

MEETING  
BEFORE THE  
STATE LANDS COMMISSION  
STATE OF CALIFORNIA

ORIGINAL

STATE CAPITOL  
ROOM 113  
SACRAMENTO, CALIFORNIA

WEDNESDAY, DECEMBER 21, 1994

2:00 P.M.

Nadine J. Parks  
Shorthand Reporter

MEMBERS PRESENT

Gray Davis, State Controller, Chairman  
and Cleatta Simpson, Deputy Controller

Leo T. McCarthy, Lieutenant Governor, Commissioner

Theresa Parker for Russell S. Gould, Director of Finance

Staff:

Robert Hight  
Executive Officer

James Trout  
Assistant Executive Officer

Jack Rump  
Chief Counsel

Blake Stevenson  
Staff Counsel

Also Present:

Daniel L. Siegel  
Deputy Attorney General

Ann Mills, Chief of Staff to the Lieutenant Governor

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## P R O C E E D I N G S

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2  
3 COMMISSIONER McCARTHY: Good afternoon, ladies and  
4 gentlemen. Our Chairman, Gray Davis, will join us in a  
5 couple of minutes. He's had an urgent problem upstairs he  
6 must address, and he will be with us shortly. And  
7 Commissioner Parker and I will carry the work here for a  
8 while, and my Chief of Staff, who is on my right side here,  
9 my steady hand through so many wars.

10 This is my last Commission meeting; so, I'd like  
11 to thank you at the beginning, in the middle, and in the end  
12 for making this part of my job as Lieutenant Governor such a  
13 pleasurable one. There is an array of talent within the  
14 State Lands Commission and the Attorney General's Office --  
15 and some staff from other departments that help us  
16 frequently -- that gives this a very special kind of  
17 enjoyment for me -- to know what we're doing. We have high  
18 public purposes that we pursue, and it's been a lot of fun.

19 I think we really accomplished a great deal. And  
20 it's just been a pleasure being one of the partners in this  
21 firm. So, thank you very much.

22 Why don't we start. The minutes of the last  
23 meeting approved without objection.

24 Items on the consent calendar, we're pulling off  
25 Items 31, 35, and 36. Any others we're pulling off besides

1 those three?

2 EXECUTIVE OFFICER HIGHT: And Item 32, Mr.  
3 Chairman, if we could pull it off consent. And since we  
4 have no regular agenda, we will move it to the regular  
5 agenda.

6 COMMISSIONER McCARTHY: Okay. Item 32 is now on  
7 the regular agenda. Any objections to passing the consent  
8 calendar with those modifications?

9 COMMISSIONER PARKER: No objection.

10 COMMISSIONER McCARTHY: No objections. If not,  
11 then that will be the action.

12 And now, we're on what once was Consent Item 32  
13 and is now Regular Calendar Item No. 1.

14 EXECUTIVE OFFICER HIGHT: Yes, Mr. Chairman. Item  
15 32 is a title settlement with the California Youth Authority  
16 in the City of --

17 MR. TROUT: Catholic.

18 (Laughter.)

19 EXECUTIVE OFFICER HIGHT: Catholic Youth  
20 Organization -- excuse me, Mr. Chairman -- in the City of  
21 San Rafael.

22 The settlement has a very long history, Mr.  
23 Chairman, and I'll go back in time very quickly.

24 Representatives of the CYO first approached the  
25 Lands Commission on July 22nd, 1988, to determine the

1 State's interest in -- why don't you point out the parcel?

2 MR. STEVENSON: It's this parcel right in between  
3 (indicating) -- I'm Blake Stevenson, Staff Counsel for the  
4 State Lands Commission -- right in between Highway 101,  
5 through the facility known as St. Vincent's School for Boys,  
6 out into the lowland rearward of that facility, and all the  
7 way out to the bay, but excluding an internal parcel held by  
8 the Los Gallinas Sanitary District.

9 EXECUTIVE OFFICER HIGHT: On October 13th of 1988,  
10 we sent a notice of a title study, which is our typical  
11 staff procedure. The study goes to all interested groups in  
12 the area, anybody who has an interest, for input into the  
13 staff's determination as to the status of title.

14 On May 24th, 1989, we met with representatives of  
15 the CYO and described the State's interest in that parcel.  
16 Hearing the State's interest in the parcel, they then chose  
17 wise counsel, Mr. John Briscoe, on August 3rd of 1990.

18 We did a series of negotiations up until 1991, at  
19 which time the City of San Rafael desired that the matter  
20 kind of be put on hold pending local planning for the use of  
21 the property.

22 We allowed until February of 1993 for the city to  
23 complete their plan. The City Council, in June of '94,  
24 completed the plan, but it has not been adopted by the City  
25 Council. The Planning Commission empowered by the City

1 Council completed the plan, but it was not adopted by the  
2 Council.

3 The settlement, in essence, is that the State will  
4 receive -- you might point out the area we will receive.

5 MR. STEVENSON: Yes. I can best direct you to  
6 refer to the map appended to the calendar item, and just  
7 look at this for references.

8 Under the settlement, the State would receive fee  
9 title in the area known, or referred to on your map, as the  
10 "Marsh Parcel," which is the property, which is waterward of  
11 the last levee which was constructed. This parcel, I think,  
12 is about 165 acres.

