

MEETING
STATE OF CALIFORNIA
STATE LANDS COMMISSION

COPY

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

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

INDEX

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

1 Next order of business is the Executive Officer's
2 Report.

3 Mr. Thayer, may we have your report.

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

6 There is no Executive Officer's Report this
7 morning.

8 CHAIRPERSON WESTLY: Nothing?

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

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

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

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

22 I wanted to note for the record that we did
23 receive, late on Friday, a letter of concern regarding the
24 levee projects. These are Items 30, 32, and 33. However,
25 staff counsel has reviewed that letter and we don't

1 believe that it takes the form of an oppose letter, which
2 under our rules would require the item to be removed from
3 the consent calendar.

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

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

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

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

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

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

21 Did I get that name right?

22 MR. ASUNCION: Yes.

23 CHAIRPERSON WESTLY: If you could come forward to
24 the podium here and then please identify yourself for the
25 record.

1 MR. ASUNCION: My name is John Asuncion.

2 And I'm the president and founder of the Blue
3 Whale Sailing School. We're an educational corporation
4 here in the state, and I'm a resident of Santa Barbara.
5 So this is very concerning to me on the moorings that are
6 off East Beach and the boats that are -- have been
7 anchored off for some years.

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

15 And so that's my comment on that. Thank you so
16 much.

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

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

25 CHAIRPERSON WESTLY: Thank you, Mr. Thayer.

1 That's exactly the right approach.

2 Thank you Mr. Asuncion.

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

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

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

16 All right.

17 Mr. Thayer?

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

24 These days, because the approach of most policy
25 makers in the State and of the public itself is contrary

1 to additional drilling. However, we're in essence stuck
2 with these old contracts that require us to perform or
3 otherwise, as a none-practicing, non-licensed attorney, I
4 would say that there's some liability issues here that we
5 want to be careful about.

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

7 Having heard that, I would like to ask if we could
8 take the consent items up as group, for a single vote.

9 ACTING COMMISSIONER GONZALEZ: I just want one
10 clarification.

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

13 EXECUTIVE OFFICER THAYER: Yes.

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

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

22 ACTING COMMISSIONER GONZALEZ: Okay.

23 Thank you.

24 CHAIRPERSON WESTLY: Ms. Sheehan?

25 ACTING COMMISSIONER SHEEHAN: I will move the

1 consent calendar with the three items taken off to be put
2 over to the next meeting. So I will make that motion.

3 CHAIRPERSON WESTLY: Second?

4 ACTING COMMISSIONER GONZALEZ: Second.

5 CHAIRPERSON WESTLY: All in favor?

6 (Ayes.)

7 CHAIRPERSON WESTLY: That passes unanimously.

8 At this point, then, we move to Mr. Thayer. I
9 believe Item 86. It's a consideration of financial review
10 and legislative grant of tide and submerged lands to the
11 City of Redondo Beach.

12 And I believe we're going to have a staff
13 presentation first; is that correct, Mr. Thayer?

14 EXECUTIVE OFFICER THAYER: Yes, sir.

15 The presentation will be made by Jennifer
16 Lucchesi, who actually passed the Bar since our last
17 Commission meeting.

18 CHAIRPERSON WESTLY: We would have been happy to
19 have you speak in either case.

20 (Laughter.)

21 STAFF COUNSEL LUCCHESI: Chairman Westly and
22 Commissioners, my name is Jennifer Lucchesi, staff
23 counsel, for the Commission.

24 In response to complaints alleging a number of
25 illegal activities by the City of Redondo Beach,

1 Commission staff conducted a financial audit of the City's
2 granted trust lands and trust assets.

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

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

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

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

23 These areas involve two particular transactions:
24 the Harbor Center Project and the Kincaid's Restaurant
25 lease. However, before addressing those two transactions,

1 I will first briefly discuss the specific allegations
2 outlined in the original complaint.

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

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

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

23 In 1983, pursuant to the expressed provisions of
24 the Tidelands Trust Grant, the Commission approved an
25 expenditure of \$3.5 million of Trust funds for the

1 acquisition of land for the public portion of the Harbor
2 Center Project. Subsequently, the Commission approved two
3 18-month extensions for the City to comply with the time
4 authorized for the acquisition of the land and conveyance
5 to the trust.

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

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

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

22 Now I will discuss Kincaid's Restaurant.

23 Kincaid's Restaurant is located on the City's
24 "horseshoe" portion of the Redondo Beach pier, on Trust
25 lands. The city -- excuse me, Kincaid's has been very

1 successful, fiscally, for the Trust, generating
2 approximately 150,000 per year.

