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TRANSCRIPT OF
MEETING
of
STATE LANDS COMMISSION

LOS ANGELES, CALIFORNIA

September 25, 1967

1 MEETING OF
2 STATE LANDS COMMISSION

3 LOS ANGELES, CALIFORNIA
4 September 25, 1967

5 PARTICIPANTS:

6 THE STATE LANDS COMMISSION:

7 The Hon. Houston I. Flournoy, Controller, Chairman
8 The Hon. Robert H. Finch, Lieutenant Governor
9 The Hon. Gordon P. Smith, Director of Finance

10 F. J. Hortig, Executive Officer

11 OFFICE OF THE ATTORNEY GENERAL:

12 Jay L. Shavelson, Assistant Attorney General

13 APPEARANCES:

14 (In the order of their appearance)

15 Calendar Summary Item 5(a) - Noyo Harbor District

16 E. A. Curtis, Chief of the Development Branch,
17 Department of Harbors and Water Craft

18 Calendar Summary Item 8(b) - San Luis Harbor District

19 Gerald Weaver, Attorney, of the firm of
20 Crossman and Weaver, representing
Robert Marre

21 Herbert Grundell, Attorney for the
22 San Luis Harbor District

23 Calendar Summary Item 8(a) - Exchange of land in
24 Upper Newport Bay between The Irvine Company and
the County of Orange

25 Adrian Kuyper, County Counsel, County of Orange

26 Lewis A. Follansbee, Professor of Marine Science,
Orange Coast College

continued

APPEARANCES:**Calendar Summary Item 8(a) continued**

Andrew J. Hinshaw, Assessor, Orange County

Warren Crow, Corona del Mar

Frank Robinson, representing County
Tidelands Association

Janet Boer, Santa Ana, Research Analyst

Mrs. Corinna Babb, Marina Park Association
Newport Beach, et al

John Tyler, Vice President, Southern
California Chapter of The Nature
Conservancy

Assemblyman Robert E. Badham
71st Assembly District

Assemblyman Kenneth Cory
69th Assembly District

Grover C. Stephens, Professor of Biology,
Chairman of Organismic Biology
University of California at Irvine

Craig Harlan, Vice President, Associated
Students, University of California
at Irvine

Don Barton, President, Marina Park, Inc.,
home owners' group, Upper Newport Bay

James W. Harrison, Director, Southern
California Marine Dealers Association

Evelyn Gayman, Conservation Chairman,
Desomount Club; also speaking for:
Barbara Horton, Pasadena Audubon Society

Paul Colburn, National Audubon Society,
National Wild Life, National Parks
Association, Orange County Advisory
Committee

continued

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APPEARANCES:

Calendar Summary Item 8(a) continued

Robert Vile, President, Ocean Fish
Protective Association

Richard H. Bali, Sierra Club
Angeles Chapter

Rimmon C. Fay, Commercial Fisherman

Fern Zimmerman, Santa Ana

Karl Hufbauer, Costa Mesa

James Schneider, representing
Conservationist Group of Sierra
Club, Orange County Group, part
of Los Angeles Chapter

L. H. Cloyd, Regional Manager, Region 5,
Los Angeles, Department of Fish
and Game

David James, Chairman of Executive
Committee, Orange County Chamber
of Commerce

Ellen Stern Harris

Selim Franklin, President, Orange
County Coast Association

Conrad Epley, Field Representative to
Congressman James B. Utt

John Macnab, President, Newport Harbor
Chamber of Commerce

Gus Patzer, Costa Mesa

H. A. Stuckey, Newport Beach; repre-
senting Bay Area Citizens Council

George Friedl, Jr., Corona del Mar

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I N D E X
(In accordance with Calendar Summary)

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6			1
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8	(a)	47	1
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11	(d)	24	6
12	(e)	5	8
13	(f)	56	10
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15	(a)	6	12
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33	(s)	18	39
34			1-Deferred
35			1

continued

I N D E X
(In accordance with Calendar Summary)

<u>ITEM CLASSIFICATION</u>	<u>ITEM ON CALENDAR</u>	<u>PAGE OF CALENDAR</u>	<u>PAGE OF TRANSCRIPT</u>
5 OIL-AND-GAS & MINERAL LEASES AND PERMITS:			
(a) Noyo Harbor District	48	40	2-Deferred
(b) Standard Oil Co. of Calif. Western Operations Inc.	10	42	3
(c) Pauley Petroleum Inc.	21	43	3
(d) Lyman E. Davis	28	44	3
(e) M. J. Ruddy and Son	27	46	3
(f) R. G. Flood, et al: (1)	40	47	3
(2)	41	52	3
(3)	42	54	3
(4)	43	57	3
(5)	44	60	3
(g) Seaside Sand & Gravel Co.	30	63	3
(h) Beloil Corp., Ltd.	36	64	3
(i) Standard Oil Co. of Calif. Western Operations Inc.	29	65	3
(j) City of Los Angeles	38	66	3
(k) County of L.A. Dept of R.E.	37	69	3
(l) Standard Oil Co. of Calif.	20	71	3
(m) Atlantic Richfield Co., et al	33	72	3
(n) Great Basins Petroleum Co.	34	73	3
(o) Mobil Oil Corporation	32	74	3
(p) Phillips Petroleum Co. and Pauley Petroleum Inc.	31	75	3
(q) Standard Oil Co. of Calif. and Humble Oil & Ref. Co.	35	76	3
6 CITY OF LONG BEACH:			
(a) First Amendment to Coop. Agreement for Water Injection Operations, L.B. Unit	39	77	3
(b) Expenditures incl. subsidence remedial work, Pico Av. & Ontario Ave. Town Lot Area	22	78	3
(c) Expenditures inc. subsidence remedial work Back Area Piers A to D	23	81	3
(d) Approval of documents in relation to interest of Pauley Petroleum Inc. and Allied Chemical Corp.	53	84	3

continued

I N D E X
(In accordance with Calendar Summary)

<u>ITEM CLASSIFICATION</u>	<u>ITEM ON CALENDAR</u>	<u>PAGE OF CALENDAR</u>	<u>PAGE OF TRANSCRIPT</u>
7 PROPOSED ANNEXATIONS:			
(a) Notification to City Council Santa Barbara re value of State-owned T & S lands under designation "Tidelands Annexation"	19	86	3
(b) Commission protest to pro- posed annexation, Santa Barbara	54	86a	3-Deferred
8 ADMINISTRATION:			
(a) Exchange of lands Upper New- port Bay-Irvine Company and County of Orange	49	87	14
(b) Port San Luis Harbor	25	91	4
(c) Agreement to correct techni- cal errors in exchange with Leslie Salt Co.	26	93	4
(d) Proposed budget, State Lands Division	55	94	4
9 INFORMATIVE:			
(a) Legislative report	51	102	
(b) Litigation	52	105	
10 NEXT MEETING			120

I N D E X

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5	5	8	1	45	4	1
6	6	12	1	46	34	1
7	7	24	1	47	1	1
8	8	36	1	48	40 (Def.)	2
9	9	23	1	49	87	14
10	10	42	3	50	2	1
11	11	15	1	51	102	Info.
12	12	17	1	52	105	Info.
13	13	21	1	53	84	3
14	14	19	1	54	86a (Def.)	3
15	15	30	1	55	94	4
16	16	37 (Def.)	1	56	10	1
17	17	32	1	57	25	1
18	18	39	1	58	26	1
19	19	86	3			
20	20	71	3			
21	21	43	3			
22	22	78	3			
23	23	81	3			
24	24	6	1			
25	25	91	4			
26	26	93	4			
27	27	46	3			
28	28	44	3			
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40	40	47	3			

NEXT MEETING 120

1 LC5 ANGELES, CALIFORNIA, MONDAY, SEPTEMBER 25, 1967--10:05 A.M.

2
3 MR. FLOURNOY: The meeting of the State Lands
4 Commission will come to order.

5 There are, to the knowledge of the members and the
6 staff, only two items on the agenda that people have indicated
7 a desire to speak to. These items are those regarding the
8 San Luis Harbor District and the proposed exchange of land
9 between The Irvine Company and the County of Orange. Unless
10 I am incorrect in that, we will proceed with the rest of the
11 agenda.

12 Item number 2 -- The minutes of the meetings of
13 August 14 and August 21, 1967 will be confirmed.

14 Item 3 -- Permits, easements and rights-of-way, some
15 six items on the agenda: If there is no discussion or objec-
16 tion, those items will be approved and confirmed as indicated.

17 Item number 4 -- Permits, easements, leases and
18 rights-of-way issued pursuant to statute and established
19 rental policies of the Commission: If there is no discussion
20 on any of those items, or objection, they will be approved and
21 the action is confirmed as indicated.

22 MR. HORTIG: Mr. Chairman, on item 4(r) on calendar
23 summary page IV -- Pacific Gas and Electric Company's applica-
24 tion for right-of-way easement -- at the request of the appli-
25 cant and the San Francisco Bay Conservation and Development
26 Commission it is recommended that the consideration of this

1 item be deferred.

2 MR. FLOURNOY: It will be so deferred unless there
3 is objection, and others in item 4 will be approved and the
4 proposed action authorized.

5 Item number 5 -- Oil-and-gas and mineral leases and
6 permits issued pursuant to statutes and established policies
7 of the Commission.

8 MR. HORTIG: Mr. Chairman, on item 5(a) I have just
9 been informed that the Department of Small Crafts and Harbors
10 wishes to speak to this item -- Mr. Curtis.

11 MR. CURTIS: Mr. Chairman, I am E. A. Curtis, Chief
12 of the Development Branch of the Department of Harbors and
13 Water Craft.

14 We have an item here on this dredging permit that
15 we feel involves a policy issue, which may be quite far-
16 reaching. This dredging is being done, as stated in the sum-
17 mary, to construct a mooring basin. In fact, it is being done
18 to provide a navigation area in the river bed itself; and
19 while the three cents per cubic yard, since we are only talking
20 about 10,000 yards here, is not a back-breaking item -- it is
21 for navigational purposes. The soil is to be used on the Noyo
22 Harbor District land and so, as far as we know, from the stand-
23 point of both issues -- from the standpoint of navigation and
24 from the standpoint of the use of the soil -- we don't feel
25 this three cents per cubic yard should be imposed.

26 GOV. FINCH: Why don't we put this over another

1 month? Is there any objection staffwise?

2 MR. HORTIG: No objection.

3 GOV. FINCH: With the other problems we have, I'd
4 like to have you submit written argument on this, if you will.

5 MR. CURTIS: Okay.

6 MR. FLOURNOY: We will then defer action on item
7 5(a). Is there any discussion or objection to the approval
8 of the other items under item number 5? Hearing none, this
9 item will be approved and action taken as indicated.

10 Item number 6 -- City of Long Beach, four items
11 there: Is there any discussion or objection to those items?
12 (No response) Without objection they will be approved and
13 action authorized as indicated.

14 Item number 7 -- Proposed annexations, two of them.
15 If there is no discussion ...

16 MR. HORTIG: Yes, Mr. Chairman. With respect to
17 item 7(b), which was calendared because of an anticipated hear-
18 ing by the City of Santa Barbara prior to the next meeting of
19 the State Lands Commission, the office of the city attorney of
20 Santa Barbara has now stated that this matter will be continued
21 until October 31, 1967, in order that the Lands Commission and
22 staff can consider all the problems at the October meeting of
23 the Commission. So this matter should also be deferred at
24 this time.

25 MR. FLOURNOY: Without objection, 7(b) will be
26 deferred; and unless there is further discussion or objection

1 7(a) will be authorized.

2 We will for the moment pass consideration of 8(a)
3 and 8(b) and deal with items 8(c) and (d). If there is no
4 discussion or objection to approval of action on those items,
5 they will be so authorized; and that leaves us with items
6 8(a) and 8(b).

7 Since the major problem, as I understand it, before
8 this Commission today will revolve around item 8(a), we will
9 take up item 8(b) -- a finding that the Port of San Luis
10 Harbor District has complied with the substantial improvement
11 requirement contained in section 1(b), chapter 302 of the
12 laws of 1957.

