MEETING
STATE OF CALIFORNIA
STATE LANDS COMMISSION

PRESERVATION PARK
NILE HALL
668 13TH STREET
OAKLAND, CALIFORNIA

MONDAY, JUNE 26, 2006
10:00 A.M.

KATHRYN S. KENYON, CSR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 13061

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
APPEARANCES

COMMISSION MEMBERS

Mr. Steve Westly, State Controller, Chairperson, also represented by Ms. Cindy Aronberg

Mr. Cruz M. Bustamante, Lieutenant Governor, represented by Ms. Lorena Gonzalez

Mr. Michael C. Genest, Director of Finance, represented by Ms. Anne Sheehan

STAFF

Mr. Paul Thayer, Executive Officer

Mr. Jack Rump, Chief Counsel

Mr. Alan Hager, Attorney General

Ms. Jennifer Lucchesi, Staff Counsel

Ms. Kimberly Lunetta, Executive Assistant

ALSO PRESENT

Mr. John Asuncion, Blue Whale Sailing School

Mr. David Biggs, City of Redondo Beach

Ms. Ruth Gravanis, Public Trust Group

Mr. Jess Money, Reform Redondo

Mr. Robert Raburn, East Bay Bicycle Coalition

Mr. Michael Warburton, Public Trust Alliance
<table>
<thead>
<tr>
<th>INDEX</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. Open Session</td>
<td>1</td>
</tr>
<tr>
<td>II. Confirmation of Minutes for the Meeting of April 17, 2006</td>
<td>1</td>
</tr>
<tr>
<td>III. Executive Officer's Report</td>
<td>2</td>
</tr>
<tr>
<td>IV. Consent Calendar C01-C38, C40-C72, C74-C83</td>
<td>2</td>
</tr>
<tr>
<td>V. Regular Calendar</td>
<td></td>
</tr>
<tr>
<td>Item 86 City of Redondo Beach (Trustee):</td>
<td>7</td>
</tr>
<tr>
<td>Consideration of a financial management</td>
<td></td>
</tr>
<tr>
<td>review of the City of Redondo Beach granted tide and submerged lands; Los Angeles County.</td>
<td></td>
</tr>
<tr>
<td>(G05-07.5) (A53; S 28)</td>
<td></td>
</tr>
<tr>
<td>Item 87 California State Lands Commission:</td>
<td>47</td>
</tr>
<tr>
<td>Commission consideration of a resolution</td>
<td></td>
</tr>
<tr>
<td>proposed by the Controller opposing</td>
<td></td>
</tr>
<tr>
<td>legislation recently introduced in Congress that would allow for new offshore oil and gas.</td>
<td></td>
</tr>
<tr>
<td>VI. Public Comment</td>
<td>49</td>
</tr>
<tr>
<td>VII. Closed Session</td>
<td>62</td>
</tr>
<tr>
<td>Adjournment</td>
<td>63</td>
</tr>
<tr>
<td>Reporter's Certificate</td>
<td>64</td>
</tr>
</tbody>
</table>

PETERS SHORTHAND REPORTING CORPORATION    (916) 362-2345
CHAIRPERSON WESTLY: Good morning, everybody. I would like to call this meeting of the State Lands Commission to order and we'll formalize that authoritatively here.

All the representatives of the commission are present. I'm State Controller Steve Westly, and I'm joined today by Lorena Gonzalez, representing the lieutenant governor, and 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'll hear the proposals concerning the leasing and management of these public properties.

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

And may I have a motion to approve the minutes?

ACTING COMMISSIONER GONZALEZ: I'll motion.

ACTING COMMISSIONER SHEEHAN: Second.

CHAIRPERSON WESTLY: Great.

All in favor say "aye."

(Ayes.)

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

Mr. Thayer, may we have your report.

EXECUTIVE OFFICER THAYER: Good morning, Mr. Chair, and members of the Commission.

There is no Executive Officer's Report this morning.

CHAIRPERSON WESTLY: Nothing?

EXECUTIVE OFFICER THAYER: Nothing. There's plenty more to come in the rest of the meeting.

CHAIRPERSON WESTLY: All right. We'll hold tight here.

The next order of business will be the adoption of the consent calendar, and I would like to call on our executive officer, Mr. Thayer, to indicate which items have been removed from the consent calendar.

EXECUTIVE OFFICER THAYER: There are several items. Three of them will be heard in a succeeding Commission meeting. They are Items 73, 84, and 85. And all of those off this calendar will be heard at another meeting.

I wanted to note for the record that we did receive, late on Friday, a letter of concern regarding the levee projects. These are Items 30, 32, and 33. However, staff counsel has reviewed that letter and we don't
believe that it takes the form of an oppose letter, which
under our rules would require the item to be removed from
the consent calendar.

So it does note several concerns about these
levees. It's concerned about whether or not the State is
giving up property and things like that.

But we're recommending that the Commission leave
that on the consent calendar unless the individual is here
and has filled out a slip and wants to speak.

So those remain pending anyone who wants to speak
on that.

We also noted that we've received a speaker slip
on item 39, the Santa Barbara Mooring Program, and so that
must come off consent. And we view that as a regular
calendar item later in the meeting.

CHAIRPERSON WESTLY: Okay. Thank you, Mr. Thayer.

At this point, then, we do have one member of the
audience I would like to ask to come forward and speak,
which is, I believe, on Item C39. And that is, is that
Mr. John Asuncion?

Did I get that name right?

MR. ASUNCION: Yes.

CHAIRPERSON WESTLY: If you could come forward to
the podium here and then please identify yourself for the
record.
MR. ASUNCION: My name is John Asuncion. And I'm the president and founder of the Blue Whale Sailing School. We're an educational corporation here in the state, and I'm a resident of Santa Barbara. So this is very concerning to me on the moorings that are off East Beach and the boats that are -- have been anchored off for some years.

And I hope in the coming years that this area, like other areas in the state, can be addressed and cleaned up. And I hope the City of Santa Barbara, in turn, has the mooring balls put in place, in a correct place, where it's not a danger to the public, as people are on the beach or boats that are anchored out be a hazard to other boats that are out on the Pacific Ocean. And so that's my comment on that. Thank you so much.

CHAIRPERSON WESTLY: Mr. Thayer, can you add anything to that?

EXECUTIVE OFFICER THAYER: No, it sounds -- I hope Mr. Asuncion corrects me if I'm wrong, but he's not objecting to this project, and so I would presume if he has no objection, we would restore that to the consent calendar and handle that as part of the overall vote on the consent calendar.

CHAIRPERSON WESTLY: Thank you, Mr. Thayer.
That's exactly the right approach.

Thank you Mr. Asuncion.

At this point, I would like to ask Mr. Thayer or and/or Mr. Hager. I'm presently concerned about Item C78, and the real question here is, do we have any room, legally, to deny this? It's my understanding that in the past we probably don't, but I would like to get your opinion from a legal standpoint, if we could.

ASSISTANT ATTORNEY GENERAL HAGER: Yes. The lessee here has a right to develop a lease, has to do it in a prudent manner and subject to all applicable regulatory requirements. If that's done, yes, they have a lease right to continue to develop.

CHAIRPERSON WESTLY: Any questions on that? Ms. Sheehan? Ms. Gonzalez?

All right.

Mr. Thayer?

EXECUTIVE OFFICER THAYER: Well, I would just add to Alan's comments that this is an approach that's been taken by the Commission, historically, that a lot of these leases have been entered into at a time when the Commission and the State have been discussing offshore oil, presents a problem.

These days, because the approach of most policy makers in the State and of the public itself is contrary
to additional drilling. However, we're in essence stuck with these old contracts that require us to perform or otherwise, as a none-practicing, non-licensed attorney, I would say that there's some liability issues here that we want to be careful about.

CHAIRPERSON WESTLY: Okay. Thank you, Mr. Thayer. Having heard that, I would like to ask if we could take the consent items up as group, for a single vote.

ACTING COMMISSIONER GONZALEZ: I just want one clarification.