13 The State would also receive a public -- or have  
14 confirmed that it's subject to a public trust easement over  
15 another 66 acre piece of land, which lies just inland of the  
16 Los Gallinas Valley District spray field that you see here  
17 (indicating on map).

18 And, also, the State would acquire the fee title  
19 to what's referred to as the "Exchange Parcel," which is  
20 roughly in the shape of a putter, the handle being at the  
21 levee of the relocated Miller Creek, and then the head of  
22 the putter, again, running along the creek on this side up  
23 to the railroad track.

24 EXECUTIVE OFFICER HIGHT: Staff supports the  
25 settlement at this point in time.

1           One of the reasons for that settlement is, quite  
2 frankly for the record, we believe this settlement is very  
3 advantageous to the State; that the time delay involved in  
4 litigation is questionable. There are currently cases with  
5 the California Supreme court that could go either for or  
6 against us.

7           The applicant has indicated that they would prefer  
8 to settle it at this time. We think that -- this project,  
9 as I said, has gone on since 1988, and staff recommends the  
10 settlement as proposed.

11           We have three speakers -- two who are concerned  
12 about the settlement and the attorney for the project.  
13 Perhaps we should hear from Barbara Salzman first.

14           COMMISSIONER McCARTHY: Whatever order they want.

15           EXECUTIVE OFFICER HIGHT: Okay.

16           COMMISSIONER McCARTHY: The three proponents,  
17 whatever order they would like.

18           Why don't you please take a seat up here, if you  
19 would. Let's make sure that mike is on.

20           MR. NELSON: Thank you.

21           Mr. Chairman, my name is Frank Nelson, and I'm  
22 from CAPS. In fact, CAPS is a nonprofit public benefit  
23 organization. And our focus is on the preservation of these  
24 lands, which are the subject of the title settlement.

25           Our nonprofit organization has spent about a year

1 opposing the planned development for lands which are  
2 actually outside the settlement area, but owned by the  
3 Archdiocese. That opposition has been successful. As  
4 reported, the city has not approved the planned development.  
5 In fact, the public reaction to the high-density plan was so  
6 overwhelmingly in opposition that there seemed to be no  
7 choice for the City Council.

8 I'm here today to request of this Commission a  
9 continuance of at least 30 days to give us an opportunity to  
10 look into some of the underlying information supporting the  
11 settlement.

12 Just quickly, the language in the -- on the  
13 hearing calendar indicates that the settlement is in  
14 conformity or consistent with the plan. And our concern on  
15 that point is that, since the plan was so overwhelmingly  
16 opposed by the local citizens, it seems questionable to  
17 reach a settlement which is consistent with an already  
18 rejected plan.

19 What we're requesting is for the 30 days to have  
20 time to study the settlement, to look at the underlying  
21 documents and records, and to talk to members of the Lands  
22 Commission staff.

23 (Thereupon, Commissioner Cleatta Simpson  
24 took Chairman Davis' seat on the Commission.)

25 MR. NELSON: Quickly, a couple of examples of

1 areas that we're concerned about with the exchange parcel  
2 that was referred to, it, in fact, mostly runs along a  
3 ditch, which is an artificial construction and not in line  
4 with the natural flow and historical flow of Miller Creek.

5 And we, our organization, devoted to restoring and  
6 preserving the very, very special lands, feel that any  
7 exchange parcel should be consistent with the natural flow  
8 and the historical flow of the creek in order to preserve  
9 and protect any future restoration of that creek.

10 Another quick point is that the low water -- or  
11 Blake Stevenson, in our brief conversation before this  
12 meeting, indicates that I may mean the high water mark --  
13 this is discussed in the papers and has a very important  
14 bearing on where the line is drawn that separates out the  
15 State fee interest from lands that the State has no interest  
16 in.

17 And we would like to have an opportunity to make  
18 sure that the line is most advantageous to the public  
19 interest.

20 And thirdly and quickly in winding this up, in the  
21 finding section of the material submitted on page 5 (sic),  
22 Finding A, there's reference to language that, "The trust  
23 termination parcel," which is the major in size parcel  
24 involved in this agreement, "has been filled and reclaimed  
25 and is no longer subject to the tides."

1           Our information is that most, if not all, of that  
2 land is historically under sea level. Our concern is that  
3 language, such as the finding in A, would tend to crystalize  
4 and send future development in the direction of assisting  
5 for development, rather than leaving the issue open as to  
6 whether or not these very special lands could be restored to  
7 a marsh or a marsh restoration project.

8           And so, in summary and conclusion, we received  
9 notice of this on December 10th. I got the hearing calendar  
10 printout several days later. The time has been short to  
11 look into a settlement, which contains issues, and  
12 documents, and legal cases that are very complex.

13           The consequences of this settlement are  
14 potentially far reaching. And so, our organization, on  
15 behalf of our public interest in preserving these lands and  
16 making sure that the lands are used in a way that promote  
17 the public interest, we're merely asking for time to review  
18 it and satisfy ourselves that all these needs have been met.

19           And I would lastly add that, since there's no plan  
20 before the city, there's no developer waiting, that it would  
21 seem to me that there is no immediate harm to the  
22 Archdiocese. There's no hurry.

23           And certainly, when such large interests are at  
24 stake for the public interest, it would seem that at least a  
25 30-day continuance would not harm either side.