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

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

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

20 This transaction should have received Commission
21 review and approval as Trust assets would ultimately be
22 liable for the loan. Therefore, staff found that the City
23 failed to secure Commission's approval prior to allowing
24 the PFA's future rents from Kincaid as collateral for the
25 \$1.75 million loan.

1 Finally, I would like to conclude by saying while
2 staff believes there are some need -- needed modifications
3 to the City's financial management of its Trust lands and
4 assets, the City has invested a substantial amount of its
5 resources in enhancing its granted Trust lands, by
6 creating a premiere visitor-serving water front
7 destination in its King Harbor.

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

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

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

22 Thank you.

23 CHAIRPERSON WESTLY: Thank you, Ms Lucchesi.

24 Would either of the other commissioners like to
25 ask a question, otherwise I will call on some of the

1 members of the public who are here to speak today.

2 Questions?

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

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

10 Mr. Biggs, if you could identify yourself.

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

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

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

20 It's unfortunate that this type of energy and
21 effort needs to be expended on a review such as this,
22 especially when it arose out of, really, what is Redondo
23 Beach just before I arrived there, a local election that
24 was quite heated, and these allegations arose out of that,
25 those -- those local elections and together with some

1 labor relations issues that were simmering in our harbor
2 department.

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

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

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

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

25 As a community we don't have an adjacent downtown

1 area, another area that, having worked in a number of
2 tidelands communities, sometimes it's viewed as siphoning
3 off tidelands revenues.

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

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

12 The City also has invested other non-redevelopment
13 non-tidelands funds into the pier and harbor area in an
14 ongoing basis. Monies that could have been spent anywhere
15 in the community, in fact, after the pier was destroyed in
16 1988. There was a City-wide vote which gave direction
17 that we should find the resources to reinvest in the
18 harbor and pier. So this is not just a casual effort, but
19 certainly our electric lease, wholeheartedly the King
20 Harbor and our tidelands, are the center piece of our
21 community.

22 So again, consistently, the tidelands have been
23 made one of the City's highest priorities. And we believe
24 we've managed our tidelands areas with the utmost
25 responsibility.

1 Clearly, as I indicated, there was a few items in
2 the staff report that we don't agree with, exactly how
3 they have been characterized. We did provide you with a
4 letter dated June 21st which outlines that in some detail.

5 Again, I would like to take just a few moments to
6 highlight some of those points and then speak to staff's
7 specific recommendations, if I may.

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

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

21 Also it's interesting to note, I think, as we've
22 again demonstrated our commitment as a Tidelands trustee
23 that in particular with the Harbor Center Project Area,
24 the State Tidelands Grant is benefitting in three ways.
25 We believe it be three levels of benefit.

1 Firstly, the State Lands Commission did find a
2 project in general, with the provision of visitor-serving
3 amenities, public parking, public open space, was of
4 benefit to the Tidelands Trust, and there has been a small
5 amount of income generated annually by that. Admittedly,
6 now you look back 25 years later, the transaction may not
7 seem to be market rate, but I believe there are many
8 transactions, if you look back at something that was that
9 old that you would find the same thing, especially when
10 you don't weigh it against the public benefit that's been
11 accrued from that package.

12 Additionally, it was the City, as a Tidelands
13 Trustee, and its redevelopment agency made their own
14 decision -- again, while the Commission authorizes three
15 and a half million dollars as an investment, we decided in
16 approximately 1990 that we were going to fully repay that
17 amount with interest to the Tidelands Trust through our
18 redevelopment agency. And in fact, we did make two
19 payments up until the time the assessed value of that
20 project area declined, and also we had issued bonds to
21 rebuild the pier, and we didn't have the income able --
22 were not able to make those payments. But that debt
23 remains on the books. It still creates interest at the
24 late rate, and coincidentally, just recently, the assessed
25 value in the project area went up because the hotel has

1 sold, and starting this next year in our budget, which was
2 adopted last week, we will recommence payment, and we
3 provided your staff a documentation that demonstrates we
4 will be able to fully repay that amount to the Tidelands
5 Trust at interest.

6 Just to put it in perspective, we've collected
7 four and a half million dollars of tax increment out of
8 this redevelopment project area and we can collect
9 \$52 million. So certainly, the principal and current
10 interest can be repaid within that timeframe.

