

STATE LANDS COMMISSION

TRANSCRIPTS

February 5, 1992

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MEETING
STATE LANDS COMMISSION
STATE OF CALIFORNIA

~~CONFIDENTIAL~~

BOARD OF EQUALIZATION
ROOM 102
1020 N STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, FEBRUARY 5, 1992
10:00 A.M.

Nadine J. Parks
Shorthand Reporter

MEMBERS PRESENT

1
2
3 Leo McCarthy, Lieutenant Governor, Acting as Chairman
4 Jim Tucker for Gray Davis, State Controller, Chairman
5 Susanne Burton for Thomas W. Hayes, Director of Finance
6
7

Staff:

8
9 Charles Warren, Executive Officer
10 James Trout, Assistant Executive Officer
11 Robert Hight, General Counsel
12 Ken Williams, Deputy Attorney General
13 Nancy Saggese, Deputy Attorney General
14 Curtis Fossum, Senior Staff Counsel
15 Jane Sekelsky, Chief, Land Management Division
16 Paul Mount, Chief, Mineral Resources Management Division
17
18
19
20
21
22
23
24
25

I N D E X

		<u>Page</u>
1		
2		
3	Proceedings	1
4	<u>Agenda Items</u>	
5	III Approval of Minutes for January 8, 1992 meeting	1
6	IV <u>Consent Calendar</u>	
7		
8	Approval of Consent Items 01 through 17, with the exception of Pulled Items 5, 7, and 15	3
9	V Regular Calendar	
10	18 Presentation by Jane Sekelsky	3
11	Commission Action	3
12	19 Presentation by Jane Sekelsky	3
13		
14	Charles W. Trainer, Esq. Counsel for Lessee	4
15	Commission Action	5
16	20 Presentation by Paul Moun ^o	5
17	Commission Action	5
18	21 Presentation by James Trout	6
19	Commission Action	6
20	22 Presentation by Robert Hight	6
21	Commission Action	7
22	23 Presentation by Curtis Fossum	7
23	Commission Action	10
24	24 Presentation by Curtis Fossum	10
25	Questions/Comments	11

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2345

1	INDEX, continued. . .	<u>Page</u>
2	<u>Agenda Items</u>	
3	24 <u>PUBLIC COMMENT</u>	
4	Marilyn Willsie	
	Resident	12
5	Questions/Comments	13
6	Barbara Devlin	
7	Huntington Beach resident	15
8	Questions/Comments	30
9	Patricia Snyder, Esq.	
	Counsel for Destiny II	48
10	Donald Coultrup	
11	Destiny II	49
12	Commission Action	50
13	Report on Executive Session by Mr. Hight	50
14	Adjournment	51
15	Certificate of Reporter	52
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 382-2346

P R O C E E D I N G S

--oOo--

1
2
3 CHAIRMAN MC CARTHY: Good morning, ladies and
4 gentlemen. Welcome to this meeting of the State Lands
5 Commission. To my right is Commissioner Jim Tucker,
6 representing the State Controller, Gray Davis. My name
7 is Leo McCarthy.

8 Without objection, the minutes of the previous
9 Commission meeting are approved.

10 Mr. Warren, our Executive Officer, would you like
11 to get us off on the right track here with the Consent
12 Calendar.

13 EXECUTIVE OFFICER WARREN: May I --

14 CHAIRMAN MC CARTHY: We've got three items pulled.

15 EXECUTIVE OFFICER WARREN: Three items to be
16 pulled.

17 CHAIRMAN MC CARTHY: Items 7, 15 --

18 EXECUTIVE OFFICER WARREN: And Item 5.

19 CHAIRMAN MC CARTHY: And 5. 5, 7, and 15.
20 Commissioner Burton, welcome.

21 COMMISSIONER BURTON: Thank you.

22 CHAIRMAN MC CARTHY: So, those three consent
23 items are pulled off the calendar. None of them were put
24 on the regular calendar.

25 EXECUTIVE OFFICER WARREN: That's correct.

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2345

1 CHAIRMAN MC CARTHY: So, 5, 7, and 15 of the
2 Consent Calendar are off. Anybody have any comment on the
3 rest of the Consent Calendar?

4 MR. WAGNER: (From the audience) I do.

5 CHAIRMAN MC CARTHY: Yes, sir?

6 MR. WAGNER: My name's Jeff Wagner. I just wanted
7 to take this opportunity to thank Duncan and the State
8 Lands Commission for interfacing with me and finding a
9 reasonable solution to my problem and making -- enabling
10 me to stay in business at a reasonable rate.

11 And I'd like to -- what I'd like to see is a couple
12 of guarantees -- I'm not going to be the only marina out
13 there under lease at a distinct disadvantage to my
14 competitors (sic), and that the State Lands Commission
15 would also seek to clean up the docks and posts that
16 are sunken around my facility on State lands creating an
17 eyesore and detriment to my business.

18 Once again I'd like to thank the Commission for
19 considering my application.

20 CHAIRMAN MC CARTHY: (Addressing the court
21 reporter) Did you get the note? It's not often we get
22 thanks for something like that.

23 (Laughter.)

24 All right. Do you have any comments? All right.
25 Thank you.

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2345

1 Without objection, the Consent Calendar is
2 adopted.

3 We'll move on to the regular calendar.

4 EXECUTIVE OFFICER WARREN: On the regular
5 calendar, Mr. Chairman and Commissioners, we have
6 requests to speak received on Items 19, 21, and 24.

7 And to present Item 18 is Jane Sekelsky, who is
8 the Chief of our Land Management Division.

9 MS. SEKELSKY: Item 18 involves a request for
10 authorization to go out to bid for commercial sand and
11 gravel extraction at three locations in San Francisco Bay.

12 CHAIRMAN MC CARTHY: Any questions by members of
13 the Commission?

14 Any thoughts on Item 18 by members of the
15 audience?

16 If not, the recommendations are adopted.

17 Next?

18 MR. SEKELSKY: Item 19 regards a lease for
19 an existing marina and a restaurant facility on the
20 Sacramento River. The lessee has applied for an
21 additional ten-year lease, term effective June 18th of
22 1991.

23 There will be a provision for maintenance
24 dredging in the lease not to exceed 10,000 cubic yards per
25 year. They are also requesting approval of a sublease for

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2345

1 a portion of their leased premises to Riverbark Holding
2 Company in conjunction with their marina next door.

3 CHAIRMAN MC CARTHY: Questions by members of the
4 Commissi

5 Anyone in the audience wish to address this
6 issue?

7 MR. TRAINER: (From the audience) I placed my
8 name --

9 CHAIRMAN MC CARTHY: Yes. Come forward, please.
10 Mr. Charles Trainer?

11 MR. TRAINER: Yes. I just placed my name there
12 in the event there was any opposition. And so --

13 CHAIRMAN MC CARTHY: Is there any opposition
14 to Item 19 as it stands before us?

15 MR. TRAINER: If none, I've said what I have to
16 say.

17 CHAIRMAN MC CARTHY: All right.

18 EXECUTIVE OFFICER WARREN: You can say thank you.

19 MR. TRAINER: Thank you very much.

20 (Laughter.)

21 MR. TRAINER: Might I add, the State Lands
22 Commission staff has been superb in working with us on
23 this.

24 (Laughter and simultaneous comments.)

25 CHAIRMAN MC CARTHY: Let's not get carried away

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2346

1 here.

2 (Laughter.)

3 COMMISSIONER BURTON: How about the Chairman?

4 CHAIRMAN MC CARTHY: The Chairman wanted to stay
5 as far away from this particular issue as possible.

6 MR. TRAINER: Thank you.

7 EXECUTIVE OFFICER WARREN: Item 20, Mr. Chairman,
8 will be presented by Paul Mount, the Chief of our Mineral
9 Resources Management Division.