1           COMMISSIONER McCARTHY: Mr. Nelson, how long have  
2 you been involved in discussions of this property?

3           MR. NELSON: The particular item that's on today  
4 or --

5           COMMISSIONER McCARTHY: The whole issue.

6           MR. NELSON: -- entire project?

7           COMMISSIONER McCARTHY: Yes.

8           MR. NELSON: It's been about a year now that I've  
9 been involved with the CAPS organization, and attending City  
10 Council meetings, and talking --

11          MR. NELSON: And before the CAPS organization was  
12 formed, were you involved in any way?

13          MR. NELSON: Yes.

14          COMMISSIONER McCARTHY: How many years back does  
15 this go?

16          MR. NELSON: One year.

17          COMMISSIONER McCARTHY: I know the CAPS  
18 organization was formed a year ago. But I meant prior to  
19 that, were you involved --

20          MR. NELSON: No.

21          COMMISSIONER McCARTHY: -- as an individual?

22          MR. NELSON: No.

23          COMMISSIONER McCARTHY: Some of your neighbors  
24 were, though. This discussion has been underway involving  
25 folks in Marin County for quite a long time.

1 MR. NELSON: I can't speak for the others. Ii  
2 assume, obviously, there are others.

3 COMMISSIONER McCARTHY: I just want to give you  
4 some of the background. We have delayed this issue again,  
5 and again, and again in deference to both local government  
6 and neighbors in the area a number of times.

7 So, when the comment is made, "What's the hurry,"  
8 this has been going on now for close to six years.

9 COMMISSIONER PARKER: Since July of 1988.

10 COMMISSIONER McCARTHY: But not all that was heavy  
11 neighbor involvement, but there are several years of very  
12 painstakingly, slow conversations. And, frankly, we have  
13 held it up so those conversations could occur. The  
14 Commission has held it up.

15 But let's go over the three points that Mr. Nelson  
16 raised.

17 MR. NELSON: If I could add that, in terms of the  
18 specific points, my reason for presenting them was not to  
19 get into the merits of this in terms of trying to illustrate  
20 and raise questions as to the complexity and the need for 30  
21 days.

22 In the last six years, the argument would seem to  
23 flow naturally and calmly that another 30 days out of the  
24 six years is really a drop in the bucket.

25 COMMISSIONER McCARTHY: Assuming that someone else

1 doesn't step forward after 30 days and say, "How about  
2 another month or two?"

3 MR. NELSON: Well, I guess you'd have to hold our  
4 feet to the fire and make sure we stick to that 30 days.

5 COMMISSIONER McCARTHY: That sort of feeling  
6 extends way back on this issue.

7 Let's address the three points that you raised and  
8 see if there's -- there are satisfactory answers.

9 EXECUTIVE OFFICER HIGHT: Mr. Chairman, before we  
10 do that, I left out a very important part of my  
11 presentation. And that is, the Commission today is merely  
12 settling title.

13 The action that you take will have no effect on  
14 any local or county planning, zoning, development process.  
15 All we're doing here is clarifying the state of the title.  
16 And so, the normal county building process will be adhered  
17 to in any development that would go from this point on.

18 COMMISSIONER McCARTHY: Within that context, let's  
19 respond to Mr. Nelson's points.

20 EXECUTIVE OFFICER HIGHT: Okay. Insofar as the  
21 creek is concerned, it's our understanding that the existing  
22 Miller Creek is in a state of "not nature." And assuming  
23 further development, it will be realigned.

24 The reason that we took the parcel that we took  
25 was, it has been identified as having significant

1 environmental values and is in a state that can be restored.

2 So, we figured that we would take that parcel and,  
3 in the restoration process, we would have something that  
4 would be very good.

5 The creek ultimately will have to be realigned,  
6 and we don't know where -- what the location of that  
7 realignment will be. And no doubt, as a county planning  
8 condition, it will have to be maintained in some kind of  
9 fashion. So, we didn't think that, by any means, we were  
10 giving up that.

11 COMMISSIONER McCARTHY: Are you saying that part  
12 of the intent here is to restore the creek?

13 EXECUTIVE OFFICER HIGHT: The intent for the  
14 Commission is to restore the eight acres. But we felt  
15 comfortable that the creek will be restored as part of the  
16 overall --

17 COMMISSIONER PARKER: As well as the ditch, which  
18 is the issue Mr. Nelson has raised, will that be determined  
19 at some future time?

20 EXECUTIVE OFFICER HIGHT: Yes.

21 COMMISSIONER PARKER: At future local government  
22 hearings?

23 EXECUTIVE OFFICER HIGHT: Yes. Right. The exact  
24 placement on the ground, whether it's moved, how it's  
25 reconfigured will be determined by local government.

1 MR. NELSON: Should I respond? It seems to me  
2 clear that it's no mystery that -- I walk the land  
3 frequently. And you go out there and you look -- as the  
4 creek ends near the railroad tracks -- and they've just  
5 created an artificial ditch that goes south.

6 COMMISSIONER McCARTHY: Who's "they"?

7 MR. NELSON: I suppose the landowner over the  
8 years has created that ditch. And the point is that,  
9 through inspection of historical maps and through the  
10 assistance of geologists and hydrologists and that, you can  
11 determine what more or less the natural flow of that creek  
12 would be out to the bay. I don't think it's a big mystery.

