fell out. We were concerned when the City Manager said
that they could sell the property.

One of the things I'd also like the thank you for
is to answer my public records request. I got it last
Thursday. It was my first opportunity to kind of really
look at what's been happening. We haven't had a public
dialogue about the land swap until about a week ago.

And, as you can see from our discussion, there
are a lot of things to talk about. I also think the
process has been politically cumbersome. I think that we
have been -- our process is really bent towards the
developer and not the interests of the public, which is
why I brought up the issue before about recreation.

We've been promised in terms of Cesar Chavez Park
part of the land for the residents in that area. I'm
going the switch over and where my mom hat about this
situation, Cesar Chavez Park, and I have some pictures for
you. I refer to that freeway strip median as asthma park. And I call it asthma park because on either side of that freeway median the port traffic, which means that the children in that area are subjected to rubber particles and diesel fumes, et cetera from the port traffic.

The other thing is standing from Cesar Chavez Park, it's all fenced around for safety reasons so the children won't get run over. And in terms of Cesar Chavez Park being 23 acres, ten of it is the freeway median and the freeway. So they have been counted as 23 acres, which they might have done just to get grant money, I'm not sure, but only 13 acres of it is active park land.

My concern in the way that they're willing to swap is that eventually that's all going to become a freeway, and I think that that's a problem. I think if the City is making the commitment to us about the park land, they need to keep with it.

Now, Mr. Toboado was saying they didn't have anything in their capital improvement budget about parks. I wanted to say that they created their Cesar Chavez master plan in 1996, and they divided it into a number of phases and they have five development phases. And so far construction has happened in three of the five areas, but the master plan has not been completed for any of them.

It says the reason why they haven't proceeded
with this area five that you are thinking that people can have a bridge to or a road access to it is because they didn't have the money to move the roadway, and they didn't know when they would be moving it.

But it's been promised for that particular area that they would get much needed recreation space, because there were not football fields, baseball fields, et cetera, those types of active recreational uses in that area.

COMMISSIONER CONNELL: Well, evidently there can't be on our land, anyway, if Mr. Thayer is correct.

MS. WILSON-KLEEKAMP: This is a totally unrealistic thinking that you can drive or walk to that median. You are basically telling children to go play in the freeway, all right.

Now, you know, we have Cesar Chavez Park, which you're now going to take two and a half acres of, fence it all off and deny the public access there in an any area that's very densely populated with children who are poor. They lack schools, and I think this is an egregious offense to children in the community and what they've been promised in terms of park land.

That property already belongs to the City and I don't see why we're going through this process for land that's already been promised to our public. I don't see
any State benefit for taking it away from us.

So with that said, I don't think that the swap is necessary. At the last council meeting, our city attorney said that this swap was not necessary. It is only operationally necessary which makes me think it means it has to happen just for the developer. And I don't think that these swaps should happen just to benefit the developer.

The type of project that we're building is duplicated all around us in a five-mile area. We're chasing the same retail dollars, low-wage earning jobs to perpetuate this cycle of poverty in downtown. And I don't think that we should continue with that path of development.

By the way, I have pictures for you, if you're interested of what the freeway and the park looks like and the freeway median. You can see lots of cars and traffic. I think there's a Southern California Edison generator on one of the parcels entirely fenced in, and I would think it would be unsafe for someone to accidentally run into the median from the freeway. There's a tremendous amount of traffic on the 710 freeway from the port, which we have not resolved that issue.

I haven't figured out how nine million people are going the get down the 710 freeway to our Queensway Bay,
but miracles never do cease to exist.

Thank you.

CHAIRPERSON BUSTAMANTE: Thank you.

LONG BEACH DEPUTY CITY ATTORNEY McCABE: Mr. Chair, I apologize. I filled out a card, but I haven't been called. Is it appropriate to speak briefly?

CHAIRPERSON BUSTAMANTE: You're right, you did fill one out, and I have not called you.

LONG BEACH DEPUTY CITY ATTORNEY McCABE: Thank you very much.

CHAIRPERSON BUSTAMANTE: This is the last one.

LONG BEACH DEPUTY CITY ATTORNEY McCABE: I will be brief. I very much urge the Commission to be aware, as a whole, that this has been a very long process, that the Queensway Bay commercial development, which we're speaking of today, has had more than 25 city council appearances over a period of years, that the city council has always acted in a lopsided fashion to approve this project.

That the City Council acted in special session this last Thursday, called itself into session especially for this purpose, and voted 8 to 1 to go ahead with this plan swap.

The swap itself has the you know, when you boil it down to its total effect, has the end result being that these parcels along the river will be made subject to the
trust that we're subject to the trust before.

Those uses will be limited to tideland uses for all the relevant purposes are going to be park in this area.

The City has an absolute commitment in terms of its energy, subject to future funding and necessary council action, to go ahead with park development. And we'd very much like to encourage this and making this -- making these river parcels subject to the tidelands trust would further that goal.

I just wanted to emphasize, again, that the democratic process in Long Beach has taken its course. Both councilmen for the districts involved have voted consistently in favor of this project, and both council people involved in this -- in the potential exchange favor that on behalf of their constituents.

Thank you.

CHAIRPERSON BUSTAMANTE: Thank you.

COMMISSIONER CONNELL: Mr. Chair, I have a motion I want to make, but I will certainly respect, Annette, if she wishes to speak on an informational basis.

CHAIRPERSON BUSTAMANTE: Annette.

ACTING COMMISSIONER PORINI: Yes. I just wanted to ask our last speaker, the two and a half acres within Chavez Park, is that specifically -- is that a joint use
project with the City -- with the school district, rather?

LONG BEACH DEPUTY CITY ATTORNEY McCABE: Of the parcels that we're speaking of, the river parcels none of them are presently within the boundaries of Cesar Chavez Park.

Now, with that perhaps the City Manager can answer.

LONG BEACH CITY MANAGER TOBOADA: I think I'm better qualified on this one, because there is no agreement currently between the school district and the City of Long Beach for joint use of the park. It's been proposed. The organizations that give us guidance, such as the project area committee for the redevelopment agency project area have voted not to go forward with that joint development. The council has yet to undertake that particular proposal.

And if it did go forward, it would be on the basis that the school would only have shared use of it not exclusive use.

ACTING COMMISSIONER PORINI: Thank you.

CHAIRPERSON BUSTAMANTE: What's the pleasure of the Commission?