10 COMMISSIONER BURTON: Did we approve 19?

11 EXECUTIVE OFFICER WARREN: Oh, I'm sorry.

12 CHAIRMAN MC CARTHY: Yes.

13 COMMISSIONER BURTON: Okay.

14 CHAIRMAN MC CARTHY: Yes, we unanimously approved
15 19.

16 MR. MOUNT: Item 20, Mr. Chairman, is to
17 consider an assignment of State geothermal leases to
18 Central California Power Agency No. 1 by GRI Exploration
19 Corporation and GRI Development. It involves 674 acres
20 of geothermal steam field in Sonoma County. This is a
21 negotiated agreement between CCPA and the State Lands
22 Commission.

23 CHAIRMAN MC CARTHY: Any questions on Item No. 20
24 by members of the Commission? By members of the audience?

25 If not, the recommendation is approved. Next?

PETERS SHORTHAND REPORTING CORPORATION

3338 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2345

1 EXECUTIVE OFFICER WARREN: We'll do 21

2 ASSISTANT EXECUTIVE OFFICER TROUT: Item 21 is
3 the approval of boundaries for a proposed annexation by the
4 City of Folsom. It runs from the center of Folsom
5 Boulevard to the center line of the American River under
6 Lake Natoma, and from Aerojet Road on the west to some
7 distance up on the north side of the freeway, and would
8 allow the continuation of the submittal of this request.
9 All the Commission is approving now is the adequacy of the
10 boundary description.

11 If this goes through LAFCO, the item for the
12 actual annexation of the State tidelands would appear
13 again for the Commission.

14 So, all you're approving here is the legal
15 description of the property.

16 CHAIRMAN MC CARTHY: Questions by members of
17 the Commission? Members of the audience?

18 That's approved as recommended. Next?

19 EXECUTIVE OFFICER WARREN: Items 23 and 24,
20 Mr. Chairman, will be -- oh, I'm sorry.

21 Let's go back to Item 22. That will be
22 presented by Mr. Hight, our General Counsel.

23 MR. HIGHT: Item 22, Mr. Chairman, is the
24 assignment from Exxon to Atlantic Richfield of Exxon's
25 share in the Long Beach field in THUMS.

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2345

1 This agreement will complete the acquisition
2 by Atlantic Richfield of the interest of the successors
3 in THUMS, and the Commission supports this action, and
4 it's consistent with prior actions the Commission's
5 taken.

6 CHAIRMAN MC CARTHY: Questions by members of the
7 Commission? By members of the audience on this issue?

8 All right. Approved as recommended.

9 23.

10 EXECUTIVE OFFICER WARREN: Items 23 and 24 will
11 be presented by Mr. Fossum of our Legal Division.

12 MR. FOSSUM: Mr. Chairman, Commissioners, my
13 name is Curtis Fossum, Senior Staff Counsel for the
14 Commission.

15 Item 23 is a review of the County of Orange's
16 proposed leases involving granted filled tide and submerged
17 lands in lower Newport Bay.

18 This is an item that has been worked on by the
19 staff of the Commission as well the Attorney General's
20 Office for almost 11 years.

21 During that time, the County of Orange has been
22 seeking to negotiate the leases with the homeowners that
23 own approximately 33 lots on the island, and which involve
24 lands that were filled 60-some years ago as part of the
25 dredging and filling of Newport Bay that created the harbor

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 382-2345

1 there.

2 The lands themselves were granted by the
3 Legislature to Orange County in 1919, and that was amended
4 in 1975.

5 When it was discovered that some of the lands
6 that had historically been tidelands were filled out to the
7 U.S. Federal bulkhead line, the county began a process
8 to bring them under lease. Part of that process was the
9 understanding that residential uses are not a public trust
10 use, and so special legislation was sought by the county
11 to allow them to bring these back yards under lease.

12 That legislation was approved in 1984 by Chapter
13 715 of the Statutes of 1984, and authorized the existing
14 landscaping uses that are on the island to be leased by
15 the county for up to 49 years.

16 The county has negotiated with the homeowners
17 the lease. There was an interim lease of five years that
18 provided a temporary authorization for the encroachments.
19 At that time, appraisals were conducted. Three separate
20 appraisals were conducted. The first one was the county
21 hired an appraiser who valued the property. The
22 homeowners objected to that appraisal, did not feel it
23 was adequate. They submitted their own appraisal, which
24 was considerably lower.

25 It was then agreed between the county and the

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2345

1 homeowners on a third independent appraisal that they
2 both paid for.

3 During this entire time, the State Lands
4 Commission staff and that of the Attorney General believed
5 that all three appraisals were low because of a significant
6 discount factor that the appraisers gave of between
7 75 and 100 percent to the property. That's the primary
8 reason that this has taken so long to get approved.

9 During the recent year, negotiations had
10 reached a climax in that the county and the homeowners
11 agreed on splitting the difference between the 50 percent
12 that the Commission staff was prepared to recommend and
13 the 75 percent that the appraiser said was appropriate.
14 And that came to 62.5 percent.

15 Additionally, the homeowners had asked for a
16 four percent rate of return on the leases. The Commission
17 staff had recommended a nine percent rate of return.
18 The county at one point and the homeowners split that at
19 6.5. The Commission staff refused to go along with that
20 compromise.

21 However, after all the analysis that has been
22 conducted on this over the years, the staff is now
23 recommending that the review -- that the Commission approve
24 the range of consideration that has been adopted by the
25 county. Last month, they voted five to zero to approve

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2345

1 this lease, and also that the Commission would approve
2 the lease itself as to its form.

3 And I believe that is laid out in the item as
4 to the details of how much -- there's back rent due up to
5 March of this year. I should say that some of it's been
6 paid, but over a million dollars will be going into the
7 Tidelands Trust of Orange County, which can be spent,
8 among other places, on upper Newport Bay ecological
9 reserve, which has an ongoing need for funds to keep it
10 functioning.

11 And there will be over a hundred thousand dollars
12 a year coming into that fund as well.

13 CHAIRMAN MC CARTHY: Any questions by members
14 of the Commission?

15 Anyone in the audience wish to comment on this
16 item?

17 Approved as recommended. Item 24.

18 MR. FOSSUM: This is an item that has been before
19 the Commission last July. At that time, the Commission
20 asked that it be put over for a period, during which time
21 opponents of the item would have an opportunity to review
22 the appraisal that was conducted. That was presented to
23 them.

24 Additionally, they were in litigation at the
25 time, and they asked at that time that it be postponed

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2346

1 during which litigation could go forward.

2 That litigation was resolved in trial court
3 and the Court of Appeal in favor of the property owner
4 and against the opponents. And during that time, the
5 staff of the Commission conducted an additional analysis
6 of the property both with in-house experts as well as
7 private consultants on the outside.

8 At that time, the staff was recommending a
9 \$60,000 title settlement. Additional information,
10 however, was obtained primarily from the Office of the
11 Attorney General, which had correspondence -- internal
12 Attorney General correspondence from 1960, which staff of
13 the Commission had not been privy to prior to July.

14 And, which after having that information, it
15 helped support our case. That, as well as additional
16 supporting evidence that was obtained by our investigations
17 allowed us to seek a higher negotiated settlement.

18 And this item, which is presented to you, is a
19 settlement of claims of a public trust easement within
20 a 1.7 acre parcel of land. The offer from Destiny II was
21 \$110,000. The staff's analysis showed showed that it's
22 equal to or greater than the value of the State's claim
23 to the property.