13 COMMISSIONER McCARTHY: The response of our staff  
14 is that the county can do that.

15 MR. NELSON: But the problem with this settlement  
16 is that it tends to move towards -- and it does, in fact,  
17 lock in an unnatural right angle, 90-degree angle,  
18 artificial ditch, land along that ditch.

19 So, the question raised is why settle in the  
20 State's interest and the public interest land along an  
21 artificial ditch, when there's an opportunity to preserve  
22 land that would go along the natural flow of the creek, and  
23 encourage what was admitted is a goal, the restoration of  
24 this creek.

25 It seemed to me that the settlement is working

1 against --

2 COMMISSIONER McCARTHY: You want the State to take  
3 more land.

4 MR. NELSON: No. Take the eight acres, but take  
5 them along where the natural flow would be, and that would  
6 tend to encourage the restoration, which has been stated as  
7 an agreed upon goal.

8 EXECUTIVE OFFICER HIGHT: This settlement does not  
9 preclude that. This settlement leaves open the ultimate  
10 placement. And what we've taken is an area that can be  
11 restored. And if part of that area is to be used later for  
12 the creek, that's fine.

13 MR. STEVENSON: That's actually consistent with  
14 what the local planning efforts have stated.

15 Actually, while the committee was operating, there  
16 was a monthly circular of its work. It had about 24  
17 members, I believe, on the committee from different walks of  
18 life in that area. We followed the working committee  
19 closely. And we saw from it -- there was discussion of not  
20 only having the creek reestablished in its original  
21 location, but also perhaps leaving the creek open where it  
22 is now and restoring above it as well. And it was really  
23 our feeling that this area was good for restoration, and  
24 that there was ample local authority to have their creek  
25 relocated for restoration in its old location, and also for

1 habitat along the old location.

2 So, in a sense, it was wise for us to acquire this  
3 land, which was available to us, because local government  
4 could acquire the remainder, if you will, through its own  
5 powers.

6 COMMISSIONER McCARTHY: Why don't we address your  
7 second point, your comment about the high water mark.

8 EXECUTIVE OFFICER HIGHT: Blake, why don't you  
9 address that one?

10 MR. STEVENSON: The location of the high water  
11 mark is always an issue in these kinds of settlements, and  
12 one which creates much controversy between the Lands  
13 Commission and private parties.

14 In this particular case, we have settled these  
15 conflicting questions by consolidating our interests into  
16 the exchange parcel, and also getting a heightened interest,  
17 that being a fee, and about half the marsh parcel the title  
18 party here has title to today.

19 So, that really was a settlement of what otherwise  
20 would be a litigated issue. I think there was some  
21 confusion about the term low water mark. What we're going  
22 to do is -- the marsh parcel today will run to the low water  
23 mark, specifically with the idea in mind of terminating  
24 private title in that area, making sure there's no vestige  
25 in our title, other than the marsh access which is

1 referenced in the calendar item.

2 The high water mark, as I say, is a disputed  
3 issue. Its settlement's part of the entire litigation was  
4 explained to Mr. Nelson in detail in several phone calls  
5 over recent days.

6 COMMISSIONER McCARTHY: But apparently not  
7 satisfactorily yet.

8 MR. NELSON: Well, I think -- Mr. Chairman, I  
9 think this process that we're going through right now kind  
10 of illustrates my point, that these issues are disputed, not  
11 only here but -- as Blake mentioned -- the high water mark  
12 is disputed. They're very complex. There are voluminous  
13 records. and documents, and points of view.

14 And I think all of that argues for the conclusion  
15 that a 30-day opportunity -- we would get a group of people  
16 together -- city planners, former county planners,  
17 geologists, map readers, and make an appointment to come up  
18 here and look through the material and talk to staff, and  
19 take it from there.

20 COMMISSIONER McCARTHY: You'll have local  
21 government act by that day on the parts of this policy that  
22 they must address?

23 MR. NELSON: In no way. But what we will be able  
24 to have an opportunity to do is look at the underlying  
25 documents, assess where that high water mark is. It may be

1 it's disputed. It may be that it's way, way up there, and  
2 that a settlement that would claim a larger area for the  
3 State may be achievable.

4 We would like to have the satisfaction of at least  
5 looking into that and deciding one way or the other.

6 COMMISSIONER McCARTHY: Okay.

7 MR. STEVENSON: I would like to point out,  
8 actually, that if the State were to prevail on all the  
9 issues and it's certain that the high water mark went into  
10 the trust termination parcel, it would result in a series of  
11 remnant sloughs up the parcel, which are now filled.

12 But perhaps more importantly, this information, in  
13 terms of where those sloughs were, was made available to the  
14 committee. It's in committee publications that go back  
15 years in time.

16 So, in terms of stating the strongest possible  
17 position of the State and where these interests might lie,  
18 have been known for some time. Years.

19 COMMISSIONER McCARTHY: The third point dealt with  
20 the wording in "A." Want to address that point, the point  
21 raised by Mr. Nelson?

22 EXECUTIVE OFFICER HIGHT: Yes, Mr. Chairman. The  
23 issue of "has been filled." In order for the Commission to  
24 legally make a lifting of the Commission's interest in a  
25 parcel, we have to find that they have been filled and they

1 are no longer subject to the trust.

2 And the area that we're lifting the trust from, we  
3 believe there's no question in that fact that they are  
4 filled and they're no longer susceptible of trust purposes.