13 MR. HORTIG: Mr. Chairman, with respect to the item
14 the Commission has this morning received the following tele-
15 gram:

16 "Arroyo Grande Sportsman Club urges that
17 an early decision be made in the matter of
18 Port San Luis Harbor now before you. The
19 majority of people here are well pleased
20 with progress made by Harbor Commission
despite many obstacles. Arroyo Grande
Sportman opposed to interruptions or delay
in harbor development.

21 Board of Directors
By David W. Hook, President"

22 Also, we have received from H. C. Grundell, attorney
23 for the Port San Luis Harbor District, a final report on some
24 of the factual material as it appears in your agenda, page 91.

25 In the third paragraph of the first page of the
26 agenda item, it is stated that "Several upland parcels

1 adjacent to the granted lands have been condemned." The use
 2 of the word "condemned" is erroneous, as the lands were ac-
 3 quired by negotiation. So the sentence should read that these
 4 lands were purchased, and the details are that they were ac-
 5 quired by negotiation rather than condemnation.

6 In the fourth paragraph it is determined that: "The
 7 total cost to the District of the pier refurbishing and the
 8 boat-launching facilities is approximately \$160,000." This
 9 should be \$100,000; and the cost of the land fill is \$262,000
 10 instead of \$160,000, as it appears in the item on page 91.

11 The staff recommendation still is that pursuant to
 12 the requirement of the granting statute to the Port San Luis
 13 Harbor District that there be a consideration by the Lands
 14 Commission as to whether or not there has been compliance
 15 with the terms of the granting statute with respect to the
 16 development of the harbor. The staff report indicating that
 17 this is the case, it is still recommended that the Lands Com-
 18 mission approve the only item that is really before the Lands
 19 Commission for consideration -- which is that this report of
 20 compliance be submitted to the Legislature.

21 However, as the Commission is aware, requests have
 22 been received for presenting views to the Lands Commission on
 23 behalf of adjoining property owners.

24 GOV. FINCH: Are we addressing ourselves, though, to
 25 the merits of the report, Mr. Hortig, or are we leaving that
 26 to the Legislature's discretion?

1 MR. HORTIG: I would recommend that if there are
2 questions on the merits of the report these should be brought
3 up this morning. In other words, if there are any contentions
4 that the report is erroneous and is not factual, that's all
5 the Lands Commission has under consideration.

6 MR. FLOURNOY: That is, if they have substantially
7 complied with the provisions of the law.

8 MR. HORTIG: That is correct.

9 MR. FLOURNOY: Who is the party who wishes to speak?

10 MR. WEAVER: My name is Gerald Weaver, with the firm
11 of Crossman and Weaver. I am representing Mr. Robert Marré.

12 GOV. FINCH: I'd appreciate it if you would at the
13 outset briefly indicate what the nature of your objection to
14 the report is and to the action by the Commission that the
15 Harbor District has complied with the substantial improvement
16 required by law.

17 MR. WEAVER: Well, Mr. Chairman, members of the
18 Commission, we sent a telegram, I believe on September 8th,
19 to Mr. Hortig as chairman of the State Lands Division, request-
20 ing that the Commission continue its determination until its
21 October meeting at least. I also followed this with a formal
22 request, explaining the reasons why we asked that the Commis-
23 sion continue its determination as to whether or not the Port
24 San Luis Harbor District has substantially complied with the
25 provisions of its grant. I do not know whether the Commis-
26 sion is aware of the request or the reasons behind it.

1 MR. FLOURNOY: I know we know you have asked to
 2 have the action postponed. I think the record may also show
 3 that I have received a letter from Senator Grunsky in the
 4 same vein, although it did not indicate a specific reason why
 5 the decision should be postponed.

6 MR. WEAVER: The request is on behalf of Luigi
 7 Marré Land and Cattle Company, owners of San Miguelito Park
 8 Company, basically an offspring of the Luigi Marré Land and
 9 Cattle Company. This property surrounds the San Luis Harbor
 10 District. This is the property upon which P.G. and E. proposes
 11 to build its reactive plant when it gains the necessary per-
 12 mission, on the upland portion of it up the coast about seven
 13 miles.

14 The reason for the request is that there is an
 15 action by Luigi Marre Land and Cattle Company, San Miguelito
 16 Park Company, against Port San Luis Harbor District to deter-
 17 mine the validity of the Port's claim to certain tidelands.
 18 We feel there is a real dispute as to who has title to these
 19 lands because some of these lands are part of the original
 20 Spanish land grant. These matters are ...

21 MR. FLOURNOY: That is not part of the report.

22 MR. WEAVER: As part of this litigation we began
 23 making an investigation into the records of the Port and as
 24 a result of this investigation, which we have not had a chance
 25 to complete and will not have a chance to complete -- or,
 26 rather, we would be able to complete it before the Commission's

1 next meeting, I am sure, which I understand is October 21st --
2 but because of what we have found so far, we feel the report
3 is erroneous; that it is not complete. Because the facts are
4 not at the present time before the Commission, the Commission
5 cannot make a real determination as to whether the terms of
6 the grant have been complied with -- that is, to substantially
7 improve the property -- and this is the reason we are asking
8 for a continuance.

9 GOV. FINCH: Give me one instance where the report
10 is incomplete or erroneous.

11 MR. WEAVER: Well, for example, in the provision in
12 the report -- it is not numbered by page -- the pier which
13 they speak of as 1,750 feet. This is a small example. They
14 state that sixty percent of this pier has been refurbished and
15 rehabilitated. By their own figures only forty percent of the
16 pier has been refurbished and rehabilitated.

17 GOV. FINCH: What do you mean "by their own figures"?

18 MR. WEAVER: Well, they say 700 feet of the 1,750
19 feet, and this isn't sixty percent unless they do not con-
20 plate finishing it. This is only one example.

21 The other is they haven't even completed Phase I of
22 their four- or five-phase plan, which we contend should have
23 been completed years ago.

24 GOV. FINCH: But they don't say they have completed
25 Phase I. My point is they have been asked to provide a report
26 back to us. We have to forward this to the Legislature. It

1 has already been delayed; it should have been in earlier.
2 The litigation with which you are concerned doesn't have any-
3 thing to do with this report.

4 MR. WEAVER: That's right.

5 GOV. FINCH: I can't see any reason for delaying
6 this matter and sending this report to the Legislature. The
7 court isn't bound by any findings in this report.

8 MR. WEAVER: And we are not asking the board to
9 delay this to assist us in the litigation in any manner what-
10 soever. The question of who owns the tidelands in that area
11 must be determined by the courts or compromise settlement; but
12 I say, as a result of the investigation we made, we feel there
13 is a real question as to whether or not the Port San Luis
14 Harbor District has substantially complied with the terms of
15 its grant, which is to substantially improve the property
16 within the ten-year period, which ends November 21st.

17 We feel if this report is incorrect, we feel we can
18 present sufficient evidence to the Commission that they have
19 not complied with their grant. I don't like to make allega-
20 tions now unless I have had an opportunity to fully and
21 thoroughly complete the investigation necessary. Some of the
22 records are not available. The attorney for the Port left
23 the first of September and advised me at the time that he
24 would not be back until the 24th of September, so I was effec-
25 tively stopped from proceeding with my investigation. As a
26 result of this I could not continue the investigation on

1 behalf of my client. I feel that by the October meeting there
2 would be no reason why this investigation can't be completed.
3 We don't feel the report as it stands is complete. I do not
4 know what the Commission will base its determination on. I
5 would assume it would be what they have done, with what they
6 had to work with.

7 GOV. FINCH: That's exactly right.

8 MR. WEAVER: And they have had plenty to work with
9 and haven't done very much with it.

10 MR. FLOURNOY: Mr. Hortig, do you have a comment
11 on that?

12 MR. HORTIG: I would think, Mr. Chairman, that it
13 would be appropriate to have Mr. Grundell, attorney for the
14 Port District, respond -- since the problem is really between
15 Mr. Grundell and Mr. Weaver's client.

16 MR. GRUNDELL: Mr. Chairman and members of the
17 Commission, my name is Herbert Grundell. I am attorney for
18 the Port San Luis Harbor District. At one time I was general
19 manager of the Pacific Coast Railway Company and I had a lot
20 to do with this grant.

21 I think that the matter before this board, as has
22 been stated, is that you have one point here to determine --
23 whether or not Port San Luis Harbor District has substantially
24 completed improvements or engaged in improvements that are now
25 in progress at Port San Luis. We think very strongly that we
26 have.

1 Let's talk about specifics. After the formation of
2 the harbor department and the effective date of the two legis-
3 lative grants, the Port San Luis Harbor District had absolutely
4 no property of any kind other than the tide and submerged lands
5 in San Luis Bay and San Luis Creek. The uplands were owned
6 and possessed by property owners including necessary ways to
7 the tidelands -- Union Oil Company franchise and a lease of
8 the San Luis Transportation Company from the State Lands Com-
9 mission.

10 Nevertheless, the District proceeded to cause a
11 survey to be made of the trust lands. In fact, there were two
12 surveys made. One of them cost the Harbor District \$9,000;
13 the other survey, \$5,475. There was an initial master plan
14 made at that time. The Corps of Army Engineers issued their
15 report for navigation in 1961.

16 In order to get access to the Port, an action in
17 eminent domain was commenced by the Harbor District to secure
18 the necessary uplands to Port San Luis. This resulted in a
19 verdict in favor of the Harbor District but the amount of
20 money was in excess of the amount of money that the District
21 could pay at that time and necessarily the matter was aban-
22 doned. The District paid in excess of \$160,000 in costs of
23 suit.

24 There were discouragements after discouragements,
25 but finally negotiations were successful with Port San Luis
26 Transportation Company and the District acquired twenty-two

1 acres of the necessary uplands, plus the Port San Luis Wharf--
2 which, gentlemen, was in a very sad state of disrepair and was
3 dangerous to people using it. The District paid \$500,000.
4 We didn't have the money; we borrowed the \$500,000 from the
5 State of California, repayable on a long-term basis.

6 Now, in addition to that, after we had bought the
7 land and paid the \$500,000, we borrowed \$200,000 from the man
8 from whom we purchased the land and that was to be used for
9 rehabilitation, and was used for rehabilitation. This
10 \$200,000 was repayable over a five-year period.

11 I think we ought to talk specifically about some
12 things that the Harbor District has done: We have repaired
13 and reinforced a former railroad bridge at a cost of \$20,000.
14 We have filled four and a third acres of tidelands, on which
15 are presently public parking for a hundred cars, and access
16 to a boat-launching and fuel dock facility and to the pier.
17 This cost the District \$262,000. We have rebuilt the Port
18 San Luis wharf. Counsel said forty percent, fifty percent.
19 The figure in the report, I believe, is sixty percent; and the
20 basis of that was the safety to the public. There are fish
21 markets on the wharf, wholesale fish markets. The fishing
22 fleet are now making use of that area and the engineers tell
23 us when we are totally through with the wharf that the value
24 will be in excess of \$400,000.

25 The right-of-way for construction of a public road
26 from Avila to Port San Luis was granted by the Harbor District

1 to the County of San Luis Obispo. The County of San Luis
2 Obispo, along this same line, constructed a new bridge over
3 San Luis Creek, estimated cost \$250,000.

4 There are future improvements that are contemplated.
5 California Polytechnic College and ~~Coasta~~ Junior College have
6 made application to us for a marine biology laboratory there
7 and Wild Life is contemplating an investment of \$40,000 for
8 fishing platforms.

9 District ownership of land which was formerly pri-
10 vate land nobody could get on -- the public has access to 200
11 feet now. A new breakwater is contemplated by the Corps of
12 Engineers and we think that capital outlay will be put up by
13 private persons for capital concessions. A launching and
14 fuel station is already in. The concessionaire has invested
15 \$50,000.

16 We have rendered services to the public, and par-
17 ticularly the marine public, that have not been available
18 before. We now have a harbor master. Moorings have been
19 assigned at proper locations. We have arranged for aid and
20 comfort in providing for emergencies; storm warning service;
21 pumps are available for boats in a sinking condition. We have
22 a harbor-to-vessel service, and we have a rescue and fire boat
23 which is now on call.

24 GOV. FINCH: Mr. Chairman, I move we approve the
25 contents of the report, as recommended by the staff.

26 MR. SMITH: I second.

1 MR. FLOURNOY: Without objection -- all those in
2 favor of approving the report say "aye."

3 (Unanimous "aye.")