COMMISSIONER CONNELL: I would entertain moving forward on this project, but only with two very significant changes to the staff report.
And those two changes are that the time factor of May 2002 becomes a dropdead date for movement forward on this project, and that if this project does not have signed leases and is not moving forward as stipulated, that our approval of the swap expires, and that there is no option for the City to develop this project on its own and that occur -- that development occurred without any phasing.

So those would be my three restrictions, that there would be a time factor of 2002 that is adhered to, that when that time -- and that second that that project move forward that the lease understanding is without phasing, and third that when the 2002 period expires, May 2002, that our swap is basically voided at that point, and that the property comes back to the State.

I could see scenarios developing on the economic front, having spent two and a half hours in those meetings this morning, where the State has more resources than the local government, and that the State might actually have greater flexibility in going back and doing something with that property in Queens Bay, where the City could not. And I would not want to be hampered by our ability to do that in the future.

So I would make my approval, at least, conditional on those three factors.
CHAIRPERSON BUSTAMANTE: What if the City came to us prior to the end of May and indicated they wanted to maintain or we wanted to complete the same activity as the developer, but they came back to the Commission prior to the end of May?

COMMISSIONER CONNELL: I think they should go through our approval process again. In other words, our approval today for this arrangement, is we have now analyzed it, we've appraised it, we've factored in after extended discussion all of the players as they now exist. If that group of players, the team taking the field, the going to differ, then I think we should have a second look at that. Given the dynamics of the kind of markets that we are now in, I have every belief that we are going to be in a stronger economic position than many local governments in this state, and I do not want to, in any way, restrict the ability of the State to move forward on a project down there.

EXECUTIVE OFFICER THAYER: Would you want also, just as a point of clarification, Mr. Chairman, would the Controller's motion also contemplate then some sort of provision to ensure that even with this developer that the uses presently planned for these sites that we're trading out of the trust, will go forward?

COMMISSIONER CONNELL: Well, that's my
anticipation. We are certainly not approving this to become a, you know, 24-hour nightclub district. We've had extended discussions about the precedent setting. I know we all have, as Commissioners, heard about the precedent setting nature of what we're doing here and I certainly do not want to have a situation facing us in the Port of LA or Santa Barbara or Ventura County where they're just eager to use their lease of authority to do something which is not as, perhaps, pleasant as we would want.

And I want to send a very strong message to local government, that there are very restricted uses when we do have a swap. And so I would assume that exactly the uses that have been contemplated that have been presented to this Commission, the exact potential conceptual drawings be used and that we not have any amendment of uses as we move forward, that we do not have retail space, substituted for entertainment space or, you know, some other use that we cannot, at this point, contemplate. We are approving a particular plan.

EXECUTIVE OFFICER THAYER: Thank you.

ACTING COMMISSIONER PORINI: Just one point of clarification, that the dropdead date then as proposed would be May of 2002 or May 2003?

COMMISSIONER CONNELL: May 2002.

EXECUTIVE OFFICER THAYER: And May 30th, I
COMMISSIONER CONNELL: I'll restate that again for the record, if you want me to. There are four factors then. We've had three and we've now added a 4th. I appreciate your alerting me, Paul, to that one.

The time factor is the end of May, May 31st of 2002 for having these necessary local agreements in place.

Secondarily, the developer must be moving forward without phasing on the development of this project.

Third, that that development activity must reflect the existing plan as presented before this Commission and in the attachments that we have.

And fourth, that should the deadline not be met, that our approval of the land swap would expire and we would be able to have our property back as the State's.

CHAIRPERSON BUSTAMANTE: That's four.

COMMISSIONER CONNELL: That's the fourth. That's the fourth. In other words, it reverts back. I don't want us to be in limbo, using a Catholic phrase, and find that, you know, it is expired, but we don't know who owns the property. I want it to be clear that it comes back to Heaven, the State being Heaven, here.

CHAIRPERSON BUSTAMANTE: So there's a motion.

Is there a second?

ACTING COMMISSIONER PORINI: I'll second.
CHAIRPERSON BUSTAMANTE: Let the record show that the motion passes unanimously.

EXECUTIVE OFFICER THAYER: Very good.

Moving on to the next item.

CHAIRPERSON BUSTAMANTE: And what is that next item?

EXECUTIVE OFFICER THAYER: Item 93.

CHAIRPERSON BUSTAMANTE: The next item is a brief break for the Commissioners who are drinking a lot of water up here.

(Thereupon a brief recess was taken.)

CHAIRPERSON BUSTAMANTE: If we can get this meeting back in order.

EXECUTIVE OFFICER THAYER: If people could find a seat, we're going to go ahead and get started.

CHAIRPERSON BUSTAMANTE: Paul, is there a reason why we can't do 93 and 94 together. They're both basically the same activities, just --

EXECUTIVE OFFICER THAYER: Certainly, we can work right through those. I think actually 93 might not take too long.

CHAIRPERSON BUSTAMANTE: We basically have until 2:15 to be able to complete this hearing, so we need to move these other items fairly quickly.

EXECUTIVE OFFICER THAYER: Ninety-three then I'll
be very brief in the introduction merely say that the resolution propose by the Lieutenant Governor echos the approach to offshore oil drilling that's been taken by many of the State leaders. And the resolution does two things. It urges Congress to first -- or Congress and the administration, in general, not to conduct oil development on the 36 undeveloped leases in federal waters.

And the second thing it does is it urges the federal government not to proceed with any other new leases. And this is consistent with the approach taken by a lot of the others in California.

CHAIRPERSON BUSTAMANTE: Annette?

ACTING COMMISSIONER PORINI: I just wanted to commend the Lieutenant Governor and the staff for bringing this resolution forward. I believe it's very consistent with the position we have had in the past and with Governor's statement just recently, with regard to the federal decisions. So I'm very supportive of it.

CHAIRPERSON BUSTAMANTE: Thank you. Is there any comments by the Controller?

ACTING COMMISSIONER ARONBERG: Also very supportive.

EXECUTIVE OFFICER THAYER: We have just one speaker.

CHAIRPERSON BUSTAMANTE: I believe we have two.
Carla Frisk and Tanya Gulessarian.

MS. FRISK: Chairman Bustamante and Commissioners, it's pleasure to be here in Sacramento with you today. As you know, the Legislature is out so Senator O'Connell is in the district, therefore he couldn't be here.

To say that he's very thrilled about that this Commission entertaining a resolution opposing the development of the 36 federal leases off the Santa Barbara County coast would be an understatement. As you know, the Senator repeatedly opposed the development of those leases for all the reasons cited in your resolution. And I'm not going to go over them, because you already know them.