5 MR. NELSON: What I hear being stated is that  
6 there is a legal requirement within the process that you  
7 have to make this finding in order to go forward.

8 That doesn't address whether or not the finding is  
9 accurate. I talked to the Marin County Planning Director,  
10 and his comment was that this is erroneous. I mean, it's  
11 not factual.

12 And our concern is that, when you make a statement  
13 of finding -- having prosecuted cases for 20 years and being  
14 familiar with how the law can tie somebody into a course of  
15 action -- once you get language in the record that says,  
16 "These lands..." -- and these are very substantial lands --  
17 "...are no longer subject to the tides, there are  
18 ramifications that run out from that. And we may be -- you  
19 know, there's an expression -- giving away the store or  
20 there may be something happening here that should be looked  
21 at very closely as to the long-range impact.

22 So, there may be a legal requirement that requires  
23 throwing that language in, but I'm suggesting let's look at  
24 whether or not it's factual, and raise the question as to  
25 whether or not we are tying ourselves to a course of action

1 that is truly not in the public interest.

2 EXECUTIVE OFFICER HIGHT: Mr. Chairman, my easiest  
3 rebuttal to that the staff has looked at it; the Attorney  
4 General's Office has looked at it. And we believe that  
5 we're making the best claims for the State and the most  
6 advantageous claims for the State. And if there were any  
7 further claims that we could make, we would certainly make  
8 them.

9 We believe this goes as far as we can legally go.

10 COMMISSIONER McCARTHY: All right. Any questions  
11 of Mr. Nelson?

12 Thank you, Mr. Nelson.

13 MR. NELSON: Thank you, Mr. Chairman.

14 COMMISSIONER McCARTHY: Are there any other  
15 witnesses in opposition or in favor of postponement? Yes,  
16 please.

17 Would you like to take the same seat? Give us  
18 your name, please.

19 MS. SALZMAN: My name is Barbara Salzman. I was  
20 the person that was called first. I chose to have Mr.  
21 Nelson go first.

22 COMMISSIONER McCARTHY: Okay.

23 MS. SALZMAN: I'm here representing the Marin  
24 Audubon Society. I have been involved for about 20 years on  
25 the sites -- Audubon 20 years, but what's going on at this

1 site as well as many other bay land sites in Marin County.

2 I've spent many hours observing birds on the site.

3 I know it well. I also served on the advisory committee.

4 About -- let me pass out -- actually, I have a  
5 letter from us as well as two other organizations in Marin  
6 County. Is in the Sierra Club, Marin Group; and the other  
7 is the Environmental Forum, all asking for a continuance.

8 In 1991, I was a member of the group that met with  
9 the then Executive Officer, Charles Warren, about this site.  
10 And we were informed that there was some discussions going  
11 on and some interest by the property owners in settling the  
12 claim.

13 We were also told, as I remember -- and I checked  
14 this out with others who were there -- that we would -- that  
15 we would -- that the Commission would be in touch with us  
16 when there was -- when this settlement had moved along and  
17 when there was some likelihood it would be a settlement in  
18 the near future.

19 I don't feel that that commitment was honored.  
20 I'm happy that I received a telephone call and a fax from  
21 Mary Howe. But I don't think that a fax of the staff report  
22 received a week ahead of time during the Christmas holidays  
23 is really giving organizations a fair opportunity to look at  
24 what's going on here.

25 Frankly, none of us even -- have even had a

1 meeting during that week. So, you know, we've had to  
2 scramble about just to get at least a request for -- for a  
3 continuance.

4 If this has been going on so long, it doesn't  
5 really seem that another month is going to make that much  
6 difference.

7 Basically, we agree with what Mr. Nelson has said.  
8 And I would like to make a few points about that issue as  
9 well as other issues -- a few other issues.

10 We commented and other organizations, and many  
11 individuals commented during your notice of title study that  
12 was referenced earlier. There is no reference to how that  
13 information was factored into arriving at this settlement.

14 I know that we submitted substantial bird lists  
15 for these sites, and there's actually not even any reference  
16 to birds. What is referenced, in terms of public trust  
17 interest, is navigation and fish. Of course, the site's  
18 diked, so there's not much, except at Miller Creek, the fish  
19 use there. But there is extensive bird use.

20 And one of the things we would like to achieve, if  
21 we can get a delay, is to find out how that information was  
22 factored in.

23 Secondly, as a participant in the advisory  
24 committee, I have to really express some concern about how--  
25 about the statement that the -- that this settlement is in

1 accord with policies of the advisory committee, because at  
2 no time did the advisory committee discuss -- the advisory  
3 committee did not have policies that favored filling these  
4 lands, with the exception of a small piece that came up at  
5 the end that was maybe 50 acres as opposed to something like  
6 600 acres, which the school wanted to use for their school  
7 facilities.

8 That was always envisioned by the committee as a  
9 site that would remain bay land, or there was even  
10 discussion of restoring, using dredge material to -- which  
11 is a big deal now on what to do with the dredge material --  
12 using that to restore tidal marsh. So, I think that's  
13 another concern that we have. With regard to the finding  
14 about fill, there was also, to my recollection -- I only  
15 missed one meeting -- there's been no evidence presented  
16 that this -- these sites -- this site is filled.