24 COMMISSIONER TUCKER: We were also providing some
25 property?

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2345

1 MR. FOSSUM: Not in this particular transaction.
2 This -- areas have been dedicated as a part of the coastal
3 permit process. Several parking spots were dedicated
4 on site for public access to and along the waterfront.
5 And the waterfront area -- it's a 10-foot strip of public
6 access that is owned by Destiny II, but which the
7 Commission is not being asked to terminate the easement
8 to.

9 EXECUTIVE OFFICER WARREN: We have three speaker
10 slips.

11 CHAIRMAN MC CARTHY: Yes. I have Marilyn Willsie?

12 MS. WILLSIE: (From the audience) If I could
13 just speak from here, I --

14 CHAIRMAN MC CARTHY: No, ma'am. We want to get
15 you on the record. If you'd come up and use the
16 microphone, we'd appreciate it.

17 And Barbara Devlin?

18 MS. WILLSIE: I'm Marilyn Willsie, and I'm
19 a resident of the Huntington Harbor area. And I
20 couldn't hear what Mr. Fossum said about the dedication --

21 (Thereupon, the reporter requested the
22 speaker to speak into the microphone.)

23 MS. WILLSIE: Okay. I didn't hear what Mr. Fossum
24 said about the dedication. I know that there has been an
25 offer to dedicate the walkway, but I've never seen the final

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2345

1 dedication. I notice it's in the past tense in the
2 report, but it has been dedicated?

3 MR. FOSSUM: I have a copy in the file.

4 MS. WILLSIE: I called the City Clerk's office
5 yesterday, and they couldn't find any record of it.

6 MR. FOSSUM: I have a copy of the dedication of
7 the parking, and I believe the access --

8 CHAIRMAN MC CARTHY: Well, we don't want this
9 conversation to go back and forth. Why don't you come on
10 up. Give Ms. Willsie a copy of the information you have
11 that she needs.

12 (Thereupon, Mr. Fossam approached the
13 microphone and handed Ms. Willsie documents.)

14 MR. FOSSUM: It was accepted, apparently, in
15 May, 1991.

16 CHAIRMAN MC CARTHY: I'm sorry. Closer to the
17 mike, please.

18 MR. FOSSUM: The public access dedication of
19 15 parking spaces and access to and from Warner Avenue
20 that I presented her was dated May of 1991.

21 MS. WILLSIE: Does that include the 30-foot
22 roadway that comes off of Warner and goes around to that
23 parking lot? It's a very narrow lot.

24 MR. FOSSUM: It doesn't have a legal description.
25 It simply says, (Reading rapidly.) "Grantor does hereby

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2345

1 grant and assign grantee an easement for the sole purpose
2 of vehicular parking, ingress and egress over, across,
3 and along the said described property to and from Warner
4 Avenue and certain parking areas located adjacent to said
5 streets to and from the marina located adjacent to grantor's
6 real property."

7 MS. WILLISIE: It's a very narrow lot. It's like 10-
8 feet wide. And this easement would amount to about
9 45 feet of the lot, 30 feet for the roadway and 15 feet
10 of the front access to the harbor.

11 I know that in the hall of records, it was
12 offered to dedicate in 1988, but it had a 21-year time
13 limit on it. It wasn't forever.

14 CHAIRMAN MC CARTHY: All right. Does Barbara
15 Devlin or Patricia Snyder have an answer to the question
16 being asked?

17 MS. SNYDER: Yes. Don Coultrup is with me.
18 He's from Destiny II, and he is also on my list, and he
19 has an answer.

20 CHAIRMAN MC CARTHY: All right. So, we can hold
21 in abeyance. Would you like to make any other comments
22 for now?

23 MS. WILLISIE: No.

24 CHAIRMAN MC CARTHY: Thank you very much.

25 Ms. Devlin? Would you take a seat, please.

PETERS SHORTHAND REPORTING CORPORATION

3336 BRALSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2345

1 MS. DEVLIN: I'm just going to give her a copy,
2 because last time you told me I spoke very rapidly, and --

3 CHAIRMAN MC CARTHY: I hope I said it politely.

4 MS. DEVLIN: Lieutenant Governor McCarthy,
5 my name is Barbara Devlin, and I'm a homeowner in
6 Huntington Harbor. And I am appealing to you today not
7 to give up this land trust easement on the Destiny II
8 development in Huntington Beach for \$110,000.

9 This was supposed to be open space from day one;
10 limited to uses for navigation, fishing, and marina.
11 Mr. Ahadpour, the owner of the land from 1980 to 1990,
12 had knowledge from the day he bought the property that
13 there was a land trust easement on the property.

14 According to the deed transactions, the sale
15 to Mr. Coultrup occurred the day after the Coastal
16 Commission turned down my appeal March 10th, 1990.
17 Mr. Ahadpour was still the owner until then, and they hid
18 from anyone the knowledge of the 1980 letter mentioned
19 in Deputy Robert Collins' letter, and Mr. Ahadpour knew
20 that the 1985 letter did not address the issues.

21 The whole flaw in the staff report is that the
22 staff report is merely looking at this as an unfortunate
23 problem and honest mistake, and that they are trying hard
24 to do justice and provide equity.

25 It's understandable that you didn't have all the

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2345

1 facts about all of the lies, fraud, and deceit the
2 developer committed.

3 On page 5 of the staff report, Item D states:

4 "The parties have a good faith and
5 bona fide dispute as to their respective
6 interest and claims within the subject
7 property."

8 How can this be true if there is fraud involved, as the
9 Attorney General indicated and as we now know, based on
10 the January, 1980, letter to Virtue and Scheck.

11 Well, it is not an honest mistake. It is out-and-
12 out fraud -- ab initio.

13 Just as Deputy Attorney General Collins -- just
14 read his report -- I have brought copies with me if you
15 have not seen it. Just look at the knowledge that
16 Mr. Ahadpour had at the very beginning and his underhanded
17 and fraudulent power play.

18 They just can't throw themselves at your mercy
19 now and ask for anything. They should be estopped from
20 asking for or getting anything.

21 Marilyn Willsie, who is with me today, called the
22 State Lands Commission and spoke to either Mr. Trout or
23 Mr. Rump, and was told that if Mr. Ahadpour or Mr. Coultrup
24 had asked in advance for the land trust easement to be
25 lifted, it would have been denied them.

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2345

1 On page 7 of attorney Collins' letter, in the
2 last paragraph, he states, quote:

3 "Moreover, it is inconceivable that
4 the title companies were unaware of the
5 existence of the public trust easement
6 over the subject property. Given my
7 experience with title companies, I also
8 believe that Destiny II developer and its
9 predecessors in interest, including
10 Coultrup and Mr. Ahadpour, were aware of
11 the easement claims."

12 There have been nothing but lies, deceit, fraud, and
13 coverup on this project.

14 I will start with Mr. Ahadpour and how the
15 question of fraud, deceit, or concealment applies to
16 him -- Mr. Ahadpour -- the original owner.

17 On page 6, attorney Collins says he found in the
18 files a letter dated January 28, 1980, stating:

19 "This is to advise you that the area
20 of concern shown on your map is within tide
21 land location 221 patented by the State on
22 January 6, 1903."

23 Attorney Collins called us when he discovered the letter --
24 I have a legal brief for you, legal style brief.

25 The letter was to the law firm of Virtue and

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2345

1 Scheck in Newport Beach in answer to a letter from attorney
2 Scott McConnell.

3 Mr. Collins told us that he tried to contact the
4 law firm of Virtue and Scheck, but the firm no longer
5 exists.

6 He then said he called Mr. McConnell, and was
7 told that attorney McConnell had no idea why he wrote the
8 letter; that it was either for a client or an attorney in
9 the firm. But after 10 years, he really had no idea.

10 Attorney Collins then asked us if we could find
11 out any relationship that might have existed between
12 Mr. Ahadpour and/or the Huntington Harbour Beach Club
13 and the law firm of Virtue and Scheck.