As you may recall, this Commission took the lead a number of years ago in establishing a moratorium on new leasing in all State waters that had not already been protected statutorily. That action was very important because it led the way for the passage O'Connell's O'Connell's legislation when we was in the Assembly, AB 2444, the California Coastal Protection Act.

So today Senator O'Connell has asked me to thank you, Lieutenant Governor, for introducing this resolution and putting it before this Commission and to express its strong support for it's passage.

I also have, which I have handed copies out, and
I guess they will be passed out to later, from two of our county supervisors, since we weren't able to get this on the agenda, Susan Rosh from the Second Supervisorial District and Naomi Schwartz from the First Supervisorial District mentioning the potential cause of dangers of offshore oil development, the local opposition to new development, the importance of tourism and healthy oceans to continued.

The long established ocean based industries in our area urge you to adopt this resolution to ban further oil development off our shores.

CHAIRPERSON BUSTAMANTE: Thank you. There's also a letter from the Citizens Planning Association of Santa Barbara County. I believe that's on record.

MS. GULESSERIAN: Lieutenant Governor and Commissioners, I have those other copies of those letters from the Environmental Defense Center and Citizens Planning Association.

My name is Tanya Guesslerian and I'm a staff attorney with the Environmental Defense Center. We strongly urge the State Lands Commission to adopt the resolution propose by Lieutenant Governor Bustamante supporting termination of the 36 undeveloped leases in federal waters off the central coast of California.

The Environmental Defense Center is a public
interest environmental law firm working in Ventura, San Luis Obispo and Santa Barbara counties. And we brought the original request for termination of the leases and review by the State of California.

EDC also represents environmental intervenors in the State of California versus Norton Case.

EDC believes the federal leases should be terminated because the oil companies failed to demonstrate due diligence in developing these leases, and because the environmental harm associated with such a development far outweighs any potential benefits. In addition, EDC supports a permanent ban on any new leasing off the California coast.

According to a State report, the California ocean resources, which is mentioned in our letter, the State receives much more revenue from nonpolluting industry such as tourism than offshore oil development.

Thank you for your consideration of this important resolution and we urge you to adopt it today.

CHAIRPERSON BUSTAMANTE: Thank you.

Any other concerns?

What's the Commission's pleasure?

ACTING COMMISSIONER PORINI: Move approval.

ACTING COMMISSIONER ARONBERG: Second.

CHAIRPERSON BUSTAMANTE: Let the record show that
the motion was made, seconded and is moved unanimously.

EXECUTIVE OFFICER THAYER: The next item is 94 and Kris Walker from the Commission staff will give a brief presentation on this.

MR. WALKER: Lieutenant Governor and Commissioners, as you know, Chevron removed four oil platforms off the coast of Santa Barbara in '96 leaving large shell mounds on the bottom. The staff of the State Lands Commission and the Coastal Commission directed a study to be made of those mounds two years ago.

That study showed several things. First, that the mounds are not biologically productive. And second, that they all have a similar structure of hard mound followed drill nodes and cuttings in the sea floor. There are samples taken -- core samples taken that show there is chemical contamination within the mounds, but it is a very low level.

And finally, it is physically possible to remove those mounds using one of several methods. Although, all of those would be operating at the depth within the current technology.

The study did not address several important questions, and the item before you is a request to do an Environmental Impact Report to answer those questions and then come back to you with a recommendation of the project.
as to whether the mounds should be removed, left in place or some other treatment take place.

CHAIRPERSON BUSTAMANTE: Now, we did a core sample. I remember we did this some time back. What were the results of the core samplings.

MR. WALKER: On three of the mounds --

CHAIRPERSON BUSTAMANTE: This idea was to take the core to see if there was anything we could discern from that coring, so that we're not just having to go through more expensive EIR process if it were not necessary or that we can make some kind of determination if, in fact, we could remove the shell mounds.

MR. WALKER: That is correct. And on three of the mounds we found essentially below levels of detection for almost all chemicals. On one of the mounds we were above allowable amounts in PCBs and in nickel.

What it did not determine was and why we now need the EIR is whether or not if you took those mounds out, what would you have to do to dispose of them, whether it can be disposed in the sea, on land in a regular landfill, or whether it would be special treatment. And so now that's what we are asking to go back and do.

ACTING COMMISSIONER PORINI: I'm just wondering about timing. What do we think our timeframe is going to be if we go back for this EIR, it seems like there's been
a significant amount of time that's elapsed.

MR. WALKER: There has been a large amount of time. We have gone forward with interviewing contractors. We have not done the cost negotiations pending your action. If this is approved and you select them in the next week, we would have a draft EIR available for public distribution in April, and we would probably have a final document by August.

CHAIRPERSON BUSTAMANTE: Any questions?

In this process, this is going to be the first time that we're contemplating removing shell mounds. And so I would hope that any kind of removal would contemplate staging or phasing of activities to ensure that as things are taking place there are assessments that are being made in each of the phases, so as not to bid out something in which -- or to have an EIR that would talk about only the removal in one large effort.

I would hope that we would be very diligent. And we are going to go through this process, so let's figure out how we would go through it in a way that the first time was done the right way, and if we get involved with something that we didn't anticipate, that there are different checks and balances.

MR. WALKER: I just hope that the EIR would also sort of identify the order in which we should approach the
форматов, от наименее опасных до наиболее опасных.

EXECUTIVE OFFICER THAYER: И мы также могли бы
направить консультанта, готовящего EIR, на рассмотрение этой
альтернативы фазы удаления или хотя бы параллельного
наблюдения, чтобы когда одна была завершена, другая удалялась
и результаты этого были немедленно доступны, чтобы видеть,
может ли это быть изменено методом удаления для других.

Но мы, на этом этапе игры, мы можем предоставить
это вводное, чтобы документ рассматривал эту
вопрос.

CHAIRPERSON BUSTAMANTE: Любые комментарии по этому?

Any other comments?

We have two people Tanya, again and Carla.

MS. FRISK: Еще раз, Carla Frisk из кабинета Сенатора Jack
O'Connell. Как все вы знаете, это было длительным
протяженным процессом, которым мы занимались. Как
было сказано ранее, эти курганы были удалены -- или разрешения
были выданы в 1995 и 1996, платформы были
удалены. Это заняло много времени, чтобы получить
студию, но ваш
шеф и штаткомиссии наконец-то сделили
вместе и сделали его
полным. И как ваш шеф
succinctly stated, it showed the three things that we had
been maintaining all along.

And, in fact these shell mounds do have toxics in
them. And, in fact, they are not providing the habitat that's some had indicated they were and that they can actually be removed.