On the letter concerning the levees, that came unsigned; correct?

EXECUTIVE OFFICER THAYER: Yes.

ACTING COMMISSIONER GONZALEZ: So we're not even sure who sent it, if it was the letter of opposition, who it came from.

EXECUTIVE OFFICER THAYER: No. I think the letters were dropped off at a number of offices including yours. And in each case, the one we received at the Commission's office, a copy of which is on the podium in front of all of you, is unsigned; we don't know who it is.

ACTING COMMISSIONER GONZALEZ: Okay.

Thank you.

CHAIRPERSON WESTLY: Ms. Sheehan?

ACTING COMMISSIONER SHEEHAN: I will move the
consent calendar with the three items taken off to be put
over to the next meeting. So I will make that motion.

CHAIRPERSON WESTLY: Second?
ACTING COMMISSIONER GONZALEZ: Second.
CHAIRPERSON WESTLY: All in favor?
(Ayes.)
CHAIRPERSON WESTLY: That passes unanimously.
At this point, then, we move to Mr. Thayer. I
believe Item 86. It's a consideration of financial review
and legislative grant of tide and submerged lands to the
City of Redondo Beach.
And I believe we're going to have a staff
presentation first; is that correct, Mr. Thayer?
EXECUTIVE OFFICER THAYER: Yes, sir.
The presentation will be made by Jennifer
Lucchesi, who actually passed the Bar since our last
Commission meeting.
CHAIRPERSON WESTLY: We would have been happy to
have you speak in either case.
(Laughter.)
STAFF COUNSEL LUCCHESI: Chairman Westly and
Commissioners, my name is Jennifer Lucchesi, staff
counsel, for the Commission.
In response to complaints alleging a number of
illegal activities by the City of Redondo Beach,
Commission staff conducted a financial audit of the City's granted trust lands and trust assets.

During the course of the investigation, staff consulted and met with City staff, interested citizens, and the Attorney General's Office, and analyzed numerous documents including financial records, city council staff reports and minutes, leases and agreements, correspondence, and other pertinent information submitted by the City and various individuals.

While the complaint included a variety of allegations relating to City operations, staff focused only on those allegations related to Tidelands Trust Funds.

In summary, staff believes that the evidence uncovered does not warrant further action by the Commission regarding the allegations of criminal conduct involving the Tidelands Trust made in the original complaint.

The allegations did, however, lead staff to uncover several separate areas within the financial management of the City's trust lands, which were in need of explanation and remediation.

These areas involve two particular transactions: the Harbor Center Project and the Kincaid's Restaurant lease. However, before addressing those two transactions,
I will first briefly discuss the specific allegations outlined in the original complaint.

The specific allegations suggested illegal transfers of trust funds to the City's general fund and to the redevelopment agency and a perceived depletion of the Trust's retained earnings.

As described in the staff report, the audit did not substantiate any of these allegations. However, as stated previously, staff did find certain instances where the City's contractual arrangements involving granted tidelands raised some questions. I will now briefly discuss these specific instances, beginning with the Harbor Center Project.

As background, in the early 1980s, the Harbor Center Project was developed by the City's redevelopment agency to be a hotel, retail, and parking complex project. The project, as submitted to the Commission, shows the project is divided between public and private portions. The public portion, as proposed, was to be a public parking structure and an open landscape area. The private portion was to be a 353-room hotel, retail space, and a portion of the parking structure.

In 1983, pursuant to the expressed provisions of the Tidelands Trust Grant, the Commission approved an expenditure of $3.5 million of Trust funds for the
acquisition of land for the public portion of the Harbor Center Project. Subsequently, the Commission approved two 18-month extensions for the City to comply with the time authorized for the acquisition of the land and conveyance to the trust.

Staff analysis of the Harbor Center Project focused on three primary aspects, including the specific procedural requirements for the Commission's approvals, the rate of return received for the lease of the public portion of the Harbor Center Project, and an occupation of a portion of the parking structure by a non-trust use.

Staff found that the City failed to comply with certain procedural requirements of the Commission's 1983 approval and subsequent amendments. Staff also included that the amount of rent received from the parking structure lease is not reflective of commercial market rates and is less than adequate as a percentage of return on investment.

Finally, staff found that the second story of the parking structure is currently being occupied by Gold's Gym, a non-Trust use.

Now I will discuss Kincaid's Restaurant.

Kincaid's Restaurant is located on the City's "horseshoe" portion of the Redondo Beach pier, on Trust lands. The city -- excuse me, Kincaid's has been very
successful, fiscally, for the Trust, generating approximately 150,000 per year.

In 1997 the City and RUI ONE corporation entered into an agreement for the construction of Kincaids, in which RUI would initially finance the entire project, and the City would reimburse RUI for 50 percent of the cost.

The City's financing was arranged with the Redondo Beach Public Financing Authority, a financial branch of the Redevelopment Agency. The PFA used as collateral future rents from Kincaid's and acquired a 20-year loan for $1.75 million, from which the PFA paid RUI 50 percent of the project's construction costs.

The borrowing of the money for a capital improvement and the collateralization of future rents from an asset within the Tidelands Trust is tantamount to a capital expenditure. Pursuant to the City's granting statues, any capital expenditure of Tidelands funds in excess of $250,000 requires Commission review and approval.

This transaction should have received Commission review and approval as Trust assets would ultimately be liable for the loan. Therefore, staff found that the City failed to secure Commission's approval prior to allowing the PFA's future rents from Kincaid as collateral for the $1.75 million loan.
Finally, I would like to conclude by saying while staff believes there are some need -- needed modifications to the City's financial management of its Trust lands and assets, the City has invested a substantial amount of its resources in enhancing its granted Trust lands, by creating a premiere visitor-serving water front destination in its King Harbor.

While the City may disagree with certain staff interpretations of the City's Trust management, Commission staff is confident that the City and the staff will be able to resolve the issues while addressing the City's concerns and protecting the Public's Trust assets.

As such, staff recommends, as detailed in the staff report, that the Commission direct staff to continue to review the City's financial statements and management practices and to resolve the issues involving the Harbor Center Project and Kincaid's lease with the City, and return to the Commission within six months with a formal agreement.

I'm available to answer any questions you may have.

Thank you.

CHAIRPERSON WESTLY: Thank you, Ms Lucchesi.

Would either of the other commissioners like to ask a question, otherwise I will call on some of the
members of the public who are here to speak today.

Questions?

All right. We have two members of the public who would like to speak today.

The first is David Biggs, the assistant city manager from the City of Redondo Beach, and then we have Jess Money who came here from the City. And Mr. Money, we will allow you some additional time because of the light agenda this morning.

Mr. Biggs, if you could identify yourself.

MR. BIGGS: Thank you, Mr. Westly and members of the Commission.

My name is David Biggs. I'm the assistant city manager for the City of Redondo Beach.

First of all, I would like to thank this Commission and staff for the time that they spent looking at our activities in Redondo Beach. And certainly, we're happy that your efforts resulted in the City being cleared of any of the allegations of wrongdoing that were alleged.

It's unfortunate that this type of energy and effort needs to be expended on a review such as this, especially when it arose out of, really, what is Redondo Beach just before I arrived there, a local election that was quite heated, and these allegations arose out of that, those -- those local elections and together with some
labor relations issues that were simmering in our harbor department.

Sort of interesting in that when I first arrived at the City over a year ago, to serve as the assistant city manager, Ron Richardson, your auditor was using an office in our harbor department, and he was there so often, I actually thought he was a full-time employee of the City.

But as Jennifer said, we really do look forward to working over the course of the next six months with the Commission and its staff in order to resolve the issues that came up.

However, what I would like to do this morning is, since this is of interest not only in Redondo Beach, but I think to Tidelands trustees from throughout the state, is spend just a few moments sort of establishing the track record I think that we have, here in Redondo Beach.

Again, I think as Jennifer indicated, we probably would characterize -- there's some disagreement as far as how certain activities have been interpreted between the staff report and how the City views it, especially with our local elected officials. As a City, we've had a tremendous record of investing in the tidelands, which is really the King Harbor area, and our pier.