14 We went to Orange County Superior Court and we
15 researched the files. Lo and behold, we discovered that
16 an attorney from the law firm of Virtue and Scheck,
17 Tim Paone -- who was a planning commissioner for the City
18 of Huntington Beach, and who stepped down from the
19 Planning Board specifically to continue representing
20 the Huntington Harbour Beach Club and Marina -- was
21 representing Huntington Harbour Beach Club and Marina in
22 a lawsuit filed in December, 1979.

23 One of the allegations in this lawsuit was that
24 this property was on State tidelands. In my opinion,
25 it is obvious that the allegation was the reason -- that

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 382-2345

1 allegation was the reason that Virtue and Scheck wrote
2 the letter to the State Lands Commission.

3 So, from January 28, 1990, Mr. Tim Paone of the
4 law firm of Virtue and Scheck knew about the land trust
5 easement on the property.

6 In August of 1980, Mr. Ahadpour purchased the
7 property and the lawsuit continued with Mr. Ahadpour
8 continuing using Mr. Paone as his attorney until June
9 of '81.

10 I prepared a legal-style brief proving knowledge
11 to attorney is knowledge to the client. This is a
12 conclusive rule of law. I presented this legal-style
13 brief to the City of Huntington Beach on February 6th.

14 On November 4th, 1991, I appeared before the
15 City Council of Huntington Beach and read them part of
16 attorney Collins' letter. The whole council was stunned
17 when I read excerpts from the letter.

18 The City Manager said that I and the Attorney
19 General had made serious accusations, and that the city
20 would have to study them and get back to me and have a
21 conference about the issues we raised.

22 To date, I have not heard one word from the city.
23 So, since the city attorney was not interested in doing
24 any work on this matter -- and I am not a lawyer -- I
25 decided to do the work for the city attorney and research

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2345

1 the laws of agency.

2 Attorney Collins claimed that he believed that
3 Destiny II, Coultrup, and Mr. Ahadpour were aware of the
4 easement claims. I felt then and I feel then (sic) that
5 attorney Collins was indicating that fraud had been
6 committed in this matter.

7 Fraud, to me, is when one knows about something
8 and tries to deceive you. That's what most people would
9 claim as fraud.

10 But I also looked it up in the dictionary.
11 The definition of fraud, according to Funk and Wagnall's
12 "New Comprehensive International Dictionary of the
13 English Language," is:

14 "(1) Deception in order to gain by
15 another's loss. . .

16 "(4) Law: Any artifice or deception
17 practiced to cheat, deceive, or
18 circumvent another to his injury. . .

19 A fraud is an act of deliberate deception
20 with the desigr of securing something by
21 taking unfair advantage of another. . ."

22 What we have in open space on this property for marine and
23 navigation, and by hiding this, Mr. Ahadpour was able to
24 build condos on this by not letting the city or anyone
25 else know that there was a land trust easement.

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2345

1 As I mentioned before, I prepared a legal-style
2 brief for the city, showing that Mr. Ahadpour knew from the
3 day he purchased the property that there was a land trust
4 easement, because his attorney and agent, Mr. Tim Paone
5 of Virtue and Scheck, knew it.

6 This is a conclusive rule of law. It actually
7 does not matter, even if Mr. Paone did or did not tell
8 Mr. Ahadpour about it. And to my knowledge,
9 Mr. Ahadpour has not made any denials that his attorney
10 actually did not inform him about -- that I know about.

11 Attorney Collins also accuses Chicago Title of
12 knowing about this land trust easement and even goes on
13 to mention that former State Lands Commission employees
14 Don Davidson and James Dorsey -- who are now working with
15 the title insurance companies, were aware of this.

16 I have an article from the Orange County Register,
17 dated 11/2/91, stating that 14 homes were built on land
18 set aside as public domain five years ago. County
19 officials and the developer point the finger at Chicago
20 Title Insurance Company.

21 How many times has Chicago Title done this and
22 they weren't caught; you -- because you and the citizens
23 weren't vigilant. It was the citizens who caught this,
24 and making them pay only \$110,000 is letting them get away
25 with a mere slap on the wrist, paying a mere pittance for

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 361-345

1 what they could not have obtained before they had even
2 tried.

3 If they had been lucky, they would have gotten
4 away without our finding out. Now that you've found out,
5 you are going to let them get away with what you would not
6 even let them get away with in the beginning if you knew.

7 But they knew. They knew all along that they
8 could not build if they asked. So, why not go ahead and
9 and maybe no one will notice the mistake, and they can get
10 by with fraud again? Or if they get caught, maybe they'll
11 be lucky enough to find a tender-hearted person that will
12 slap their wrists and make them pay only \$110,000 for
13 what they could not have gotten away with for any amount
14 of money if they had been honest in the beginning.

15 Obviously, there was no incentive for them not to
16 try. And, of course, if they get away with it, there's
17 no incentive for them not to do the same thing all over
18 again.

19 Clearly, they have a pattern of doing this. This
20 isn't the first time, and it won't be the last time they
21 do it. If you let them get away with it, what company
22 wouldn't want to pay \$110,000 to make a large profit on
23 something that they knew in advance that they should not
24 even start?

25 You will note in attorney Collins' letter on

PETERS SHORTHAND REPORTING CORPORATION

3335 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2345

1 page 7, that in May of 1990, the State Lands sent another
2 letter that rescinded the 1985 letter. And attorney
3 Collins states:

4 "It is my understanding that Destiny
5 II became aware of this 1990 letter after
6 ground stabilization work at the property
7 had been commenced, but prior to above-
8 ground construction."

9 Marilyn Willsie has a picture of the property at that time.

10 So, I guess that Destiny II decided, "Let's go
11 ahead and build on it even though the law says we
12 can't, but we'll probably get away with it. Nobody will
13 probably notice. The State has not the time or money
14 and the State told us that. And the little guys can
15 be trampled upon and what citizen is going to find this
16 out and use his or her time, money, and effort to defeat
17 us anyway? Hey, even if we lose, we'll only have to pay
18 a pittance and still make a fortune. They'll let us off
19 the hook. I guarantee it."

20 The way I see it, if you let them have it for
21 this, then you're going along with it, too.

22 They have a problem now, because they had
23 knowledge from the very beginning, and yet they went ahead
24 and broke the law. And they might well be on the stick
25 to the developer for \$5 to \$7 million. And I'm sure that

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2345

1 is what they are really interested in. That's the
2 bottom line. They surely are not interested in you, me,
3 the little people, or the State of California.

4 You have before you today a title insurance
5 company who has a practice of not finding evidence of
6 protected lands which benefit the public.

7 You have the owner, Mr. Ahadpour, who knew from
8 day one that there was a tideland easement on this
9 property. And you have a developer, Mr. Coultrup, who
10 has lied to the Coastal Commission about the geological
11 setbacks, inflating them from 25 feet to 142 feet, and
12 having one edge of a building on the fault, who submitted
13 papers from his geologist with a 10,000 year fossil dating
14 error, trying to take the project out of the Alquist-Priolo
15 Act, and a 43-foot surveying error, which just happened
16 to be place the earthquake fault between the two
17 buildings when, in reality, the fault goes under the
18 corner the corner of one building.

19 The city now admits these errors. Mr. Coultrup
20 even lied under penalty of perjury to the Department of
21 Real Estate in stating that his project was not in a
22 special studies zone and that no geological studies were
23 done on the project. I have that for you.

24 You might be interested to know that our attorney
25 called the District Attorney in Orange County, and his

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2345

1 answer was, "Well, now that you've found out about it,
2 no harm done."

3 Don't let them steal this land for a pittance
4 just because we caught them with their hands in the
5 cookie jar -- our cookie jar. It belongs to the
6 citizens of Huntington Beach and the entire State of
7 California.