Again, as your staff stated, Chevron has submitted a permit application for three potential projects, removal, modification and mitigation. And attached testimony from Senator O'Connell has those descriptions attached, so it's in the staff report.

I think it's important to note that the California Coastal Commission did require on June 13th that the application to the Commission be for removal. And in discussing this issue, I think it's important that the project description be consistent for a CEQA review process.

And one of the concerns that we would have is that if the project is not for removal, that all of the options have to get full project review. So you then have one project that gets full project review and alternatives that are looked at or you have three projects that are getting full project review.

And when you look at the issue of the two other projects shell mound mitigation or modification, those projects don't, in fact, take into account this issue of the toxicity in the mounds. This report says they do not represent this. The assumption in Chevron's project
description is that they do not represent a chemical or biological hazard to the environment. The information in the study, meaning the shell mounds study, does not suggest that this is the case.

Further more, the project description for removal includes the removal of the caissons that the platform has on it. It's critical that we have -- that you that the Coastal Commission and the State Lands Commission have the option if it comes down to that, which is what you're addressing of partial removal, complete removal so that you're not put in a box. It's either all or nothing.

Again, the same concerns are that were just reiterated about the longevity of this process. In 1995 and 1996, the Senator indicates, "It is nothing short of ridiculous that it took Chevron five years to apply for a permit to address this issue." And we hope that you and your staff will stay on this project, now that we do have many of the studies that we were hoping to get to make sure that this goes forward and that we get this issue resolved as soon as possible.

There are at least 20 platforms off the central cost, which will ultimately be going through the abandonment process. And it is likely that many of those will have these mounds under them, if not all of them and that there will be toxics there as well.
So it's really an arduous process, but this is so critical in terms of what will occur in the future with regards to additional abandonments and additional mounds.

Also, I have a letter from a Supervisor named Schwartz in whose district these shell mounds rest in Santa Barbara County, mentioning that the county of Santa Barbara owns the property on which the platforms were ounce erected, and therefore the county has a vested interest in ensuring that post-abandonment activities environmentally sound. Naomi Schwartz endorses the Commission and State Lands Commission's permits to remove -- original conditions to remove the toxic debris beneath the platforms upon abandonment, including the shell mounds, and are, again, concerned about the time line. Finally, urging you to proceed with the preparation of the environmental document to evaluate the issue of the removal.

Thank you.

EXECUTIVE OFFICER THAYER: On two points, we'll fully investigate all 3 different options and the EIR will do that, particularly the full removal option, which is the one that I think she and some of the others are mostly in favor of.

And her second point is we don't necessarily accept at face value -- we don't accept at face value
Chevron's assertion that there is no contamination.
That's the job of the EIR to determine, you know, how much contamination there is.

CHAIRPERSON BUSTAMANTE: And we also don't accept at face value that just full removal is the only alternative.

EXECUTIVE OFFICER THAYER: That's correct.

CHAIRPERSON BUSTAMANTE: If it's the best alternative here. It's going to be very important, the idea of coring and then the reason for the EIR was to -- because we are setting a precedent. We've never done this before. We have to make sure that the first one is done right. And so, however, we do this, we have to make sure that it is done in a way that you're not going to stir up a tremendous amount of toxins that end up in the water and that it ends up having greater environmental damage.

If we could all take it out without any problems, my guess is that that would be the option that most people would want. But if it's going to create huge damage and pollution in the waters, I think we have to be very, very careful exactly how we're going to do this.

MS. GULESSERIAN: Lieutenant Governor and Commissioners, I have a copy of Environmental Defense Center's letter, and another letter from the Citizens Planning Association.
My name is Tanya Gulesserian. I'm an attorney with the Environmental Defense Center.

Just to comment regarding the late submittal of letters. Several agencies are able to put their staff reports on the web site. This would ease the public's ability to review the information in a timely manner at least a week prior to the hearing, so that we are able to review it and then submit a letter commenting on this information on a timely basis, so that you're able to review those letters before you come here today.

So we would request that staff reports be available on the Internet if that is possible.

The Environmental Defense Center is a public interest environmental law firm. We're representing the Citizens Planning Association, the Sierra Club, and the Pacific Coast and Federation of Fisherman's Association, with respect to Chevron's failure to remove its debris in compliance with State Lands Commission, Coastal Commission and Army Corps permits.

Since 1996 some Four-H platforms were removed. The Environmental Defense Center has been advocating for compliance with these permits.

Finally, in June 2001, five years later, the California Coastal Commission directed Chevron to apply for a permit to remove the toxic mounds. Because the
State Lands Commission is the lead agency under CEQA. Chevron was also required to submit a permit request to the State Lands Commission.

However, rather than apply for a permit to remove the mounds, Chevron has submitted a proposal involving a range of alternatives. This proposal violates the clear direction of the California Coastal Commission to submit a permit amendment to remove the mounds.

The State Lands Commission should consider the removal alternative to be a project description and evaluate other proposals as project alternatives. The alternatives now listed should also include an alternative involving removal of all debris except the caissons. And then as the Lieutenant Governor was mentioning, perhaps another alternative that dealt with phasing to address a phased project so that we have all the information in one environmental review document, and we're not hear next year with an inadequate EIR that doesn't cover some action to comply with these permits.

This recommendation is consistent with the existing State Lands Commission permit, which already requires full site clearance.

Removals is especially important, given the fact that interim safety measures required by the State Lands Commission, in particular the requirement for buoys to
mark the locations of the mounds have been woefully inadequate. We have submitted some charts to you attached to our letter that show that buoys have been found missing or damaged 34 percent of the time.

In addition, the shell mounds environmental review confirmed that the mounds do contain toxic levels of contaminants and that such contaminants are leaching into the sedimentation beneath the mounds.

Contrary to the staff report, and I believe Ms. Frisk addressed this question, the review did not find a lack of water column contamination. In fact, the review did not test the water column.

Although EDC has requested that water quality testing be conducted, to no avail.

Finally, EDC urges the State Lands Commission to demand a timely permit review process and to ensure that this process that is set forth is being met. The issue has been unresolved for over five years. And, as you know and you stated, this action will set a precedent for over 20 platforms that are offshore of the central coast.

Thank for this consideration of this issue.

EXECUTIVE OFFICER THAYER: On two points on the Internet question, we've started to post some of our more popular items. And so, for example, the Queensway Bay item and the public trust items have been on the Internet
for several weeks. We are investigating moving the next step and to make even more of them available. It does require both staff and equipment resources in order to do this. We know that the Coastal Commission does, in fact, make some of theirs available, although not all of them in recognition of those resources, but I wanted to let you know that we're headed in that direction.