As a community we don't have an adjacent downtown
area, another area that, having worked in a number of
tidelands communities, sometimes it's viewed as siphoning
off tidelands revenues.

Our main focus, one of our main economic engines
is the harbor and the pier. So again, we have a
consistent record of investing money beyond tidelands
resources into those areas.

Redevelopment funds, for example, were used to
rebuild the pier after they were destroyed in the storm.
Those redevelopment revenues still are being used to pay
off those pier bonds which benefitted the Tidelands Trust.

The City also has invested other non-redevelopment
non-tidelands funds into the pier and harbor area in an
ongoing basis. Monies that could have been spent anywhere
in the community, in fact, after the pier was destroyed in
1988. There was a City-wide vote which gave direction
that we should find the resources to reinvest in the
harbor and pier. So this is not just a casual effort, but
certainly our electric lease, wholeheartedly the King
Harbor and our tidelands, are the center piece of our
community.

So again, consistently, the tidelands have been
made one of the City's highest priorities. And we believe
we've managed our tidelands areas with the utmost
responsibility.
Clearly, as I indicated, there was a few items in
the staff report that we don't agree with, exactly how
they have been characterized. We did provide you with a
letter dated June 21st which outlines that in some detail.
Again, I would like to take just a few moments to
highlight some of those points and then speak to staff's
specific recommendations, if I may.

First of all, the three and a half million dollars
that was -- the State Lands Commission authorized in 1983
to invest in the Harbor Center Redevelopment Project Area
is, we believe, mischaracterized as $5 million. And the
letter explains that, in that at the point in time we
deposited those monies, with Superior Court in Los Angeles
County, these funds became the funds of the property that
we were condemning, and any interest occurring in the
court account is their money as a matter of State law.

The City did, and the redevelopment agency, in
assembling the site did have the use of that property from
that time under an Order for Immediate Possession. So we
did get the benefit of those funds having been deposited.

Also it's interesting to note, I think, as we've
again demonstrated our commitment as a Tidelands trustee
that in particular with the Harbor Center Project Area,
the State Tidelands Grant is benefitting in three ways.
We believe it be three levels of benefit.
Firstly, the State Lands Commission did find a project in general, with the provision of visitor-serving amenities, public parking, public open space, was of benefit to the Tidelands Trust, and there has been a small amount of income generated annually by that. Admittedly, now you look back 25 years later, the transaction may not seem to be market rate, but I believe there are many transactions, if you look back at something that was that old that you would find the same thing, especially when you don't weigh it against the public benefit that's been accrued from that package.

Additionally, it was the City, as a Tidelands Trustee, and its redevelopment agency made their own decision -- again, while the Commission authorizes three and a half million dollars as an investment, we decided in approximately 1990 that we were going to fully repay that amount with interest to the Tidelands Trust through our redevelopment agency. And in fact, we did make two payments up until the time the assessed value of that project area declined, and also we had issued bonds to rebuild the pier, and we didn't have the income able -- were not able to make those payments. But that debt remains on the books. It still creates interest at the late rate, and coincidentally, just recently, the assessed value in the project area went up because the hotel has
sold, and starting this next year in our budget, which was
adopted last week, we will recommence payment, and we
provided your staff a documentation that demonstrates we
will be able to fully repay that amount to the Tidelands
Trust at interest.

Just to put it in perspective, we've collected
four and a half million dollars of tax increment out of
this redevelopment project area and we can collect
$52 million. So certainly, the principal and current
interest can be repaid within that timeframe.

I would also note that at the same time the City's
uplands invested money as well and we're deferring our
repayment on that until the State tidelands part is
repaid.

In addition, at the end of the term, for an asset
which the Commission will be fully repaid, you will still
own that asset unless we agree to do something different,
with your staff.

On repayment of the debt, to talk about that
briefly, it is subordinate to our repayment of our pier
bonds. Again, that's three and a half million dollars of
pier bonds. The redevelopment agency will be repaying
three and a half million dollars that was used to rebuild
the pier, after the storm. As I indicated, there was a
dramatic decrease in the assessed value that impaired our
ability to repay the Tidelands Trust, and the bonds do have a first lien on that tax increment revenue that the repayments will commence with our next fiscal year, in the amount of $160,000.

In regards to Gold's Gym, Gold's Gym is one of those interesting uses. It's been there for quite a while.

One, it went in about 1988. If I may, I didn't submit this in a letter. I don't know how best to provide this to members of the Commission. If I can just hand this up there.

CHAIRPERSON WESTLY: Thank you.

MR. BIGGS: You know, I did have the pleasure of working in two other jurisdictions that do have tidelands -- both Huntington Beach and Long Beach -- over my 25-year public sector career. And I think it's interesting to note the Gold's Gym, and we understand why it's a concern, because it's a nonconforming use. It was in place in 1988. One, there was a prior audit done by the State Lands Commission in '87 and '88. They took a specific look at the Harbor Center Project Area, and while we disagree with your staff as to whether -- we do agree that the current staff really wasn't cognizant that that use was there. However, it has been there for more than -- for nearly 20 years.
As you can see from the photo, it is a very visible use in the tidelands area. It's not an office use tucked away in some office building. But anyone who visits Redondo Beach sees Gold's Gym there, on the second floor of the parking structure.

And also in the staff report, they noted that the staff was down, actually, in 2001, looking at an expansion of that use. And if this was such a concern, I'm surprised it took three years or four years and a public complaint for it to rise to an area that needs to be addressed.

Again, that being said, we certainly are willing to work on a number of solutions to address that matter.

On the issue of rate of return, I guess again, as someone who always has said that development and economics is simple math, certainly that gets confusing to the public, to look at some of the transactions we do both at the state level and in local government level.

But the rate of return, we think, on this asset actually has been superior over time in that we've got not only the public benefit of the use, but it's going to be paid for, in effect, by three times, and then we'll be repaying this at full interest. So really there's an infinite return on this asset if you're fully repaid, in addition to whatever other income and public benefit is
generated.

And again, in regard to the Harbor Center overall, I think one observation made, in 1984 when the staff was considering -- the State Lands Commission staff was considering some of the amendments to the agreement that allowed us to make this investment. A condition was imposed that the City agreed to have the project audited within two years of completion.

In 1984 our then harbor director sent a letter to the State Lands Commission, and I think this sort of capsulizes the anticipated problem, passage of time has been a problem. The City hopes that all audits can be scheduled within a year or two of project completion. The City's primary concern, as I'm sure you can understand, is that with the passage of time, employees who are familiar with the project leave the City and unfortunately records seem somehow to get misfiled or misplaced.

And I think that same thing can be said of the State Lands Commission as well.

In regard to Kincaid's --

CHAIRPERSON WESTLY: If you could begin to wrap up, Mr. Biggs.

Thank you.

MR. BIGGS: It's the first new investment on the pier in over a decade. It's been a financially successful
There's been a misunderstanding, I think, of the State Lands Commission staff on how public finance authority works and about future accountability.

And I just -- one observation as far as debt approval. We think that's not necessarily a bad idea. However, it should apply to all Tidelands trustees across the state, and also we've received numerous boating and waterways loans that are being repaid by tidelands assets and I know at one point in time suggested those should be approved as well.

CHAIRPERSON WESTLY: Thank you, Mr. Biggs.

Why don't you stay here for maybe other questions from the members.

How long was that? I want to make sure we're providing equal time.

MS. LUNETTA: Ten minutes.

CHAIRPERSON WESTLY: Ten minutes. Great.

What I would like to do is ask Mr. Money to come forward. And I want to thank you -- is Mr. Money here? -- for driving all the way up from Redondo Beach. We appreciate that. We will make sure that you have equal time.

Mr. Biggs, we may ask you to come back for the questions in a minute.

MR. MONEY: Thank you very much.
I would like to thank the Commission for the opportunity to appear at this hearing.