8 We have filed our appeal in the Supreme Court.
9 The court is not over, Mr. Fossum. I don't know if you
10 understood that or not.

11 Please do not make a decision now until we have
12 exhausted our remedies in this matter. You owe that to
13 the citizens of Huntington Beach, who have hired a lawyer
14 and paid their own money to fight this in the court,
15 because you would not be getting a dime unless we citizens
16 had spent our own money to fight this fraud.

17 Mr. Coultrup and Mr. Ahadpour knew all -- about
18 all of these problems and they went ahead Mr. Coultrup
19 kept saying, "I'm doing it at my own risk."

20 Now he's really saying, "Oh, take pity on me and
21 get me off the hook." Don't reward him now for doing
22 it at his own risk.

23 Please realize that we turned down \$150,000 from
24 the title insurance company. And you were told at the
25 last meeting by attorney Snyder that they had offered

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2345

1 that amount to us. When we turned them down, they were
2 shocked. They never had any homeowner group do this
3 before.

4 That tells you that they have a pattern of
5 doing this and have always been able to buy out the
6 opposition. I'm sure they felt, if we wouldn't take the
7 money, then the State would take the money. We have no
8 idea how many times they have done this, but they
9 obviously have a pattern of doing this.

10 And I brought you an article from the Register
11 stating that -- that county officials and the developer
12 point the finger at Chicago Title Insurance Company, which
13 was to ensure that all property was free from other
14 claims as the final maps were drawn up.

15 In this case, the county's claim wasn't
16 discovered.

17 I also want to mention to you that Destiny II
18 will also be asking for a release of more State tidelands
19 on this property. I have with me today a copy of the
20 April 12th, 1984, Coastal Commission report, in which
21 Commissioner Nutter on page B-3 asks, quote:

22 "These greenbelts area (sic) that are
23 provided in the schematic in the area
24 where the buildings are now (sic) proposed to
25 go, are those areas assured of remaining

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2345

1 open space?"

2 Liz Fuchs' answer is, "Yes."

3 Gentlemen, we do not want the release of any
4 more State tidelands easement on any more of this
5 property. We knew that all of this land should be open
6 space, and we want the rest of the property to remain
7 open space, and to be used for navigation, fishing, and
8 commerce, as promised on April 12th, 1984.

9 We want -- indeed, we demand -- a guarantee
10 of this from the State Lands Commission. You are supposed
11 to represent us, the citizens of the State of California,
12 not just the title insurance company, or Mr. Ahadpour,
13 or the Japanese company, Destiny II, that bought the
14 property from Mr. Coultrup.

15 They are all culpable and charged with the
16 knowledge by the Attorney General's Office -- and
17 if there is a wrong, the Japanese company, Destiny II,
18 can sue Coultrup and Ahadpour for fraud. And the State
19 Lands Commission should not be releasing this State lands
20 easement and thereby rewarding Ahadpour, Coultrup, and
21 Destiny II at the expense of the State.

22 I suggest that you request a formal opinion from
23 the Attorney General's Office as to whether the State
24 would have liability if it maintained its public trust
25 easement, and whether the State can require the developer

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2345

1 to compensate the State fully for the violation of the
2 public trust easement.

3 Originally, attorney Collins felt there was
4 knowledge, and coverup, and deceit all along, which was
5 on the part of Ahadpour, Coultrup, and the title insurance
6 company. And of course, he didn't know --

7 (Thereupon, the reporter requested

8 Ms. Devlin to speak into the microphone.)

9 MS. DEVLIN: -- but, but certainly, when he wrote
10 the letter to Patricia Snyder that Ahadpour was connected
11 to the law firm of Virtue and Scheck, Marilyn Willsie and
12 I found out all that afterwards, after Mr. Collins left,
13 which makes Collins' letter 100 percent stronger. Because
14 if he didn't know what you now know --

15 And on page 8 of the letter from attorney
16 Collins, he says: (Reading)

17 "I do not believe that the proposed
18 agreement can be justified under Public
19 Resources Code, Section 6307 and the
20 Kapiloff Land Bank Act."

21 The idea of Kapiloff is to allow land exchanges under
22 Section 6307 when an exchange parcel is not immediately
23 available. Implicit in applying Kapiloff is the notion
24 that that the exchange value could be objectively
25 ascertained so that a relatively equivalent parcel later

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2345

1 could be purchased.

2 This, however, is not what is proposed in this
3 case. I do not believe that there is any property which
4 would be equivalent in its public trust utility which
5 could be obtained in the immediate vicinity of the
6 subject property for 60,000.

7 Perhaps an equivalent parcel of at least an
8 equal amount of acreage could be found in exchange in order
9 to meet the requirements of Section 6307. I would like
10 to know if the equivalent parcel -- is that going to be
11 purchased? The -- evidently, you told -- Mr. Fossum
12 was speaking to our attorney and told him that the value
13 of the property is \$6 million with the condo on it,
14 \$4 million if it was kept a marina.

15 So, I don't understand why the value of the
16 land trust easement isn't worth \$2 million.

17 In September or in July, the staff justified
18 \$60,000, because they felt only a small part of the
19 property was tideland.

20 But now, that argument has been discarded, and
21 that changes the whole value of the property. And I
22 believe there's a \$2 million difference, and I would like
23 this explained to me.

24 I am asking for at least a delay or a
25 continuance while it is still before the State Supreme

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2345

1 Court. Let the Supreme Court decide it. Please don't be
2 premature and pull the rug out from under the court.

3 If we win the lawsuit and it's remanded to the
4 city for reconsideration, the city will have a perfect
5 right to insist that the developer get the proper letter
6 from the State Lands Commission stating that the property
7 does not have a land trust easement on it.

8 Thank you. And I have the copies of the things
9 that I -- I don't know whether you have --

10 CHAIRMAN MC CARTHY: Why don't you sit down,
11 Ms. Devlin.

12 MS. DEVLIN: Okay.

13 CHAIRMAN MC CARTHY: Any Commissioners have
14 questions of Ms. Devlin?

15 Do you want to respond?

16 MR. FOSSUM: Yes, I would like to.

17 CHAIRMAN MC CARTHY: Ms. Devlin's case seems
18 to be based largely on former Deputy Attorney General
19 Collins' letter.

20 MR. HIGHT: Mr. Chairman, if I could just
21 interject for one second, the Attorney General is of the
22 opinion and agrees with staff and supports this
23 transaction.

24 There's another fact that the witness either
25 doesn't understand or needs to be put on the record. The

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2345

1 State sold the bulk of this land in a patent, and all that
2 was remaining is an easement, and that's what we're
3 talking about here. I wanted to put that in perspective.

4 CHAIRMAN MC CARTHY: All right.

5 MR. FOSSUM: Your first question was as to the
6 Attorney General's letter. The letter that was sent by
7 Rob Collins to Patricia Snyder, representing Coultrup,
8 was a response to a position letter that they had submitted
9 claiming that there was no State interest and giving their
10 legal arguments as to their position on the case.

11 The response letter from Mr. Collins, as I
12 understand it, was a rebuttal of that, and putting on --
13 basically putting on the facts as he believed them to
14 be and the legal positions that he believed applicable
15 to the situation.

16 Those were his opinions as set forth in there.
17 There are several of them that I agree with. There are
18 several of them I don't agree with. He is no longer
19 working on that case. It has been -- this information
20 has all been turned over to Deputy Attorney General
21 Nancy Saggese, who has reviewed all the information
22 as well. And I'm sure that if there's any specific
23 questions as to Mr. Collins' letter, we'd be happy to
24 respond to them, either one of us.