And then in terms of the project, I'm not sure -- the Coastal Commission has directed that Chevron return with a full shell mound removal application for a permit amendment. However, the Commission's original approval, in essence, gave them the authority to demand that kind of an amendment. We don't have that. And instead as the previous speaker mentioned, Chevron's proposed a range of removal options including the one that the Coastal Commission required. So all of that will be studied in the EIR.

CHAIRPERSON BUSTAMANTE: Along with the issues of water quality testing?

EXECUTIVE OFFICER THAYER: Absolutely.

CHAIRPERSON BUSTAMANTE: Any questions?

ACTING COMMISSIONER ARONBERG: So, Paul, I guess what you're saying that the project description is going to be removal with the other alternatives as suggested by the speaker?
EXECUTIVE OFFICER THAYER: No. All of them will be evaluated equally. The project description for the EIR is somewhat dependent upon what the applicant applies for. In other words, we can't write that separately from what the applicant is proposing. And in our case, the applicant proposed that an EIR -- in essence a range of options that they wanted the EIR to review to determine which would be best. But this full removal option, which is one that the Coastal Commission asked for, is one of the co-equal options that has to be fully examined.

ACTING COMMISSIONER ARONBERG: Is there any reason for this Commission to express its desire that the mounds be removed, if it is safe and feasible and nonpolluting?

EXECUTIVE OFFICER THAYER: The Commission can do that, but, of course, the EIR will develop that information. And so I think, you know, the approach right now, the best approach, would be to come up with a solution, the direction might be the solution that's best for the environment. And we don't know what those answers are yet. One suggestion on method of dealing with them that was discussed in the earlier study was whether or not some of them should be buried in sand. And I'm not necessarily subscribing to that as the best solution at all, but if there's some contaminated mound where the
removal of the mound itself might be sustained, some of
the contaminants, that might be a good one for one of the
mounds. So, at this point, it would be difficult to say
what's best for the environment.

ACTING COMMISSIONER ARONBERG: Can we have this
be expedited as another question.

EXECUTIVE OFFICER THAYER: I believe Kirk Walker,
the staff person indicated, that the draft would be out in
April if everything worked out and the final coming in
August.

CHAIRPERSON BUSTAMANTE: What's the pleasure of
the Commission?

ACTING COMMISSIONER PORINI: I'll move approval.

ACTING COMMISSIONER ARONBERG: Second.

CHAIRPERSON BUSTAMANTE: Motion has been made and
seconded. Let the record show that the motion passed
unanimously.

Are we going -- do we have anything on 95?

EXECUTIVE OFFICER THAYER: It's an oral staff
presentation. I'd recommend that perhaps we take up the
two items that have been trailed, 82 and 84 from consent,
and if we're running out of time we can do the audit
report at a future meeting.

CHAIRPERSON BUSTAMANTE: Let's go to those 2
items.
EXECUTIVE OFFICER THAYER: Item 82 I think is a presentation. This is the proposal by Venoco to extend the due diligence requirement for submitting a development plan by two years.

MR. MOUND: Venoco, a least was transferred to Venoco in March of 2000. They acquired Chevron's 50 percent interest in this Lease 3150. At that time, they had asked for a two-year drilling deferment to study the drilling options and to come in with a development plan and a proposed drilling plan. However, the Commission only granted them one year.

They had requested, like I said, an initial two years. However, they didn't meet that requirement and we still, as of yet, don't have a plan or a development plan or a drilling deferment approved.

We've reviewed their request to extend this another two years. We believe that they've had plenty of time. They blame the fact that they haven't submitted a plan to the Commission on the fact that they were having difficulty getting information from Chevron during the transfer. We looked at their reasons for the delays. I believe it was partly Chevron in their reorganization and moving the facilities, files were relocated and could not be located. We also believe that Venoco could have within diligent in getting the information they needed to develop
a plan for this lease.

Therefore, because of that, we're suggesting that you do not give them a deferment -- well, that you give them a deferment, but not beyond the year -- not beyond January 1st, 2002, which is about four months from now, which is giving them another four months to complete a -- or to come into you with a development plan for this lease.

CHAIRPERSON BUSTAMANTE: Is a representative of Venoco here? Yes, I believe so.

CHAIRPERSON BUSTAMANTE: I didn't see a request to speak form, so I'm assuming you don't want to speak?

They don't want to speak they're just here to answer questions.

Do the Commissioners have any questions?

ACTING COMMISSIONER PORINI: I'd just like to make a statement.

CHAIRPERSON BUSTAMANTE: Sure.

ACTING COMMISSIONER PORINI: I kind of feel like I'm being put in a position of being a mom, but I'll approve this deferment for four months, but I don't believe I'll approve any further deferments, period.

ACTING COMMISSIONER ARONBERG: Move approval of staff's recommendation.

ACTING COMMISSIONER PORINI: Second.
CHAIRPERSON BUSTAMANTE: There is a motion and a second.

EXECUTIVE OFFICER THAYER: There is one person who has signed up to speak.

CHAIRPERSON BUSTAMANTE: I'm sorry. I must have missed that.

MS. FRISK: When you have to go through two airports to get here and two airports to get home, you try to make it worthwhile. Thank you.

Carla Frisk with Senator Jack O'Connell's office.

I'm here today to express the Senator's concern about deferments in general. A concern that oil companies do not take their due diligence requirement seriously. And as you heard from staff, there is some concern at that level as well.

Again, as you know, Senator O'Connell has significant concerns about additional drilling in the Santa Barbara channel. And this concern is just basically augmented by this situation. For example, I was present at the hearing before the State Lands Commission when the Benton Oil Company promised this Commission it would absolutely be drilling in one year, and I believe all the members were there. I think this Commission was very clear that they wanted that to move forward or not.

And in the end what happened was Benton did
virtually nothing for about ten months and then
immediately started activities, applied to the Commission
for an additional deferment. The county acted before this
Commission could act. The county had an entirely
different permit condition.

CHAIRPERSON BUSTAMANTE: We're talking about
Venoco right now.

MS. FRISK: Right, but in the end the point is
Benton was sedate, which they should be doing in it one
year and now it's three years. And our concern is that we
have are seeing these deferments come before the
Commission and we don't really feel that the oil companies
are taking the deferment seriously.

We don't feel that we are sure that, in fact,
when the one-year is the one year is going to be up. And
until the Commission begins denying some of those
deferments that may not be the case, that may continued to
be the situation.

CHAIRPERSON BUSTAMANTE: Please sum up.