17 Perhaps now there's been agricultural in it and,  
18 if there's been some levees built -- but this site is like  
19 every other site around the North Bay, it is some -- I don't  
20 have the figures in front of me -- but it is a number of  
21 feet below sea level. I'm sure there has been movement of  
22 material, dirt, earth around in the process of growing crops  
23 there. But to say that it's been filled so that it would  
24 not be subject to tidal action, if those dikes were  
25 breached, either naturally or not naturally, is just not the

1 case (sic), it would be flooded if somebody breached those  
2 dikes.

3 So, I'm not sure what you mean by "filled." Maybe  
4 that's the problem. But they have not been filled so that  
5 they are raised above the level of tidal action.

6 With regard to the Miller Creek settlement, I'd  
7 like to -- one of the things I would like to see if we could  
8 do would be to look to see if we could locate that  
9 settlement parcel so that it would be able to useful if the  
10 creek were relocated. In other words, is there an area  
11 where it could be relocated to; so that, if the creek were  
12 restored to its normal or historic meander, could -- is  
13 there a location where it could be adjacent to the present  
14 creek as well as the historic meander of the creek? Because  
15 what you're going to have if you -- and certainly this  
16 doesn't preclude restoring the creek to its historic  
17 meander.

18 But if you do that, you're going to have a public  
19 trust parcel stuck in the middle of nowhere not related to  
20 that parcel, and that's not in the public interest.

21 Basically, that's, you know, some of the examples  
22 of things. And I don't -- I think that the environmental  
23 community of Marin County has an honest reputation, and none  
24 of us are approaching this from the point of view of wanting  
25 to, you know, delay things interminably. We simply would

1 like to have an opportunity to know how this settlement was  
2 arrived at. If there are some differences of opinion, then,  
3 at least know how -- why our views could not be  
4 incorporated. And that's it.

5 I think, if there's an absolute date set or --  
6 especially with the county's letter asking for -- obviously,  
7 they didn't have notice either -- the county's request to  
8 have a delay of --

9 COMMISSIONER McCARTHY: The county didn't have  
10 notice?

11 MS. SALZMAN: There's a letter from -- the one  
12 from the County of Marin that they had no notice, and that  
13 they are also asking for a request (sic) -- for a delay for  
14 30 to 60 days.

15 MR. STEVENSON: The county was noticed. The  
16 notice was sent to the Planning Department. I put it in the  
17 mail box.

18 MS. SALZMAN: Well, I guess it didn't get to the--

19 COMMISSIONER McCARTHY: Remember that TV ad, where  
20 the boss yells at the person who's supposed to have sent the  
21 letter?

22 (Laughter.)

23 MS. SALZMAN: I don't know. There's a  
24 possibility. I know the Planning Director didn't get one.

25 COMMISSIONER McCARTHY: I know the Marin County

1 government doesn't make any mistakes. So, we must be wrong.

2 MS. SALZMAN: I didn't say that.

3 (Laughter.)

4 COMMISSIONER McCARTHY: Let me just ask a couple  
5 of questions here.

6 On the advisory committee, could you remind us,  
7 the Commission members, once again, please, what the  
8 diversity was of the organizations serving on the advisory  
9 committee?

10 MR. STEVENSON: The people on the advisory  
11 committee.

12 COMMISSIONER McCARTHY: The organizations  
13 particularly.

14 MR. STEVENSON: Uh-huh. Well, they run from  
15 members of the City Council --

16 COMMISSIONER McCARTHY: I'm interested in  
17 environmental groups.

18 MR. STEVENSON: Okay.

19 COMMISSIONER McCARTHY: Or neighborhood groups.

20 MR. STEVENSON: North San Rafael Coalition,  
21 Marinwood Association, Captain's Cove Homeowners, United  
22 Montecito Neighborhoods Association, Marin Conservation  
23 League, Ecumenical Association for Housing, Mont Marin  
24 Homeowners, Marin Audubon Society. That completes it.

25 COMMISSIONER McCARTHY: Okay. Now, how was the

1 attendance at meetings? We've got a list. How many groups  
2 attended and had serious opportunity to participate in  
3 discussions?

4 MR. STEVENSON: We know, basically from the couple  
5 of meetings which we attended, they were well attended.  
6 Otherwise, we'd monitor the circular that came out every  
7 month with the roster of people that were on -- my  
8 recollection is that they were all extremely well attended.

9 COMMISSIONER McCARTHY: And I note the language  
10 they use in the resolution regarding commerce, navigation,  
11 and fisheries, I think, is just taken out of the State  
12 Constitution.

13 MS. SALZMAN: And they're public trust, as you  
14 know.

15 COMMISSIONER McCARTHY: Of course, and we act on--  
16 our vision of the public trust is much larger than this.  
17 We've had many discussions before the Commission on wildlife  
18 in many forms. Was there some discussion -- there must have  
19 been -- during the advisory committee meetings -- now, you  
20 were -- I don't know how many you attended.

21 MR. STEVENSON: I attended one time when I spoke.

22 COMMISSIONER McCARTHY: Okay. Did you attend on  
23 behalf of the Audubon Society?

24 MS. SALZMAN: I attended all but one, yes.

25 COMMISSIONER McCARTHY: Did you raise issues of

1 birds and opportunities for --

2 MS. SALZMAN: (Interjecting) Well, yes, I did.  
3 But that's not -- the point I'm making here is about the  
4 State -- I did not think that I was raising them then as to  
5 effect a public trust settlement. I mean I did raise them  
6 then.

