APPEARANCES

Cruz Bustamante, Chairperson
Director of Finance, represented by Anne Sheehan
Steve Westly, State Controller, represented by Cindy Aronberg

STAFF
Paul Thayer, Executive Officer
Jack Rump, Chief Counsel

ALSO PRESENT
Alan Hager, Deputy Attorney General
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PROCEEDINGS

CHAIRPERSON BUSTAMANTE: We'll call the meeting of the State Lands Commission to order. All representatives of the Commission are present.

I am Lieutenant Governor Cruz Bustamante. I'm joined today by Cindy Aronberg representing the Controller, Anne Sheehan representing the Department of Finance.

For the benefit of those in the audience, the State Lands Commission administers properties owned by the state as well as its mineral interests. Today we will hear proposals concerning the leasing and management of these public properties.

The first item of business will be adoption of the minutes from the Commission's last meeting.

May I have a motion to approve the minutes?

ACTING COMMISSIONER SHEEHAN: I will move approval of the minutes.

ACTING COMMISSIONER ARONBERG: Second.

CHAIRPERSON BUSTAMANTE: Let the record show that there has been a motion and second and it's unanimous.

The 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 just have two things to report on. First, I want to thank on behalf of the Commission the City of El Segundo for making their City Council chambers available to us. It's convenient for the Commission to come here and we very much appreciate their hospitality.

CHAIRPERSON BUSTAMANTE: Also one other note on El Segundo is it is the home and the former place where a friend and colleague recently passed away, Mike Gordon. I would normally ask for a moment of silence, but Mike was never silent.

(Laughter.)

CHAIRPERSON BUSTAMANTE: So although he's probably here somewhere lurking around and looking over our shoulders, we will just go ahead and continue the meeting because that's what Mike would have done.

EXECUTIVE OFFICER THAYER: Thank you.

The other item that I had was I would like to introduce, we have a new Division Chief, Mike Valentine, has been with the Department of Fish and Game for the last seven years, but prior to that he was with the State Lands Commission for years as the Assistant Chief Counsel here. So we're very glad to have him back with the State Lands Commission family. And Mike, if you would stand. So it's
very important to have him here.

Bob Lynch had served in that capacity for years and years and he's now enjoying a wonderful retirement, and we miss him of course, but we're glad to have Mike here. And that concludes the Executive Officer's report.

CHAIRPERSON BUSTAMANTE: Well, that was to the point.

(Laughter.)

CHAIRPERSON BUSTAMANTE: What I would like to do at this point is to instead of going forward with the consent calendar, ask to remove and consider Item 52 at this time in order to celebrate what is of great significance to the Commission and the state of California.

Mr. Thayer, I understand you have a presentation?

EXECUTIVE OFFICER THAYER: Yes, sir. I will speak longer reaching the point on this.

CHAIRPERSON BUSTAMANTE: Good.

EXECUTIVE OFFICER THAYER: This item is a proposal for the Commission to accept another Offer To Dedicate an easement for public access along the California coast. These OTDs, as they are known, involve strips of land along the ocean that when accepted permit public use of the dry beach along the ocean.

The California Coastal Commission, pursuant to the Coastal Act, has obtained over 1,200 of these OTD's as
conditions of permit approval. But the public can't use
those strips of the beach until they are accepted, either by
a nonprofit or a public entity. There has been a lot of
acceptance of these OTDs, there have nonprofits, Steve Hoye
is here from one of them today, the Coastal Conservancy, and
other state agencies and local governments.

The State Lands Commission has long been dedicated
to promoting access to public waterways and the coastlands
administered by the Commission. Many public trusts or land
exchanges are focused on improving public access. The
Commission has filed litigation to preserve public access
that had been obtained through prescriptive rights. And
it's absolutely in the last couple of years we've been
involved with ensuring public access at Mad River, at Lake
Tahoe, and now on our agenda today is in closed session a
proposal that will resolve some litigation the Commission
filed on the San Joaquin River for public access along that
waterway.

Since 1991, as part of the Commission's mission on
public access, the Commission has accepted OTDs along the
California coast. While most have been in the Malibu area,
in fact they are from all over California.

Today the Commission is opening up a new access
way at Carbon Beach, about 25 miles north of here. This
access way, it's one of the ones shown on the map here, you
can see Carbon Beach about here, and we just point it out there. It's like a lot of the other accessways we've accepted, but it's dissimilar in that it's the 200th one, it's a milestone really which marks how many we have done and our role in public access in California. In fact, no entity has accepted more public accessways or these OTDs than the State Lands Commission.

While we are proud of this accomplishment, we know that public access in California is a team effort, and as I mentioned earlier, we work closely with the Coastal Commission, the Coastal Conservancy, as part of the state's official coastal access program, and the Commission's OTDs are part of a broader pattern of accessways, including those accepted by other public and private entities.

Representatives of some of those are here today to speak to the Commission. It's the staff recommendation after hearing from them that the Commission vote yes on accepting this OTD and that we then adjourn to celebrate for a few minutes with cake and coffee in the back of the room.

CHAIRPERSON BUSTAMANTE: No ice cream?

EXECUTIVE OFFICER THAYER: No ice cream.

(Laughter.)

EXECUTIVE OFFICER THAYER: So that conclude's the staff recommendation. And there are a number of people who have signed up to speak.
CHAIRPERSON BUSTAMANTE: We have five requests.
Steve Hoye, Executive Director of Access for All. And then
after that, it will be Sarah Wan.

MR. HOYE: Thank you very much, Commissioners.
And it is a great joy for me to actually be here
today, especially since yesterday I sat in the 200th OTD, I
think I was the first member of the public to actually sit
in this particular easement. And it was a very, very good
feeling because we are on Carbon Beach, you know, having
teething troubles, birth pains, what have you, with the
homeowners and with, specifically, Mr. David Geffen who has
actually granted us the ability to actually vertically
access Carbon Beach. And yesterday we had 200 people walk
down our accessway. Two weeks ago we had 300 people walk
down that accessway, including a horse. It has been a bone
of contention with the homeowners, they really don't think
there should be horses walking down the accessway. But two
weeks ago --

CHAIRPERSON BUSTAMANTE: Is a horse defined as the
public?

(Laughter.)

CHAIRPERSON BUSTAMANTE: Is that in the
definition? Can we get an opinion from the Attorney
General's office?

MR. HAGER: Yes.
MR. HOYE: We also two weeks ago had former Mayor Richard Riordan walk down our accessway who proceeded to come down and quite frankly gave me a little bit of a lecture about the mean tideline, which he really didn't quite get. And I did actually say on four occasions I don't think you're quite right there Mr. Mayor, perhaps I could explain, or perhaps you would like to speak to Paul Thayer, the Executive Director of the State Lands Commission to explain to you the mean high tide line, which is what the situation is now.

We're having a great time down at Carbon Beach and so is the public. And we're really actually having that great time specifically because of the California State Lands Commission and all of the OTDs that they have actually accepted.

This is a map of Carbon Beach, it does not actually include the 200th at this moment in time, but there are a lot of easements on this beach that are actually able to be actually spreading out the public. And do you know who made this map, it wasn't me, it wasn't any state agency, it was the homeowners, specifically the attorney of Mr. Geffen, because he would like to see the public spread themselves out along Carbon Beach and not sit directly in front of his house.

Anyway, these are actually being given out --
CHAIRPERSON BUSTAMANTE: We're going to do all we can to help.

(Laughter.)

CHAIRPERSON BUSTAMANTE: We're going to help Mr. Geffen as much as we can.

MR. HOYE: On a more serious tone, we're trying to work out a relationship with the homeowners on this beach. But we couldn't even come close to that if the State Lands Commission hadn't actually done what it's done on this beach and on Broad Beach up coast. These beaches are actually public beaches now, there is no such thing as a private beach in the state of California.

Thank you.

CHAIRPERSON BUSTAMANTE: Thank you.