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

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

19 On repayment of the debt, to talk about that
20 briefly, it is subordinate to our repayment of our pier
21 bonds. Again, that's three and a half million dollars of
22 pier bonds. The redevelopment agency will be repaying
23 three and a half million dollars that was used to rebuild
24 the pier, after the storm. As I indicated, there was a
25 dramatic decrease in the assessed value that impaired our

1 ability to repay the Tidelands Trust, and the bonds do
2 have a first lien on that tax increment revenue that the
3 repayments will commence with our next fiscal year, in the
4 amount of \$160,000.

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

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

12 CHAIRPERSON WESTLY: Thank you.

13 MR. BIGGS: You know, I did have the pleasure of
14 working in two other jurisdictions that do have
15 tidelands -- both Huntington Beach and Long Beach -- over
16 my 25-year public sector career. And I think it's
17 interesting to note the Gold's Gym, and we understand why
18 it's a concern, because it's a nonconforming use. It was
19 in place in 1988. One, there was a prior audit done by
20 the State Lands Commission in '87 and '88. They took a
21 specific look at the Harbor Center Project Area, and while
22 we disagree with your staff as to whether -- we do agree
23 that the current staff really wasn't cognizant that that
24 use was there. However, it has been there for more
25 than -- for nearly 20 years.

1 As you can see from the photo, it is a very
2 visible use in the tidelands area. It's not an office use
3 tucked away in some office building. But anyone who
4 visits Redondo Beach sees Gold's Gym there, on the second
5 floor of the parking structure.

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

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

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

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

1 generated.

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

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

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

20 In regard to Kincaid's --

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

23 Thank you.

24 MR. BIGGS: It's the first new investment on the
25 pier in over a decade. It's been a financially successful

1 transaction. There's been a misunderstanding, I think, of
2 the State Lands Commission staff on how public finance
3 authority works and about future accountability.

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

11 CHAIRPERSON WESTLY: Thank you, Mr. Biggs.

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

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

16 MS. LUNETTA: Ten minutes.

17 CHAIRPERSON WESTLY: Ten minutes. Great.

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

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

25 MR. MONEY: Thank you very much.

1 I would like to thank the Commission for the
2 opportunity to appear at this hearing.

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

9 The primary problems with this report are that it
10 omits or understates significant issues, and that the
11 solutions proposed are insignificant to either remedy the
12 situation or deter future abuses. It also fails to
13 consider, or even mention, historical contents of ongoing
14 misuse of Tidelands Funds. Historically, back in the
15 1960s, the City allowed apartments to be illegally
16 constructed on tidelands properties, in fact, in the
17 harbor. This eventually lead to retroactive legislative
18 approval.

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

25 Correspondence between the SLC staff and the City

1 reflects a predisposition on the part of the staff to
2 grant excessive and unnecessary concessions to the City in
3 spite of this long history of abusive and illegal
4 behavior, with respect to the Harbor Center parking
5 structure.

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

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

17 The City entered into a sweetheart, below-market
18 50-year lease, which benefits the City and the
19 redevelopment agency at the expense of the Tideland. And
20 then the City arbitrarily discontinued repayment of that
21 debt, allowing interest to accrue now in the amount close
22 to a million dollars. The report describes this as
23 mismanagement of the Tidelands Trust funds. Really? You
24 think?

25 In a letter from the Lands Commission to the City,

1 dated 4/14 of this year, it says, "This lease may be
2 considered a gift of public monies pursuant to Article 16,
3 Section 6," end quote.

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

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

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

1 in using the tidelands and harbor area.

2 The report also fails to properly illustrate the
3 true financial picture. The Tidelands Funds spent 5
4 million in 1987 dollars. The total repayment is 600,000
5 in deflated dollars stretched over 50 years. And that
6 600,000 in return on investment, if you can characterize
7 that as a return, is \$300,000 less than the \$900,000 in
8 interest that had accrued to this loan, up through 1994 --
9 I mean, excuse me, through 2004.

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

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

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

25 Furthermore, the solution advocated by the State

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

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

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

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

22 The PFA is the entity by which the City and the
23 redevelopment agency issue bonds and was created in March
24 of 1996, solely to circumvent a measure, adopted by the
25 voters two weeks earlier, limiting city bonds and debt

1 instruments to a maximum term of 20 years.

2 According to the City's own comprehensive annual
3 financial report, the PFA also owns and operates
4 properties. More importantly, in the fiscal year 02/03,
5 PFA financials that have previously been reported
6 separately were combined with and reported as a part of
7 the redevelopment agency in order to conceal the true
8 financial condition and further deterioration of the
9 Public Financing Authority.