MS. FRISK: Many of those deferments for
submitting a development plan actually expired last March,
so it has already received de facto a six-month extension
and it is still unable to meet it's obligation. Again,
it's critical that this Commission take an action that
will get the attention of oil companies and send a message
that if their operating in State waters or they have due diligence requirements they better take them seriously.

CHAIRPERSON BUSTAMANTE: Thank you.

MS. GULESSERIAN: Tanya Gulesserian. Lieutenant Governor and Commissioners, thank you for the opportunity to quickly comment. That EDC is very concerned and opposed to all deferrals until the oil companies aggressively prove that they are due diligently meeting all deadlines. You have two requests for deferments being heard today months after their actual expiration. That means they are due de facto extensions already.

In opposing these deferrals and de facto extensions, EDC urges the Commission to, one, require requests for a deferral before the expiration to get information in a timely manner, and, two, only allow deferments if the industry has made significant and aggressive efforts toward meeting the deadline and cannot meet that deadline only through no fault of their own.

With respect to Venoco, the Commission put Venoco on notice when the Commission approved the assignment of the lease from Chevron in February of 2000 that Venoco must submit an exploration and development plan by March 2001. It is already been one and a half years and Venoco has not submitted a plan.

A staff report states and the staff has spoken to
you here today that inaction by Venoco appears to have contributed to the delay.

CHAIRPERSON BUSTAMANTE: Please sum up.

MS. GULESSERIAN: EDC urges the State Lands Commission to deny the request for deferment and require the leasee to final quit claim as soon as possible.

Thank you.

CHAIRPERSON BUSTAMANTE: Thank you.

Any other questions, any other comments? Motion?

ACTING COMMISSIONER ARONBERG: Move approval of staff's recommendation, noting that the Controller shares Senator O'Connell's concerns about deferment as well as EDC's and would echo Annette's comments about this being the last deferment.

ACTING COMMISSIONER PORINI: Second.

CHAIRPERSON BUSTAMANTE: Motion was made and seconded. Let the record show that it was passed unanimously.

Item 84, Berry Petroleum.

MR. PLANCK: Lieutenant Governor and Commissioners, Jeff Planck, staff at the Commission. PRC 3314 was a acquired by Berry from Shell Oil Company. And an on-shore facility which has one well and a small oil and gas processing plant that's on shore in
the neighborhood of a third to a half mile from the shoreline.

In 1985 there was one drill -- one well drilled there by Chevron and it's been producing ever since 1985 at about 100 barrels and continues to produce. This lease actually encompasses another lease, PRC 735, that are all off-shore in Montalvo and Ventura County. It's actually a rather large oil field on-shore that does go out into the State waters.

Berry Petroleum received a deferment from the Commission in 2000, and they were in the process of trying to find a buyer for the lease and assign the lease. They have since decided not to assign the lease and do want to continue to develop the lease, but they believe that they need more seismic information before they can fully understand the faulting and the geologic structures.

They're in here asking for another deferment to review -- to actually do the seismic study, to get all the permits they need necessary, and to begin drilling by the end of next year.

CHAIRPERSON BUSTAMANTE: What is their due diligence up to this point?

MR. PLANCK: You mean like how man deferments have they had?

CHAIRPERSON BUSTAMANTE: No, they've had
deferments. What have they been doing while they've had deferments?

    MR. PLANCK: Well, in the last year they were actually in the process of trying to sell and sign the lease. And that's all I know. They have come in twice now --

    CHAIRPERSON BUSTAMANTE: Is there somebody here. Please come up.

    MR. BERG: Steve Burg and Richard Pulley with Berry Petroleum. Lieutenant Governor and Commissioners, thanks for considering our --

    CHAIRPERSON BUSTAMANTE: We need a very quick response sir,

    MR. PULLEY: We spent $10,000 --

    CHAIRPERSON BUSTAMANTE: Your name please.

    MR. PULLEY: My name is Richard Pulley. I'm the staff geologist on this project. We spent $10,000 on getting cost estimates to do the seismic program. The seismic program will cost about two and a half million. That will give us targets for development both on shore, and in this off-shore portion of the lease.

    We cannot do this effectively without doing the seismic. This is something that's never been done before, that's why we want to do it.

    CHAIRPERSON BUSTAMANTE: Well, yeah wasn't this
done earlier? I mean, you've been trying to sell the --
if you're going to use the time for deferment, why haven't
we proceeded quickly to deal with this?

MR. BERG: Lieutenant Governor, the cost to drill
a well from on-shore to off-shore at these targets, which
are about 11 thousand feet subsea, is in the neighborhood
of $3 million. And it's only been within the last year
that the oil prices have stabilized to allow us to have
the economics to move forward with a project of this
magnitude.

ACTING COMMISSIONER ARONBERG: I guess I'll just
add my caution to you that I will be willing to agree to
this postponement this time, but I won't agree to it next
time.

CHAIRPERSON BUSTAMANTE: So is there a motion?
Is there any other questions by staff or any
other comments to be made?

Carla and Tanya.

MS. FRISK: Again Carla Frisk with Senator Jack
O'Connell's office. Just for the record, let me reiterate
Senator O'Connell's concern that oil companies are not
taking their due diligence requirement seriously. I agree
with your comment that this should have been moving
forward for the past year.

And in this case, in fact, Berry Petroleum is
asking for twice the amount of time that they were given originally to move forward with this project. Again, the message must be sent that oil companies that do not seriously pursue their projects will not be granted deferments.

CHAIRPERSON BUSTAMANTE: Thank you. Staff, the time of deferment staff is recommending is?

EXECUTIVE OFFICER THAYER: It would expire January 1st, 2003 and there are also interim milestones established in this.

CHAIRPERSON BUSTAMANTE: Run out a year and a half.

EXECUTIVE OFFICER THAYER: Correct.

MS. GULESSERIAN: Tanya Gulesserian with the Environmental Defense Center. I just wanted to put our comments on record today that the State Lands Commission approved a year ago a deferment until June 2001. Here we have another example of a de facto extension, and an after-the-fact-request for another deferral.

I'd also like to put on the record that economic considerations are not a justification for failing to meet due diligence standards, and now you're considering a request to defer until 2003. We will be returning then to oppose any further deferral.

Our experience with these companies is they make
every promise to the regulatory agencies, yet most of these promises remain unfulfilled. We would urge the State Lands Commission to make sure that these deferments do not continue and that do diligence is met.

    Thank you very much.

CHAIRPERSON BUSTAMANTE: We have a staff.