EXECUTIVE OFFICER THAYER: I should note that Mr. Hoye's group, Access for All, I don't know whether it was clear in his presentation, is in fact the entity that picked up the David Geffen vertical accessway and there was a grand opening there which was especially grand because it only occurred after years of litigation against Mr. Hoye and litigation involving the Attorney General's office as well. And that's been successfully concluded, so it's great to hear from him.

CHAIRPERSON BUSTAMANTE: And we thank the Attorney General's office, as well as Mr. Hoye.
Sarah Wan, a Coastal Commissioner and all around good guy.

MS. WAN: Thank you very much, and I too am here to celebrate a very happy day.

Public access is a critical component of this state's coastal protection program. And in 1972, the public went to the polls on a grassroots movement and enacted Proposition 20, which was the Coastal Preservation Initiative. And, frankly, one of the main reasons it was passed was because of the public's desire to have public access to the beaches with the belief, and correctly, that those beaches belonged to the state, they belonged to the public, and everyone should have the ability to get to them.

For many years, for a variety of reasons, a lot of them having to do with funding, the state sort of lagged in getting these things opened. But I have to say that the State Lands Commission when it did step up to the plate is really in my opinion the agency that took one of the lead roles in seeing the shift that we've seen in the last maybe six or seven years and a real effort to get the public the ability to get to the beach.

And I am looking forward to having more of these picked up and to having a day when we don't have a patchwork of easements as Mr. Hoye showed you but that the entire beach has been accepted. There are legal ways which take
time for that to happen. But I have to applaud the State Lands Commission for its role, it's taken a lead role in this, and of course along with private entities, but also along with the Coastal Commission and the Coastal Conservancy. And so in partnership this state has one of the best public access programs in the nation.

CHAIRPERSON BUSTAMANTE: Thank you, Sarah.

With Mr. Hoye's personality, your hard work, and a little nudging by the Attorney General's office and State Lands staff, we're hoping to be able to do exactly that.

Thank you, Sarah.

MS. WAN: Thank you.

CHAIRPERSON BUSTAMANTE: Joan Cardelino, with the Coastal Conservancy.

MS. CARDELINO: Good morning, Commissioners, and congratulations. It's really a great day and I'm happy to be here on behalf of the Coastal Conservancy Board and our executive officer, and we extend you our deepest gratitude for the work that you've done.

I manage the Conservancy's Public Access Program, I work very closely with OTDs, and my hat's off to you. Two hundred OTDs, that's far more than any other entity in the state. I think the Coastal Conservancy might be the second one and we're way behind at about 120. There is a nonprofit in Mendocino County, the American Land Conservancy, that I
believe holds about 80. So you guys are way out ahead and
have done tremendous things to help secure the coastline for
the public. And you are also really smart because you take
these OTDs and you don't have to manage them.

(Laughter.)

MS. CARDELINO: And that's where the rub is for
all of us who are trying to manage these things.

I would just underscore what Steve and Sarah have
said about Carbon Beach is such a great example of the
situation we deal with. If you look at a map of Carbon
Beach and you see the lines for the individual properties,
it's like looking at a piano keyboard and some of them are
colored for public access and others aren't. And as a
member of the public when you walk along the sand you have
no idea when you're on private sand or public sand.

So I don't know exactly what the answer is, but
the Coastal Conservancy extends whatever we have, funding,
technical assistance, staff assistance, to work with State
Lands to see if we can figure out a way to get the rest of
these intervening parcels into public ownership. So we have
to put our heads together on that.

Once again, thank you very much.

CHAIRPERSON BUSTAMANTE: Thank you.

Jack, maybe you can tell her how we do it.

CHIEF COUNSEL RUMP: Certainly.
CHAIRPERSON BUSTAMANTE: Next is Roy Van de Hoek.

MR. VAN de HOEK: Thank you for asking how to pronounce my name. And I'm a Board Member of Access for All with Steve Hoye. And I'm honored to be able to speak to all three of you on the Lands Commission and indeed the public, and to talk to you as a biologist also for a second.

The sand to me when I walked there yesterday, for example, felt extra special because of the symbology about the whole process. I've walked on many beaches of California with my binoculars looking for birds and wildlife and got to do that yesterday and felt special about that and saw eight whimbrels. They are a kind of sand piper with a long beak that curves down, and they raise their families on the arctic tundra in Alaska and Canada, and they have already arrived back to this piece of beach where now the public and also scientists and naturalists can get to see them and school groups can come and teach about the whimbrel and that bird. And also yesterday I saw a bottlenosed dolphin swim by. And on the dedication day for the easement that Access for All just, with the State Lands Commission and the Conservancy, opened, we were able to see a whole pod of bottlenosed dolphins. These are dolphins that hug the shoreline.

So when you first arrive on this piece of coastline, you arrive by car, and for miles you can't see
the coast because there are houses blocking the view. So you can't see what the ecology is, you can't see the birds or the dolphins in this stretch. Now you can just park and walk out and see them. That great sign, that brown and white sign on the window back there, coastal access, there is one on the highway on either side of where you park. And so it's just really a great day.

And being with the Sierra Club and on the executive committee for this chapter of Los Angeles and as a spokesperson for the Sierra Club today, the Sierra Club is also really glad that this access is open and that's off to the State Lands Commission on having that happen.

Thank you.

CHAIRPERSON BUSTAMANTE: Thank you.

Also with us today, before we have the last speaker, is a person who is not normally recognized for the work that he did while in the state legislature, but carried one of the largest bills of this kind. And with us today in the back and the corner is former Senator Richard Polanco.

(Appause.)

CHAIRPERSON BUSTAMANTE: The last speaker is Marcia Hanscom, is that correct, Sierra Club Coastal Program.

MS. HANSCOM: Honorable Commissioners, Honorable Chair Bustamante, thank you for the opportunity to speak
with you today. On behalf of the Sierra Club Coastal Program, we especially want to say thank you for this.

About ten years ago, our Coastal Program realized, along with the Coastal Conservancy, that there were some real concerns because there were all these Offers to Dedicate that were to be expired soon, and that's actually part of what inspired Steve Hoye to start Access for All who was one of our Sierra Club employees at the time and realized that we needed to move fast. And the Sierra Club, like another government bureaucracy, takes a little longer, so he started Access for All thankfully. And so I'm pleased to be a member of his Board of Directors.

And we're very, very happy at the Sierra Club that you have taken such leadership in accepting these OTDs. I know that Access for All would not have felt they could have done the work without the State Lands Commission's support and the support of the Coastal Commission and the Coastal Conservancy.

And I also would like to help everybody remember one of the reasons why we're involved in this, it goes back to our founder John Muir, who expressed the importance of getting out and experiencing nature, that if you don't do that, it's very difficult to protect it. And so he was the one that got Teddy Roosevelt out to Yosemite and started the National Parks movement, and we think that maybe there is a
child or two in East LA who will help us to protect more
land if they are able to see the beaches.

I remember when our mayor, our new mayor of Los
Angeles, Antonio Villaraigosa, first spoke to the Sierra
Club as he was running for the legislature, and he explained
to some of our folks how many people in his district never
even saw the California coast, even though they were only a
few miles away. So we're hoping that this whole coastal
access program will help the many millions of people here in
the region to be able to experience our beautiful California
cost.

Thank you.

CHAIRPERSON BUSTAMANTE: It already has. We
already had a kid from East LA already help on the Offers To
Dedicate and that was Senator Polanco.

(Laughter.)

CHAIRPERSON BUSTAMANTE: So we're looking for a
c few kids to buy Geffen's home so we can always access.

(Laughter.)

CHAIRPERSON BUSTAMANTE: So at this point we would
like to have any comments by any Commissioners, if there are
any, otherwise we would --

ACTING COMMISSIONER SHEEHAN: No, just that kudos
to the staff and to all who have made this possible, because
it really is a historic moment I think for the Commission.
ACTING COMMISSIONER ARONBERG: I am so thrilled that we are here today to celebrate the 200th OTD and the heros really are sitting right there in the front row, it's Roy, Marcia, Steve, and Sarah. You are there every day protecting the coast, looking after it, and our staff has been wonderful to have been so open to accepting these OTDs in the last few years, and it's great. But you are the true heros and I know I speak for the Controller and myself that we are so lucky to have you.