4 MR. FLOURNOY: Opposed? (No response) The report
5 is approved.

6 We will move to item 8(a) on the agenda, the only
7 remaining item before us.

8 MR. HORTIG: Mr. Chairman, I believe possibly the
9 best summary could be provided of this matter by a reading of
10 the agenda item which is before the Commission with respect to
11 the application for approval of exchange of land in Upper New-
12 port Bay, Orange County, between the Irvine Company and the
13 County of Orange.

14 In 1957 the California Legislature enacted Chapter
15 2044, providing for an exchange of land between the County of
16 Orange and private owners in Upper Newport Bay for the purpose
17 of developing the bay to serve a statewide interest. It
18 provides in part as follows:

19 "Sec. 3 That any and all of said portions of
20 said lands hereinbefore referred to, which
21 have been or which shall hereafter be improved,
22 filled, and reclaimed, as hereinbefore provided,
23 if and when so improved, filled, and reclaimed,
24 may be irrevocably alienated and conveyed free
25 of the public uses and trusts in said acts,
26 by the said County of Orange, with the approval
and concurrence of the State Lands Commission,
to the owner or respective owners of the up-
lands lying contiguous thereto in exchange for
lands of such owner or owners necessary or
desirable for the improvement, development
and conduct of said harbor upon a finding by
the State Lands Commission that the lands

1 "located in the area commonly known as
2 Upper Newport Bay which are to be exchanged
3 are no longer useful for navigation, com-
4 merce, and fishing, and that the lands to
5 be received in exchange are at least of
6 equal value thereto. The lands received
7 by the county in exchange shall be used by
8 the county only for purposes of statewide
9 interest. Upon any conveyance as herein
10 provided all right, title, and interest of
11 the State and said County of Orange in the
12 land exchanged shall vest in the grantee or
13 grantees thereof."

14 Pursuant to the said statute, the County of Orange
15 developed a plan of exchange and development that was con-
16 sidered by the State Lands Commission at its meeting on
17 August 25, 1966, and again at its meeting on December 14, 1966.
18 Final approval was withheld pending studies of alternative
19 plans and the receipt of further legal opinions.

20 The County of Orange has requested that the proposal
21 for exchange approval be considered by the Commission.

22 Both the Legislative Counsel and the State Attorney
23 General's Office have determined that the Commission may
24 authorize the exchange by finding that (1) the lands in the
25 bay that are to be filled and conveyed to The Irvine Company
26 are no longer useful for navigation, commerce, and fishing,
and (2) the lands to be received in exchange by Orange County
are at least of equal value to the lands transferred by the
County. Both counsel concluded that an express finding by
the Commission that the exchange is in the statewide interest
is not required in order to authorize the exchange. However,
the statute does require that the lands received by Orange

1 County ultimately be used for purposes of statewide interest.

2 The Commission employed the planning firm of
3 Livingston and Blaney as its consultants, and received their
4 report on December 14, 1966. This report suggested that
5 alternative methods of development of Upper Newport Bay be
6 explored, which has been done. The further investigations
7 indicated that large public acquisitional and developmental
8 costs would be required by alternative plans, and that there
9 is insufficient money available from any sources to make such
10 alternative plans of development practical in the near future.

11 Subsequent to consideration of the matter by the
12 State Lands Commission on August 25, 1966, the Office of the
13 Attorney General advised that the controlling law to be con-
14 sidered by the Commission in making its determination is as
15 follows:

16 1. Chapter 2044, Statutes of 1957, is not unconsti-
17 tutional on its face, and a legal exchange may be accomplish-
18 ed pursuant thereto.

19 2. Chapter 2044, Statutes of 1957, vests in the
20 Commission discretionary authority to examine the proposed
21 transaction as a whole to determine whether the proposed con-
22 veyance of granted lands free of the public trust is in the
23 best interests of the State.

24 3. The Commission should make the following deter-
25 minations:

26 (a) Whether it should give or withhold its

1 approval of and concurrence in the proposed
2 conveyance;

3 (b) Whether the lands to be conveyed are no
4 longer useful for navigation, commerce, and
5 fishing; and

6 (c) Whether the lands to be received in the
7 exchange are of at least equal value to those
8 conveyed.

9 In connection with the determination under 3(b)
10 just read, the Office of the Attorney General advised that the
11 legislative finding in the statute does not relieve the Commis-
12 sion of the responsibility for making an independent examina-
13 tion of pertinent facts and the application of the established
14 criteria, and that the Commission's finding should be based
15 upon physical conditions existing on the date of actual con-
16 veyance.

17 Data developed indicates that the project is large
18 enough to be of statewide interest, and that the following
19 advantages would accrue from the development of the proposed
20 project:

21 1. The area under public jurisdiction is increased
22 from about 400 to 745 acres, an increase of 345 acres or over
23 eighty-six percent.

24 2. The area available for public park and beach
25 areas is increased from 70 to 261 acres, an increase of 191
26 acres or two hundred seventy-three percent.

1 3. The waterfront public access, including that in
2 front of the park areas, is increased from about 6,090 to
3 17,860 lineal feet, an increase of over one hundred ninety-
4 three percent.

5 (These conditions are also indicated in the bar
6 graph to the Commission's left: Upper Newport Bay Exchange
7 Advantages to the County. The bar to the right, which is the
8 fourth element, represents the estimate of the Orange County
9 records' specialist on the potential for increase of recrea-
10 tional user days in the greater Newport Harbor area if this
11 exchange is approved.)

12 4. The development of the area in the interest of
13 the people of the State of California would be made feasible by
14 the approval of the exchange.

15 5. Approval of the exchange would make it feasible to
16 have early development of aquatic facilities currently needed
17 by the University of California at Irvine and other educational
18 institutions, including a five-acre waterfront site and a
19 2000-meter rowing course, or similar aquatic facilities.

20 6. Access is provided by several major county and
21 city arterial roads, which connect to two existing and two
22 future freeways within one mile of the public areas.

23 7. Approval of the exchange would make feasible
24 development that would provide for an estimated increase of
25 from 8 to 17.2 million user-days for greater Newport Harbor.
26 This is reflected in the fourth bar to the right of the chart.

1 8. The parties are contractually bound by the
 2 dredging agreement to complete the preliminary dredging within
 3 two years and to complete dredging of the navigable channels
 4 within five years, thus assuring the public of the use of the
 5 waterways at a much earlier date than any alternative plan
 6 studied.

7 An independent appraisal report shows the value of
 8 the land to be received by the County is greater than that to
 9 be transferred to The Irvine Company, as follows:

10	Total value of parcels to be	
11	received by Orange County	\$19,466,000
12	Total value of parcels to be	
13	received by The Irvine Company	\$11,453,500
14	with an indicated dollar advantage to County	\$ 8,012,500

15 A staff appraisal shows the land received by the
 16 County to be at least of equal value to the land to be
 17 transferred to The Irvine Company, thereby meeting the
 18 statutory criteria.

19 The Resources Agency reported the desirability of
 20 providing for preservation and improvement of the marine
 21 ecology in any development program for the subject area.
 22 The County of Orange has agreed to cooperate in the implemen-
 23 tation of such a marine development program, subject to the
 24 approval of the Resources Agency.

25 A supplementary agreement has been entered into be-
 26 tween The Irvine Company and Orange County specifying the
 leases that may be administered by The Irvine Company. The

1 entire value of the land covered by the retained leases may be
2 excluded from the appraised value of the lands to be received
3 by the County without substantially affecting the preponderance
4 of value in favor of the County, and without affecting compli-
5 ance with the statutory requirement of at least equal value.

6 Therefore, it is recommended that the Commission,
7 in accordance with Chapter 2044, Statutes of 1957:

8 1. Give its approval of, and concurrence in, the
9 proposed conveyance to The Irvine Company by the County of
10 Orange of land in Upper Newport Bay, in exchange for the lands
11 to be received by the County of Orange.

12 2. Find that the lands that are to be filled and
13 conveyed to The Irvine Company by the County of Orange, pursu-
14 ant to the exchange and in accordance with the application
15 filed with the State Lands Commission, at the time of said
16 conveyance, will be no longer useful for navigation, commerce,
17 and fishing.

18 3. Find that the lands to be received by Orange
19 County in the exchange with The Irvine Company are at least
20 of equal value to the lands to be transferred to The Irvine
21 Company.

22 4. Authorize the notification of the County of
23 Orange of the above approval and findings.

24 Mr. Chairman, up to this morning, for the record,
25 the State Lands Commission had received letters on the proposed
26 exchange transaction under consideration as follows:

1 September 5 -- from Professor Grover C. Stephens,
2 Department of Organismic Biology,
3 University of California, Irvine

4 September 6 -- Mr. Vernon L. Human, Venice, Calif.

5 September 12-- Mr. and Mrs. Donald Heiney of
6 Newport Beach

7 September 22-- Mr. Wayne Wheelock, Long Beach

8 September 25-- Mr. and Mrs. Schinzinger, Irvine,
9 California

10 In summary, these letters propose principally that
11 the currently privately held tidelands be held as a public
12 ecological reserve. As already covered in the agenda item,
13 determination of this type of development would be made by
14 the County of Orange in conjunction with the State Resources
15 Agency if the Orange County application is approved.

16 Letters and telephone requests for an opportunity to
17 report views to the Commission have been received from:

18 September 20 -- Professor Grover C. Stephens

19 September 21 -- Mrs. Corinna Babb, Marina Park
20 Association, Newport Beach

21 September 22 -- Mr. Frank Robinson, Orange County
22 Tidelands Association, Newport Beach

23 September 22 -- Mr. J. Harrison, Southern California
24 Marine Dealers Association.

25 Finally, letters recommending State Lands Commission
26 approval of the pending application have been received from:

27 September 13 -- The Honorable Alton Allen, Chairman,
28 Board of Supervisors, County of
29 Orange

30 September 18 -- California Marine Parks and Harbors
31 Association

1 September 19 -- The Honorable William D. Martin,
2 Mayor, City of Laguna Beach

3 September 20 -- Mr. Robert Guggenheim, Newport Beach

4 September 20 -- Honorable Paul C. Gruber, Mayor,
5 City of Newport Beach

6 September 21 -- Orange Coast Civic Association, Inc.,
7 Newport Beach

8 September 22 -- Mr. R. P. Hughes, President, Pacific
9 Hawaiian Products Company.

10 Now, Mr. Chairman, if you will bear with me, I have
11 had handed to me by people in attendance this morning the fol-
12 lowing sheaf of papers, which should be entered into the
13 record:

14 Mr. Craig Harlan, Vice President of Associated
15 Students, University of California, Irvine,
16 wishes to be heard on Upper Newport Bay.

17 Mr. Paul W. Colburn of Carmel wishes to speak.

18 Mr. Conrad Epley, Field Representative to
19 Congressman James B. Utt, requests to be
20 heard.

21 Barbara Horton, Conservation Chairman, Pasadena
22 Audubon, wishes to be heard on Upper Newport Bay.

23 Another letter from Mrs. Corinna M. Babb, who has
24 already been noted as officially requesting an
25 opportunity to be heard.

26 A series of petitions proposed to be read by
Mr. Hufbauer.

Mr. John Macnab, President, Newport Harbor
Chamber of Commerce, wishes to be heard.

Mayor Paul Gruber, City of Newport Beach, who
has already transmitted a letter to the Com-
mission, wishes to be heard.

Mr. Richard H. Ball, Conservation Chairman,
Angeles Chapter Sierra Club, wishes to be
heard.

1 Mrs. Esther P. Johnson, Tustin, and Miss Fern
2 Zimmerman, in their individual capacities.

3 Mr. Selim Franklin, President, Orange County
4 Coast Association.

5 Mr. Fenton Jones, Orange County Chamber of
6 Commerce only wishes to state approval of
7 the conveyance to The Irvine Company.