I would like to preface my comments by saying that I mean no disrespect to the State Lands Commission staff, and I take no pleasure in presenting the criticisms that follows. The SLC staff that I dealt with are very nice people and, in fact, that may be a significant cause of what I see as deficiencies in this report.

The primary problems with this report are that it omits or understates significant issues, and that the solutions proposed are insignificant to either remedy the situation or deter future abuses. It also fails to consider, or even mention, historical contents of ongoing misuse of Tidelands Funds. Historically, back in the 1960s, the City allowed apartments to be illegally constructed on tidelands properties, in fact, in the harbor. This eventually lead to retroactive legislative approval.

However, in 2005, as a settlement -- in part of the settlement of a lawsuit between the leaseholder and the City, the City permanently surrendered its right to audit the revenues and expenses of this same leasehold. In other words, they forfeited their right to verify funds, a portion of which should go to the tidelands.

Correspondence between the SLC staff and the City
reflects a predisposition on the part of the staff to grant excessive and unnecessary concessions to the City in spite of this long history of abusive and illegal behavior, with respect to the Harbor Center parking structure.

The City used 1.5 million more than the amount authorized by the Lands Commission for land acquisition and construction. They did so four years ago after the authorization expired, and then they later converted the property from a public asset owned by the Trust into debt owed to the Trust.

Contrary to both controlling grant statutes and specific representations made to the Lands Commission, the City converted the public open space portion of this structure into a private, for-profit commercial enterprise, Gold's Gym.

The City entered into a sweetheart, below-market 50-year lease, which benefits the City and the redevelopment agency at the expense of the Tideland. And then the City arbitrarily discontinued repayment of that debt, allowing interest to accrue now in the amount close to a million dollars. The report describes this as mismanagement of the Tidelands Trust funds. Really? You think?

In a letter from the Lands Commission to the City,
dated 4/14 of this year, it says, "This lease may be
considered a gift of public monies pursuant to Article 16,
Section 6," end quote.

   Somehow that language was deleted from the final
report. I wonder why. Maybe it has something to do with
the statement farther down, on the same page, of that
letter that says, quote, "A resolution which addresses the
City's concerns as well as protects the City's Trust lands
and assets can be accomplished," end quote.

   Why should the Lands Commission take into
consideration the City's concerns? Clearly, the City did
not demonstrate any consideration for the public or the
Lands Commission or its obligations as trustee of the
tidelands. The fact is, ever since the breakwater and
harbor were constructed in the late 1950s, the City and
prominent local real estate interests have viewed the
entire tidelands area as their own private fiefdom, to be
exploited as they saw fit, without regard to either laws
or public obligations.

   Here are two examples of how this report lacks
depth and clarity. No mention is made of the fact that
Gold's Gym operates 24 hours a day, 365 days a year. So
in addition to the club facility itself usurping public
open space, its 2,000 members take up many of the 325
parking spaces intended to serve and facilitate the public
in using the tidelands and harbor area.

The report also fails to properly illustrate the true financial picture. The Tidelands Funds spent 5 million in 1987 dollars. The total repayment is 600,000 in deflated dollars stretched over 50 years. And that 600,000 in return on investment, if you can characterize that as a return, is $300,000 less than the $900,000 in interest that had accrued to this loan, up through 1994 -- I mean, excuse me, through 2004.

There is also absolutely no evidence the City ever intended to resume repaying this loan if the Lands Commission had not been pushed into performing this review.

While the City's tale of financial hardship during the recession of the early and mid '90s may be valid, its claim of inability to repay the Tidelands Fund loan in later years is patently bogus.

In fiscal 02/03, rather than repay the Tidelands Fund, the City and the redevelopment agency elected to squander 10 million on a lavish and unnecessary renovation of the performing arts center, a municipal white elephant that requires over $600,000 a year in operating subsidies in order to host such cultural masterpieces as used car clearance sales and carnival rides.

Furthermore, the solution advocated by the State
Lands Commission staff would allow the misuse of the property to continue in perpetuity, thus forever denying the public the benefits that were promised as a result of the original expenditure of Tidelands funds. This continues the disturbing pattern in which the City allows private developers to violate laws, and then the Lands Commission retroactively facilitates approval without penalty to the City or the developer or without benefit to the public or the State.

Now let me address the errors, omissions, and failures of the analysis of the Kincaid's restaurant lease.

First of all, the Public Financing Authority is not a financial branch of the redevelopment agency. It is a joint-powers entity created by the City and the redevelopment agency. It is a supra-entity, not a subordinate branch.

The Public Financing Authority is not a sinking fund, and its primary function is not to, quote, "serve as a repository of monies to be held to pay down debt obligations."

The PFA is the entity by which the City and the redevelopment agency issue bonds and was created in March of 1996, solely to circumvent a measure, adopted by the voters two weeks earlier, limiting city bonds and debt
According to the City's own comprehensive annual financial report, the PFA also owns and operates properties. More importantly, in the fiscal year 02/03, PFA financials that have previously been reported separately were combined with and reported as a part of the redevelopment agency in order to conceal the true financial condition and further deterioration of the Public Financing Authority.

Between 1996 and the end of fiscal years 2000/2001, the PFA went $1.4 million in the red. In fiscal years 01/02, and 02/03, PFA net losses increased by $3.8 million -- that's 371 percent -- to 5.2 million. The Tidelands Funds supposedly gets $155,000 a year in rental revenues from Kincaid's, but according to the report, staff report, Page 10, second line from the bottom, quote, "Trust assets would be ultimately liable," end quote, for repayment of a 20-year loan, which the City obtained, to reimburse the developer half the cost of building the restaurant. What the report fails to mention is that according to the City's own CAFR, the loan in question from South Bay Bank has no repayment schedule and not a single payment has ever been made.

The true picture of this transaction is that by virtue of a loan, the proceeds of which were transferred...
to a private commercial, for-profit enterprise, titled to a real property asset, once owned free and clear by the people of the State of California, as part of the Tidelands Trust, is now held by a bank. And taxpayers, either through city or the state, will ultimately have to pay 1.75 million or more to get it back.

The letter to the City from the Lands Commission staff dated 4/14 of this year says, quote, "The lease arrangement between the City and the PFA appears to be written as a net profits arrangement whereby all rental income is credited to the redevelopment agency and all debt service and utility charges are offset from revenues and the net is transferred to the Tidelands fund. This rental clause allows the redevelopment agency to pass through debt service costs without limit, thereby providing the redevelopment agency a funding source that is totally within the Tidelands Trust area."

Strangely, this statement is missing from the final report.

CHAIRPERSON WESTLY: Mr. Money, could you begin to wrap up. We're going to have a lot of questions for you.

MR. MONEY: I would be glad to answer them.

CHAIRPERSON WESTLY: I sense that.

If you could wrap up here, and we'll give Mr. Thayer a chance and then we'll have questions.
MR. MONEY: I just have a couple of quick things that you should know here, that the report doesn't address.

This started because members of the police department and the harbor patrol came to various people in the community and said, you should know that police patrols on the pier are being discontinued except on the weekends, because there's no money in the Tidelands Fund.

Now, the Tidelands Fund is supposed to have almost $12 million in retained earnings, but they can't afford police patrols? Our harbor patrol has three boats at that time, not a one of which was in operating condition. They had to borrow a boat from Palos Verdes. Now, these are public safety issues. Also, this idea that the retained earnings was changed into unrestricted funds, I find it impossible to understand the explanation here. How can a retained earnings category have depreciable assets in it? That doesn't make any sense. And even after that 900,000 was transferred out, why is the category now retitled "unrestricted funds"?

The City has $25 million total in Tidelands Reserves: 14 million in a catastrophic periodic repair or maintenance fund, and almost 12 million in retained earnings. And they couldn't afford cops? We need to find out if this money really exists. And I will tell you,
this is a city that has ghost employees. This is a city whose CAFR report says that they have never had more than 604 employees but we have evidence that they've issued 696 paychecks. We have people retiring with phony disability claims so that part of their retirement will be tax-free.