10 Between 1996 and the end of fiscal years
11 2000/2001, the PFA went \$1.4 million in the red. In
12 fiscal years 01/02, and 02/03, PFA net losses increased by
13 \$3.8 million -- that's 371 percent -- to 5.2 million. The
14 Tidelands Funds supposedly gets \$155,000 a year in rental
15 revenues from Kincaid's, but according to the report,
16 staff report, Page 10, second line from the bottom, quote,
17 "Trust assets would be ultimately liable," end quote, for
18 repayment of a 20-year loan, which the City obtained, to
19 reimburse the developer half the cost of building the
20 restaurant. What the report fails to mention is that
21 according to the City's own CAFR, the loan in question
22 from South Bay Bank has no repayment schedule and not a
23 single payment has ever been made.

24 The true picture of this transaction is that by
25 virtue of a loan, the proceeds of which were transferred

1 to a private commercial, for-profit enterprise, titled to
2 a real property asset, once owned free and clear by the
3 people of the State of California, as part of the
4 Tidelands Trust, is now held by a bank. And taxpayers,
5 either through city or the state, will ultimately have to
6 pay 1.75 million or more to get it back.

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

18 Strangely, this statement is missing from the
19 final report.

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

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

23 CHAIRPERSON WESTLY: I sense that.

24 If you could wrap up here, and we'll give Mr.
25 Thayer a chance and then we'll have questions.

1 MR. MONEY: I just have a couple of quick things
2 that you should know here, that the report doesn't
3 address.

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

9 Now, the Tidelands Fund is supposed to have almost
10 \$12 million in retained earnings, but they can't afford
11 police patrols? Our harbor patrol has three boats at that
12 time, not a one of which was in operating condition. They
13 had to borrow a boat from Palos Verdes. Now, these are
14 public safety issues. Also, this idea that the retained
15 earnings was changed into unrestricted funds, I find it
16 impossible to understand the explanation here. How can a
17 retained earnings category have depreciable assets in it?
18 That doesn't make any sense. And even after that 900,000
19 was transferred out, why is the category now retitled
20 "unrestricted funds"?

21 The City has \$25 million total in Tidelands
22 Reserves: 14 million in a catastrophic periodic repair or
23 maintenance fund, and almost 12 million in retained
24 earnings. And they couldn't afford cops? We need to find
25 out if this money really exists. And I will tell you,

1 this is a city that has ghost employees. This is a city
2 whose CAFR report says that they have never had more than
3 604 employees but we have evidence that they've issued 696
4 paychecks. We have people retiring with phony disability
5 claims so that part of their retirement will be tax-free.

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

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

14 MR. MONEY: Okay.

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

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

20 EXECUTIVE OFFICER THAYER: Certainly.

21 I think the staff finds itself and its perspective
22 to be something in the middle, between the City's
23 perspective and Mr. Money's. Many of Mr. Money's
24 concerns, of course, aren't Public Trust concerns: the
25 ones involving civic center and payrolls and that kind of

1 thing. But we do agree with much of what he had to say
2 about the Gold's Gym not being a Public Trust use, and the
3 use of the parking lot. One thing that hasn't come out
4 that he didn't mention and staff didn't mention is that
5 the parking lot -- the users from the hotel get a discount
6 rate over what the public gets and that kind of thing.

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

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

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

24 CHAIRPERSON WESTLY: It's a fairly complex case.
25 At some point, here, what I'm going to ask staff for a

1 list of things that may or may not wrong, Mr. Money, but
2 are not in our purview, and then a list of things that are
3 in our purview. But just to get to the core here, how
4 did --

5 MR. PAUL THAYER: The other issue --

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

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

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

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

20 CHAIRPERSON WESTLY: Ms. Sheehan.

21 ACTING COMMISSIONER SHEEHAN: If one of our
22 trustees -- it's incumbent upon them to come back to us if
23 they are going to lease out part of that building that
24 was -- you know, any use should be consistent with the
25 Public Trust, if they feel there's any question about

1 whether that is consistent with the Public Trust or not.

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

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

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

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

25 ACTING COMMISSIONER GONZALEZ: Paul, this wasn't

1 traditionally Public Trust Lands then; right? This became
2 part of the Public Trust when it was purchased with Public
3 Trust funds.