8 Mrs. Dora Hill, former Mayor, City of Newport
9 Beach, is in attendance.

10 GOV. FINCH: I can't tell whether that is a secret
11 ballot or public ballot you are taking there.

12 MR. HORTIG: The one I laid aside, Governor Finch,
13 was with reference to another item on the Commission's agenda
14 and not pertinent to Newport Beach. To continue:

15 Katherine Hall, member of the Sea and Sage
16 Club, National Audubon Society, wishes
17 to speak.

18 They are still coming in:

19 L. H. Cloyd, Regional Manager, Region 5,
20 Department of Fish and Game, wishes to
21 make a presentation on behalf of the
22 Department of Fish and Game and the
23 Resources Agency.

24 The others I am laying aside, Governor, indicate
25 attendance, but do not indicate that there is any desire to
26 make a presentation to the Commission; I am only reading the
letter:

Dr. Lewis A. Follansbee, Professor of Marine
Science, Orange Coast College.

Mr. Coulson Tough, Campus Architect, University
of California, Irvine, wishes the University's
letter to be read into the record, which I
will do immediately following this.

1 Letter from Jack Garnaus, President, Bay Area
2 Citizens Council of Orange County, who wish
their name added to the agenda.

3 Letter from Paul Howard, Assistant Western
4 Representative, National Audubon Society,
5 indicating there must be in depth study of
each proposal prior to any decisions or
action.

6 Letter from Assemblyman the Honorable Edwin
7 L. Z'berg, enclosing letter from Mr. Gus
8 C. Patzer, indicating personal opposition
to the transaction.

9 Letter from Mrs. Howard Allen, requesting in
10 her statement that the Commission give
11 favorable consideration to the adoption of
12 park reserve area as advocated by members
of the staff at U. C. Irvine.

13 Evelyn Gayman, Conservation Chairman, Deasomount
14 Club, wishes to speak opposing the exchange.

15 Mr. Rimmon C. Fay, individual commercial fisher-
16 man, opposes the transfer; would like to
make a statement.

17 Mr. John Tyler, Vice Chairman, Southern Cali-
18 fornia Chapter, The Nature Conservancy,
wishes to speak.

19 Jan Boer, research analyst, wishes to speak.

20 Monterey Park Rod and Gun Club supports wildlife
21 conservation measures.

22 An expansion of a letter previously filed on
23 behalf of Orange Coast Civic Association,
in favor of the exchange.

24 Mr. Robert Vile, President, Ocean Fish Protective
25 Association, wishes to speak.

26 We have attendance slips that indicate both support
27 and opposition to the exchange, but no indication of a desire
28 to speak on the subject, from many people here in attendance.

29 In accordance with the request that the University

1 of California at Irvine's letter be read into the record, it
2 is dated September 22nd, addressed to the State Lands
3 Commission:

4 "Re: Development of Upper Newport Bay
5 Orange County

6 Gentlemen:

7 With respect to the development of
8 the Upper Newport Bay, the University has
9 no official position other than its inter-
10 est in the property described in the agree-
11 ment between The Irvine Company and the
12 University of California. As part of the
13 agreement, The Irvine Company shall deed
14 a parcel of land of five acres located at
15 the easterly end of Upper Newport Bay,
16 together with a corridor one hundred feet
17 in width connecting such parcel to the
18 campus. The description of this parcel
19 of land and its purposes are contained in
20 the Second Phase Report prepared by
21 William L. Pereira and Associates for
22 the Irvine Campus and included as a part
23 of this agreement.

24 Very truly yours,

25 Daniel G. Aldrich, Jr."

26 And in the letter of the Orange Coast Civic
Association of September 21st, there is a concluding statement:

"I call these needs to your attention and
request time at your hearing to urge fur-
ther study before the commission on public
lands makes a decision.

(signed)

Edward P. Allen, President"

Also, letters have been received by the
Commissioners as follows:

1 From Miriam H. Smith, Corresponding Secretary
2 pro tem for the Nature Study Group of
3 Laguna Beach, received by Commissioner
4 Smith, suggesting implementation of the
5 maximum of conservation.

6 Also received by Director of Finance Smith, a
7 letter from Mrs. Robert J. Howison of
8 Laguna Beach, recommending a proposed
9 park reserve for Upper Newport Beach.

10 Another letter to Mr. Smith, expression of
11 concern from Mrs. Patricia Stephenson
12 of Fullerton, California, with respect
13 to preservation of the natural areas.

14 Also received by Mr. Smith a letter from
15 Dr. Gale A. Granger, expressing concern
16 and a desire for a natural bay in
17 Southern California; and

18 Letter from Southern California Marine Asso-
19 ciation, Mr. E. P. Nichols, Executive
20 Director; and, as indicated from pre-
21 vious telephone calls, a representative
22 of that association has also indicated
23 a desire to speak in opposition to
24 certain phases of the matter.

25 It might help, Mr. Chairman, if I stressed for the
26 benefit of the people here concerned, as stated in the agenda
item, that the Commission has a letter from the Chairman of
the Board of Supervisors of Orange County, specifically out-
lining the degree of agreement and willingness on the part of
the County of Orange to work on all effective programs for the
preservation of ecological values in any development of Upper
Newport Bay if the land exchange is consummated, and that
such programs are to be subject to the approval of the State
Resources Agency.

Therefore, this is an element of concern as

1 expressed in the majority of the letters that the Commission
2 has received, but that is not an element or condition for con-
3 sideration for approval of the basic real estate transaction --
4 the land exchange of granted tide and submerged lands from the
5 County of Orange to The Irvine Company, and the return from
6 The Irvine Company of privately owned land -- then to be
7 studied for development in the statewide interest, as required
8 by Chapter 2044 of the Statutes of 1957.

9 GOV. FINCH: Let me ask this: If the County comes
10 back with detailed proposals as to how they will use their
11 land, would we have the benefit then of the Resource Agency's
12 approval as a condition precedent before we would then be
13 asked to approve that development?

14 MR. HORTIG: Only if the County also submitted the
15 total plan or plans as they might exist at that time to the
16 State Lands Commission for consideration. There is no require-
17 ment in the statute that this be done. However, there is the
18 obligation of responsibility on the part of the State Lands
19 Commission, together with the Office of the Attorney General,
20 to evaluate any future plans by Orange County for such develop-
21 ment, whether submitted for review to the Lands Commission or
22 not, in order to determine that the full conditions of the
23 original tideland trust, as well as the requirement for devel-
24 opment in the statewide interest under Chapter 2044, is being
25 met, in fact.

26 GOV. FINCH: Just a minute, Mr. Hortig. You went

1 completely around a circle on that one.

2 MR. HORTIG: I am trying to give you a specific
3 answer, Governor. I think this question as to the proposal
4 as to how Orange County contemplates carrying out this program
5 and whether they intend to submit development plans for review
6 by the State Lands Commission before they go forward, in addition
7 to their working out their plans on the ecological aspects
8 with the Resources Agency, could be directed by the Chairman
9 as a question to the representatives of Orange County who are
10 here.

11 MR. FLOURNOY: I think that what Mr. Hortig is trying
12 to say -- Under the law there is no requirement, although
13 there is a continuing requirement that the lands be developed
14 in the statewide interest; and, of course, we could assert
15 they were not if they were not. Although they are not re-
16 quired to submit them, I presume we would have access to the
17 plans.

18 GOV. FINCH: But specifically they are required to
19 work with the Resources Agency with regard to the ecological?

20 MR. HORTIG: Not as a matter of statute, but simply
21 as a matter of agreement. The Resources Agency raised the
22 question and they have agreed to that.

23 GOV. FINCH: If we can agree on that, we can cut
24 down a number of people to be heard from.

25 MR. SMITH: Mr. Chairman, before we begin -- On the
26 last page, Mr. Hortig, on this particular issue, there were

1 four actions that should be taken and I'd like to suggest,
2 unless there are other suggestions, that items 2 and 3 be
3 considered as items 1 and 2, and item 1 be considered as 3.
4 In other words, we first make the determination, if we do at
5 all, that the lands will be no longer useful for navigation,
6 commerce and fishing; and, number 2, that the lands that will
7 be received by Orange County in the exchange are at least of
8 equal value to the lands being provided to The Irvine Company;
9 and then we make the determination as to whether or not we
10 approve the conveyance. In other words, it seems to me we
11 should make a determination on 2 and 3 before we make a deci-
12 sion on item 1.

13 MR. FLOURNOY: We can, I think, preferably at least
14 direct our attention as to whether or not there is a specific
15 objection to 2 and 3, in the sense of the valuation of the land
16 or the utilization of the land; then these findings would fol-
17 low. If we don't approve them, we don't need to make those
18 findings. We only need to make those findings if we approve
19 it. I believe, along with your comment, that we could deter-
20 mine whether or not there are people who wish to speak speci-
21 fically to those questions and perhaps at this point in time
22 we could just get an indication by a showing of hands if there
23 are people who wish to speak specifically and directly to
24 those two items on the agenda -- one, to contest that the lands
25 to be exchanged are not at least of equal value; and, two,
26 with regard to the value of the lands for commerce, navigation

1 fishing at the time of the conveyance, which would be under
2 the agreement if such action would be taken. Let us get this
3 matter cleared up if we can.

4 MR. KUYPER: Mr. Chairman, my name is Adrian Kuyper.
5 I am County Counsel, County of Orange.

6 There has been a wealth of material submitted to the
7 staff over past years, before and subsequent to the last hear-
8 ing, and I won't burden the record with what would be largely
9 repetition. We concur with the staff report and its recom-
10 mendation, and we respectfully urge your approval.

11 As Mr. Hortig reported, we are in agreement that we
12 will submit plans to the Resources Agency for its approval on
13 this phase of development of Upper Newport Bay.

14 If there are any questions on details or rebuttal
15 necessary, we would be happy to answer them.

16 MR. FLOURNOY: In that connection, is your agreement
17 with the Department of Resources such that it is not statutory
18 that they approve but this would be a factor in proceeding --
19 as to whether or not the Resources Agency approved the plan?

20 MR. KUYPER: There is no specific contract. There
21 was a letter that was introduced at the last hearing; and what
22 we represent to the Commission, as we have to the staff -- and
23 this is in the body of the report -- is that we will work with
24 the Resources Agency and we are sure we can arrive at some
25 mutually satisfactory development in the Upper Bay.

26 GOV. FINCH: Is that an agreement on the ecological

1 factors?

2 MR. KUYPER: I might say we doubt whether we can
3 approve the diagram that we have seen in the last week, where
4 we just hack off the top of the bay. We are going to dredge
5 in a particular fashion outlined in the dredging agreement,
6 but we can retain areas in the Upper Bay. It will not be the
7 primary use of the Upper Bay. It will be one of the recrea-
8 tional facilities. This retains that factor, but it will not
9 be the predominant use of the bay, but will be incorporated as
10 best we can.

11 Thank you, gentlemen.

12 MR. FLOURNOY: If there are no questions on that, I
13 think we should proceed and I would suggest we proceed along
14 the basis of those people who are in opposition to various
15 features of this program. Let me say we have a rather lengthy
16 list of people who wish to address themselves to this subject.
17 We would hope, certainly, that a minimum of repetition would
18 be engaged in by those who wish to speak to the Commission.
19 If the point has already been made, it seems to me you can
20 indicate your position briefly, and we would look favorably
21 upon whatever curtailment of extensive testimony can be
22 effected.

23 Let us, then, proceed.

24 MR. HORTIG: Mr. Chairman, may I interrupt? It is
25 very essential for the record, and I apologize for not having
26 noted previously, that we also have requests for statements to

1 be made by the Honorable Robert Badham, the Assemblyman in
2 whose district Upper Newport Bay is located, as well as by
3 Mr. Charles Baldwin on his behalf, and Assemblyman Cory on
4 behalf or at least in association with the Joint Legislative
5 Committee on Public Domain.

6 MR. FLOURNOY: Let us then proceed to try and dispose
7 of any contentions with regards to 2 and 3 first. Then we
8 will get on the subject of those who are opposed to it.

9 Let's start with the item with regard to the value
10 of the land. Will those people who wish to address themselves
11 to that specifically limit themselves specifically to this
12 point. We would appreciate it.

13 PROFESSOR FOLLANSBEE: Gentlemen of the Commission,
14 Lewis A. Follansbee, Professor of Marine Science, Orange Coast
15 College, and I speak to, item one, the independent appraisal.