This is not the group of altar boys that Mr. Biggs would have you believe. And, in fact, we have had a former councilman go to federal prison for bribery, and the person who bribed him was shot outside his office and survived three gunshot wounds. This is not a nice little beach community. This is "Enrondo" Beach, believe me.

CHAIRPERSON WESTLY: Mr. Biggs (sic), why don't you hold on.

MR. MONEY: Okay.

CHAIRPERSON WESTLY: I have a hunch there will be questions for you.

Mr. Thayer, would you care to respond to some of the questions that were raised. And then I'm going to ask my fellow Commissioners if they have additional questions.

EXECUTIVE OFFICER THAYER: Certainly.

I think the staff finds itself and its perspective to be something in the middle, between the City's perspective and Mr. Money's. Many of Mr. Money's concerns, of course, aren't Public Trust concerns: the ones involving civic center and payrolls and that kind of
thing. But we do agree with much of what he had to say about the Gold's Gym not being a Public Trust use, and the use of the parking lot. One thing that hasn't come out that he didn't mention and staff didn't mention is that the parking lot -- the users from the hotel get a discount rate over what the public gets and that kind of thing.

So we have some real concerns about how these projects -- of the city center project, in particular, which has been approved by the Commission, how they ended up varying from the project description which the Commission had before --

CHAIRPERSON WESTLY: Mr. Thayer, I want to make sure I understand. There's a lot of data going back and forth. You're saying that on behalf of the State Lands Commission staff, you yourself have concerns about money being spent -- public-use money being spent on -- Public Trust money being spent on the Gold's Gym?

EXECUTIVE OFFICER THAYER: Yes. And on that particular project, of course, the Public Trust money was used for acquisition of the land, and the infrastructure of the buildings went in afterwards was not funded by the Public Trust funds. But we definitely have concerns about the Gold's Gym because it's not a non-Trust use.

CHAIRPERSON WESTLY: It's a fairly complex case. At some point, here, what I'm going to ask staff for a
list of things that may or may not wrong, Mr. Money, but
are not in our purview, and then a list of things that are
in our purview. But just to get to the core here, how
did --

MR. PAUL THAYER: The other issue --

CHAIRPERSON WESTLY: Let's just take the ones on
the table first.

How did we end up with money in Gold's Gym, given
that seems pretty clearly not a Public Trust Doctrine use?

EXECUTIVE OFFICER THAYER: It wasn't so much that
the Public Trust funds were used to build Gold's Gym; it
was used to acquire the property on which the Gold's Gym
is located. And this was not approved by the Commission.
This was done by the City contrary to what the Commission
had approved.

When the project came to the Commission, it
included a parking structure, and the top floor of the
parking structure was supposed to be a public view area or
almost like a park. And this gym was added at later time.

CHAIRPERSON WESTLY: Ms. Sheehan.

ACTING COMMISSIONER SHEEHAN: If one of our
trustees -- it's incumbent upon them to come back to us if
they are going to lease out part of that building that
was -- you know, any use should be consistent with the
Public Trust, if they feel there's any question about
whether that is consistent with the Public Trust or not.

EXECUTIVE OFFICER THAYER: In general, in granted areas, they don't need to and don't generally come to the State Lands Commission for approval of each individual project.

As we've seen in San Francisco, some of the projects there and Oakland, where a project is controversial, they will often come to the Lands Commission staff and ask for advice. Is this consistent with the Trust? Is it not? We'll talk with the Attorney General's Office. We'll try to move forward in a way that's both flexible but still carries out the Public Trust Doctrine. Upon occasion, approvals are necessary from the Commission or outside entities want the Commission to actually act on a project like this.

ACTING COMMISSIONER SHEEHAN: But let me ask this. But they have guidelines from us as to what is appropriate use under the Public Trust and what is not?

EXECUTIVE OFFICER THAYER: Yes. And all grantees are required by the terms of their grant to carry out the Public Trust Doctrine in their management. But in point of fact, the Legislature has transferred management of these lands from the State Lands Commission to the local entity. It's up to us to monitor them, though.

ACTING COMMISSIONER GONZALEZ: Paul, this wasn't
traditionally Public Trust Lands then; right? This became part of the Public Trust when it was purchased with Public Trust funds.

EXECUTIVE OFFICER THAYER: That's correct.

ACTING COMMISSIONER GONZALEZ: And sometimes I noticed, in the last eight years that I've got to witness things happen at this Commission, we've asked people to come back to the Commission.

I'm thinking specifically in Long Beach, if there were changes made to a plan that was going to be -- to happen on Public Trust, was there anything in the lease or in the agreement or in the Commission item that required or asked the City to come back? Do we know?

EXECUTIVE OFFICER THAYER: I don't know whether there was a specific condition of the Commission's initial approval of the capital funds, the use of the Public Trust money, that requires them to come back. However, the project which the Commission had before it, the project description, when it approved the funds, the basis for the Commission's approval was a different project; it did not have a Gold's Gym on it. And the representation of the parking lot was that it was primarily going to be used for the public who were going to be using the Harbor Center.

ACTING COMMISSIONER GONZALEZ: Sure.

And unrelated, then, and I don't think it bears to
this item, but maybe that should be something in the
future projects that come forward, just a reminder that
the City, if they want to change the project should
probably come back before us, as the standard boilerplate
language so that, you know, in the future it would be a
lot easier if we had that language to look back on and
say --

MR. PAUL THAYER: Sure.

ACTING COMMISSIONER GONZALEZ: You know, I clearly
don't agree with Mr. Biggs who seems to put the onus on
the State Lands Commission which doesn't have an
enforcement capability on every single Trust land
throughout the state. And we ask that the managers of
those trusts do that.

So I don't agree with him. But I think in the
future, just to avoid this kind of situation, that we
might want to add it to our boilerplate.

EXECUTIVE OFFICER THAYER: Two points on that.

Number one, Jennifer being a practicing attorney
now, does have a copy of the previous approval. And it
does specifically require that "If the Commission finds
that if there are substantial changes to the acquisition
project or the proposed use, the parking structure's
approval is void and the City of Redondo Beach must come
back to the Commission for approval for the revised
But it's also true that even if this project hadn't been subject to the Commission's review, it's the Commission's -- it's the City's responsibility to ensure that non-Trust uses aren't going on the lands that they been granted or that they bind the Public Trust revenues.

ACTING COMMISSIONER GONZALEZ: Now they violated also --

EXECUTIVE OFFICER THAYER: But also the --

ACTING COMMISSIONER SHEEHAN: Yeah, because that's the -- not just Redondo, but as some of us, I know, have concerns about the other agreements we have out there. And I think that's something that possibly in the future we maybe need to discuss, is what is the process for them to -- to maybe on an annual basis, reconfirm the uses of those are consistent with the Public Trust. And if there was any deviation, the liability is on their part to do that.

I mean, they would be liable if something were --

whether we have the runaround, I think, as the representative from the lieutenant governor's office said, we don't have the staff to go out and monitor every single one of these issues. But as I say, the original legal agreement does require them. And I think that's where there was a slight deficiency on their part. I mean, I
understand what they're saying, that anybody who comes down there sees it's Gold's Gym. Well, you know, unless we're touring on a regular basis, you're not necessarily going to see that.

ACTING COMMISSIONER GONZALEZ: With a map of the Public Trust land.

ACTING COMMISSIONER SHEEHAN: Exactly.

CHAIRPERSON WESTLY: So Mr. Thayer, we should let you finish your report and we'll come back to additional questions.

EXECUTIVE OFFICER THAYER: Certainly.

Other main points were raised by Mr. Money, and also that are in the staff report. Again, we disagree with the City that the $12,000 return on the 3.5 or 5 million, depending on how you want characterize it is, is a market rate return.

In essence, the City leased the land under the parking structure to which it contributed 3.5 or 5 million, depending on how you count it with the interest, to the developer for $12,000. This did not seem like a reasonable return.