MR. MOUND: I just wanted to add one thing. We're taking deferments very seriously. These deferments include the previous two that you issued at the last meeting, all asterisk milestones which these companies have to meet. So from now on we should not hit in this position with any deferments that you're issuing.

CHAIRPERSON BUSTAMANTE: What's the pleasure of the Commission?

ACTING COMMISSIONER PORINI: I'll move approval of the staff's recommendation with the specific milestones.

ACTING COMMISSIONER ARONBERG: Second.

CHAIRPERSON BUSTAMANTE: Motion and a second. Let the record show that it was passed unanimously.

Is that the end of the regular calendar.

EXECUTIVE OFFICER THAYER: Yes, it is. We could put over that public -- excuse me the audit report.

CHAIRPERSON BUSTAMANTE: Put it over.

EXECUTIVE OFFICER THAYER: We do have two
requests to speak during the public comment period.

CHAIRPERSON BUSTAMANTE: Yes, we do. You're right. Candice Harper.

MS. HARPER: I'm here to respond on the comments that I expect to be made on behalf of the Riverbank Holding company so I would like to be able to speak following that, if I may.

CHAIRPERSON BUSTAMANTE: River Bank Holding Company.

EXECUTIVE OFFICER THAYER: I believe Rod Blonien is signed up.

MR. BLONIEN: Thank you, Governor Bustamante, Ms. Porini and Ms. Aronberg. Ron Blonien on behalf of the River Bank Holding Company.

The chart we have on the wall is for purposes of explanation. And if you take a look at the chart, you will note that the blue part is the area indicating where River Bank owns the La Toro portion of the property. The pink indicates where the Virgin Sturgeon owns the La Toro portion of that property.

And, generally, the regulation that the State Lands Commission has indicates that generally the person who has La Toro property rights is assumed to also be entitled to the trust property rights to the sovereign property rights, the submerged water rights.
In this situation, we have here in 1976 Virgin Sturgeon gets a lease from the State Lands Commission for the portion that's in the pink. Subsequently, River Bank Marina comes along gets the lease for the property that's in the blue. And then in 1986 River Bank enters into a sublease with the Virgin Sturgeon for that portion of the property which is the La Toro, the back part is the pink and the blue part is leased by River Bank from the Virgin Sturgeon.

And the piece we're talking about is this piece right here, and that was in 1986. Staff, at that time, sends a memo to file indicating that they are concerned with the quote, "Windfall profits that enure to the benefit of the Virgin Sturgeon," by virtue of the fact that they pay the State approximately $250 a month for the lease of that property and they're getting over $2,500 a month from River Bank for the lease of that property.

Then we progressed to 1992, at which time the Virgin Sturgeon comes forward and asks to exercise their option under the lease. The recommendation from the staff is that they go ahead and they grant the option, even though River Bank has indicated that they would like to directly negotiate with the State and have the right to lease the property and not to be sublessee.

Obviously, it would be to the advantage of the
State to do that, because they would be able to get the profit that is now inuring to the benefit of Virgin Sturgeon. Staff indicated at that time, since this was an option, what they would like to do is continue for the option period.

But in a letter to Mr. Skidmore, the President of River Bank Holding, Mr. Valentine indicates, the staff counsel indicates, that at the time this lease expires, which would be the year 2001, that then River Bank would have the ability to lease directly from the State and that they would provide notice to River Bank.

Something odd happened then, Governor Bustamante. In 1996, the lease is again extended for a 25-year period of time, in spite of the fact that that lease still had ten years to run. So the lease has got ten years to run and the staff goes and extends that lease for another 25 years, gives no notice to River Bank, doesn't give River Bank the opportunity to compete for that property. And despite the fact, again, that the La Toro property rights should go to River Bank marina.

Subsequently it's determined -- incidentally, this takes place on a consent calendar, which is supposed to be for noncontroversial items, but in the meantime there are at least two pieces of litigation filed back and forth between the parties relating to this business
transaction. So it clearly was controversial.

   No notice given to River Bank. The lease has got
ten years to run and they extend it for another 25 years.
Subsequently, it's brought to the attention of the Lands
Commission staff that they had extended this lease so long
it now violates statutory law.

   Statutory law provides you cannot have a lease in
excess of 49 years. They now have a lease in excess of 49
years. It's our contention that the lease, at that point,
is void and cannot -- you cannot be remediated in any way
or fashion. But what the staff then seeks to do is to cut
off the final year and a half approximately to that least
to bring it under 49 years and to allow the situation to
continue.

   And, again, our concern is that promises were
made, commitments were made to River Bank that were not
followed. We got to a point in '96 where no notice was
provided, staff went against what they previously had
committed to River Bank and just recently, just within the
last couple of months, staff went in and amended that
lease to shave off the last couple of years and try and
make it a legal lease.

   We contend it is not legal. We would ask that
this matter be put on the agenda for your next meeting so
that may be reviewed and so that we may have this thing
discussed in public and not have it slip through the
consent calendar as it has been done in the past.

CHAIRPERSON BUSTAMANTE: Thank you. If you could
just hold for a moment.

I heard three issues. And so from staff, are we
required to give notice to River Bank on this particular
issue?

EXECUTIVE OFFICER THAYER: Staff does not give
notice for extension of existing leases. It does give
notice to any who requested it for new leases, and that's
been our standard practice.

CHAIRPERSON BUSTAMANTE: And was there a
commitment made to provide a notice?

EXECUTIVE OFFICER THAYER: Most of this happened
before -- all of this happened, except for the last
incident, before I came to the Lands Commission. My
understanding is that Mike Valentine did, in fact,
indicate that notice would be given, but it was within the
context of the 1992 meeting. And I believe notice was
given at that time.

And I believe that at that particular juncture
there was contemplation of an agreement between River Bank
and Virgin Sturgeon. And so at that particular moment in
time, and it was a brief one, there was not a disagreement
going on, and so there was no objection from River Bank to
the 1992 action.

But I don't believe, and, again, I'm going --
we're digging stuff out of the piles to deal with these
issues, I don't believe that that assurance was for longer
than that 1992 meeting.

CHAIRPERSON BUSTAMANTE: Was that notice in
writing?

EXECUTIVE OFFICER THAYER: I don't know.

MR. BLONIEN: Yes, Governor, it is in writing and
it's one of THE attachments in the binder and that's a
1991 letter from Mr. Valentine.

EXECUTIVE OFFICER THAYER: I think the Lieutenant
Governor was asking about the notice that we gave River
Bank for the 1992 meeting. I don't know whether we sent a
special notice or whether we sent a copy, as we generally
do, the agenda, which shows the items that will be coming
up.