Thank you for your hard, hard work. Thank you for being here today to celebrate. Thank you everyone and thank you to Paul for doing this over the years. And hopefully we'll have a celebration for a 300th pretty soon.

CHAIRPERSON BUSTAMANTE: That's right. I remember when I was Speaker and I had a little event that then a member of the community, Pedro Nava, who is now a member of the legislature, had me come over and visit with around a hundred environmentalists from Santa Barbara. And one of the activists who were there as I was walking up yells out, I hope that you protect our coast, we love our coast. And as I got up there, I felt compelled to tell her, I said it was my coast too. I may live in Fresno, but it's the only coast that I have. And right before making the appointments to the Coastal Commission, I actually drove my children to the coast and I said, even though they were kind of young at
the time and didn't really understand, I said I want this
cost to look better than this when you get a chance to show
your grandchildren.

And so I think that these Offers To Dedicate are
going to important not just for folks who live along the
cost, but also for those people who rarely have an
opportunity to go to the coast, but having access is very,
very important. In order for us to escape 108 degree heat
in Fresno, we need a way to get to the coast, an easy way.
But it's important that all people, even those that live
along the coast, recognize a very huge number of people who
don't and they also need access to the coast. So you're not
just fighting for the neighborhoods that are close by,
you're fighting for all the neighborhoods throughout the
state of California.

So thank you all for all the work that you do.

Then why don't we go ahead and move this item. I
will accept a motion and a second.

ACTING COMMISSIONER ARONBERG: I am thrilled to
move approval.

ACTING COMMISSIONER SHEEHAN: And I'll second.

CHAIRPERSON BUSTAMANTE: Let the record show it's
a motion and a second and that the vote was unanimous.

Thank you all.

And now we have cake.
(Applause.)

CHAIRPERSON BUSTAMANTE: Let's take 10 minutes.
(Thereupon a short recess was taken.)

CHAIRPERSON BUSTAMANTE: Enough celebrating.

Enough cake eating. We have a relatively short agenda. I again want to thank all the speakers who came today. And for the person who made the wonderful cake, it was great.

The next order of business is the adoption of the consent calendar.

Is there any items that you wish to remove?

EXECUTIVE OFFICER THAYER: Mr. Chair, we'd like to remove C-30, this will be heard at a subsequent Commission meeting. I understand the Chair has an item as well.

CHAIRPERSON BUSTAMANTE: Also, C-44, the El Paso Natural Gas, we'd like to hear that item in order.

EXECUTIVE OFFICER THAYER: Okay. Then those two items will be removed from the consent calendar.

CHAIRPERSON BUSTAMANTE: So the motion would need to approve the consent items without Items 30 and 44?

EXECUTIVE OFFICER THAYER: That's correct.

CHAIRPERSON BUSTAMANTE: Is there a motion?

ACTING COMMISSIONER SHEEHAN: I'll move the consent calendar, minus Items 44 and Item 30.

ACTING COMMISSIONER ARONBERG: Second.

CHAIRPERSON BUSTAMANTE: There is a motion and a
second. Let the record show that the vote was unanimous.

I was supposed to ask the public to speak. Let's retract that motion and ask if there is anybody who would like to speak. If not, it will remain.

Is there anybody who would like to speak on any of the consent items?

Going once, going twice. Seeing none, the motion will remain as made and seconded.

So we are now in regular session. The first item is Item 44.

EXECUTIVE OFFICER THAYER: That's right, Mr. Chair. This item has to do with the conversion of a pipeline in the California desert from oil to gas use. The applicant is El Paso Products and/or El Paso Natural Gas. The Commission has had this on the agenda for several meetings, and I think the individual Commissioners are very familiar with this. It would join two of El Paso's systems, a northern and southern route into and out of California. And I believe that there is no opposition to this, but that the Chair had some concerns, particularly about the utility of this pipeline to California.

CHAIRPERSON BUSTAMANTE: The idea, for the Members of the Commission, as well as for the public, was that we were looking to find a way to expand the benefit to Californians. We were hopeful that in trying to work with
El Paso we would find a way of linking other systems to
benefit not only Southern California, but Central and
Northern California as well. We were able to in fact find
such a compromise, such an effort with PG&E and El Paso, in
order to be able to establish an interconnection between
pipelines that would service -- PG&E would service Central
and Northern California.

We are hopeful that -- I believe we have some
language that should be read into the record in order to be
able to -- we've shown this information to both the El Paso
and PG&E and hopefully we'll have an opportunity to put this
on the record so that both the El Paso project can move
forward and also the interconnection with PG&E will also be
able to follow at some point in the future.

EXECUTIVE OFFICER THAYER: Yes. At the Chair's
instigation, we have drafted some conditions and I will read
through these now so that everybody will be familiar with
them.

The El Paso Line 1903 pipeline conversion project
is approved subject to the following:

Number 1. El Paso agrees to allow PG&E to connect
its natural gas system to Line 1903, such connection to be
in the vicinity of Cadiz or other mutually agreeable site,
and El Paso will cooperate with PG&E in construction of the
physical improvements.
Number 2. PG&E will be responsible for paying all these costs associated with the interconnection.

Number 3. PG&E will be responsible for obtaining all permits and approvals necessary to construct the interconnection.

Number 4. El Paso agrees to not oppose PG&E's efforts to secure all necessary approvals and permits to implement the connection.

Number 5. Those foregoing terms will be included in the provision of the State Lands Commission's leases to El Paso in a form to be approved by Commission staff counsel.

CHAIRPERSON BUSTAMANTE: We have with us to speak on this item Jim Cleary who is the president of El Paso Natural Gas.

Come forward, please.

If you would like to make any general comments about the item, as well as the addendum or the amendment that is being proposed.

MR. CLEARY: First, Chair Bustamante and Commissioners, we appreciate the Commission's consideration of this application and we are looking forward to moving forward. I believe we have completed the full CEQA review with the Commission staff and I think this pipeline will bring benefits to the state of California as well as to the
rest of the El Paso Natural system. As to the conditions that you just read into the record regarding an interconnect with PG&E, they are fully acceptable to us and we look forward to working with PG&E to make this happen.

CHAIRPERSON BUSTAMANTE: Great.

Is there anyone here from PG&E or any other? Please come forward.

MR. BEDWELL: Mr. Chair, Committee Members, Ed Bedwell with Pacific Gas and Electric. I am the Director of State Government Relations for PG&E in Sacramento.

We've met with the staff, as well as members of the Commission and El Paso, and also that would be Keith Simpson, our attorney, and the conditions as proposed by Mr. Thayer are acceptable to Pacific Gas and Electric.

CHAIRPERSON BUSTAMANTE: Great. Thank you.

Is there any other comments from staff on this issue at this moment?

EXECUTIVE OFFICER THAYER: No, that concludes staff presentation.

CHAIRPERSON BUSTAMANTE: Any commissioner comments?

ACTING COMMISSIONER ARONBERG: I move approval.

ACTING COMMISSIONER SHEEHAN: I'll second.

CHAIRPERSON BUSTAMANTE: There is a motion and a second. Is there anyone in the public who would like to
comment on the issue?

There was only one request to speak and that was Mr. Cleary. Seeing no other public comment, the motion has been made and seconded. Let the record show that the motion was passed unanimously by the Commission.

Okay. All right. Going on to Item Number 65. I understand that we are going to be postponing this item and you have had a chance to talk with the folks over at Dos Cuadras and they are in agreement with the postponement?

EXECUTIVE OFFICER THAYER: Yes. We've spoken with Dos Cuadras. The staff has had some concerns about this project, but thinks that some of the information that has recently been brought forward by Plains, the Assignor, and the Assignee Decore, and that these may form the basis for staff's coming forward with a favorable recommendation. But we think we need some additional time to fully develop those and have the correct agreements and we would propose to bring this back at the October 20th Commission meeting.

CHAIRPERSON BUSTAMANTE: So we're anticipating a favorable recommendation at the next meeting?