7 COMMISSIONER McCARTHY: Tell us what you would  
8 have liked to have seen in a settlement that referenced  
9 birds and the opportunities for pleasure and growth that  
10 they represent to Marin residents?

11 MS. SALZMAN: Well, I'd like to see that there's  
12 some -- some habitat protection for wildlife -- for wildlife  
13 other than fish -- for birds that use the area. And maybe  
14 that was -- I mean, again, I'm approaching this from the  
15 point of view of wanting to have more information.

16 I do not see that -- how that was taken into  
17 consideration. Maybe it was, but --

18 COMMISSIONER McCARTHY: Well, let's get an answer.  
19 I'm interesting in knowing what you feel should have been  
20 incorporated into this policy-making in connection with bird  
21 life in the area.

22 MS. SALZMAN: Well, those lands are flooded from  
23 time to time when -- the years when there's a heavy  
24 rainfall. And they provide important wildlife use for  
25 migratory birds of the Pacific Flyway.

1 I don't know how those values are going to be  
2 preserved with this settlement, because it's basically  
3 giving up all of those lands. So --

4 COMMISSIONER McCARTHY: Would you --

5 MR. STEVENSON: We can point out that. The  
6 settlement really incorporates everything in many ways which  
7 we at least could hope to win in court if we prevailed. And  
8 it follows, really, any reasonable expectation the plan  
9 takes. In this area (indicating on map), the active marsh  
10 today, the committee identified it as being extremely  
11 important. Everyone has. that will come to the State in  
12 fee. It can be leased out to a local agency if that's  
13 desirable.

14 In this area (indicating on map), where we will  
15 have a public trust easement, it's about --

16 COMMISSIONER McCARTHY: There was a local agency  
17 or a nonprofit entity to help, to advise us as to the  
18 supervision of the area for the usages of wildlife and  
19 birds?

20 MR. STEVENSON: That's right. That is right.

21 COMMISSIONER McCARTHY: For migratory birds. All  
22 right.

23 MR. STEVENSON: One of the consultants to the  
24 committee also identified the behavior or the importance  
25 of today's active marsh. What we did in this area was we

1 retained the State's public trust easement, which we  
2 asserted -- it was contested. We retained that easement.  
3 And, constantly, what we were hearing locally -- we worked  
4 into this settlement this area is to be used for agriculture  
5 or to be used for marsh restoration, or they would have to  
6 revisit the State Lands Commission.

7           So, we used our underlying easement in this  
8 property really to enhance this area and to keep this area  
9 open (indicating on map).

10           Where we hit larger issues was that we had some  
11 scattered interest in remnant sloughs through this parcel,  
12 up to the railroad track roughly (indicating on map). I  
13 think it's important to remember that the interests were  
14 scattered. They were not fee, which we were asserting, and  
15 they were very, very much disputed.

16           So, you reach a policy point where one has to  
17 decide -- do you want to continue pursuing your course or  
18 interests which are particularly usable or administrable;  
19 but, instead, do you want to consolidate them into what  
20 would be usable land for restoration. That's what we chose  
21 to do.

22           Otherwise, we're left with potential litigation of  
23 some scattered interests roughly (indicating on map) through  
24 this parcel.

25           I think there may be a tendency to envision our

1 interests in a grander way than they exist, even according  
2 to our own assertions.

3 As to upland of the railroad track, where the  
4 proposed development might occur, the State has no  
5 ostensible interest. It's included within the trust  
6 termination parcel here -- really doesn't indicate the State  
7 will recognize that through the settlement. We're not  
8 terminating any trust, because none exists.

9 COMMISSIONER McCARTHY: What arrangements do we  
10 have elsewhere in the State in areas where migratory bird  
11 flight patterns are at stake? Do we enter into agreements  
12 with local bodies or nonprofit entities that may be  
13 statewide or regional groups to help in the policies that  
14 determine the supervision? How do we work that out?

15 EXECUTIVE OFFICER HIGHT: We have leases with the  
16 Department of Fish & Game and with the Department of  
17 Interior for areas that are refuges.

18 (Thereupon, Chairman Davis took his seat  
19 at the dais.)

20 MR. TROUT: The Fish & Wildlife Service, I  
21 believe, already has a lease from the Commission for the  
22 area here in front of Hamilton Air Force Base and about  
23 30,000 and some acres in San Francisco Bay, I think part of  
24 the South Bay Refuge and some of the other issues there.

25 COMMISSIONER McCARTHY: Has that proved a

1 satisfactory method of preserving those areas? Are you  
2 familiar with any of those, especially --

3 MS. SALZMAN: (Interjecting) Well, our concern  
4 wasn't about the tidelands. It was about the diked bay  
5 lands.

6 COMMISSIONER McCARTHY: No, I know. You're  
7 talking about the functioning of the land --

8 MS. SALZMAN: Yes.

9 COMMISSIONER McCARTHY: -- and do you know  
10 anything about those other areas that we've entered into  
11 these agreements with --

12 MS. SALZMAN: Well, yes.

13 COMMISSIONER McCARTHY: -- both State and federal  
14 agencies, whose direct responsibility it is to protect  
15 migratory birdlife?