4 EXECUTIVE OFFICER THAYER: That's correct.

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

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

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

24 ACTING COMMISSIONER GONZALEZ: Sure.

25 And unrelated, then, and I don't think it bears to

1 this item, but maybe that that should be something in the
2 future projects that come forward, just a reminder that
3 the City, if they want to change the project should
4 probably come back before us, as the standard boilerplate
5 language so that, you know, in the future it would be a
6 lot easier if we had that language to look back on and
7 say --

8 MR. PAUL THAYER: Sure.

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

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

18 EXECUTIVE OFFICER THAYER: Two points on that.

19 Number one, Jennifer being a practicing attorney
20 now, does have a copy of the previous approval. And it
21 does specifically require that "If the Commission finds
22 that if there are substantial changes to the acquisition
23 project or the proposed use, the parking structure's
24 approval is void and the City of Redondo Beach must come
25 back to the Commission for approval for the revised

1 project." We included that boilerplate.

2 But it's also true that even if this project
3 hadn't been subject to the Commission's review, it's the
4 Commission's -- it's the City's responsibility to ensure
5 that non-Trust uses aren't going on the lands that they
6 been granted or that they bind the Public Trust revenues.

7 ACTING COMMISSIONER GONZALEZ: Now they violated
8 also --

9 EXECUTIVE OFFICER THAYER: But also the --

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

19 I mean, they would be liable if something were --
20 whether we have the runaround, I think, as the
21 representative from the lieutenant governor's office said,
22 we don't have the staff to go out and monitor every single
23 one of these issues. But as I say, the original legal
24 agreement does require them. And I think that's where
25 there was a slight deficiency on their part. I mean, I

1 understand what they're saying, that anybody who comes
2 down there sees it's Gold's Gym. Well, you know, unless
3 we're touring on a regular basis, you're not necessarily
4 going to see that.

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

7 ACTING COMMISSIONER SHEEHAN: Exactly.

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

11 EXECUTIVE OFFICER THAYER: Certainly.

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

17 In essence, the City leased the land under the
18 parking structure to which it contributed 3.5 or
19 5 million, depending on how you count it with the
20 interest, to the developer for \$12,000. This did not seem
21 like a reasonable return.

22 The City's response is that this whole project,
23 which was a joint project between the developer and the
24 City, the developer built a hotel immediately adjacent to
25 the parking structure on non-Trust property. It ended up

1 costing a lot more because of the condemnation from the
2 court. And the City looked at this as a subsidy to make
3 sure it would go through. It tries to say that because it
4 converted the \$3.5 million from an investment, the City
5 originally was not going to get any of that money back
6 because it converted it to a loan. But there's some
7 equity involved here in terms of the subsidation (sic) of
8 the parking structure on the loan should be discounted
9 because of the fact that now the City is going to be
10 getting all this back. Staff does not agree with that,
11 which we were counting on the City's approach to that.
12 And so the \$12,000 we think is below market rate and is an
13 inappropriate subsidation of the hotel.

14 With respect to the \$3.5 million loan and the
15 repayment of that, we look at that primarily with respect
16 to compliance to the Commission's earlier action as being
17 inconsistent, because the Commission approved the outright
18 expenditure of that money, not as a loan, but just as an
19 investment, which would be used to acquire property, part
20 of the Trust. It would enlarge the Public Trust holdings.
21 That land would be subject to all the Public Trust
22 restrictions. The fact that the City converted that to a
23 loan, I think partly to take advantage of tax increment
24 financing. But the net result was a benefit to the Trust
25 of them doing that. Because instead of this money being

1 lost to the Trust or being invested in the property and no
2 longer being available, the net result would be that that
3 money is paid back to the Trust and the Trust enjoys the
4 use of the property.

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

11 With respect to Kincaid's, this is a restaurant
12 that was put up using half, in essence, Public Trust funds
13 and half private funds. At the end of the lease that
14 facility would be wholly owned by the Trust. Though it's
15 just an investment scheme wherein the City's able to get a
16 restaurant out there, to provide service to the public,
17 and it's in effect going into a development deal with a
18 restaurant. It puts up half the money through a bond.
19 That bond is paid back from -- from rent that Kincaid's
20 pays. And at the end of the day, the City owns the
21 property outright. So this seems like a reasonable
22 approach. A restaurant is a Public Trust use and the
23 City, once Kincaid's lease runs out and it owns the
24 property, can enter into a lease with whoever comes along
25 with a full rate and doesn't have to split anything.