CHAIRPERSON BUSTAMANTE: Would we have that on
file?

EXECUTIVE OFFICER THAYER: Yes. And as a matter
fact Jack did the research on this.

CHIEF COUNSEL RUMP: Yes. I took a look at the
file for that date and mailing was made to, I believe, two
individuals within the River Bank organization.

CHAIRPERSON BUSTAMANTE: And those two people.
CHIEF COUNSEL RUMP: I believe it is Kip Skidmore and I think there was generally to River Bank.

CHAIRPERSON BUSTAMANTE: Also, on the the lease in excess of 49 years, are we required to now reissue an entirely new contract in order not to exceed the 49 years or how does that process work?

EXECUTIVE OFFICER THAYER: When Kip Skidmore met with me and with Jack and several every others, within, I guess, about six months, eight months ago to bring up this issue. And we consulted with the Attorney General's office who reviewed the relevant court cases. And in situations where there's a discrete -- I'm going to say this and ask for Alan to really say what it means. But my understanding of it was that where there are discrete mistakes made under contract, which are easily correctable, that the rest of the contracted is not void.

And in this particular circumstance, the advice was to stay that this contract was only valid for the 49-year period in which was lawfully allowed under the law. There was a mistake made and it was granted to 50 years instead of 49. I then sent a letter not a amending the lease at all, but merely advising Virgin Sturgeon that their lease would expire after 49 years by operation of law. So I did not amend it.

CHAIRPERSON BUSTAMANTE: And that's all as far
ATTORNEY GENERAL.

ASSISTANT ATTORNEY GENERAL HAGER: That's pretty close. We looked at the law. There has been some conflicts among the different Appellate districts, but we think the weight of the authority and the better authority is that when you have a lease where part of the period where it goes beyond the statutory prescribed period, only the extended -- only that longer portion is void. The whole lease is not void.

CHAIRPERSON BUSTAMANTE: And so there's no. -- at this point, is there, as we've entered into a contract, based on what you've said, can we enter into new negotiations on a lease since we've already let a lease?

ASSISTANT ATTORNEY GENERAL HAGER: You've issued a least that is valid for 49 years. You do not need to amend that lease to make it 49 years. It, by operation of law, remains a valid lease, but only for the 49 years.

CHAIRPERSON BUSTAMANTE: Do we have an option to be able to get in to that lease or do we have cause to reopen that lease as a result of this either notification or the excess of 49 years.

ASSISTANT ATTORNEY GENERAL HAGER: I don't believe so.

CHAIRPERSON BUSTAMANTE: Did you want to say something?
MR. BLONIEN: Yes, Governor. Not to prolong this and get into an attorney's argument, but we believe the authority indicates that the lease is void once it goes beyond 49 years, and that the Commission could just as easily follow that line of cases and open this thing up, and get the best benefit for the people of the State of California, keeping in mind that what Jan Stevens said this morning about these being trust properties and trying to maximize State revenues.

CHAIRPERSON BUSTAMANTE: Thank you. The issue does raise another concern. And that is the $250 per month versus the $2,500 per month. How come we're not getting more?

EXECUTIVE OFFICER THAYER: I don't know the exact financial arrangements. I need to look into that. I don't for example whether we received in a percentage of the revenue that the Virgin Sturgeon receives from its sublease or what and I need to look into that. I don't know the answer to that.

I think originally though, my understanding from Kip Skidmore, who represents River Bank, that they made a mistake, and that they started building their marina and didn't realize their lease didn't encompass of what they wanted to build. And literally while the equipment was waiting, went in to negotiate with the Virgin Sturgeon.
So the original problem was created when River Bank designed a project for which they didn't get the right to build. And that's created a problem.

CHAIRPERSON BUSTAMANTE: Okay. That's good. I understand that. And I'm still wondering about the money.

EXECUTIVE OFFICER THAYER: I'll need to get back to you on that, because I'm not sure exactly what's happened.

CHAIRPERSON BUSTAMANTE: We don't have a quorum here to be able to add anything to the agenda for next time. We are going to be going into -- are you still going to go --

EXECUTIVE OFFICER THAYER: Closed session.

There is, of course, that one other comment.

CHAIRPERSON BUSTAMANTE: And we'll need to talk about that particular issue. Let me see if there's something in that that we should do with respect to any kind of an increase that would take place.

In the meantime, if there is -- if you could prepare the information that's been requested of you and make sure that the two Commissioners receive it, that way they can have an opportunity to review it, and we can get together, at some point, perhaps by phone or we can put together in the appropriate way to figure out if this is something that the Commission would like to do.
We have Candice Harper.

MS. HARPER: Thank you.

CHAIRPERSON BUSTAMANTE: You have the distinction of being the last speaker today.

MS. HARPER: I'm very happy of that, I'm sure for all of you here. I represent the Virgin Sturgeon. My law firm Trainor Robertson does, and I would just like to clarify a few of the points made by Mr. Blonien.

CHAIRPERSON BUSTAMANTE: Rebuttal.

MS. HARPER: Well, number one that the 200 feet that we are talking about, as to that portion, at least, River Bank marina is not the La Toro owner. That property -- they have a grant of easements for parking easement only. They sold that property many, many years ago, so I think you should number one be aware of that.

Number two, I believe the State Lands Commission whose started leasing this property to my client in 1976, I believe was determined that they were the best qualified user, which understand the statute that is a basis for leasing the State Lands property.

Secondly, and Mr. Thayer already brought up this point, the problem that we have today was caused by River Bank. When they built their marina and docks, they extended, they encroached onto the property that was leased by my client from the State Lands Commission as
well as onto other property that was other sovereign
property of the State Lands Commission not leased by any
party. And so the position they find themselves in is a
position they created.

And so they were caused to come to my client and
obtain permission from Virgin Sturgeon Inc. to sublease
that property. Had they not encroached, the issue would
have never arose.

Also, I note that this extension occurred in
February of 1996, five and a half years later, when that
wasn't an issue. It seems rather untimely.

So with those comments, I just wanted to make
those comments for the record.

CHAIRPERSON BUSTAMANTE: Thank you.
Is there any other thoughts or questions?
Are you sure there isn't anybody in the audience
that would like to say one more thing?

(Laughter.)

CHAIRPERSON BUSTAMANTE: Thank you.
This will adjourn the regular session and we'll
go into closed session.

(Thereupon the 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 Commission 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 11th day of October, 2001.

JAMES F. PETERS, CSR, RPR
Certified Shorthand Reporter
License No. 10063