EXECUTIVE OFFICER BUSTAMANTE: We're hoping to be able to work that out in the next couple months.

CHAIRPERSON BUSTAMANTE: Good.

All right. The last item I believe is Item 66.

EXECUTIVE OFFICER THAYER: Yes, Mr. Chair, this
item has to do with a research cable in Monterey Bay that
would provide both power to underwater research projects but
also data communications. And the Commission is both
approving the lease as well as the environmental
documentation. And so we'll have two staff presentations,
the first by Nancy Quesada, I believe, from our planning
department.

MS. QUESADA: Good morning, Commissioners. My
name is Nancy Quesada, I'm with the Land Management
Division.

And before I start a brief presentation of the
proposed Monterey Bay Aquarium Research Project, I would
like to introduce Michelle Brown with the Environmental
Planning Division. And she will be making a brief
presentation as soon as I'm done with mine.

Before I also continue with my presentation, I
would like to introduce in the audience today
representatives from the Monterey Bay Aquarium Research
Institute, from the Monterey Bay Sanctuary, and some active
environmental consultants.

The Monterey Bay Aquarium Research Institute is a
not-for-profit public benefit corporation organized and
operated exclusively for charitable, scientific and
educational purposes. MBARI and the Monterey Bay Aquarium
in cooperation with the National Science Foundation, which
is providing funding for the project, MBARI is proposing to install an advanced cable observatory known as the Monterey Accelerated Research Systems Cable Observatory.

The MARS Project will serve as an engineering testbed for a proposed 1,864 mile cable observatory off the Washington and Oregon coast. The MARS Project would be located offshore of Moss Landing in Monterey Bay partially on state tidelands and marshlands within the Monterey Bay National Marine Sanctuary. The project consists of installing a submarine cable extending 31.7 miles oceanward from the shore station in Moss Landing to an offshore submarine formation known as Smooth Ridge. A scientific node which is an apparatus located at the end of the cable would contain eight separate science ports to accommodate a variety of oceanographic research instruments. The cable observatory would provide researchers with long-term realtime data access to deep sea conditions and ocean processes accessible over the internet to scientists, students, teachers, and the public.

The cable will be buried approximately 76 percent of 25.3 miles of the route to a depth of 3.3 feet when feasible using a remotely operated plow that is towed by a cable laying installation vessel. The cable will be fully buried in state waters, 7.4 miles of the cable route in federal waters would not be fully buried due to hard
seafloor substrate and exposed rocks. In the near term the
MARS cable would be installed beneath the sea within a steel
pipe. Once on shore the cable would be connected to the
MARS facility owned by MBARI.

Commercial and recreational fishing within
Monterey Bay utilize several traps that target a wide
variety of fish and invertebrate species. Trolling and
lobster fishing are the types of fishing with potential of
coming in contact with the proposed cable. The effects of
the proposed cable on commercial fishing were analyzed in
the CEQA document. The CEQA requires identification of
mitigation measures for all impacts found to be significant.
Based on the analysis presented in the draft EIR/EIS the
proposed project's effect on commercial fishing would be
adverse but not significant.

The staff of the State Lands Commission and the
sanctuary have encouraged MBARI and fishing interests to
develop a process to coordinate their respective activities
and by compensation as may be necessary for fishing gear
lost or damaged as a result of any contact with the cable.
Although the parties as of this date have not formalized
this process, the proposed lease does contain procedures
designed to prevent any losses to commercial fishermen who
operate in Monterey Bay. And I believe we have a copy of
those conditions which are part of the lease agreement, the
The Commission will be considering two actions today. First, to certify the Environmental Impact Report, which has been prepared as part of the joint EIR/EIS. And, second, to consider issuing a general lease right-of-way lease for the MARS Cable Project.

I would now like to introduce Michelle Brown with the Environmental Planning Division who will present a brief overview of the environmental process for the proposed project.

MS. BROWN: Hello, my name is Michelle Brown and I'm an environmental scientist on the Commission staff. I'm here to describe the public and environmental review process for the MARS Project.

First, the document before you is a joint EIR/EIS and the State Lands Commission is the lead agency under the CEQA and the Monterey Bay National Marine Sanctuary is the lead agency under the NEPA.

The State Lands Commission began the process by publishing a Notice of Preparation for the draft EIR/EIS and a Notice of Public Scoping Meetings for the project with the state clearinghouse on May 25th, 2004. The Monterey Bay National Marine Sanctuary published companion federal documents, the Notice of Intent to Prepare a Joint EIR/EIS, in the Federal Register on the same day.
There were two noticed public scoping meetings on June 9th, 2004, to solicit the public agency comments on the appropriate range of issues and alternatives to be included in the environmental document. These meetings were held at Moss Landing Marine Laboratory in Moss Landing, California and comments were received from US EPA, the California Coastal Commission, the Alliance of Communities for Sustainable Fisheries, Save Our Shores, the Moss Landing Harbor District, California Department of Fish and Game, and Friends of the Sea Otter.

The draft EIR/EIS was released on March 11th, 2005, for a public review period of 45 days. We had two public hearings on April 7th, 2005, at the Moss Landing Marine Laboratory in Moss Landing to receive comments on the documents.

During the review of comment period for the draft document, seven comments were received by fax, e-mail and regular mail, and another comment was received in person during one of the hearings. These comments were received from the following entities: The California Coastal Commission, the Monterey Bay Unified Air Pollution Control District, the US EPA, the Monterey County Planning and Building Inspection Department, the Alliance of Communities for Sustainable Fisheries, NOAH Marine Fisheries Service, Moss Landing Harbor District, and Mr. Tom Hart of the Moss
Landing Fishermen's Association.

I will briefly summarize the comments we received.

The comments from the Coastal Commission were generally requesting clarification of sections of the document and additional information for their review of the project.

Comments from Monterey Bay Unified Air Pollution Control District were regarding emission standards guidelines and litigation for the project.

The US EPA comment letter stated that they have a lack of objections to the project and no significant environmental concerns.

The Monterey County Planning and Building Inspection Department commented on the project alternatives and the building authority.

The Alliance of Communities for Sustainable Fisheries expressed concerns regarding impacts of the cable on the sanctuary floor, the need for maps of the path of the proposed cable location, potential cable snags by the fishermen, reimbursement for gear that's lost or damaged due to snags, and a need for a regular dialogue between the fishing industry and MBARI. This doesn't encompass the entire content of the letter but rather highlights the general issues. And these provisions are the same ones that are listed on the handout that you received from Ms.
Quesada.

The National Marine Fisheries Service within NOAH reviewed the draft and had no comments.

The Moss Landing Harbor District commented on potential fishing problems and their permit process and requirements.

Mr. Hart with the commercial fisherman expressed opposition to Alternative 2 for the location of the cable due to the bottom conditions in the area. He also spoke on the calendar for crab season and potential interference if the project construction occurred during that time, the season begins on November 15th. And he asked about electrical current leaking from the cable and whether that would attract fish to the cable.

The comments received during the hearing and review period and responses to all these comments are contained in the final EIR/EIS which was released to the public on July 25th, 2005. The final document was also sent to the state clearinghouse and to federal, state and local agencies, as well as other interested parties.

We believe this document meets the spirit and intent of provisions of the CEQA and NEPA. Upon Commission certification and the final EIR/EIS, the Monterey Bay National Marine Sanctuary will prepare a Record of Decision which is a written public record that explains the
sanctuary's decision on a proposed project.

Mr. Chairman, the Applicant has a presentation for
the Commission. Marcia McNutt from MBARI would like to
speak for the Applicant.

Thank you.

CHAIRPERSON BUSTAMANTE: Please come forward.

MS. MCNUTT: Well, thank you, Commissioners, for
sharing this project plan and thanks very much to the State
Lands Commission for all their help in getting us this far.
This has really been a wonderful group to work with, and
that's not easy to say when it's all permitting, a long
duration process.

A lot has been said about what MARS is, but I
don't think enough has been said about why we're doing this
project. And so what I would like to do this morning is to
take a few minutes to tell you why we're undertaking this
project.