25 MS. SAGGESE: Yes. What I have done is --

PETERS SHORTHAND REPORTING CORPORATION

3338 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2345

1 CHAIRMAN MC CARTHY: Identify yourself.

2 MS. SAGGESE: Oh. I'm Nancy Saggese, Deputy
3 Attorney General.

4 I have reviewed this from the point of view
5 of the State. If you'd like, I can give you a short
6 analysis.

7 And this would be, rather than from the point
8 of view of the previous owner or the developer, this is
9 the State's case I believe.

10 This is a 1.7 acre parcel that is a portion of
11 tidelands that were sold in 1901, and a tidelands patent
12 for which -- for it was issued in 1903.

13 So, this is tidelands, but it was sold into
14 private ownership in the early part of this century. But
15 when tidelands are sold into private ownership, the State
16 retains a public trust easement. In this case, we
17 retain a claim of a public trust easement over this
18 property.

19 As long ago as the early part of this century, in
20 California Fish, and then more recently in the Line
21 (phonetic) and Fogerty cases in Lake Tahoe, the California
22 Supreme Court has told us that in cases where tidelands
23 are in private ownership and subject to a public trust
24 easement, the owner of the property can make any use of
25 the property that he wishes. And it is up to the State, as

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2345

1 trustee, to make a determination whether or not this is
2 consistent with public trust needs in the area.

3 In this case, it was the prior owner did desire
4 to make residential use of the property. This is
5 inconsistent with public trust uses. This is a position
6 that we've taken.

7 In 1985, a letter requesting a position from the
8 State was sent by the prior owner, and it asked, "What
9 is the State's interest in this property?"

10 This was a requirement of the Coastal Commission.
11 And, in fact, it was subject to the desire of the State
12 Lands Commission to be given notice when development is
13 planned on areas that may be subject to the public trust.

14 In 1985, the State Lands Commission's staff
15 responded, saying that it appeared that this did not
16 involve State land, and that no permit would be required.

17 The bottom line is that no objection was made to
18 this proposed residential development. Again, in 1990,
19 a letter was sent by State Lands Commission staff
20 rescinding the earlier letter, saying, "Well, this does
21 appear to be subject to a public trust
22 easement." However, again, no objection was made to the
23 development.

24 CHAIRMAN MC CARTHY: Objection by?

25 MS. SAGGESE: By the State. By the State Lands

PETERS SHORTHAND REPORTING CORPORATION

3338 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2345

1 Commission, by the Attorney General's Office; yet, at
2 that time, the State was aware of the planned residential
3 development for this parcel.

4 We believe that, because of California Fish,
5 and Line, and Fogerty, we were under the duty to inform
6 the owner that the proposed use was inconsistent with the
7 trust needs in the area, and that the State objected to
8 this development. We didn't do that.

9 I think that, for that reason -- and we are
10 recommending the present exchange largely because of
11 these circumstances driven by the action and inaction
12 of the State with respect to this particular parcel.

13 In other words, if we -- if we take it from the
14 position that there exists a public trust easement --
15 in other words, if we entered into litigation with the
16 present owners over this property, and we won, and it was
17 determined that a public trust easement does exist on
18 this property, we would still be faced with the problem
19 that 36 condominium units are built on this property;
20 that the State had knowledge of the building of it and
21 did nothing to stop it.

22 We would still be in the position of having a
23 public trust easement under fully developed property, and
24 we would have to be asking ourselves -- what is the value
25 of it? What is the utility of it? And that's the

PETERS SHORTHAND REPORTING CORPORATION

3338 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2345

1 position that we took and that we started from in this
2 case.

3 We didn't discount particularly, although we
4 took into consideration, the fact that the developer --
5 the owner disputes that these were ever tidelands in the
6 first place. They also dispute that a public trust easement
7 could still exist because of intervening legal agreements
8 that have taken place in the past.

9 But we took that under consideration, but came
10 up with -- even if there is still a public trust easement
11 on this property and we think that that case is winnable,
12 that that is a good case, we would still be left with a
13 public trust easement under 36 condominium units, and
14 what is the value of that claim -- of that easement to the
15 public?

16 What is the present utility? What is the future
17 utility? And we decided that, under the circumstances,
18 that we should recommend an exchange of this claim of the
19 public trust easement for -- this would be \$110,000 that
20 would be deposited into the Kapiloff Land Bank.

21 Now, this is a little different from the
22 traditional 6307 exchange, which we still feel that we
23 fit within, because it's not a simultaneous land-for-land
24 transaction. But Kapiloff gives us the added dimension
25 of allowing the land acquisition to be delayed until a

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 382-2345

1 suitable parcel is found. In this case, we believe that
2 the \$110,000 can be pooled with other money in the
3 Kapiloff Land Bank and used to acquire a suitable public
4 trust parcel that can be presently utilized by the public.

5 And for that reason, we are recommending that
6 the exchange be approved.

7 CHAIRMAN MC CARTHY: On the date of construction,
8 what would the value of the easement have been had no
9 construction occurred?

10 MS. SAGGESE: Had no construction occurred?
11 It would have been much more valuable, because other uses
12 may have been made of the property. The State could have
13 said, "We think that there are trust needs in the property
14 for beaches, for parking, for recreational activities and
15 might have been able to prevent development.

16 CHAIRMAN MC CARTHY: Had we agreed to sell the
17 land to the developer, what would we have exacted as a price?

18 MS. SAGGESE: The value of the claim of easement
19 without development? I don't think we have had an
20 appraisal --

21 CHAIRMAN MC CARTHY: If the parcel was actually
22 filled, and bulkheaded, and has existed as a parking area,
23 and had other structures on it since about early 1960s,
24 this is really a redevelopment is what took place in the
25 last couple of years. So, if the State would have had to

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 382-2345

1 look to see what kind of improvements that had already
2 been and constructed on at that time, and I have no idea
3 what the value of those improvements had been, whether
4 utilities existed, the fill, bulkheading, and so forth.

5 If the State had exercised its easement to take
6 possession of the property for -- say a parking lot or
7 something, the State would still have had to pay for those
8 lawful improvements that had been constructed at that
9 time. So, we would have had to come up with money to do
10 that basically.

11 MS. DEVLIN: Mr. McCarthy, I can --

12 (Thereupon, Ms. Devlin continued to
13 speak, overtalking the Chairman's
14 initial words.)

15 CHAIRMAN MC CARTHY: Excuse me --

16 MS. DEVLIN: I was just going to tell you what --

17 CHAIRMAN MC CARTHY: Just a second, please. We'll
18 get back to you.

19 Quite frequently, I've seen where our staff, when
20 it sees that the State might have a title interest in
21 such a proposed local development, will intervene with an
22 application to the city planning commission or whoever the
23 appropriate agency is.

24 Why did that not occur?

25 MR. FOSSUM: I believe this is an anomaly,
Mr. Chairman, and for some reason or other, unexplicably,

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 382-2346

1 the staff did not object. And when asked specifically
2 the questions that the Coastal Commission had put in the
3 land-use plan for the area, as Ms. Saggese stated, we
4 received a letter from the agent of the developer that
5 asked specifically the questions the Coastal Commission
6 put forward. And that is, "Were State Lands involved
7 or public trust lands involved?" You know, basically,
8 do we object to this project.

9 And our response was that, it does not appear
10 to involve State land and no permit from the Commission
11 will be required.

12 And our concern is that, given that letter
13 in response to the specificity of the question submitted
14 to us, we had our opportunity; we did not take our
15 opportunity. City permits, coastal permits were issued
16 for the property, and it was developed.

17 MS. DEVLIN: May I speak --

18 MR. FOSSUM: And I did listen last night. I
19 received quite a bit of information yesterday by overnight
20 mail from Marilyn Willsie, including an audiotape of the
21 Coastal Commission hearings back in 1984 on the land-use
22 plan and the land implementation plan.