16 Now, I have seen various figures in the years.
17 This figure has appreciated from one and one-half million up
18 to something like eight million dollars. I am unaware of
19 actual figures from the County Assessor's office. The County
20 Assessor would be in a position, I believe, to give us figures
21 which relate to this particular problem, and my particular
22 question is: If these, indeed, are the figures -- then why
23 are not presently these lands being assessed at those particu-
24 lar values? I understand that the Assessor of Orange County
25 is in the audience this morning and I would ask your permis-
26 sion to require or request this answer from him.

1 MR. FLOURNOY: I don't think the question of what
2 the lands are appraised for is relevant as to whether the
3 lands to be exchanged are not at least equal in value.

4 PROF. FOLLANSBEE: I think this would establish
5 whether this is equal.

6 MR. FLOURNOY: You are challenging the staff
7 appraisal that these lands are at least equal?

8 PROF. FOLLANSBEE: I say I wish for clarification.
9 I am not convinced they are.

10 MR. FLOURNOY: On what ground?

11 PROF. FOLLANSBEE: On the basis of the fact that I
12 think assessed valuations are not as indicated on the basis
13 of these figures.

14 MR. FLOURNOY: I am not going to introduce assessed
15 valuation figures as against the values of our own staff be-
16 cause that is not a matter pertinent to what they really may
17 be worth, and not pertinent to our findings that they are of
18 at least equal value, unless the other members of the Commis-
19 sion feel differently. (Short sotto voce discussion between
20 Commissioners.)

21 That is the feeling of the other members of the
22 Commission. I don't believe the assessed value is relevant to
23 the real value necessarily and I don't want to get into assess-
24 ing practices here if I can help it.

25 PROF. FOLLANSBEE: I defer to your opinion. Would it
26 be possible to ask the Assessor to give his opinion whether or

1 not these figures establish whether or not

2 MR. FLOURNOY: I think if the Assessor ~~is~~ here and
3 if he wishes to make any comment with regard to the value of
4 these specific lands or has them available -- and I don't know
5 he does, since he did not indicate he wanted to testify --
6 then certainly he has the right to do so. If he wishes not
7 to comment, he has that right as well.

8 GOV. FINCH: Mr. Hinshaw, your public is calling.

9 MR. HINSHAW: For the record, my name is
10 Andrew Hinshaw. I am the Assessor of Orange County.

11 I am called upon to answer this particular question
12 many times, particularly during the times when there are
13 some newspaper articles about the trade in the Upper Bay.

14 We, of course, must establish a valuation of the
15 lands which are being proposed for assessment purposes and,
16 of course, the Commission must be aware that we operate under
17 the same type of constitutional and professional appraisal
18 practices that are employed by your own appraiser and the
19 private appraiser, Mr. Evans, who made the appraisal for the
20 Commission, as I remember.

21 I received a copy of the appraisal made for the
22 State Lands Commission and went over it in great detail, and
23 there are a number of passages in the appraisal that would
24 lead another appraiser to believe that maybe the conclusions
25 are not supported by the facts. I could refer to the state-
26 ment by the appraiser himself that he has not analyzed all of

1 the parcels in the proposed trade. On Page 42, the value
2 estimates -- quoting from the appraisal by Mr. Evans -- "No
3 attempts were made to analyze each of the parcels appraised
4 by the subdivision residual method. It is believed the
5 examples heretofore given adequately illustrate the question."

6 If I were asked for my opinion of value on the
7 Irvine parcel as a part of the entire Irvine Upper Bay owner-
8 ship -- that is, if the entire ownership were to be sold to
9 one buyer -- the contributory value of each of the parcels
10 would be substantially lower than the values given. However,
11 this general principle would be applicable to the County
12 values. That is as an appraiser and speaking only as an
13 appraiser, because I have no official position on whether or
14 not the trade as proposed is desirable or undesirable. I have
15 no official position on that whatsoever, but I would say that
16 the trade that is presently contemplated and before this
17 Commission would indicate that if the trade is consummated
18 there cannot be a net benefit to the County simply because
19 the islands which will be dredged out largely then will have
20 that value transferred to the perimeter land which will be
21 held both by The Irvine Company and the County. Those islands
22 which are the bulk of the great benefit supposedly accruing
23 to the County will not accrue to the County; they will largely
24 accrue to the larger perimeter of the owners of the other
25 lands. The values which will be inherent in some of the
26 physical properties they hold largely would be enhanced to a

1 great magnitude by the decision of not only this Lands Commis-
2 sion but by the Corps of Engineers, who have to be involved in
3 the development of the navigable portions of the property.

4 I would say as an appraiser that there can be no
5 showing at this point in time that the County will receive a
6 benefit. Indeed, I would say that the benefit would be the
7 other way around. It would largely be to the owners of the
8 perimeter lands, which would be partly the County and partly
9 the Irvine Company.

10 GOV. FINCH: But you are talking about the future.
11 Right now, are you saying the appraisal is eight million off?

12 MR. HINSHAW: I would say he is more than eight
13 million off.

14 GOV. FINCH: As of the future or now?

15 MR. HINSHAW: As of right now. If I could use an
16 example, at the present time there are apparently two owner-
17 ships in that area -- The Irvine Company and the County hold-
18 ing lands in trust; but there are some other governmental
19 agencies which become involved: the Lands Commission, for
20 example, the Corps of Engineers possibly. Let's just expand
21 for a moment that type of interlocking interest and control.
22 Say we had fifteen or twenty governmental agencies and two or
23 three hundred private interests involved. You may have a
24 situation that would be chaos and the valuation would be
25 largely dependent at any point in time on the decisions to
26 clean up and make clear the rights that are presently involved

1 In the appraisal report of Mr. Evans, he assumes
2 that there should be some bridges built to the islands and
3 that is not borne out on the report before us. I would hazard
4 a strong guess without a great deal of cooperation and permis-
5 sion The Irvine Company could not develop these islands if
6 this trade would be postponed or disapproved. I would say
7 there is question of whether there is much of any value other
8 than nominal to those islands. This is why we do not think
9 that the market value that we should place on those properties
10 is anywhere close to the Evans appraisal.

11 GOV. FINCH: Did you make these observations to
12 your Board of Supervisors?

13 MR. HINSHAW: Yes. We have not particularly done
14 so. I have spoken to one of the Supervisors when he called
15 me on the telephone to suggest that perhaps we should keep
16 the valuations low because there were some complications to
17 the trade, and I pointed out that we didn't think the parcels
18 in the Evans appraisal were market value anyway and he should
19 not be concerned. I have not called it to their attention
20 officially because it seems to me I shouldn't voluntarily
21 inject myself into a controversy which is not my official
22 business.

23 GOV. FINCH: They made a recommendation and appar-
24 ently they did not have the benefit of your counsel; and now
25 you have been asked here and I just wanted to know whether
26 they had the benefit of your thinking before they gave their

1 approval.

2 MR. HINSHAW: No, they have not.

3 MR. SMITH: Mr. Hinshaw, have you made a study of
4 this and do you have a report on your views?

5 MR. HINSHAW: Not a specific parcel by parcel
6 review.

7 MR. SMITH: Do you have it in writing?

8 MR. HINSHAW: No, sir. I could furnish you some-
9 thing in writing.

10 MR. SMITH: Do you have it in writing now? We are
11 coming to grips with this issue today.

12 MR. HINSHAW: I didn't plan to testify here today.
13 I was here as an interested observer.

14 MR. FLOURNOY: He just happened to have a copy of
15 the appraisal report.

16 MR. HINSHAW: Well, I have a lot of papers.

17 MR. SMITH: As the County Assessor, I would think
18 you would have something in writing.

19 MR. HINSHAW: Not with me today; no, sir.

20 MR. FLOURNOY: Thank you very much, Mr. Hinshaw.

21 Is there any further testimony on this
22 particular point?

23 MR. CROW: My name is Warren Crow and I have sent
24 letters to this Commission on the specific subject on why I
25 objected to the trade; and to get to the specifics of what
26 Mr. Hinshaw has been talking about in generalities, the upper

1 island in the trade has been appraised by Mr. Evans at
2 \$100,000. "Current fair market value" are the words used in
3 his report. At the present for the year 1966 those islands
4 are assessed at fifteen hundred per acre, which is 1.5 percent.

5 If it is true that the law requires the Assessor to
6 appraise at 20 to 25 percent of market value to the year 1971
7 and then in 1971 it becomes necessary to appraise at 25 percent,
8 and in the interim he must state publicly what he assessing
9 these islands to, he has stated it is 25 percent. If it is
10 25 percent, it is \$6,000 per acre.

11 In the year before, those islands were appraised and
12 assessed at \$100 per acre, which would indicate a market value
13 of \$400 per acre; in the year before that, they were appraised
14 at \$15 an acre, which would be \$60 market value.

15 I, as a citizen of Orange County, object with all
16 the ability I have to accepting this trade on the basis of
17 \$100,000 per acre when this same company has helped contribute
18 to our total tax load on the basis of \$60 an acre, \$400 an
19 acre, and \$6,000 an acre. If this does not indicate that
20 there is some tremendous difference of opinion in the market
21 value which will most certainly affect where the balance lay,
22 whether to the advantage of the County or not, then I don't
23 know what other competent evidence could be presented that
24 this valuation certainly needs further inquiry. It is just
25 too far apart. There is no possible way to rationalize the
26 term "value" and come up from \$60 to \$6,000 an acre -- which,

1 by the way, was approved by the County Board of Equalization,
2 and yet a few months later they come along and tell us we
3 would be doing well to acquire these lands at \$100,000 per
4 acre. There is just absolutely no sense, rhyme or reason to
5 combine those two statements. It cannot be done.

6 MR. FLOURNOY: Any further comment on this particu-
7 lar point?

8 MR. ROBINSON: Mr. Flournoy, I wrote a letter but
9 I didn't know the sequence you were going to set. So I have
10 one page I would like to read ...

11 MR. FLOURNOY: I would rather we stick with the
12 value.

13 MR. ROBINSON: Frank Robinson, County Tidelands
14 Association. I am an engineer, so I became considerably
15 interested in this about four or five years ago; and there
16 is a number of discrepancies in this general approach that
17 bother me.

18 Now, I am following all this with authority. I
19 would like to just make one point that makes me question the
20 whole valuation on this trade. I believe you gentlemen have
21 seen this map put out by the Harbor Department; you are all
22 quite familiar with it. The question that comes to my mind
23 in the evaluation of the \$8 million advantage to the County --
24 and using the criteria at the time of the exchange, which is
25 at close of escrow, conceivably say two years from now, assum-
26 ing everything went smoothly -- at close of escrow we will

1 have generated a new channel. The area up here, as you are
2 aware, is the County portion and with the exception of Big
3 Canyon the rest of the channel will be given to The Irvine
4 Company.

5 Now, recently Linda Island has been developed and,
6 prior to this, Dover Shores has been developed. In the June
7 issue of The House and Home there is an article describing the
8 development of Dover Shores. At this time it gave the cost
9 and sales price of Dover Shores and this has been confirmed
10 by The Irvine Company in their brochure on Linda Island.
11 These lots came out at an average of approximately \$2,200 a
12 front foot. Now, applying that criteria to the frontage ac-
13 quired by The Irvine Company, it is roughly 35,000 feet on the
14 bay. Now, Dover Shores fingers three-to-one. If you assume a
15 two-to-one frontage fingering, you have 35,000 times two, which
16 is 70,000 lineal feet; and 70,000 times \$2,000 is \$140 million
17 value. I wouldn't have been upset by the figure so much until
18 I read the article and the cost to front the Dover Shores
19 development is \$100 a foot, which is rather a nominal figure.

20 So what I am puzzled about, if it is a fair deal --
21 someone cuts the pie and the other guy takes the choice of the
22 pie; and if there is any truth in the \$8 million advantage
23 to the County, I would gladly give The Irvine Company the
24 County share and take the Irvine 70,000 lineal feet. I think
25 this would be a pretty good deal. Since by law it has to come
26 out to the County's advantage, I can't reconcile these figures.

1 We talk of \$9 million, \$20 million, and all of a
2 sudden here is something worth \$150 million. That is too
3 different. There should not be that great a proportion of
4 difference. If I was off two or three times, I would question
5 my ability to make this statement but I am using the present
6 market value and I suspect in two years, ~~if anything~~, it may
7 go up slightly.