And I probably don't have to say much about this
first slide up here simply because it's been sitting up here
so long you're probably all sick of it. But what we're
really trying to do here at MARS is nothing more than
revolutionize the entire way we go about collecting data in
the ocean.

Now, in the traditional approach to ocean
research, a ship would leave a port typically for a 30-day
expedition, the scientific staff and equipment chosen would
test a narrow hypothesis and samples and data are only
collected along the ship track. The disadvantages of this
approach are first of all weather. I'm sure I don't have to
tell you that if you look at the ship tracks out there, most
of them are in temperate latitudes and most of them are when
the weather is nice there. And, unfortunately, we don't
have a lot of information about what happens in the ocean
when the weather is not very nice. It's also very easy to
get the wrong answer when you only have data along a ship
track taken during a 30-day expedition, we can easily miss
important things that happen.

This is also a very expensive way to go out to
sea. We have a large crew that has to go out. And I think
the most important problem is that you have to be very lucky
to be around when a significant event happens.

Because the bottom line is that important changes
in the ocean occur as events, they happen quickly and they
are difficult to predict. Bacteria multiply and a beach has
to be closed, or a slip in plate tectonics causes volcanic
eruptions and earthquakes, or a toxic algae bloom and poison
the food chain. All of these things are narrow events that
happen and you have to be incredibly lucky we have seen to
collect data on one of these events.

Well, for that reason, our new approach to going
to sea has been to put in observatories. And we've been putting observatories at the surface of the ocean for enough years now that we have a good idea of the advantages of putting observatories out in the ocean. The important thing about observatories is they collect data 24 hours a day, 7 days a week, 365 days a year. They collect the information, they are powered by solar cells, they send the information via satellite back to shore. This avoids the problem of having to be lucky to catch an event because observatories are always at work, always on the job, and collect data in a very affordable way.

But the problem is these observatories that we've had so far only sample the upper most venire of the ocean. And the importance of the MARS project is it's taking observatory science and bringing it down to the bottom of the ocean.

Now, we've been running surface observatories long enough that we can tell you some pretty important things have been captured by these observatories.

This is an example of a time series that my students collected starting in 1989 going to the present. The upper diagram here shows changes in ocean temperature and you can see the summer and winter cycle. Any place that's colored in red is because the ocean was anomalously warm. Any time it's colored in blue, the ocean was
anomalously cold. You can see the big El Nino in '97 and
'98 where the ocean was really, really warm. And you can
see in general that the decade of the '90s was a gradual
increase in ocean temperature that turned around after the
big El Nino and the ocean started cooling in Monterey Bay.

What's interesting is to look at the lower diagram
that shows chlorophyll as measured by plant production, and
this is a measure of how much the food chain in the ocean is
being stimulated by plant growth and then going up through
the fish to the higher animals. What you can see is that
while the ocean warmed, the chlorophyll went down. During
the big El Nino was the lowest point in productivity at
Monterey Bay. After Monterey Bay turned around and the
ocean started getting cold again, suddenly the plants came
back and the marine ecosystem started coming back and the
whole food chain was reinvigorated during this time.

Because of this kind of information, we understand
what happened, why there is this correlation between warm
temperature and low productivity, cold temperatures and high
productivity in Monterey Bay. It's because when the ocean
is warm it's like putting a big thermal lid on the ocean and
it stops the cold upwelling waters from coming up and
bringing the nutrients that feed the plants. It's sort of
like this was the point when no one bothered to fertilize
the lawn that is the ocean and suddenly that cold water to
come up with its nutrients and cause the plants to bloom.

Okay. This is only what's happening in the upper part of the ocean, but it doesn't tell us what's happening deeper, and that's what we hope to do with MARS.

Now, this should show us that what we're seeing at Monterey Bay is what's happening all over the globe. This is not a unique place, it's not an unusual occurrence. Now, this is the data that we have from MBARI just from 1989 on showing this big regime shift from a warm bay with low chlorophyll to a cold bay with high chlorophyll.

Now, during this time, we can go back in time, we've got partial records that take us back to the last time this shift occurred, this regime shift and the Pacific oscillation. The last time it happened was in the mid 1970s and the time it happened before that was in the 1950s.

Now, when the Pacific is in the warm phase, we call that the Sardine Regime, when it's in the cold phase, it's in the Anchovy Regime. Back in this time, back in the 1930s and '40s, that was the time when we were in another eastern Pacific warm phase and these shifts. The Sardine Regime is when the fisheries are good in Monterey Bay, the Anchovy Regime is when the fisheries are poor in Monterey Bay. This last regime shift corresponded to the collapse of Cannery Row when the fishing communities highly suffered.

And we've captured this one now with high
resolution records. Hopefully we will be able to understand and predict better the next time this regime shifts so we can warn the fishing communities well in advance.

But taking us down deeper in the ocean. One thing is that this will be a major change in the way we do research to be able to have this cable going out to Smooth Ridge and to try to understand how do these changes in the productivity in the upper ocean affect what's going on in the deep sea as well.

MARS is what we call transformational research. There are two kinds of research that are funded. There is incremental research and there's transformational research. Incremental research, think evolutionary. Transformational research, think revolutionary. It is the kind of research that fundamentally changes from there on the way that we understand how the earth works. And it's transformational research such as MARS that's needed in order to take those patterns we see in the upper ocean and try to understand how they affect the deep sea. We already have information that it is affecting the deep sea, although it's pretty sparse.

I will, in the interest of time, not talk about Monterey, but let me go forward to this. This is some data which was taken from our remotely operated vehicle from Monterey Bay. This shows from 1989 going to the present the prevalence of two species as observed by our remotely
operated vehicle. The gray at the bottom is the hake which is a commercial fish. The red is Humboldt squid. Now prior to about 1997, the Humboldt squid were not seen north of the Channel Islands, and suddenly after the big El Nino, we started seeing them in Monterey Bay, but only temporarily. After about 2003, they have come into Monterey Bay and they seem to be there to stay.

And what you will notice is that it's in this correlation between the warming and the Humboldt squid. And in fact evidence from our remotely operated vehicle of conditions that the declining numbers of these fish are caused by predation by the Humboldt squid. And when you say Humboldt squid, this is not the squid that you get at your restaurant or at your food market, these are big tough fish. These squid grow to my size, my height and my weight, in one year. Can you imagine how much they have to eat to get to my size in one year. And they are tough animals. I think of them as sort of really mean rats of the ocean. When they run out of other food, they eat their own kind, and they have been known to attack divers. They have a beak the size of a baseball that they use to chomp on their victims.

Now the reason why these Humboldt squid are coming in is probably environmental, but it's also because the top level predators have been removed from the ocean ecosystem. Whatever would eat the Humboldt squid are no longer found
and also there's -- so there's an ecological niche for them here, they seem to be in Monterey Bay to stay.

    Now, just to underscore the effect they have on the hake. This just shows prior to 1997 when they moved into Monterey Bay. This shows that every month of the year you could find hake in our remotely operated vehicle observations, basically any month of the year. After 1997, this shows that during months of the year when the Humboldt squid are seen, there are no hake. They completely come in and they wipe them out. So this is a major change that's happening in the depths of Monterey Bay. We think this is the kind of change that is only one example of what we're probably going to find when we're able to make observations in the deep sea 24 hours a day, 7 days a week.

    And I want to thank you very much again, the staff, for their help with this project. I think this is incredibly important, not just for Monterey Bay, but for this important transformational research which we hope will be duplicated elsewhere and allow other communities to understand how changes in the upper ocean are affecting the deep sea.

    Thank you very much.

    CHAIRPERSON BUSTAMANTE: Thank you.

    Any comments by the Commissioners?

    ACTING COMMISSIONER ARONBERG: I just really
appreciated that. That's great, you're a good teacher.

CHAIRPERSON BUSTAMANTE: Any other public comment?

I have no requests to speak but wanted to make sure and check though.