23 And I was up till after midnight listening to
24 those. And those tapes reflect that there was some
25 opposition at the meeting to this development. But a

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2345

1 significant amount of the homeowners in the area saw it
2 as a -- as a positive redevelopment. They thought that
3 the existing parking lot looked like a huge car lot.
4 They said that the condos would actually enhance the
5 area.

6 And the big selling point apparently to the
7 Coastal staff, which recommended the approval, and the
8 Commission that voted unanimously for it, was that there
9 would be benefits to navigation and the environment in
10 the area, in that part of the deal was they were going to
11 rehabilitate the marina, put in pump-out stations for
12 sewage that was a problem in the area; dedication of
13 public access and beach areas, and so forth. And that
14 seemed to be very convincing to the Commission.

15 They did put in the requirement that the State
16 Lands Commission be contacted and that a letter be
17 obtained. And the developers did that in the following
18 year, 1985.

19 So, there apparently is compliance.

20 CHAIRMAN MC CARTHY: Our response is the one you
21 cited a moment ago.

22 MR. FOSSUM: That's correct.

23 There was an exchange done on this -- involving
24 the Huntington Harbour area in 1960, between the Commission
25 and the property owners at that time. The argument of the

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO CALIFORNIA 95827
TELEPHONE (916) 382-2345

1 title company and the developer is that that resolved all
2 the questions of public trust easements within the
3 Huntington Harbour area.

4 The Commission staff and the Attorney General
5 staff do not believe that to be the case. We believe
6 that virtually all of the Huntington Harbour area that was
7 in the tideland patent still remains subject to the public
8 trust, which probably includes hundreds of residences in
9 the area worth -- I'd hate to say.

10 And I doubt seriously that the Commission is in
11 the position to -- to exercise an easement in those areas
12 from a financial standpoint or otherwise. However, we
13 will look very carefully at any development, redevelopment
14 or development, that is proposed to take place in the
15 future.

16 And I think Ms. Devlin alluded to the fact that
17 the Coastal Commission was very concerned about that
18 as well when they did vote the land-use plan amendment,
19 which provided for changing the recreational designation
20 of the area to residential. They were concerned that
21 there be preservation of the remaining areas for
22 recreational purposes, and it would require going back to
23 the Coastal Commission, as well as the city, to change
24 the additional areas that are looked at as a Phase 2 in
25 here. We've already been approached by the title company

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 24C
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2345

1 in that area. And I expect that they will make offers
2 to the Commission to deal with the problems in that area.

3 We will certainly give that our thorough
4 analysis, and you can expect they won't get another letter
5 from the staff like the '85 letter.

6 CHAIRMAN MC CARTHY: Can you tell me what was the
7 actual date of the construction of the 36 condominiums?

8 MS. SAGGESE: I think it was -- it was 1990,
9 completed in 1991.

10 MS. DEVLIN: I think that's --

11 CHAIRMAN MC CARTHY: Well, it's all right. We'll
12 get that in a minute. Thank you. That's your
13 best recollection.

14 MS. SAGGESE: I think so.

15 CHAIRMAN MC CARTHY: Any questions?

16 COMMISSIONER BURTON: There's one point that
17 Ms. Devlin brought up that hasn't been addressed, and
18 that is that there is pending an appeal to the State
19 Supreme Court or U.S. Supreme Court. I'm not sure.

20 MS. DEVLIN: State.

21 CHAIRMAN MC CARTHY: State.

22 COMMISSIONER BURTON: State Supreme Court.
23 And I guess I'd like some indication of -- she's asking
24 that we delay any action until the Supreme Court has
25 taken action.

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 382 2345

1 MS. SAGGESE: Yes, they --

2 COMMISSIONER BURTON: I'd like some comment
3 on that.

4 MS. SAGGESE: There is an action pending. There
5 are many issues. I guess they're mostly the earthquake
6 issue that Ms. Devlin spoke of. However, they lost in
7 the California Court of Appeal, and they have presently
8 pending a request that the California Supreme Court hear
9 their case. The only problem with that -- the question
10 for us -- is what is the impact on the public trust
11 easement?

12 That issue is very tangentially before the
13 court, and I question what utility it would be to wait
14 for the court to decide. Because even if these homeowners
15 win their case -- if the court takes it, and it then
16 decides in their favor, the California Supreme Court --
17 we still are left with the situation of a public trust
18 easement underneath 36 condominium units.

19 And unless the court decides to require them to
20 tear them down, we have to see that as a practical
21 problem.

22 CHAIRMAN MC CARTHY: I think the options -- we're
23 not a party right now.

24 MS. SAGGESE: We're not a party right now.

25 CHAIRMAN MC CARTHY: The options were that there

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 382-2345

1 might be some additional coastal lands which the developer
2 could be required to give in exchange or a greater dollar
3 value in compensation for having developed on a public
4 easement. I didn't get a sense that anybody is really
5 proposing at this point that the 36 condos or the material
6 part of that be torn down.

7 MR. FOSSUM: I think that is exactly what they're
8 proposing, Mr. Chairman.

9 CHAIRMAN MC CARTHY: Is that what you're proposing,
10 Ms. Devlin?

11 MS. DEVLIN: I would leave that to go to the
12 court. What we --

13 CHAIRMAN MC CARTHY: Wait, wait, wait, just one
14 question at a time. Are you proposing that?

15 MS. DEVLIN: I don't know -- I don't know what
16 the court will do.

17 CHAIRMAN MC CARTHY: Never mind the court.

18 MS. DEVLIN: Uh-huh.

19 CHAIRMAN MC CARTHY: Are you proposing that?

20 MS. DEVLIN: Well, the -- one of the buildings
21 I feel encroaches on the Alquist-Priolo -- on the new and
22 active branch of the Newport-Inglewood Fault, and morally
23 and ethically -- I cannot --

24 CHAIRMAN MC CARTHY: Is your answer that part --

25 MS. DEVLIN: Well, for that one --

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 382-2345

1 CHAIRMAN MC CARTHY: -- part of the structure to
2 be torn down?

3 MS. DEVLIN: One, on that one building, yes --

4 CHAIRMAN MC CARTHY: All right.

5 MS. DEVLIN: -- because morally and ethically. I
6 don't know whether it will ever occur.

7 CHAIRMAN MC CARTHY: I got my answer.

8 MS. DEVLIN: That's how I feel.

9 CHAIRMAN MC CARTHY: Thank you.

10 MR. HIGHT: Mr. Chairman, an important part is
11 that the Commission is not a party to the litigation
12 that is the subject of the appeal to the U.S. Supreme
13 Court (sic). That's an action against the --

14 CHAIRMAN MC CARTHY: State Supreme Court.

15 MR. HIGHT: Yeah, the State Supreme Court. That's
16 an action that's against the City of --

17 MR. FOSSUM: Huntington Beach.

18 MR. HIGHT: -- Huntington Beach.

19 CHAIRMAN MC CARTHY: Any other questions from
20 members of the Commission?

21 COMMISSIONER TUCKER: Well, I don't see a reason
22 to wait. It seems to me, particularly after today's
23 discussion -- and, of course, this is the in a democracy,
24 is that it requires that you discuss your case in public.

25 After today, we don't have a case. I mean, after

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2146

1 what's been said here today in public -- and I'm not
2 criticizing anyone for saying it -- we don't have a claim.
3 I mean, what could we go to court and say? We've already
4 conceded publicly, because of the requirements, you know,
5 we've explained this to you in public, et cetera, that we
6 don't have a claim.

7 We couldn't go to court and defend something,
8 and turn around and say, "Well, forget what we said in
9 public. We were just, you know, kind of huffing and
10 puffing, and we really do have a claim. We don't have a
11 claim.