1 CHAIRPERSON WESTLY: All right.

2 If there aren't any other questions from the
3 Commission, here's what I'd like to see, Mr. Thayer.

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

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

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

19 MR. MONEY: I appreciate that.

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

22 CHAIRPERSON WESTLY: Go ahead, Mr. Money.

23 MR. MONEY: One of the problems with looking
24 toward the future is that it's SOP, standard operating
25 procedure, in Redondo to tell commissioners, especially

1 this one, what they want to hear and then do whatever they
2 want and present it as a fait accompli afterwards.

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

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

15 Now, with respect to the parking structure, that
16 parking structure also serves the hotel, plus part of the
17 upper level of that parking structure is office space,
18 which is not mentioned here, and the employees and
19 visitors to those offices use that parking structure. So
20 what started out as going to serve the people using the
21 tidelands and the harbor is no such thing. And with
22 5.9 million, total, of the loan and interest accumulated
23 through 2004, even if the Lands Commission were to
24 magnanimously waive the 3.5 million that they originally
25 authorized, they City would still owe the Lands, the

1 Tidelands Trust 2.4 million. And I submit that excess
2 revenues that the City of Redondo has been holding on to
3 and investing and using for their own benefit, by
4 agreement, by the grant -- the title grant, should be
5 coming back to the State for the State Treasury. And I
6 wonder what the perspective of inland communities would be
7 if they found out that this rich, white bread, affluent
8 beach community got away with using tidelands money to
9 build a health club for Richie Rich and his buddies. I
10 don't think that's going to fly too well in Salinas and
11 the Imperial Valley and Yolo County and some of those
12 places.

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

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

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

1 guess I will speak on the motion after that. That is my
2 recommendation.

3 ACTING COMMISSIONER SHEEHAN: I will second the
4 motion.

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

7 (Ayes.)

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

17 Personally, I don't see a problem with that. I
18 kind of haven't seen this happen before in light that this
19 situation could rise. I don't think there's any problem
20 with -- maybe I'm wrong. I'm not a financial expert up
21 here. But that part doesn't bother me. I'm more
22 interested in seeing how that happened, how many years. I
23 know you have to keep the debt on the books in order to
24 benefit from the tax increments, so I was just wondering
25 the details of that.

1 I'm not in a position to necessarily mess with the
2 City. So that's one thing that I would like to hear in
3 the next round as well.

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

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

23 The staff report also notes that another option
24 which the Commission might want to consider with respect
25 to Gold's Gym and the parking lot, is if the Commission

1 believes, and this may be the case, that that parking
2 structure really is not serving a Public Trust purpose.
3 An alternative is to have the City swap that for another
4 piece of property, take that off of the rolls of the
5 Public Trust, but then get the value out of it and a piece
6 of property where Public Trust can properly be followed.
7 So there are a number of different options, and we've
8 discussed this a lot with the City and with Mr. Money.
9 And we certainly can do that.

10 CHAIRPERSON WESTLY: Thank you, Mr. Thayer.

11 I want to thank Mr. Biggs and Mr. Money, both, for
12 being here.

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

15 ACTING COMMISSIONER SHEEHAN: Can I make one
16 more --

17 CHAIRPERSON WESTLY: Ms. Sheehan, go ahead.

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

24 EXECUTIVE OFFICER THAYER: We would be glad to do
25 that. Just by background on that, we did request an

1 augmentation of our budget and got it about five years ago
2 to increase our compliance staff. And that was all taken
3 away --

4 ACTING COMMISSIONER SHEEHAN: Okay.

5 EXECUTIVE OFFICER THAYER: -- to budget cuts.

6 CHAIRPERSON WESTLY: Great.

7 Thank you, Ms. Sheehan.

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

11 May we have the staff presentation Mr. Thayer.

12 EXECUTIVE OFFICER THAYER: Certainly.

13 Mr. Chair, members of the Commission.

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

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

22 Earlier this year, another proposal was tacked on
23 to the appropriations bill for the Interior Department.
24 Just before the floor voted on this measure, staff
25 forwarded the resolution, adopted by the Commission at its

1 December meeting last year, to all members of the
2 California delegation. I'm not sure we can claim credit
3 for the results, but the proposal was amended out of the
4 appropriation by a narrow margin.

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

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

16 The resolution before you today expressly opposes
17 HR 4761, and another measure HR 4318 by Peterson that
18 would allow for new gas leases in federal offshore waters.

19 The resolution also restates the Commission's
20 general opposition and long-standing opposition to any
21 weakening of the moratorium.

22 This concludes the staff's presentation.

23 CHAIRPERSON WESTLY: Great. Thank you.

24 What I would like to do is ask speakers to come
25 forward. If there are no speakers here, we will ask for

1 motion.