The City's response is that this whole project, which was a joint project between the developer and the City, the developer built a hotel immediately adjacent to the parking structure on non-Trust property. It ended up
costing a lot more because of the condemnation from the court. And the City looked at this as a subsidy to make sure it would go through. It tries to say that because it converted the $3.5 million from an investment, the City originally was not going to get any of that money back because it converted it to a loan. But there's some equity involved here in terms of the subsidation (sic) of the parking structure on the loan should be discounted because of the fact that now the City is going to be getting all this back. Staff does not agree with that, which we were counting on the City's approach to that. And so the $12,000 we think is below market rate and is an inappropriate subsidation of the hotel.

With respect to the $3.5 million loan and the repayment of that, we look at that primarily with respect to compliance to the Commission's earlier action as being inconsistent, because the Commission approved the outright expenditure of that money, not as a loan, but just as an investment, which would be used to acquire property, part of the Trust. It would enlarge the Public Trust holdings. That land would be subject to all the Public Trust restrictions. The fact that the City converted that to a loan, I think partly to take advantage of tax increment financing. But the net result was a benefit to the Trust of them doing that. Because instead of this money being
lost to the Trust or being invested in the property and no longer being available, the net result would be that that money is paid back to the Trust and the Trust enjoys the use of the property.

So I don't think it's -- again, while it's inconsistent with what the Commission did, and should have come back to the Commission and asked for approval of that, because it's not contemplated at all in the Commission's original approval, it's not -- it actually turns out probably to be of benefit to the Trust.

With respect to Kincaid's, this is a restaurant that was put up using half, in essence, Public Trust funds and half private funds. At the end of the lease that facility would be wholly owned by the Trust. Though it's just an investment scheme wherein the City's able to get a restaurant out there, to provide service to the public, and it's in effect going into a development deal with a restaurant. It puts up half the money through a bond. That bond is paid back from -- from rent that Kincaid's pays. And at the end of the day, the City owns the property outright. So this seems like a reasonable approach. A restaurant is a Public Trust use and the City, once Kincaid's lease runs out and it owns the property, can enter into a lease with whoever comes along with a full rate and doesn't have to split anything.
CHAIRPERSON WESTLY: All right.
If there aren't any other questions from the
Commission, here's what I'd like to see, Mr. Thayer.

Mr. Money has raised some fairly worrisome
questions. And again, I appreciate you driving up here
and I appreciate the thoroughness of the research you put
into this.

What I would like to see staff do is to break out
which of these concerns and allegations we have authority
over, and what your opinion is on them. And I would like
to see you sit down with City staff and Mr. Money and come
back to us with a recommended approach toward resolution.

I would also like to see an outline of which ones
we do not have purview over, but I would like you to work
with Mr. Hager and the attorney general, because some of
these are clearly are under the jurisdiction of other
agencies. And as disconcerting as they are, I would like
to see the appropriate entity be looking at these.

MR. MONEY: I appreciate that.

If I could respond to a couple of things that Mr.
Thayer said --

CHAIRPERSON WESTLY: Go ahead, Mr. Money.

MR. MONEY: One of the problems with looking
toward the future is that it's SOP, standard operating
procedure, in Redondo to tell commissioners, especially
this one, what they want to hear and then do whatever they
want and present it as a fait accompli afterwards.

And as you'll see in my recommendations here, I
recommend that the Lands Commission take whatever steps
are necessary to force the City to buy out the Gold's
lease and tear it down and return it to what it was
supposed to be. Because this will send them a message
that it's not going to be same old, same old.

I would also like to say that the City gets away
with this because there may be a lot of waste, fraud, and
abuse in other parts of the state government, but I doubt
you'll find any in the Lands Commission. It's
understaffed, underfunded, and we all know it, and they
count on that.

Now, with respect to the parking structure, that
parking structure also serves the hotel, plus part of the
upper level of that parking structure is office space,
which is not mentioned here, and the employees and
visitors to those offices use that parking structure. So
what started out as going to serve the people using the
tidelands and the harbor is no such thing. And with
5.9 million, total, of the loan and interest accumulated
through 2004, even if the Lands Commission were to
magnanimously waive the 3.5 million that they originally
authorized, they City would still owe the Lands, the
Tidelands Trust 2.4 million. And I submit that excess revenues that the City of Redondo has been holding on to and investing and using for their own benefit, by agreement, by the grant -- the title grant, should be coming back to the State for the State Treasury. And I wonder what the perspective of inland communities would be if they found out that this rich, white bread, affluent beach community got away with using tidelands money to build a health club for Richie Rich and his buddies. I don't think that's going to fly too well in Salinas and the Imperial Valley and Yolo County and some of those places.

And I will be glad to work with the attorney general and anybody else, because this thing's been going on for years and some of us refer to it as the Redondo Beach Organized Crime Family.

CHAIRPERSON WESTLY: I would like to ask for the lieutenant governor's representative to make a motion.

ACTING COMMISSIONER GONZALEZ: I would like to move that we don't vote on recommendations presented today. That instead, we do exactly -- that the motion is that the staff do as asked by the controller to review and create two lists for us: those which we can deal with, those which we cannot. And sit down with the City and talk about some of the recommendations to be -- And then I
guess I will speak on the motion after that. That is my recommendation.

ACTING COMMISSIONER SHEEHAN: I will second the motion.

CHAIRPERSON WESTLY: All in favor, please say "aye."

(Ayes.)

ACTING COMMISSIONER GONZALEZ: The only note that I would have really to -- I'm a little confused about the presentation on the redevelopment area that goes over the public tidelands and the tax increment funding. And I feel like maybe I didn't get this staff report soon enough to read this over, but I wasn't sure when -- how many years we have left in that redevelopment area, and if the City could benefit from this type of structure with the tax increment.

Personally, I don't see a problem with that. I kind of haven't seen this happen before in light that this situation could rise. I don't think there's any problem with -- maybe I'm wrong. I'm not a financial expert up here. But that part doesn't bother me. I'm more interested in seeing how that happened, how many years. I know you have to keep the debt on the books in order to benefit from the tax increments, so I was just wondering the details of that.
I'm not in a position to necessarily mess with the City. So that's one thing that I would like to hear in the next round as well.

And the other thing that I have to say is with the recommendations offered on what's to be done with the Gold's Gym, I think that if we continue -- or if we put a precedent out that if a city moves forward and does things that are clearly illegal on Public Trust land, and we offer them corrective action through Legislation that we are going to cosponsor later, I think that creates a problem and precedent that maybe we don't want to put forth. So I would like that considered in the next round as well.

EXECUTIVE OFFICER THAYER: Sure. It is, as lieutenant governor's representative indicates, an enormously complex financial situation down there. And you're absolutely right, I think one of the reasons that the debt was created involving the Public Trust funds was to allow the redevelopment agency to survive for a long period of time and tax increment financing to continue to be available to the city. So there's a number of different parts to that.

The staff report also notes that another option which the Commission might want to consider with respect to Gold's Gym and the parking lot, is if the Commission
believes, and this may be the case, that that parking structure really is not serving a Public Trust purpose. An alternative is to have the City swap that for another piece of property, take that off of the rolls of the Public Trust, but then get the value out of it and a piece of property where Public Trust can properly be followed. So there are a number of different options, and we've discussed this a lot with the City and with Mr. Money. And we certainly can do that.

CHAIRPERSON WESTLY: Thank you, Mr. Thayer. I want to thank Mr. Biggs and Mr. Money, both, for being here.

What I would like to do at this point is move right to Item No. 87.

ACTING COMMISSIONER SHEEHAN: Can I make one more --

CHAIRPERSON WESTLY: Ms. Sheehan, go ahead.

ACTING COMMISSIONER SHEEHAN: I still do think it's important, maybe at a future meeting, to once we've resolved the Redondo Beach, to come back with some suggestions to the Commission on other Public Trust agreements that we have in terms of the process so that we can begin to look at that, to monitor on a regular basis.

EXECUTIVE OFFICER THAYER: We would be glad to do that. Just by background on that, we did request an
augmentation of our budget and got it about five years ago
to increase our compliance staff. And that was all taken
away --

ACTING COMMISSIONER SHEEHAN: Okay.