12 We've already said that we created a situation,
13 for whatever reason -- there may have been good reasons --
14 upon which the developer could reasonably rely in
15 proceeding. And that's the end of our claim, it seems to
16 me.

17 It seems to me, not that we don't have a public trust
18 easement, but that, you know, we don't have a defense
19 to their claim that they reasonably relied on us. It is
20 now a matter of public record. So, I don't see anything
21 for us to do now, except to say it's good that we got
22 from \$60,000 to \$110,000.

23 It's good that, you know, we're more aware of
24 what's going on in this area so that we can try and
25 perhaps proceed differently. And, you know, I'm not

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2346

1 conceding that what happened in '85, that may have been
2 the right response under all of the circumstances. We
3 don't know what was going on there, you know, why that
4 particular response occurred, et cetera.

5 There may have been a good reason. But that's
6 irrelevant. The point is now, it seems to me, that we're
7 in a situation where we have conceded that we don't have
8 a defense to their defense that they reasonably relied on
9 what we told them.

10 And so, we should take what we can get. And
11 whatever the Supreme Court does is not going to change
12 any of the facts that have been presented here today and
13 any of the concessions that we've made.

14 So, I don't see any reason to wait. I think that
15 we have spent an extraordinary amount of time on this
16 matter. We've given the people in the community
17 tremendous opportunities to be heard more than any agency
18 would normally do, which is good.

19 We have devoted a lot of staff time to this.
20 We reinvented the wheel three or four times now. It seems
21 to me we ought to be able to close this.

22 CHAIRMAN MC CARTHY: We have one more witness.

23 Ms. Devlin, we've really given you more time
24 by far than anybody else.

25 MS. DEVLIN: Yes, I know you have, but could I

PETERS SHURTHAND REPORTING CORPORATION

3378 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2345

1 just say, in the letter from attorney Collins, he talks
2 about the 1985 letter, and he says the term "State Land,"
3 however, refers to State fee-owned land, without reference
4 to the public trust easement. He said it was an incomplete
5 letter. And could I just tell you something about this
6 Supreme Court -- the city has in their specific plan,
7 they said that Mr. Coultrup had to get a letter from the
8 State Lands Commission, and he didn't get that letter
9 for a new CUP.

10 So, if it went back to the city, the city could
11 demand that he get that letter. And now, of course, he
12 couldn't get the letter, 'cause it is State lands.

13 I just wanted to rebut, you know, a little bit
14 what they said.

15 CHAIRMAN MC CARTHY: Thank you.

16 MS. DEVLIN: (Interjecting) By the way, I did
17 ask this -- I did call Leslie Grimes and asked him to
18 file with us, and he said the State has no money to do
19 things on this. And then I felt --

20 (Thereupon, Chairman McCarthy attempted
21 to speak, but Ms. Devlin interjected.)

22 MS. DEVLIN: -- the man, you know, he committed
23 fraud. You're saying if he commits fraud, it's okay?

24 CHAIRMAN MC CARTHY: You've been a good advocate
25 for your side of the street. Thank you, Ms. Devlin.

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2345

1 MS. DEVLIN: Can I give you some of my papers?

2 CHAIRMAN MC CARTHY: You can leave whatever you'd
3 like us to make part of the case.

4 Patricia Snyder?

5 MS. SNYDER: Yes. Thank you.

6 CHAIRMAN MC CARTHY: You'll take Ms. Devlin's
7 seat.

8 MS. SNYDER: Thank you.

9 (Thereupon, there was a pause while
10 Ms. Devlin cleared her papers from
11 the witness table.)

12 MS. SNYDER: I'm Patricia Snyder in behalf of
13 Destiny II Corporation. And I have very little to add,
14 other than to say that everything that has been addressed
15 here by Ms. Willsie and Ms. Devlin has been considered,
16 and it was taken into account when we were making our
17 analysis. And I believe it was also taken into account
18 when the State Lands and the Attorney General were making
19 their analyses. And unless there are any further
20 questions, I don't have anything further.

21 CHAIRMAN MC CARTHY: Do either of the Commissioners
22 have any questions of Ms. Snyder?

23 Thank you, Ms. Snyder.

24 Does Mr. Coultrup wish to make any testimony?
25 We're not asking that you do it. We just want to know if

PETERS SHORTHAND REPORTING CORPORATION

3336 PRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2345

1 you wish to do that.

2 MR. COULTRUP: Yes, thank you.

3 MR. FOSSUM: Mr. Chairman, I'd like to make
4 one statement. The analysis -- the information that was
5 presented to us by Barbara Devlin and Marilyn Willsie
6 and their attorneys was taken into consideration.

7 The case evaluation, however, did not take
8 into consideration the pending litigation, because we
9 didn't feel we were a party to that litigation, and we
10 didn't feel it would affect the suit.

11 So, at the time the evaluation was done, their
12 case was still pending. They had not lost in a court of
13 appeal. That was not given any influence either way on
14 our case at that time.

15 CHAIRMAN MC CARTHY: Mr. Coultrup.

16 MR. COULTRUP. Thank you. I appreciate the
17 opportunity to address. I haven't had a word to say for
18 about a year now. And I want to just say that we're a
19 local builder, a local family builder. We make our living
20 locally.

21 And it's a terrible thing, the accusations that
22 people like Ms. Devlin can make. They are nontruths,
23 unfounded. We've been vindicated and supported by every
24 single level of government along the way, including the
25 courts.

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 582-2345

1 She may believe some of the things she says,
2 but I think it's based on emotion and not fact, and they
3 twisted it. It's unfortunate we've all been put through
4 this.

5 With that, enough said. It's been a very long,
6 major, drawn-out process. I appreciate your support.

7 CHAIRMAN MC CARTHY: Thank you, Mr. Coultrup.
8 Staff have any further comment?

9 EXECUTIVE OFFICER WARREN: No. Under all the
10 circumstances, the staff stands by its recommendation to
11 you.

12 CHAIRMAN MC CARTHY: Commissioners have any
13 further comment? Do I hear a motion?

14 COMMISSIONER TUCKER: So moved.

15 COMMISSIONER BURTON: Second.

16 CHAIRMAN MC CARTHY: All right. Commission
17 adopts the recommendation.

18 EXECUTIVE OFFICER WARREN: Thank you very much,
19 Mr. Chairman.

20 CHAIRMAN MC CARTHY: That concludes today's
21 agenda.

22 MR. HIGHT: Excuse me, Mr. Chairman. I have one
23 item on the notice.

24 CHAIRMAN MC CARTHY: Before we finish the
25 meeting, Mr. Hight.

PETERS SHORTHAND REPORTING CORPORATION

3338 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 532-2345

1 MR. HIGHT: Yes. I'd like to report that in
2 the executive session, the Commission discussed the
3 litigation -- State Lands Commission vs. the County of
4 Contra Costa, and report to you that we have a
5 successful completion of that litigation.

6 We have received letters of assurance from the
7 county and from the attorneys for the respective
8 developers that site-specific environmental impact
9 reports will be done on two future projects, and that the
10 notices of determination will be out very shortly. And
11 this is the goal of the Commission sought to achieve
12 in the litigation.

13 CHAIRMAN MC CARTHY: And you'll put those
14 letters into the --

15 MR. HIGHT: And we'll put those letters into the
16 record today.

17 CHAIRMAN MC CARTHY: All right. Thank you.
18 With that, this Commission meeting is completed.
19 (Thereupon, the meeting was adjourned
20 at 11:30 a.m.)

21 --oOo--
22
23
24
25

PETERS SHORTHAND REPORTING CORPORATION

3336 BRADSHAW ROAD, SUITE 240
SACRAMENTO, CALIFORNIA 95827
TELEPHONE (916) 362-2345