8 MR. FLOURNOY: Those figures are for front footage
9 for Dover Island?

10 MR. ROBINSON: Just the front footage, the bare
11 empty lots as the Irvine Company prepares to lease them. Take
12 a specific case: Dover Shores is shown in this area. It has
13 approximately one-third mile on the channel. By fingering
14 this has been increased three-to-one. Using the same price
15 structure -- I believe it is fairly close or reasonably close
16 to Linda Island -- there is actually one mile gained in here;
17 and on the present market value, as is determined by the bro-
18 chures on Linda Island, this is somewhere in the vicinity of
19 \$10 million.

20 Now, right next to it is another parcel of approxi-
21 mately equal size. What it says is that this parcel similarly
22 developed will be worth another \$10 million, and that is using
23 a three-to-one ratio. I say let's take it at two-to-ones. In
24 this area it is quite deep and can be fingered quite success-
25 fully. In the gross picture at the time of the escrow closure
26 this represents what the thing is worth, and I am talking in

1 terms of a couple years, not far in the future.

2 There is one other subtlety here which I missed.
3 You will notice the bulkhead line which is the basis of the
4 exchange, a very fine line, like in insurance policies. There
5 is a pierhead line. This pierhead line extends practically
6 the entire length. So just for fun, you multiply the enclo-
7 sure between the pierhead line and bulkhead line. It comes
8 out to be 35 acres, which will be totally, exclusively, one
9 hundred percent used by the adjacent landowners. You couldn't
10 navigate through a pier; it causes all kinds of trouble. So
11 this is almost as if we were giving them this additional 35
12 acres. In the trade, the three islands are valued at roughly
13 \$100,000 an acre. That could conceivably, by that figure,
14 amount to \$3½ million in the appraisal.

15 I bring this point out to show that there is a lot
16 of unanswered questions in our minds as to what is the true
17 value. I would make one suggestion -- that the only true
18 value could be arrived at is throwing the whole ball of wax
19 into an escrow situation and put it up for bid; otherwise we
20 don't know what the true market value is.

21 GOV. FINCH: We don't have the power to do this.

22 MR. ROBINSON: I know this. I mention the best way
23 to find market value is in an open market.

24 MR. HORTIG: May I refer to the Commission's atten-
25 tion agenda page 89. It is stated specifically that the
26 reported advantage to the County is based on an independent

1 report, but that a staff appraisal by the State Lands Division
2 shows the lands to be received by the County to be at least
3 of equal value to the lands transferred to The Irvine Company,
4 because some of the discussions in the evaluation that we have
5 heard here today were evaluated and included in the State
6 Lands Division report and hence we did not indicate a specific
7 advantage to the County, but the fact that the statutory re-
8 quirement that an equal value could be justified.

9 MR. ROBINSON: May I comment on that? Since the
10 inception of this plan as presented in 1963, it started out
11 as being that; but with substantially not much change in the
12 plan, the advantage seemed to rise 1.2, 1.6 million, 3.2 mil-
13 lion. All this seemed to go along with all the hell we were
14 raising. Now it is up to \$8 million. What is the value?

15 GOV. FINCH: I am sure if we procrastinate another
16 48 years it will be a multiple of that.

17 MR. ROBINSON: May I comment on that?

18 Mr. Flournoy, we wrote a letter and this
19 answered the questions you raised. We had written you pre-
20 viously concerning our belief that the 1957 enabling legisla-
21 tion to permit the exchange of the tidelands in Upper Newport
22 Bay is unconstitutional. We have been advised by counsel that
23 there is indeed serious doubt as to the validity of the
24 enabling legislation. Until and unless the report of the
25 Attorney General is released and made available for our study,
26 our counsel says he has no reason to believe that this trade

1 would be held legal in the courts. You have stated in corre-
2 spondence to us that ten years which have elapsed since the
3 enabling act is sufficient to pass. May we say that although
4 ten years have passed, very little visibility has been given
5 to this trade until recently. The first Irvine appraisal was
6 not made until 1963, six years after the enabling act, and the
7 agreement between the County of Orange was not signed until
8 1965. Opinions were not sought from the taxpayers as to what
9 they might want for the Upper Bay. They were offered this
10 plan and none other; and we were kept uninformed from 1957 to
11 1963 that a trade of such consequence, with miles of public
12 lands, was being contemplated.

13 Meanwhile, since 1957 we have had an enormous growth
14 of population in Orange County -- only a hint of what is to
15 come. We have seen the construction of a new campus at the
16 University of California. We have realized we have a new
17 citizen in our midst. He is alert; he raises questions; he
18 goes to meetings. He safeguards the public interests as well
19 as the interests of large landowners. The Assessor, Andrew
20 Hinshaw, is evidence of the informed citizen.

21 We are convinced that this citizen would not con-
22 sider the voiding of a public trust in order to deed public
23 lands to a large corporation. Presently, this corporation
24 owns all the waterfront property on the ocean between Cameo
25 Shores and Laguna Beach, thereby controlling access to these
26 ocean shores. Approval of this tidelands exchange will add

1 several miles to the expanded waterfront control by this
2 corporation and will remove this newly created waterfront from
3 the public use forever. The transfer of public tidelands into
4 private domain seems to us inappropriate when all reports of
5 projected population growth indicate that there will be an
6 enormous shortage of recreational area for the public in a
7 very relatively short time.

8 Our nonpartisan committee humbly requests that your
9 Commission deny this proposed trade. We urge that the recom-
10 mendation be made that the Orange County Supervisors allocate
11 funds for the private study of Upper Newport Bay with the
12 intent of preserving the tidelands trust. The Harbor Depart-
13 ment will be required to spend approximately \$2 million follow-
14 ing approval of this proposed trade to dredge and fill the
15 tidelands in accordance with The Irvine Company-Orange County
16 agreement. The Harbor Department undoubtedly has set aside
17 a large portion of this \$2 million. They were able to accumu-
18 late almost \$5 million for the Dana Harbor. Surely, some of
19 this \$2 million may be set aside.

20 GOV. FINCH: Let me ask a couple questions. You
21 criticized the Lands Commission for inaction from 1957 to '63.

22 MR. ROBINSON: I did not criticize the Lands Commis-
23 sion -- the County.

24 GOV. FINCH: Secondly, you raise the legality of the
25 act of 1957. Isn't it true that there is no way to get into
26 the courts to test that unless we take action?

1 MR. ROBINSON: Correct; I hope you will.

2 GOV. FINCH: Thirdly, what kind of assurance -- Do
3 you have any reasonable assurance that the County, because we
4 can't force them to do it, would conduct the study you ask for?

5 MR. ROBINSON: None whatsoever, except the veto power
6 you have over agencies that perhaps will not fulfill the
7 requirements of the trust. You have a tremendous veto power
8 until somebody does something, to give us time in the County
9 as individuals and citizens to generate the necessary help
10 to do this thing.

11 GOV. FINCH: What has been happening during this
12 last year when you had this same situation?

13 MR. ROBINSON: For three years - - Well, one of our
14 problems, specifically, is that we do not have the fund that
15 the Harbor Department has spent over the twenty-odd years
16 developing the Irvine plan. This is talked of as "The Irvine
17 Plan" -- not "The County Plan." What we have is an example of
18 public funds being used to develop plans for a private company.
19 I only wish we had that. It is going to be a difficult prob-
20 lem; I recognize that.

21 GOV. FINCH: So the only alternative you have really
22 given us is to say that you would like the County Supervisors
23 to come up with some money for a new plan.

24 MR. ROBINSON: Yes.

25 GOV. FINCH: And we have, on the other hand, the
26 Supervisors telling us they would like us to approve the

1 transaction. So the hope you nurse in your breast is not
2 exactly viable.

3 MR. ROBINSON: Yes, but the power you have is...

4 GOV. FINCH: You have been sitting on this thing for
5 years and years and years and nothing has happened.

6 MR. ROBINSON: Four years.

7 GOV. FINCH: Four years. I don't see any reasonable
8 suggestion that anything can be changed.

9 MR. ROBINSON: It may not.

10 GOV. FINCH: This is where we have to make a judgment.

11 MR. ROBINSON: If nothing is changed, the County
12 will hardly lose any further ground.

13 MR. FLOURNOY: One point: You say we have a veto
14 power to see that nothing happens. Since we have no capacity
15 to prevent The Irvine Company from using the lands they have..

16 MR. ROBINSON: That would be excellent.

17 MR. FLOURNOY: We do not have that.

18 MR. ROBINSON: But you do have. From Mr. Hortig's
19 statement you have the broad authorization to check these sug-
20 gestions, to determine if they are in the public interest.

21 MR. FLOURNOY: Not with regard to land that The
22 Irvine Company now owns.

23 MR. ROBINSON: Of course not.

24 MR. FLOURNOY: So there is nothing we can do to
25 prevent The Irvine Company from using the land they now have.

26 MR. ROBINSON: That is correct.

1 MR. FLOURNOY: We really don't have control over the
2 ultimate disposition of this just by saying "no."

3 MR. ROBINSON: No, they can go ahead; and I think it
4 might be a good idea to let them do this.

5 GOV. FINCH: But then you concede the public usage
6 would be less than under this plan?

7 MR. ROBINSON: Hardly, because we have the right to
8 use the channels as they now exist. We own frontage on this
9 new channel.

10 GOV. FINCH: Do you have any reason to think that
11 the County has the capability of doing that?

12 MR. ROBINSON: Well, they have the capability of
13 generating a \$10 million harbors and parks program which they
14 are committed to for the next ten years. Mr. Sampson has
15 applied for State, local and Federal funds. I assume he knows
16 what he is doing. He is a competent man.

17 MR. SMITH: I'd like to ask Mr. Hortig, since there
18 seems to be a difference in the value of the land between the
19 appraisal and what Mr. Hinshaw says and Mr. Robinson says --
20 Mr. Hortig, has the organization who made this appraisal made
21 other appraisals in the area insofar as the State Lands Divi-
22 sion is concerned, and in other appraisals you have made down
23 in this area what has been the reliability of these appraisals?

24 MR. HORTIG: My recollection is as to the complete
25 reliability of the work of Mr. Evans. This appraisal was con-
26 tracted for as an independent appraisal by the County of

1 Orange and I believe they have used Mr. Evans in this connec-
2 tion previously; and probably the appraisal and reliability
3 thereof should be presented to the representatives of the
4 County of Orange.

5 MISS BOER: My name is Janet Boer, 912 North Lowell,
6 Santa Ana.

7 At the instigation of the Mayor of Santa Ana in
8 early 1966, I investigated the entire harbor district and I
9 intend to speak later to many other points; but right now I
10 want to call your attention to one very vital fact. The
11 Harbor and Navigation Code, Division 8, Section 2, under which
12 Orange County operates, is not a harbor district. It is a
13 harbor improvement district. It is very unique in California
14 because we are the only harbor improvement district in Cali-
15 fornia. This is a special privilege act put into the law to
16 benefit no one but Orange County.

17 Whenever we want this law changed -- you know,
18 Mr. Finch, being an attorney, how it is done -- the Assembly-
19 man or Senator carries the bill; and in this case it has been
20 amended since '49 to make it possible for other harbors besides
21 the one for which it was passed originally and in 1953 it was
22 passed for other harbors.

23 In 1949 when this law was passed by the Legislature,
24 the Norman Chandler Corporation, which owns the Times

25 MR. FLOURNOY: Is this on the matter of the valuation
26 of the exchange?

1 MISS BOER: Yes, just a moment. They gave \$15,000
2 to the County of Orange, and I quote (it is in the County
3 Auditor's office): "to begin the acquisition of Dana Point."

4 The same thing happened in 1957. The Senator who
5 carried the bill, which was written by the County Counsel,
6 has openly stated in the newspaper it was supported by the
7 Board of Supervisors of Orange County -- the bill that made
8 possible the filling of Upper Newport Bay. That bill was
9 carried to the Legislature in Sacramento by a Senator who is
10 now a director of The Irvine Company.

11 MR. FLOURNOY: What is the relation of that to the
12 value of the lands and whether or not they are of equal value?
13 This is the point at the moment and I would appreciate it if
14 you would confine your remarks to that.