EXECUTIVE OFFICER THAYER: -- to budget cuts.

CHAIRPERSON WESTLY: Great.

Thank you, Ms. Sheehan.

I'd like to move to Item 87 which is consideration
of the resolution I requested concerning new legislation
regarding new offshore oil and gas development.

May we have the staff presentation Mr. Thayer.

EXECUTIVE OFFICER THAYER: Certainly.

Mr. Chair, members of the Commission.

The Chair requested staff to draft this resolution
to oppose the latest attempts to weaken the current
moratorium on new oil and gas leasing on federal offshore
waters.

The Commission has been very clear on its position
regarding these attempts. We've adopted four resolutions
since August 2003, opposing any weakening of the
moratorium, yet the attempts in Congress continue.

Earlier this year, another proposal was tacked on
to the appropriations bill for the Interior Department.
Just before the floor voted on this measure, staff
forwarded the resolution, adopted by the Commission at its
December meeting last year, to all members of the California delegation. I'm not sure we can claim credit for the results, but the proposal was amended out of the appropriation by a narrow margin.

Now there are several new threats. Chief among them is HR 4761, the Deep Ocean Energy Resources Act. This bill would give up to 75 percent of the federal revenues from offshore oil leasing to adjacent states that agree to the leasing.

HR 4761 is authored by Congressman Jindal from Louisiana, but its language represents efforts by the House Resources Committee Chair Richard Pombo to come up with a plan that will obtain the necessary votes. The bill has passed out of Committee and may be heard on the House floor this week.

The resolution before you today expressly opposes HR 4761, and another measure HR 4318 by Peterson that would allow for new gas leases in federal offshore waters. The resolution also restates the Commission's general opposition and long-standing opposition to any weakening of the moratorium.

This concludes the staff's presentation.

CHAIRPERSON WESTLY: Great. Thank you.
What I would like to do is ask speakers to come forward. If there are no speakers here, we will ask for
motion.

ACTING COMMISSIONER SHEEHAN: I have a question.
How does this -- I just got this. I have been traveling.

How does this resolution differ from the previous ones other than I know the legislation name is different?

EXECUTIVE OFFICER THAYER: I think it's entirely consistent with the Commission's direction in the past. But in fact, this resolution was generated because the efforts continue in Congress, and so it takes note of those efforts.

ACTING COMMISSIONER SHEEHAN: I'm guess I'm asking the specific substance of the resolution is virtually identical to what we have done before with the exception of putting in the different bills that we're changing in terms of the vehicles --

EXECUTIVE OFFICER THAYER: Yes.

ACTING COMMISSIONER SHEEHAN: All right. That was my question.

Would you like a motion?

CHAIRPERSON WESTLY: Yes, please.

ACTING COMMISSIONER SHEEHAN: Yes. I will move approval of the resolution.

ACTING COMMISSIONER GONZALEZ: I will second it.

CHAIRPERSON WESTLY: Great. All favor, say "aye."
(Ayes.)

CHAIRPERSON WESTLY: Motion carries.
Thank you very much.
That concludes the regular calendar.
And are there any speakers who wish to address the Commission during the public comment period? If there are, please bring your comments forward.
We have three so far. And I would like to ask members of the public if they could to keep these to three minutes.
The first is Ruth Gravanis. And if Ms. Gravanis could come forward.
And I would like to see if we could get Mr. Robert Raburn on deck.

MS. GRAVANIS: Good morning, Commissioners.
My name is Ruth Gravanis, and I am with the Public Trust Group.
And I'm here today, first of all, to thank you for meeting in the San Francisco Bay Area, and I hope to see you meet here more often. You are certainly very welcome.
The Public Trust Group was founded ten years ago to educate the public and the decision makers about the Public Trust Doctrine, especially as it relates to our closing military bases, but we are also interested in making sure that the Public Trust Doctrine and the
Tidelands Trust Pact are upheld on all of our San Francisco Bay shoreline properties.

We know that the State Lands Commission is under intense pressure which is likely to get worse, to allow non-Trust uses on our former tidelands, wetlands, and our open water. In the city of San Francisco, the push to put housing on the waterfront is particularly strong. And we're relieved that some recently proposed legislation to extinguish or modify the trusts on our piers and seawall lots was dropped. But we know that similar legislation is going to appear in the future, and we hope that the Commission will remain very, very strong in opposing such legislation.

We want to make sure that recreational uses on our Trust lands are water-related or at the very least, that they are limited to those uses that are enhanced by a waterfront location. Obviously Gold's Gym would not be one of those.

We strongly support public access to the shoreline and open space configurations that not just say, "this is public," but make the public actually feel welcome there. We are still smarting from the Oak to Ninth decision of a couple of nights ago. And we feel that we'd really like to see what we can do in the future to make sure that shoreline open space is truly, truly public.
We believe in applying a hierarchy of Trust uses when we are looking at land uses on Trust lands. A parking garage may, by some stretch, be considered a Trust use, but it certainly is not the one that can provide the public with the greatest benefit.

We support many Public Trust exchanges: Treasure Island and Alameda. We feel that there are very good reasons to do these exchanges to allow housing on our former military bases, but we would really like to see much more clearly-defined criteria when we develop findings that declare a property no longer useful for Trust purposes. We feel that sometimes this has been done in a way that is kind of hard for public to understand.

We hope that the Public Trust Group's education and advocacy efforts will be useful to the State Lands Commission in warding off the political pressures to weaken its upholding of the Public Trust Doctrine. And we hope to continue to work with the staff of the Commission to make sure that we maximize public benefit on our Trust lands.

Thank you.

CHAIRPERSON WESTLY: Thank you, Ms. Gravanis.
And I have to agree that even in a Schwarzenegger administration, I don't think that Gold's Gym meets the Public Use Doctrine.
CHAIRPERSON WESTLY: All right.
Mr. Raburn, please.
MR. RABURN: Good morning, Commissioners. My name is Robert Raburn. I'm the executive director of the East Bay Bicycle Coalition.
Welcome to the East Bay, and I am very grateful that you would bring your meeting to the East Bay and the Bay Area in general, to allow us to address what we feel is a very important issue regarding the Chevron Long Wharf Terminal, which is coming up on a future agenda.
THE REPORTER: Could you move the microphone up, please.
MR. RABURN: The East Bay Bicycle Coalition founded in 1972 has a long involvement with the Bay Trail project to plan and implement a pathway that encircles the entire San Francisco Bay.
We initially supported the Bay Trail in 1988 when then Senator Bill Lockyer introduced Senate Bill 100.
Like any transportation investment, the Bay Trail's utility is directly proportional to its continuous length. Unless the California State Lands Commission acts to address public access along the shoreline in the vicinity of the Chevron Long Wharf Lease, we fear that the current gap in the Bay Trail will be allowed to exist for
the next 30 years.

The consequences would, first, continue to hinder bicycle access to Point San Pablo Peninsula -- now reached via a freeway shoulder; it would forever preclude walking to the peninsula; and finally, it would reduce the value of the millions of dollars in public funds already spent in planning and building the Bay Trail.

The State's McAteer-Petris Act acknowledged that public access to the San Francisco Bay is inadequate and that maximum feasible access consistent with the proposed project should be provided. We believe that there is a very feasible project on the table, and the plans are in place.

The draft EIR's omission of the historical context of the public access in the vicinity of the Long Wharf represents an oversight that unfairly supports the DEIR's conclusion that no mitigation is required.

Chevron's exclusive use of the land between the Long Wharf and the refinery for their pipelines is not supported by the historical record. Public travel on Western Drive, the proposed alignment for the Bay Trail, formerly coexisted with Standard Oil's Long Wharf operations.

I conclude that other similar facilities in densely built-up areas minimize the public impact of
bivariate pipelines and using offshore mooring.

We respectfully ask that the State Lands Commission carefully review this draft EIR and address public access needs.

Thank you very much.