2 ACTING COMMISSIONER SHEEHAN: I have a question.

3 How does this -- I just got this. I have been
4 traveling.

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

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

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

17 EXECUTIVE OFFICER THAYER: Yes.

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

20 Would you like a motion?

21 CHAIRPERSON WESTLY: Yes, please.

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

24 ACTING COMMISSIONER GONZALEZ: I will second it.

25 CHAIRPERSON WESTLY: Great. All favor, say "aye."

1 (Ayes.)

2 CHAIRPERSON WESTLY: Motion carries.

3 Thank you very much.

4 That concludes the regular calendar.

5 And are there any speakers who wish to address the
6 Commission during the public comment period? If there
7 are, please bring your comments forward.

8 We have three so far. And I would like to ask
9 members of the public if they could to keep these to three
10 minutes.

11 The first is Ruth Gravanis. And if Ms. Gravanis
12 could come forward.

13 And I would like to see if we could get Mr. Robert
14 Raburn on deck.

15 MS. GRAVANIS: Good morning, Commissioners.

16 My name is Ruth Gravanis, and I am with the Public
17 Trust Group.

18 And I'm here today, first of all, to thank you for
19 meeting in the San Francisco Bay Area, and I hope to see
20 you meet here more often. You are certainly very welcome.

21 The Public Trust Group was founded ten years ago
22 to educate the public and the decision makers about the
23 Public Trust Doctrine, especially as it relates to our
24 closing military bases, but we are also interested in
25 making sure that the Public Trust Doctrine and the

1 Tidelands Trust Pact are upheld on all of our San
2 Francisco Bay shoreline properties.

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

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

19 We strongly support public access to the shoreline
20 and open space configurations that not just say, "this is
21 public," but make the public actually feel welcome there.
22 We are still smarting from the Oak to Ninth decision of a
23 couple of nights ago. And we feel that we'd really like
24 to see what we can do in the future to make sure that
25 shoreline open space is truly, truly public.

1 We believe in applying a hierarchy of Trust uses
2 when we are looking at land uses on Trust lands. A
3 parking garage may, by some stretch, be considered a Trust
4 use, but it certainly is not the one that can provide the
5 public with the greatest benefit.

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

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

21 Thank you.

22 CHAIRPERSON WESTLY: Thank you, Ms. Gravanis.

23 And I have to agree that even in a Schwarzenegger
24 administration, I don't think that Gold's Gym meets the
25 Public Use Doctrine.

1 (Laughter.)

2 CHAIRPERSON WESTLY: All right.

3 Mr. Raburn, please.

4 MR. RABURN: Good morning, Commissioners. My name
5 is Robert Raburn. I'm the executive director of the East
6 Bay Bicycle Coalition.

7 Welcome to the East Bay, and I am very grateful
8 that you would bring your meeting to the East Bay and the
9 Bay Area in general, to allow us to address what we feel
10 is a very important issue regarding the Chevron Long Wharf
11 Terminal, which is coming up on a future agenda.

12 THE REPORTER: Could you move the microphone up,
13 please.

14 MR. RABURN: The East Bay Bicycle Coalition
15 founded in 1972 has a long involvement with the Bay Trail
16 project to plan and implement a pathway that encircles the
17 entire San Francisco Bay.

18 We initially supported the Bay Trail in 1988 when
19 then Senator Bill Lockyer introduced Senate Bill 100.

20 Like any transportation investment, the Bay
21 Trail's utility is directly proportional to its continuous
22 length. Unless the California State Lands Commission acts
23 to address public access along the shoreline in the
24 vicinity of the Chevron Long Wharf Lease, we fear that the
25 current gap in the Bay Trail will be allowed to exist for

1 the next 30 years.

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

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

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

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

24 I conclude that other similar facilities in
25 densely built-up areas minimize the public impact of

1 bivariate pipelines and using offshore mooring.

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

5 Thank you very much.

6 CHAIRPERSON WESTLY: Thank you, Mr. Raburn.

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

9 EXECUTIVE OFFICER THAYER: Certainly.

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

20 There is something of a difficulty here in that
21 the Commission's jurisdiction, of course, extends only
22 over the tidelands and the upland area is not subject to
23 any lease renewal. We're just renewing the lease of the
24 existing facility on the tidelands. But it's something
25 certainly that we're sympathetic with the letters that

1 have been received and if there's some way we can work
2 through this, we want to.