15 MISS BOER: Yes; you said 2 or 4. That's the filled
16 land. The lands could not be filled unless the County of
17 Orange dredged sand out of the bottom of the bay and placed
18 the sand at the bottom of the bay. We are creating land with
19 County money, Harbor District money, and then we intend to give
20 it away.

21 MR. FLOURNOY: In exchange for other lands.

22 MISS BOER: In exchange for other lands.

23 MR. FLOURNOY: According to the independent appraisal
24 of our staff it is of equal value. Whether it is of equal
25 value has been raised by a couple of immediately preceding
26 witnesses and this is the point we are trying to retain our

1 MISS BOER: That's correct. I would call to your
2 attention that the land that is now to be exchanged -- part
3 of it, not all of it -- has been created by Orange County
4 taxpayers' money. The land was placed in very strategic
5 spots, where it would be needed in the future. We have render-
6 ed waters unnavigable which were once navigable. And now we
7 have a law passed at the instigation of Orange County; no one
8 opposed it, so the Legislature did it. But our taxpayers
9 have to pay the expense of all this.

10 MR. FLOURNOY: This, I have no doubt is true; but,
11 at the same time, if that be the case and your quarrel is with
12 some of this legislation, it would appear to me it is a matter
13 that the Lands Commission cannot deal with but one that can
14 only be dealt with between the citizens of Orange County and
15 the Legislature, with subsequent reversal of the legislation
16 if that is available. But there is nothing we can accomplish
17 here, I am afraid.

18 MISS BOER: I realize that. I just wanted you to be
19 aware of the fact that this special legislation was passed for
20 one particular purpose -- to make possible one particular
21 trade.

22 MR. FLOURNOY: I can only say in my experience in
23 the Legislature Orange County is not unique in that regard,
24 although it still may not justify the action taken. I am not
25 passing judgment on that.

26 MRS. BABB: Could I raise a question about appraisal

1 and still read the letter I am presenting?

2 MR. FLOURNOY: Let me say this -- at a great sacri-
3 fice to the Commission we will not halt this meeting before
4 lunch. We will proceed right on through.

5 MRS. BABB: I am Mrs. Babb. You asked the question
6 of whether we are talking of present or future valuation, and
7 I suggest this is a situation where we cannot make a distinc-
8 tion between present and future valuation. Our present valua-
9 tion must include future valuation.

10 If I understand correctly, there is a general use
11 map, according to which the shoreline itself is to be devel-
12 oped. This plan allows The Irvine Company the land facing
13 the lagoon. The County seems not similarly privileged in the
14 same way; the shoreline is barricaded. I would like someone
15 to point out to us what the shoreline is going to be.

16 GOV. FINCH: So far as I am advised by staff, we do
17 not have a proposal of that kind before us.

18 MR. FLOURNOY: No, this is not before us. The
19 development to protect the statewide interest is a matter
20 that would be a continuing thing and not a matter to be taken
21 up at this time.

22 MRS. BABB: In other words, the general use map is
23 not necessarily ...

24 MR. FLOURNOY: ... is not on the matter of valuation.

25 MR. TYLER: My name is John Tyler. I am the Vice
26 Chairman of the Southern California Chapter of The Nature

1 Conservancy. I live in Santa Monica.

2 In 1934 I was on leave from Cal Tech for my health
3 and I explored that entire bay; and this is a matter that is
4 being completely ignored in this planned exchange. We are
5 talking strictly about whether the land is valued at X number
6 of dollars, mainly to put buildings on it, and no considera-
7 tion given to the millions of dollars which will be lost if we
8 disturb and destroy the land for its present use for wildlife.

9 Many of you people cannot understand that. I will
10 give you an analogy, if I may. Most of you, I think, will
11 value emeralds. Very quickly -- a colleague of mine in Cal
12 Tech is the one man in the world who makes emeralds which sell
13 for thousands of dollars. He makes them out of material which
14 is twenty-six cents a pound and sells them for \$100 a carat.
15 I don't think much of jewelry; the rest of the world does.
16 The only way you can tell the difference in the gems he repro-
17 duces is to put the gem in a Bunson burner. If it explodes,
18 it is a real emerald; if it doesn't, it is made by my friend.

19 Later on, if we find our bird life has disappeared,
20 we are going to have to make an artificial area, which would
21 be very expensive.

22 I have a plan to throw out to solve the problem as
23 to relative values today and after the exchange. You are try-
24 ing to establish a value that is equal.

25 MR. FLOURNOY: This is what the Attorney General has
26 advised us to do.

1 MR. TYLER: This is not a law, and I would suggest
2 it would be a law. Namely, any land which is changed in usage,
3 as this land would be, should have one appraisal at this time
4 and later on, when it is rezoned and in effect with what you
5 are doing to it, have another appraisal. The difference
6 would be a tax on that land, payable to a State agency for
7 purchase of lands of a like nature. There will be no bene-
8 ficial accrual by rezoning.

9 This is what our problem is here -- what makes it
10 advantageous to The Irvine Company is the increase in the
11 value the land will get.

12 MR. FLOURNOY: With all due regard, I suggest that
13 is a matter you better take up with your Legislature.

14 MR. TYLER: I feel at this time if we make this
15 land exchange we are losing considerably in the wildlife of
16 the State of California; and as a public Lands Commission you
17 should be well aware of the rapidity with which this is dimin-
18 ishing and this should be pertinent to this issue.

19 MR. FLOURNOY: We are talking now only about the
20 monetary value, and the monetary value is what we have been
21 directed by the Attorney General is the issue. Let us
22 proceed.

23 I think with regard to item 3 there may have been
24 one who wished to speak with regard to the land use or the
25 conveyance with regard to navigation. Yes - - back to item
26 2, is there anyone who specifically wishes to make a remark

1 about item 2?

2 VOICE: I just want to be sure you will continue
3 that to discuss the ecology because I think that is pertinent.

4 ANOTHER VOICE: This question of ecology -- does
5 this come into navigation? It really should be under this.

6 MR. FLOURNOY: I think if that be the case, that the
7 ecology is the only matter, I think we would probably do bet-
8 ter to get to the approval of the Commission and go into that
9 later, subject only to the limitations indicated by the County
10 and supported by them that there is an agreement that they
11 will submit plans to the Resources Agency.

12 Perhaps I ought to at this point ask for testimony
13 from those legislators that are here. I think we have two
14 from Orange County, and one who is the Chairman of the Public
15 Lands Committee and their consultant.

16 Mr. Badham, would you care to speak to the Commis-
17 sion or would you defer to Mr. Cory?

18 ASSEMBLYMAN BADHAM: Mr. Chairman and gentlemen of
19 the State Lands Commission, I am Assemblyman Robert E. Badham.
20 I represent the 71st Assembly District, in which lies in its
21 entirety the Newport Bay, both Upper and Lower.

22 I am here just to make very brief remarks --
23 basically, that I am in full support of and in concurrence
24 with the staff calendar item number 49, recommending approval
25 of this Upper Bay tidelands exchange. I say this with all
26 sincerity because I have studied this from every possible

1 aspect with which I am familiar and I therefore would urge
2 your approval of this.

3 Just a couple of comments, if I might, on the re-
4 marks that have just been made by the previous speakers in
5 opposition to the proposed, supposed, or appraised assessed
6 value. I would like to state, as a property owner in the
7 area as well as an elected representative of the area, that
8 if this tideland exchange does not go through it will neces-
9 sarily be developed sooner or later by the owner of the upland
10 property.

11 I would call your attention to this map on the wall,
12 this aerial photograph which shows the entire Upper Bay area.
13 I would state to you, gentlemen, that every inch of shoreline
14 with the exception of that cut in the extreme southeast cor-
15 ner, which is Newport Dunes, is owned by The Irvine Company.
16 The islands are owned by The Irvine Company.

17 County property, of course -- be it upland, tideland,
18 or patent land -- is not assessed by the Assessor. So I think
19 that is really beside the point. But if such is the case, and
20 it is, that the uplands are entirely owned by The Irvine Com-
21 pany and the water area, not totally but in part, is owned by
22 the County -- that the opponents may make the statement that
23 the tidelands are owned by the County, and sufficient of them
24 are. If they want to stand there knee deep in mud, they can
25 look around and say, "Yes, it is all ours"; but, on the other
26 hand, they have no access to that channel except through the

1 lower level.

2 Therefore, the uplands are entirely unrestrictively
3 developable by The Irvine Company, and The Irvine Company has
4 agreed with the County to exchange lands giving shoreline to
5 the County which may be used for recreational purposes.

6 As I say again in closing, I have been through this
7 thing from A to Z. I think it is to the advantage, not only
8 of the people of the State, but of the County and my people in
9 my district, the overwhelming majority, and I would again urge
10 your approval.

11 MR. FLOURNOY: Thank you very much.

12 Mr. Cory has retired. We would be delighted to
13 hear from him at this point, representing part of Orange
14 County and the Public Lands Committee of the Assembly.

15 ASSEMBLYMAN CORY: First of all, Mr. Chairman, the
16 Public Domain Committee has not taken any position, so I do
17 not wish to stand here and say I am representing the committee.

18 I believe Mr. Badham indicated that at the present
19 time the County of Orange does not have any of the trust lands
20 which has land access to the bay.

21 Is that one of your points, Bob?

22 I think there is one parcel, parcel 13^A, if my
23 memory serves me correctly, which has been partially filled,
24 which is immediately to the north of Dover Shores but is trust
25 tidelands. It has been filled and is now accessible to the
26 public, if the public would wish to use it that way. It is a

1 minor point, but I am sure I could retire on that minor point
2 if anyone would care to give it to me. There is a small part
3 that has been filled and is now uplands and is, in fact, there.

4 I point that out to make sure the members have the
5 correct facts in front of them.

6 As a legislator, I did not plan on making any state-
7 ment. I planned on observing. There is one point in my
8 discussion with Mr. Mason of the County that I brought up last
9 week that has thus far not been brought out, which is some-
10 thing not resolved which you might consider. They said no one
11 had considered the value of the mineral rights in these two
12 valuations on what the County has in trust and The Irvine
13 Company has. Mr. Mason indicated that they would be trans-
14 ferring other land, including the mineral rights. It is my
15 information -- and I could stand corrected on this -- that
16 the State of California in its grant to the County did not
17 mention mineral rights and, therefore, there is a question
18 whether it is granted.

19 GOV. FINCH: What is the status of that?

20 MR. SHAVELSON: Governor Finch, there is a case
21 directly in point -- City of Long Beach versus Mar... --
22 holding that a legislative grant of this type includes
23 minerals, although, of course, subject to the trust.

24 ASSEMBLYMAN CORY: We wanted to realize what was
25 being done on that because we thought it had not been con-
26 sidered. Other than that, I commiserate with you because I

1 think the Legislature gave you the right to decide, correctly
2 or incorrectly.

3 GOV. FINCH: We appreciate your commiseration, but
4 only wish our predecessors had handled this problem themselves.

5 MR. FLOURNOY: Mr. Hortig, I wonder if it would be
6 desirable, toward expediting this, if I could have the names
7 of people who wish to speak, so I can have some reasonable
8 audit -- because I do not have a full resumé of the people
9 who wish to appear.

10 Once again let me ask that repetition be not in-
11 dulged in.

12 Let me ask if Professor Grover C. Stephens is
13 present and would speak at this point briefly.

14 PROF. STEPHENS: Yes. I'll try to be brief.

15 MR. FLOURNOY: Thank you.

16 PROF. STEPHENS: I have the original copy, signed
17 by the three men who composed it, of a proposal for develop-
18 ment of Upper Newport Bay. I have some additional copies if
19 any of you care to examine it. I don't intend to allude to
20 it in very much detail.

21 As a gentleman from Orange County said earlier, essen-
22 tially this is a proposal to set aside a portion of Upper New-
23 port Bay as a wildlife reserve area, with a park on the bluffs
24 that overlook it.