For the presenters, there was one presenter, I believe it was Ms. Quesada, who said that there was going to be adverse but not significant impact to the fishing industry. I'm assuming that these items that are on this list resolve all of their concerns? Do you have the Commission handout?

MS. QUESADA: Yes, I do, I have the Commission handout.

CHAIRPERSON BUSTAMANTE: Do they resolve all of the concerns?

MS. QUESADA: Yes, they do. There's two main concerns still outstanding and those two main concerns are the -- the creation of a committee was a concern for the fishing industry and in an effort to reach some kind of agreement, MBARI has most recently agreed to a creation of a three-member committee.

CHAIRPERSON BUSTAMANTE: Okay. Is there any outstanding issues?

MS. QUESADA: No.

CHAIRPERSON BUSTAMANTE: Okay. So all the items have been addressed?
MS. QUESADA: Yes.

CHAIRPERSON BUSTAMANTE: They are in support of the project?

EXECUTIVE OFFICER THAYER: I don't think we can say that at this time.

CHAIRPERSON BUSTAMANTE: What can you say?

EXECUTIVE OFFICER THAYER: I think that what we can say is just what you said which is that we've undertaken efforts to try and address their concerns. They're not listed as coming down here to speak today and we thought they were going to be here today, and there is some evidence in that, but we can't indicate that they have supported this project to date.

I also need to point out that in terms of the adverse but not substantial impact, that those are entirely within the federal waters and not in the state waters because the cable is buried the entire length and there is no impact to fishermen from the buried cable.

CHAIRPERSON BUSTAMANTE: So what is the position of the fishing industry?

EXECUTIVE OFFICER THAYER: The last time we received a letter from them was a week or so ago. They indicated a number of different concerns, but the primary one seemed to be that they wanted the Applicant MBARI to pay for fishermen to consult with the project on an annual
basis.

CHAIRPERSON BUSTAMANTE: And?

EXECUTIVE OFFICER THAYER: It was about 200,000 a year. The Applicant has indicated two things. The Applicant has indicated that that would kill the project, they don't have the wherewithal, they are operating underneath a National Science Foundation grant, to pay that amount of money. And, number two, given that our jurisdiction is limited to the state waters and that the federal water impacts were also fairly minor, large stretches of the area where the cable is going to go are already prohibited to trolling, so there wouldn't be any impact to trollers in those areas.

Staff believes that the mitigation that MBARI was agreeable to, which was again to consult with the fishermen four times a year the first year the project was in operation, I think twice the following year, and going down to once a year consultations, coupled with a commitment which is included in the lease to pay for all lost gear and all lost catch that resulted from the cable that the fishermen's concerns were communicated.

CHAIRPERSON BUSTAMANTE: Okay. Two hundred thousand was requested, that was denied, are you saying?

EXECUTIVE OFFICER THAYER: That's correct.

CHAIRPERSON BUSTAMANTE: Was there an amount then
that was offered?

EXECUTIVE OFFICER THAYER: There is still ongoing
discussions. As I say, they primarily focus with the
federal agency, the Monterey Bay Sanctuary. They have a
representative I think here today who can speak to that if
necessary, in terms of whether or not MBARI would be able to
pay for some of the expenses that fishermen might have to
participate in the consultation process. But other than
that, there's been no amount offered to the fishermen other
than, as I said, total compensation for any actual damages
they incur.

It's interesting, the fishermen are asking for
some of the same sort of payments or consultation fees that
the fiber optic cable companies voluntarily offered when
they were coming before the Commission. At that time staff
included those requirements in the leases, but only because
they had been entered into voluntarily. We didn't believe
that the Commission had the authority to exact those, and I
think the fishermen are looking for some of the same. It's
also true that over the four or five years since those
cables have gone in, there hasn't yet been a claim for any
lost gear or catch under the previous system.

So I guess in conclusion, staff thinks that the
conditions that have been posed are the result of voluntary
mitigation programs proposed by the Institute primarily
address federal water impacts but that there are no impacts in state waters to fishermen from this project.

CHAIRPERSON BUSTAMANTE: So there was no amount offered?

EXECUTIVE OFFICER THAYER: No.

CHAIRPERSON BUSTAMANTE: Could it be that the amount of the $200,000 was important so that there were no issues among the parties or is it staff's view that because there have been no claims for gear or catch reimbursement that in this particular case it's a nonprofit entity that $200,000 would be less sufficient in the communications between this entity and the fishing industry?

EXECUTIVE OFFICER THAYER: Staff's view is that even if this is a nonprofit, it's obligated to address its environmental impacts. And so although it's interesting and true that the entity that indicated it couldn't go forward with the project by paying that amount, if staff believed that these impacts were significant and these payments were necessary to mitigate it, we would be recommending that the Commission impose that requirement. But I think it was staff's view that again that kind of mitigation was being done voluntarily by the applicants before, that the Commission didn't have the authority to require it, and in this case the Applicant is not able to voluntarily make that commitment, and that the Commission doesn't have the
authority to require it, number one. And, number two, the
impacts to the fishermen are better understood now and that
these types of mitigation programs aren't required to make
the impact less than significant, but it's not a significant
impact.

CHAIRPERSON BUSTAMANTE: So they couldn't
voluntarily offer one-tenth of the amount?

EXECUTIVE OFFICER THAYER: They could voluntarily,
if they chose to do so.

CHAIRPERSON BUSTAMANTE: Does staff believe that
one-tenth the amount would be of value?

EXECUTIVE OFFICER THAYER: I think that the
earlier discussions there have been some discussion about,
and, you know, I'm not all up to date, it may be appropriate
to invite the sanctuary rep up, but there have been some
discussions about trying to pay for some of the costs that
the fishermen might have in this voluntary consultation
process. But so far I don't think the fishermen have signed
off on that approach and I don't think the Institute has.
But afterwards, I know this is going to go to the sanctuary
for decision and, of course, that's where the impacts are
occurring and that there will be further discussions.

CHAIRPERSON BUSTAMANTE: I don't want to beat this
dead horse any more, but has there been any discussions
between the folks with the project and the fishing industry
to try to resolve this particular issue? Is it a major issue between the industry and this project?

EXECUTIVE OFFICER THAYER: I believe that there have been direct discussions between those two sides but that they haven't reached agreement.

CHAIRPERSON BUSTAMANTE: Okay. Just one last -- Ms. Brown, in your presentation you indicated that there was an impact on the sanctuary, that there would be an adverse impact on the sanctuary?

MR. VALENTINE: I think -- excuse me, Michael Valentine. I think her point was that the impacts would occur in the sanctuary, but not to the sanctuary. If there are adverse impacts on commercial fishing, they would occur within the boundaries of the sanctuary.

CHAIRPERSON BUSTAMANTE: But not to the sanctuary itself?

MR. VALENTINE: Exactly.

CHAIRPERSON BUSTAMANTE: Okay.

Any other comments or questions?

ACTING COMMISSIONER SHEEHAN: I guess just a couple of comments in terms of the discussions between the fishermen and the project sponsors. I think it's significant that they are not here, because I think we had thought that maybe they would be here. And I think in terms of what MBARI has proposed seems to address what I see are
the real legitimate concerns in terms of was there any
damage to equipment, the consultation that they've done, the
24-hour hotline. It sounds like they have briefed the
committee. It seems to go a long way towards addressing
some of the concerns. So I would be in support of the staff
recommendation at this point.

ACTING COMMISSIONER ARONBERG: I would just like
to say I echo Ms. Sheehan's comments and I support the staff
recommendation as well. So if that was a motion, this is a
second.

ACTING COMMISSIONER SHEEHAN: Sure. Do we want to
hear from the public first?

CHAIRPERSON BUSTAMANTE: Requested public input,
so far no one has come forward, and since no one has
requested.

ACTING COMMISSIONER SHEEHAN: That would be a
formal motion then.

CHAIRPERSON BUSTAMANTE: So there is a motion and
a second to support the staff recommendation. Let the
record show that the vote has been unanimous.
Okay. I believe that concludes our regular
calendar?

EXECUTIVE OFFICER THAYER: Yes, sir.