3 CHAIRPERSON WESTLY: Thank you, Mr. Thayer.

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

7 MR. RABURN: Thank you.

8 CHAIRPERSON WESTLY: Great.

9 We have Mr. Warburton from the Public Trust
10 Alliance.

11 Would you please come forward.

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

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

21 A few years ago we submitted some input when you
22 were writing a new environmental justice policy. Later we
23 were happy that you adopted a policy that explicitly
24 located its basis in the Public Trust Doctrine and your
25 historic obligations as trustees for all Californians,

1 regardless of individual, political, or economic power,
2 and including the needs of future generations.

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

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

19 Some may think of that as the California way, but
20 with the public of this state and along with its
21 democratic institutions -- and that's with a small "d" --
22 have demonstrated since the time of statehood that there
23 are legal limits to how much of our natural and cultural
24 heritage can be given away. Some people think it's too
25 complex an idea and politicians can only handle sound

1 bites, but ultimately the California public can understand
2 the word "responsibility," and the actions that you take
3 will eventually face public examination.

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

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

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

20 Are you --

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

23 MR. WARBURTON: If you'll understand me more
24 clearly, instead of saying I'm executive director of the
25 Public Trust Alliance, I just say I'm a Californian who

1 has a family that includes an eight-year-old child and I
2 have deep concerns about the California my daughter is
3 going to grow up in. I truly hope she will have something
4 left of the Public Trust in air, water, and the other
5 assets that you are responsible for.

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

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

21 All of those goodies would be delivered for the
22 immediate benefit of a large corporation that came into
23 control of substantial natural resources in California as
24 a result of sheer abuse of public institutions including
25 securities markets, pension funds, insurance markets, and

1 even savings and loan. Of course, nobody could do
2 anything because they were too well-connected. In the
3 legal handling of this case, the lower courts
4 distinguished themselves by identifying a clear problem of
5 abuse of authority. But as the level of board authority
6 grows, the influence of people with direct financial
7 interests also rose and the level of vigor of defense of
8 public interest decreased.

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

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

24 As trustees of the Public Trust, I hope you will
25 communicate with other state institutions with

1 responsibilities in this situation to defend public
2 interests. I really didn't know I would be saying
3 anything today until I read in Friday's paper that some of
4 you were receiving a \$25,000-pay increase and that the
5 member of the independent commission who made that
6 decision said, "Unlike the private sector, this is not
7 intended to be money or money reward for a job well done
8 or poorly done. We're looking at what the fair thing is
9 to do for elected officials who are spending 24 hours a
10 day on duty." Then he was identified as an executive of a
11 large real estate concern.

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

15 CHAIRPERSON WESTLY: Mr. Warburton.

16 MR. WARBURTON: Yeah?

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

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

1 CHAIRPERSON WESTLY: Thank you.

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

5 MR. ASUNCION: Yes.

6 Thank you again, Commissioners.

7 John Asuncion, Blue Whale Sailing School.

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

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

21 And I hope that your office and our educational
22 foundation can still be working together in the long run,
23 to clean up the Alviso Slough. The San Francisco Bay is
24 absolutely stunning. And what everybody's doing, all my
25 staff -- take me out of the picture, but it's my staff

1 that donates their time. And my wife and I, you know,
2 help pay for all the boats and the lunches and everything
3 like this for our staff. But the most important thing is
4 giving back this property and the staff pay to the
5 taxpayers and for public access. That's the most
6 important thing that we're working towards and to try to
7 accomplish in the coming years.

8 Thank you very much.

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

11 That concludes the open meeting.

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

15 (Whereupon the Meeting of the California
16 State Lands Commission adjourned at
17 11:22 p.m.)

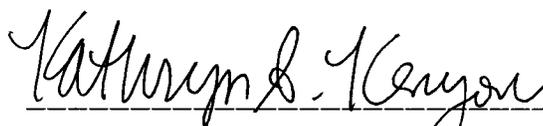
1 CERTIFICATE OF REPORTER

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

4 That I am a disinterested person herein; that the
5 foregoing Meeting of the California State Lands Commission
6 was reported in shorthand by me, Kathryn S. Kenyon, a
7 Certified Shorthand Reporter of the State of California,
8 and thereafter transcribed into typewriting.

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

12 IN WITNESS WHEREOF, I have hereunto set my hand
13 this 3rd day of July, 2006.

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16
17
18
19
20
21 

22 _____
23 KATHRYN S. KENYON, CSR

24 Certified Shorthand Reporter

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