CHAIRPERSON WESTLY: Thank you, Mr. Raburn.

Mr. Thayer, would you like to make a quick comment on that.

EXECUTIVE OFFICER THAYER: Certainly.

The Richmond Long Wharf lease is up for renewal and we're requiring that a CEQA document and EIR be prepared before the Commission acts, developing information on items like this. The draft EIR, as Mr. Raburn points out, has gone out for review and we've received a number of letters emphasizing the point that folks would like to see access through this refinery area, along with water, and certainly something we're working on at the staff level to see if there's some way to accomplish that.

There is something of a difficulty here in that the Commission's jurisdiction, of course, extends only over the tidelands and the upland area is not subject to any lease renewal. We're just renewing the lease of the existing facility on the tidelands. But it's something certainly that we're sympathetic with the letters that
have been received and if there's some way we can work through this, we want to.

CHAIRPERSON WESTLY: Thank you, Mr. Thayer.

I'd like to ask staff to work with Mr. Raburn and his group, and if there's something proactive we can do to be helpful, we would certainly like to do that.

MR. RABURN: Thank you.

CHAIRPERSON WESTLY: Great.

We have Mr. Warburton from the Public Trust Alliance.

Would you please come forward.

MR. WARBURTON: I'm Michael Warburton, and this is the first time I've made a public comment before this Commission. So excuse any skips of protocol out of nervousness.

For the last four years I have been executive director of the Public Trust Alliance. We work as a watchdog for public assets protected by the Public Trust Doctrine, and we're glad you're out there, doing the work you do every day.

A few years ago we submitted some input when you were writing a new environmental justice policy. Later we were happy that you adopted a policy that explicitly located its basis in the Public Trust Doctrine and your historic obligations as trustees for all Californians,
regardless of individual, political, or economic power, and including the needs of future generations.

We wrote still more letters of support for your role as a crucial public trustee when a new governor made a spectacular overreach by handing the reins over to a special committee on government reorganization.

This hastily assembled committee had a long, pent-up wish list and poor understanding of both state law and California history. The committee openly proposed eliminating this commission. They thought they could get away with it because nobody understood public law enough to defend public trustees' existence. But there was indeed enough public memory to recall that this commission was first established after a series of public scandals during another era when elected officials were falling all over each other to give away some of the our most valuable public heritage to private developers with narrow economic interests.

Some may think of that as the California way, but with the public of this state and along with its democratic institutions -- and that's with a small "d" -- have demonstrated since the time of statehood that there are legal limits to how much of our natural and cultural heritage can be given away. Some people think it's too complex an idea and politicians can only handle sound
bites, but ultimately the California public can understand
the word "responsibility," and the actions that you take
will eventually face public examination.

As public officials, I hope you will acknowledge a
problem when I say that next February it will be exactly
ten years since I received a postcard from a retired
California appellate judge after I told him my concerns
about some of the coastal development plans at that time.

He wrote, "I share your apprehension over the
erosion of the Public Trust doctrine, but have had real
trouble generating any confidence that as our political
system continues to degenerate into a mere formula for
enriching those rich enough to pay for further enrichment,
there's any real hope."

Things haven't gotten magically better in the last
ten years. In fact they've gotten worse. New scandals
are being reported every day, but there is actual
political power in the minds and hearts of California
voters.

Are you --

CHAIRPERSON WESTLY: Take a few moments to go
ahead and finish up.

MR. WARBURTON: If you'll understand me more
clearly, instead of saying I'm executive director of the
Public Trust Alliance, I just say I'm a Californian who
has a family that includes an eight-year-old child and I have deep concerns about the California my daughter is going to grow up in. I truly hope she will have something left of the Public Trust in air, water, and the other assets that you are responsible for.

A case has come up for Supreme Court review. And once again a few small -- a small group of well-connected people are poised to surrender in the names of all Californians, the rights that the California public has always held as beneficiaries with the same fundamental Public Trust that you're responsible for upholding.

It's good for California that there are at least a few people watching. After playing fast and loose with environmental law, an appellate judge said there was no independent basis for review of agency action for consistency with the common law Public Trust. This could be precedent for other cases and California could be surrendering one of its most important capacities for adaptive institutional change to respond to problems like climate change.

All of those goodies would be delivered for the immediate benefit of a large corporation that came into control of substantial natural resources in California as a result of sheer abuse of public institutions including securities markets, pension funds, insurance markets, and
even savings and loan. Of course, nobody could do anything because they were too well-connected. In the legal handling of this case, the lower courts distinguished themselves by identifying a clear problem of abuse of authority. But as the level of board authority grows, the influence of people with direct financial interests also rose and the level of vigor of defense of public interest decreased.

The public, including future generations, are counting on you to perhaps indicate that this might not be such a great idea.

There's a possibility of a serious mistake by the California Supreme Court. And I'm reminded of another case almost exactly 150 years ago, when another Supreme Court made the mistake of defining just how far private property should extend. And they warped the interpretation of history in order to do it. That was the case of Dred Scott and our federal Supreme Court came out saying that it was inconceivable that a slave could be thought of as a human being with inalienable civil rights. I'm not exaggerating when I say that the case before the California Supreme Court has the possibility of becoming the Dred Scott of the California environment.

As trustees of the Public Trust, I hope you will communicate with other state institutions with
responsibilities in this situation to defend public interests. I really didn't know I would be saying anything today until I read in Friday's paper that some of you were receiving a $25,000-pay increase and that the member of the independent commission who made that decision said, "Unlike the private sector, this is not intended to be money or money reward for a job well done or poorly done. We're looking at what the fair thing is to do for elected officials who are spending 24 hours a day on duty." Then he was identified as an executive of a large real estate concern.

With all due respect, I do think there is a danger of such monetary rewards being seen as a reward for a particular job well done.

CHAIRPERSON WESTLY: Mr. Warburton.

MR. WARBURTON: Yeah?

CHAIRPERSON WESTLY: Thank you. That's well over time. We appreciate your comments. If you would like to share those with the members of the board, we would certainly like to have them.

MR. WARBURTON: Well, I was going to say that I agree with the public -- with the pay raise as long as it results in better protection of public interests. And I hope that you will be giving some input to the attorney general on the defense of public interests.
CHAIRPERSON WESTLY: Thank you.

We're getting ready to go into closed session unless -- Mr. Asuncion, did you want to come forward one more time?

MR. ASUNCION: Yes.

Thank you again, Commissioners.

John Asuncion, Blue Whale Sailing School.

I just want to talk about the Alviso Slough in what has been going on there. I got to commend the State Lands and the commissioners on the great work, working with Mr. Plummer and his staff, and doing the right thing down there.

The educational foundation is still working harder than ever. We just cleaned out another about 25 tons of garbage in the last two months. We have seven more boats that we're going to be removing, tax-free. The taxpayers will not have to pay for it, or the Commission. And we figure approximately another nine to ten boats that we'll remove in the coming year. So I thank you for your time again. And it was really nice seeing all of you again.

And I hope that your office and our educational foundation can still be working together in the long run, to clean up the Alviso Slough. The San Francisco Bay is absolutely stunning. And what everybody's doing, all my staff -- take me out of the picture, but it's my staff
that donates their time. And my wife and I, you know, help pay for all the boats and the lunches and everything like this for our staff. But the most important thing is giving back this property and the staff pay to the taxpayers and for public access. That's the most important thing that we're working towards and to try to accomplish in the coming years.

Thank you very much.

CHAIRPERSON WESTLY: Thank you. Thank you for coming up from Santa Barbara.

That concludes the open meeting.

We'll now adjourn into closed session. And I would like to ask members of the public to clear the room, and we'll move right into closed session.

(Whereupon the Meeting of the California State Lands Commission adjourned at 11:22 p.m.)
CERTIFICATE OF REPORTER

I, KATHRYN S. KENYON, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Meeting of the California State Lands Commission was reported in shorthand by me, Kathryn S. Kenyon, 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 3rd day of July, 2006.

KATHRYN S. KENYON,
Certified Shorthand Reporter
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