CHAIRPERSON BUSTAMANTE: There are a couple of
people who would like to make a public comment. It doesn't
say exactly about what. One is the Long Beach tidelands, and that is Lester Denevan.

Welcome again, Lester.

MR. DENEVAN: Thank you.

CHAIRPERSON BUSTAMANTE: And the next person is --

I'm sorry?

EXECUTIVE OFFICER THAYER: I think it's California Earth Corps.

CHAIRPERSON BUSTAMANTE: Who's the representative?

EXECUTIVE OFFICER THAYER: It's Don May, I believe.

CHAIRPERSON BUSTAMANTE: He'll be up next.

MR. DENEVAN: Lester Denevan, resident of Long Beach.

I am calling and concerning misappropriations for the Tideland Operating Fund in Long Beach. And I'm going to be referring to the City Auditor's report. The name of the auditor is Gary Burrows, and he wrote an audit dated November 30, 2000. He found several irregularities done with funds.

CHAIRPERSON BUSTAMANTE: Does this have to do with the City of --

MR. DENEVAN: The City of Long Beach, Administrator of the State Tidelands.

CHAIRPERSON BUSTAMANTE: Okay.
MR. DENEVAN: And the downtown area.

CHAIRPERSON BUSTAMANTE: If we could limit our remarks to about three minutes.

MR. DENEVAN: Thank you.

CHAIRPERSON BUSTAMANTE: We'll accept any written --

MR. DENEVAN: Yes. The City has diverted dollars from the Tidelands Operating Fund to the City's Civic Life Opera and to the City's Special Advertising and Promotion Fund, a practice that, to quote the auditor, appears contrary to the statutory trust, general trust law, the state charter, and generally accepted accounting principles, unquote.

He goes on to say that, as according to the City Auditor, quote, the appropriateness of diverting convention center parking revenue to other city funds and purchases is questionable. And to go on with the auditor's report, cumulative cash operating losses for the convention center are in excess of $60 million. Quote, convention center operations continue to cost the city $2.5 million a year. That's of course in the year 2000 when the report was written.

According to the city auditor, there is a regulation that, quote, requires the city general fund to reimburse the Tidelands Fund for all losses from nontrust
events. The events are conclusively deemed nontrust events unless the city attorney makes a written determination that it is a trust event. In an 1982 audit report from the city auditor's office found that the administrative regulation was not being followed, which continues to be the case today.

So I have brought this to the attention of your staff on several occasions and nothing has been addressed in any concrete manner. And I have had communications with your staff to see what -- this is four years gone by and what I would like to do is ask that this be addressed and there be a written response from your staff to address the city auditor's report, say in three months or something like that where they could address something that's been festering for four years. So that's the conclusion of my statement.

CHAIRPERSON BUSTAMANTE: Thank you.

MR. DENEVAN: And I have a copy of my statement.

CHAIRPERSON BUSTAMANTE: We will accept that for the record. Thank you, sir.

Paul, any comment?

EXECUTIVE OFFICER THAYER: I think staff has been in communication with Long Beach about the matters that Mr. Denevan raises, and we're not totally satisfied what we've heard back from Long Beach. But --
CHAIRPERSON BUSTAMANTE: The auditor and the report that has been submitted by him has been reviewed?

EXECUTIVE OFFICER THAYER: That's right. That's correct. And there's a long series of letters that have come back and forth between the city attorney's office and our attorneys regarding this. There recently has been some changes at the city attorney's office and we have some hope that we're going to be getting some more answers as a result.

CHAIRPERSON BUSTAMANTE: Well, why don't we just put it over for your executive officer's report for the next meeting then so you can give it to the Commission. Whether it's one in open session or one in closed session, I would like to have that.

EXECUTIVE OFFICER THAYER: We'll do that.

CHAIRPERSON BUSTAMANTE: Any other comments by the Commissioners?

ACTING COMMISSIONER ARONBERG: It sounds like it's a municipal use and not a tidelands use, so is that true?

EXECUTIVE OFFICER THAYER: And there's different aspects of what's being alleged here. It is appropriate often for the city general fund to pay for costs associated with running the tidelands and so that's not a problem per se, but the diversion of tidelands revenue to city general fund sorts of uses is a problem, and we'll review that.
CHAIRPERSON BUSTAMANTE: Okay. Why don't we draft some sort of a written response after the next meeting or whenever the staff has something that they can put it on.

EXECUTIVE OFFICER THAYER: Certainly. We'll bring it back in the executive officer's report at the next meeting and then perhaps discuss further on what steps might be taken.

CHAIRPERSON BUSTAMANTE: All right.

Thank you, sir.

Don, you're up.

MR. MAY: Mr. Chairman and Commissioners, thank you very much. My name is Don May, California Earth Corps, and I just want to take three minutes of your time and chat about the settlement agreement that -- or not settlement agreement, pardon me, the Appellate Court decision on Queensway Bay.

There are two things. First of all, it brings up to I think everyone's surprise that there was not legislative authority for doing land swaps and so there is now a need for some emergency legislation to cover the land. And we're fully supportive, in fact we look at this as a great opportunity to extend the land swaps to something that's been before this Commission before you today with public access to not only a beach, but rivers, lakes, and streams. And we think that giving you the basis of showing
or we can show an increase in public access from a land swap
would be an extremely good thing. We very much look forward
to working with your staff as this is introduced and moves
through the legislature.

The other concern we have is the other half of
that, not just for Queensway Bay, but up and down the coast
and your proclivity to go to the legislature to resolve
these questions and particularly to the Speaker's Office.
We think that perhaps there should be -- I don't know how it
is that you make that process more difficult, but it seems
like these end runs spot zone the beach and rivers, lakes,
and streams, it undermines the efforts of the State Lands
Commission and gives us all a lot of heartburn and I don't
know how you address that. But that is currently with us as
the city works to introduce spot zoning to lift the public
trust from the offending creators down there. So we would
look forward to both things.

Another thing that has given us trouble is when
this Commission reaches an agreement with a developer that
it's no longer regarded as a -- for instance, at Queensway
Bay, despite the fact they have abrogated the agreement with
State Lands for this particular development, not just on the
land swap, but a requirement that there would be an IMAX
theater. There is no IMAX theater. The requirement that
there would be no phasing, as Ms. Aronberg remembers that
was the Controller's big point that this all be one project and not broken into phases, and of course immediately it immediately was broken in phases, Phase 4 not being completed yet.

I think for it to be quite visible statewide that an agreement reached with the Commission has no force really undermines a lot of the efforts of this Commission. And so with Long Beach, in particular, but with others as well, where there is such clear violations of agreements that something be done. I understand you can't go to court with every minor thing, but some of these are major problems, and I would like to hear perhaps from staff of how they think that enforcement of these agreements could take place.

Should that happen, we think that not only at Long Beach, but with a number of these other, particularly in the Bay Area and down in Mission Bay, that the Commission, this Commission, is the appropriate place that these difficult trust issues should be resolved. And it would be my hope that there would be a way found that the agreements reached between the Commission and the developers and cities could be enforced.

Thank you.

CHAIRPERSON BUSTAMANTE: Thank you.

Now, the first item we talked about was the issue of a land swap. Has that been decided by judicial edict
that that is no longer something that we can do?

EXECUTIVE OFFICER THAYER: The litigation involving Queensway Bay, it's a development in Long Beach, that Mr. May refers to a lot, he was one of the plaintiffs on that. And, yes, the provisions of the appeals court decision appeared to prevent the Commission not just in that case, but in a more general sense, from using the existing statutes to approve swaps that the staff and the Commission has found to be beneficial to the public in the past.

CHAIRPERSON BUSTAMANTE: Would that mean then that all prior swaps would be null and void or does that mean from here on out or does that mean everything in a gray area? Alan?

MR. HAGER: It would mean that that particular exchange would not be good. It wouldn't nullify other swaps we've done. And the problem is it would impede the future land swaps and that's the reason for the proposed Amendment 6307.

CHAIRPERSON BUSTAMANTE: Now, is there something particular to the way this particular land swap was done, as opposed to others that made it different, or is it just that the court ruled on this particular case and therefore all swaps?