25 Now, the area that is under our consideration is
26 essentially all of the Upper Bay north of approximately 23rd

1 Street, and that is about the northerly-most quarter of the
2 Upper Bay. In trying to defend why I should make a proposal
3 of this sort, I think the first point I would like to make,
4 and I would like to emphasize very strongly, is that Upper
5 Newport Bay is now a unique area in Southern California. In
6 general, it is unique in estuaries, which are rare; and, in
7 fact, about sixty percent of California land has already been
8 lost, has already been developed; but, in fact, in Southern
9 California, estuaries are even more rare. There were origi-
10 nally six deep bays with estuarine marshes of this kind and
11 now Upper Newport Bay is the only significant one that is
12 left, so the three people I spoke of presented this proposal.

13 I am Professor of Biology, Chairman of Organismic
14 Biology, University of California at Irvine. Another proposer
15 of this plan is Arthur S. Boughey, Professor and Chairman of
16 Department of Population and Environmental Biology; and there
17 is a third man -- Professor of Biological Sciences, also in
18 the same department, Robert H. Whittaker.

19 We would like to say this is a valuable area to the
20 people of the State of California as it now stands. It pro-
21 vides resources for wildlife feeding grounds for wild birds,
22 breeding grounds for game fishes, and it is important to pre-
23 serve it for uses of that kind which are of genuine value. In
24 addition -- being preserved as a green area in the midst of
25 urban development, seems to us very desirable.

26 I said I would be brief and will not go into all the

1 details and make an emotional appeal for either the green
2 area or wildlife. However, what I would like to do, since
3 this point was raised this morning, is to make some attempt
4 to preserve the normal ecology of the bay under the terms of
5 the land exchange and the tentative land use program, which
6 is the only thing we have to go on.

7 The land use program proposed as a portion of the
8 proposal of the Orange County Harbor District in 1964 simply
9 doesn't make any allocation of land for preservation of marsh
10 land. Subsequent to that there have been some proposals of
11 some small islands, but let me give an idea of the sort of
12 thing that has been suggested.

13 For example, there is a marine stadium at the ex-
14 treme head of the bay, which is essentially where water skiing
15 will go on. It is proposed that a long, narrow island be left
16 in the middle of that water-skiing course -- where, of course,
17 the waves would wash over it and it would be constantly dis-
18 turbed; and that is the largest of three islands proposed to
19 be left.

20 Another area of a couple acres -- three, three and
21 one-half, something like that -- would be placed in the middle
22 of Newport Dunes, which would be a probable swimming beach and
23 would be visited by public swimmers.

24 So I think it is a question of what we mean by
25 normal preservation of ecology. It can't be preserved by be-
26 ing put in the middle of a ski channel. We make this proposal

1 because we think it is extremely important to preserve this
2 for the State of California. I have already suggested they be
3 in part recreational. There are many people who simply enjoy
4 looking at green areas, birds; in part, they are fishing
5 areas.

6 Another use is an educational use. This is the last
7 area of its kind which provides an opportunity for high school
8 students, junior college students, and university students to
9 look at these animals in their normal habitat and there simply
10 is no substitute for this kind of access to animal and the
11 training or interesting of people in biological science.

12 There are a number of reasons why I think this would
13 be a wise use of that extreme head of the Upper Bay, which are
14 based essentially on what I think to be the unlikely character
15 of the present proposed uses.

16 As you gentlemen may or may not be aware, there is
17 always an onshore wind in the daytime that sweeps up Newport
18 Bay; and the present proposed land use scheme, which again is
19 all we can refer to, proposes that there be a major beach at
20 the extreme head of the bay. I think the probability that
21 the bay can be kept clean enough to make that an attractive
22 area for public swimming is essentially zero.

23 It is proposed, after this is developed, that we
24 will have a very large frontage developed as residential
25 property. There will be three thousand boats and the trash
26 will be swept to the extreme head of the bay.

1 This proposal we have made provides an area where
 2 trash of that sort can be naturally oxidized. You see, the
 3 normal rise and fall of the tide permits the handling of waste
 4 of this sort by natural processes. The proposal, in the terms
 5 it has been described by the County of Orange Harbor District,
 6 does not provide for this.

7 So, not to use any more of your time, let me simply
 8 summarize: This is a unique area. A major portion needs to
 9 be preserved if we are to talk seriously of the ecology of the
 10 area; and it does have general utility for the people of the
 11 State.

12 GOV. FINCH: May I ask a question here? Across the
 13 whole spectrum of ecological concern, what is the impact of
 14 removal of those islands under the proposed plan?

15 PROF. STEPHENS: Well, that's a very difficult ques-
 16 tion to answer precisely, Governor, because we have never had
 17 a study made on the removal of those islands or the tidal flow.
 18 A guess would be if only the islands would be removed in that
 19 portion of the bay and the top quarter of it were left as a
 20 flat marshland, then there would be no significant further
 21 disturbance of the area.

22 I should point out that at the present time the
 23 extreme head of the bay, you can see, is cut off by a dam
 24 running across it. That is already, of course, a disturbed
 25 area -- because it has been dammed off and the extreme head
 26 of the bay has been leased to a salt works, so the vegetation

1 in that area has been killed off. But there is reason to
2 think if that dam were removed, together with the lease to
3 the salt works, then you would get a release of a normal salt
4 marsh in the upper head of the bay.

5 MR. SMITH: If the present lands of The Irvine
6 Company were developed and there would be no exchange and
7 these lands were fully developed, what effect would that
8 development have on the ecology?

9 PROF. STEPHENS: I don't think I should pretend to
10 understand the legal aspects. My problem in answering the
11 question -- I am aware The Irvine Company has title to the
12 marsh islands. I don't think their development would have
13 any impact on the extreme head of the land. What I am not
14 clear about is the patent lands, which essentially comprise
15 most of the lands in this area.

16 MR. HORTIG: The Irvine Company is a successor in
17 interest to a State tidelands patent in the upper head of the
18 bay, swamp and overflowed land patent, comprising essentially
19 the majority of the area which has been discussed. In other
20 words, this is in private ownership. Under discussion, recom-
21 mended for a public ecological reserve, are privately owned
22 lands.

23 MR. FLOURNOY: Which they could develop?

24 MR. HORTIG: Which they could develop.

25 MR. SMITH: This is my point, Mr. Chairman. I am
26 wondering whether or not this issue of the ecology of the area

1 and wildlife management -- although I have an appreciation of
2 that -- is really germane, because this really goes beyond the
3 exchange of the land. The Irvine Company already has title to
4 the lands in the area and if they were developed without an
5 exchange, from what I can observe there would be a definite
6 impact on ecology and wildlife. So I think this goes defin-
7 itely beyond the area of the exchange.

8 GOV. FINCH: Except if it is built in this exchange
9 at least there is an agreement that the Resources Agency has
10 to be consulted. There would be an agreement with Resources.
11 We do get some ecological concern. If you reject it and
12 Irvine goes forward, you don't have any of that.

13 MR. SMITH: That is the point.

14 MR. FLOURNOY: I think the point Mr. Smith is making
15 is that the proposal the Professor is making is something en-
16 tirely different from the proposal of the current ownership,
17 the creation of which is beyond the power of this Commission;
18 and, secondly, would involve action and expenditure of money
19 by someone empowered to do that.

20 PROF. STEPHENS: May I comment I think I understood
21 that. I think that the problem is that unless we simply on
22 moral grounds -- I am speaking of the three men who wrote this
23 thing -- unless we simply come before this Commission and
24 point out that this is an alternate plan which at least is
25 capable of consideration and if the present land exchange goes
26 forward it presumably goes forward on the basis of, at least

1 in general terms, a use map which is the only information
2 which we have -- now if it is approved, it seems to me it be-
3 comes very much more difficult for us to look at the public
4 interest in these tidelands now held in trust.

5 We ask the question: What is the most effective
6 way to develop these for public use? We are aware of the fact
7 that our proposal was drawn without being privy to the details
8 of the land use maps or at least without being sophisticated
9 enough to take them into account; but I think what we are
10 really suggesting -- the reason we bring it before you -- is
11 that there is no alternate proposal here, and we would suggest
12 that time be given to allow us to draw together an alternate
13 proposal to explore the sources of funding and to indeed come
14 forward with some alternative which is, in fact, not based on
15 the details of the land exchange as now presented. We don't
16 feel we have had a significant opportunity to do that.

17 MR. SMITH: The only problem is there is always a
18 difficult question when we are talking about public users:
19 Do we have more bird watchers and wild life watchers than
20 those interested in swimming or sailing. It is a very diffi-
21 cult question when you say "public use." One has to make a
22 decision as to what is maximum public use.

23 PROF. STEPHENS: If I may respond to that, I would
24 certainly agree with everything you have said and I would
25 simply then feel that perhaps there has not been a careful
26 survey of public interest in the kinds of public use which

1 could develop, given the County and State's current holdings
2 in tidelands. Public use might very well turn out more appro-
3 priately in terms of boating and swimming and fishing; but I
4 suggest when we go into an exchange of the lands here, we have
5 no coherent plan at all of the use.

6 MR. SMITH: That is not my understanding.

7 MR. FLOURNOY: Let me say I think the Professor has
8 made the point of the extreme importance of the ecology in the
9 area and what he views as an optimum development of the area
10 for the consideration of the Commission. I appreciate that.

11 Thank you very much.

12 PROF. STEPHENS: I suppose I should say that we made
13 no effort to collect signatures specifically for this proposal
14 but simply distributed it for information purposes.

15 MR. FLOURNOY: I appreciate that very much.

16 MR. HARLAN: My name is Craig Harlan. I am Vice
17 President, Associated Students, UCI.

18 First of all, I am required to make a disclaimer in
19 that the University is not yet in session and therefore I can-
20 not speak for the student body as a whole. However, I have a
21 mandate to speak for the executive branch of the student
22 government.

23 We are concerned with the natural ecology, the fish
24 and wildlife, and the educational factors, and natural beauty
25 all of which I think were supported by Professor Stephens.
26 We feel we must support Professor Stephens' proposal.

1 I'd like to point out that the Associated Students
2 by taking this position stand to lose the boathouse, but we
3 feel that due to the benefit of the above stated factors we have
4 to take this position.

5 MR. BARTON: Mr. Chairman and members, Don Barton.
6 I am President of Marina Park Incorporated, a home-owners
7 group of the Upper Newport Bay. I have a letter I would like
8 to read into the record, but for brevity I will put the letter
9 in and make some comments.

10 First, we urge as strongly as we can that this
11 Commission disapprove this proposed trade. We, as owners,
12 believe that the trade would be contrary to the best interests
13 of the citizens of the State of California. We believe the
14 equity or basis of the trade is not fair and feel it stronger
15 after being in attendance here this morning.

16 As a natural resource, Grover Stephens has just
17 brought out the pricelessness of the area, its uniqueness as a
18 recreational area. This has been well established.

19 The point is, I think, well stated in a report in
20 about 1963 of the City of Newport Beach Parks, Beaches and
21 Recreation Commission. To quote very briefly from their re-
22 port: "Only one plan for Back Bay development has been pre-
23 sented to the public." That was in '63 and in '67 this same
24 fact is still true. We are locked up with one plan from The
25 Irvine Company. Everybody is afraid to do anything for fear
26 The Irvine Company is going to go ahead and develop this bay

1 on their own.

2 We plead to you in your wisdom to stop this trade
3 and let us, as responsible citizens of Newport Beach, of
4 Orange County and of Southern California, work again with our
5 public officials and generate a new plan for this Upper Bay.
6 It can be done, but it can only be done when the obligations
7 of the present trade have been broken.

8 Mr. Badham says that we can develop the bay our-
9 selves and go out and stand in the water; but if we can dredge
10 the bay and make lands for The Irvine Company, we can dredge
11 the bay and make lands for ourselves. The Engineering Corps
12 isn't going to permit development of this channel so no boats
13 can go through.

14 I am not saying ~~that we as a county are not going to~~
15 cooperate with The Irvine Company. Certainly we are. They
16 have provided many benefits for the County. But let us come
17 up with an equitable agreement. If there is no access to the
18 bay, we can work with The Irvine Company. We can trade them
19 foot for foot. That seems fair, regardless of the value, to
20 gain access of the people to the beaches and water.

21 We ask once more that this Commission hear our plea
22 and disapprove this proposed plan.

23 GOV. FINCH: Let me just ask this: Year after year
24 and again last year our predecessors said, "We won't take any
25 action. Try to work something out." The staff has been work-
26 ing. We have to assume that our staff is competent and I do