MR. HAGER: The latter.

CHAIRPERSON BUSTAMANTE: Okay.
MR. HAGER: One little thing about where this case is, the city and the developer sought in the California Supreme Court a hearing, the petition is still pending. The court extended the time for ruling on it, and I just read that as they are very busy, and I don't anticipate that the court will take action, so that it will be final probably later this year.

CHAIRPERSON BUSTAMANTE: And the piece of legislation that is talking about the land swap there are a number of authors?

EXECUTIVE OFFICER THAYER: It will probably be SB-365 by Senator Ducheny. And Mr. May has been very kind to review the draft language, and I think he's talked about making suggestions and additional changes and we're happy to entertain those. We shared that language probably a month ago or something like that, understanding that the plaintiffs in Queensway Bay probably would be amongst those most interested in this legislation. So we're eager to work with them on anything. The draft itself I think was sent to the Commission's officers and we worked with Alan and other members of the Attorney General's office and some retirees actually who were expert in public trust to make sure we wouldn't give away the store.

On some of these other points, there has been some special legislation, we see it happen a little more often in
the Bay Area. The Commission staff has generally taken the
approach that we wouldn't object as long as the bill
specifically provided that the Commission would have the
ultimate decision on any exchange. So the exchange would
not just be approved by the legislature where they would set
up a process to talk about what language is involved, it
generally sets out criteria that we believe are appropriate
fair market value being obtained, that kind of thing, but
then ultimately it has to come back to the Commission at a
public hearing before a final decision can be made.

CHAIRPERSON BUSTAMANTE: Isn't that the way the
prior legislation was drafted?

EXECUTIVE OFFICER THAYER: There is two kinds of
legislation and I think the bill that we talked about, SB-
365 would amend the statute. It gives the Commission
general authority to approve exchanges, but that
occasionally there are special bills that are introduced to
deal with particular projects, and there the Commission's
staff gets involved and generally tries to ensure that the
Commission, even in that instance as well, gets the final
decision just as is the case with the general authority.

CHAIRPERSON BUSTAMANTE: Okay. Well, what about
the greater issue of enforcement, I guess?

EXECUTIVE OFFICER THAYER: At Queensway Bay, I
don't think we know yet whether some of these would be in
violation. Now, some of the parcels that were taken out of the public trust, there are specific uses planned for them. And our agreement with the city provided that they either put those uses on the land from which the trust was lifted, or that land came back into the trust. And so we think that that's probably happening with respect to the IMAX location, because I think they're proposing a hotel there. If that happens, the first thing that happens is it comes back into the public trust. The second thing which is also true is the hotel is consistent with the public trust document so it works out. There are several other uses there that haven't been broken yet, or one or two, and if those are not built in accordance with the approval from the Commission, then that land comes back in the public trust and we're continuing to monitor that.

CHAIRPERSON BUSTAMANTE: In this particular situation, because of the court case, does it also mean that we give up the land that was offered in exchange for the area in Queensway Bay?

EXECUTIVE OFFICER THAYER: We've been holding off reaching a final or negotiating that sort of thing with the city or with Mr. May and everybody else involved as to what will happen if the court decision is sustained after the Supreme Court review is complete. When it is then presumably that exchange becomes unwound and we're
potentially left with some or a couple of parcels which have in fact been developed with the nontrust uses. These are the parcels for which the trust was lifted, several nontrust uses have gone in, and we're going to have to figure out what to do at that point, whether there is a new exchange with perhaps more valuable land coming into the trust than the ones that were part of the last exchange that would be more acceptable to some of the plaintiffs. There are different options that might come in, I shouldn't really speculate about that at this point. At this point, the legal status is uncertain until the Supreme Court decides what it's going to do.

CHAIRPERSON BUSTAMANTE: Okay. Any comments?

ACTING COMMISSIONER SHEEHAN: Yes. I have a couple of questions. On the legislation that you were talking about on this specific exchange, not the general legislation we've talked about with Senator Ducheny, and that it was the role of the staff to try and work with the legislature to say even if you want to do this, we'd still like to make sure the Commission has the ultimate approval. Have we always been successful on that effort?

EXECUTIVE OFFICER THAYER: Yes. And if we are ever not, we would be coming back to the Commission and ask to bring it to a vote.

ACTING COMMISSIONER SHEEHAN: Okay. And I guess
the other thing I would tell you in terms of the legislature
going after these special ones, it's just in my opinion it's
more a matter of education as to the process and how the
process works, and with some of the new members of the staff
in the legislature to try to improve how these things
operate would be my response in terms of working with them.
And I think you answered the question on the specific, the
lawsuit that potentially the entire agreement we have
unravels depending on what happens. Did we appear at the
Supreme Court or did the --

EXECUTIVE OFFICER THAYER: We did not and we
brought that back to the Commission and said, look, you
know, we think that the Appeals Court had a point there and
we think it's more fruitful for the Commission to seek
statutes that would authorize us to do what we thought we
had the authority --

ACTING COMMISSIONER SHEEHAN: Okay. But your
feeling is they will not wiggle on this?

MR. HAGER: They will not grant a hearing I'm
convinced.

ACTING COMMISSIONER SHEEHAN: Thank you.

CHAIRPERSON BUSTAMANTE: There were a couple of
areas that Mr. May indicated that you felt where
nonenforcement was taking place. Those two areas that were
mentioned were Mission Bay and --
MR. MAY: A number of projects up in the Bay Area.

CHAIRPERSON BUSTAMANTE: A number of projects?

MR. MAY: Yes.

CHAIRPERSON BUSTAMANTE: Are we familiar with, have these been offered to staff for review to check on these enforcement issues?

EXECUTIVE OFFICER THAYER: We have worked on the Queensway Bay one and I think we're familiar with those. The Mission Bay I'm not familiar with what issues he's referring to.

CHAIRPERSON BUSTAMANTE: Mr. May, if you could please provide, and not at this time, but if you could please provide a list of those areas where you believe nonenforcement is taking place and what kind of nonenforcement or what kind of enforcement activities perhaps you see as necessary so that staff can review and analyze those issues.

MR. MAY: I would be delighted.

CHAIRPERSON BUSTAMANTE: In my -- I don't know about the rest of the Members of the Commission, but in my viewing of staff activities, I've found them to be pretty aggressive in trying to find those areas where enforcement is necessary. I know that I have been engaged with activities with staff on certain projects in which sometimes they wonder if they're not being a little bit too aggressive
in certain areas. I don't think they can be too aggressive with this particular Commission, so we've encouraged them and I've seen them actually move in that direction. So my guess is that if anything you believe is a valid nonenforcement issue would be gracefully accepted by staff and would be looked into very, very strenuously.

MR. MAY: Thank you, I appreciate that. But one other area in 6307 that has given us some heartburn is that definition of what is in the public interest, and in that case we're -- it was determined that land of equal financial value. To us a freeway median strip has zero value to the public, and we are hopeful that in 6307 that is somehow clarified that value means value to the public and not necessarily an exchange of land of equal financial value.

CHAIRPERSON BUSTAMANTE: Okay. Any other public comments?

Seeing none, the meeting is adjourned and we will go into closed session.

(Thereupon the meeting of the State Lands Commission was concluded at 11:36 a.m. on August 8, 2005.)
The items listed on page(s) ______________________________ were approved, disapproved, deferred and/or modified as indicated.

There being no further business to come before the Commission, the meeting was adjourned.

PAUL D. THAYER
Executive Officer

Minutes confirmed at the
__________________________, 2005 Commission Meeting
CERTIFICATE OF SHORTHAND REPORTER

I, MICHAEL J. MAC IVER, a Shorthand Reporter, do hereby certify that I am a disinterested person herein; that I reported the foregoing State Lands Commission proceedings in shorthand writing; that I thereafter caused my shorthand writing to be transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said State Lands Commission proceedings, or in any way interested in the outcome of said State Lands Commission proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of August 2005.

Michael J. Mac Iver
Shorthand Reporter