16 MS. SALZMAN: I know about most of those.

17 COMMISSIONER McCARTHY: And are they satisfactory  
18 arrangements?

19 MS. SALZMAN: Well, yes, but that doesn't answer  
20 my concern about whether this is a fair solution or  
21 settlement for the public interest.

22 COMMISSIONER McCARTHY: Well, I'm trying to  
23 respond to the specific point that you made in the first  
24 place.

25 MS. SALZMAN: Right.

1           COMMISSIONER McCARTHY: I'm quite familiar with  
2 the charter of the Audubon Society. I'm trying to respond  
3 to the issue you raised that this -- the issue of birds and  
4 their migratory patterns and so on seem to you to be ignored  
5 in the deliberations, and was not referenced --

6           MS. SALZMAN: Right.

7           COMMISSIONER McCARTHY: -- anywhere.

8           I'm trying to respond to that first point, which I  
9 thought was perhaps your biggest concern. Not your only  
10 concern.

11          MS. SALZMAN: Right.

12          COMMISSIONER McCARTHY: Your biggest concern. I'm  
13 trying to respond to that.

14          MS. SALZMAN: Yeah.

15          COMMISSIONER McCARTHY: Now, I'm asking, given the  
16 explanation you just received, would this be a satisfactory  
17 way to protect those interests?

18          MS. SALZMAN: Well, what -- my interests were in  
19 the settlement of the diked bay lands, the possible loss of  
20 those diked bay lands. Because, when you settle this,  
21 you're going to be -- you know, they're going to be subject  
22 to filling and, you know, whatever.

23                 So, they're going to be lost to wildlife. And I  
24 was interested in how the wildlife interests were -- were a  
25 part of the determination of the settlement for the diked

1 bay lands, the 70 acres, in other words, that are inland of  
2 the Los Gallinas Sanitary District piece.

3 MR. STEVENSON: That was doubled from really two  
4 angles. One was, in adopting the plan's discussion  
5 regarding the need for a buffer area, we kept our title in  
6 this area (indicating on map). That would serve as a buffer  
7 down here. It also had its own boundary. Any birds could  
8 choose to use that area.

9 Secondly, we've just participated in a restoration  
10 scheme, which local interests have talked about, in this  
11 area (indicating on map) as well.

12 I think it's important to point out that the  
13 Department of Fish & Game, as recently as this week,  
14 indicated they do not have -- they looked at the settlement  
15 and they have no objection to the settlement.

16 I think there's, once again, the prospect of some  
17 unproven State interest in a very small part -- maybe 20  
18 acres out of 260 acres -- in this area, which are not  
19 contiguous interests. It militates towards the settlement  
20 of those kinds of things for areas that have been found  
21 quite useful.

22 COMMISSIONER MCCARTHY: Okay. Do you want to  
23 respond to something?

24 EXECUTIVE OFFICER HIGHT: The only point that I  
25 think I'd like to respond to is the fill issue. Once again,

1 that's a local issue. What we're doing in no way precludes  
2 or prejudices anything that will happen at a later date on  
3 this parcel.

4 Everything is still subject to local approval.

5 COMMISSIONER McCARTHY: Any questions by the  
6 Commissioners of Ms. Salzman?

7 Thank you very much.

8 MS. SALZMAN: May I make one other comment about  
9 the committee?

10 It concerns me that there seems to be reference to  
11 the committee's -- well, recommendations or policies as  
12 having some validity for -- I don't know -- local  
13 governments, or legally, or whatever. And I'd just like to  
14 point out that there really hasn't been any adoption of this  
15 plan, because it was -- it created such a public uproar when  
16 it was made public, that there -- no government had adopted  
17 this.

18 So, it has no standing really anywhere. I mean,  
19 there was a long deliberation. But it's troublesome that  
20 it's given so much credence here.

21 COMMISSIONER McCARTHY: No, I think we understand  
22 what an --

23 MS. SALZMAN: Okay.

24 COMMISSIONER McCARTHY: -- advisory committee is.

25 MS. SALZMAN: Well, the intent here was to have it

1 adopted by the city.

2 COMMISSIONER McCARTHY: It's to try to maximize  
3 participation by citizens groups in the area, so that  
4 they're not ignored. They have some voice in the  
5 discussions. That's why I was asking the questions about  
6 attendance, about whether it was a real offer for some  
7 significant participation. This is never a perfect process,  
8 but --

9 MS. SALZMAN: (Interjecting) No, well, this was --

10 COMMISSIONER McCARTHY: -- it's a good thing to  
11 attempt, to try to involve people.

12 This Commission, as I mentioned at the outset, has  
13 delayed this issue several times so that could occur.

14 MS. SALZMAN: Well, let me point out that, as a  
15 member of the committee, that there were two environmental  
16 organizations and maybe four to five homeowners  
17 associations. We were vastly outnumbered, although we were  
18 part of the committee and appreciate that.

19 COMMISSIONER McCARTHY: I'm sorry. Vastly  
20 outnumbered by whom?

21 MS. SALZMAN: By other interests. By a number of  
22 development interests. When you look at the --

23 COMMISSIONER McCARTHY: That list that was just  
24 read to us?

25 MS. SALZMAN: That was only a partial list. Some

1 of those -- well, there were a number of representatives of  
2 both property owners. There were -- a real estate interest  
3 represented. There was the Chamber of Commerce, housing  
4 interests, several housing organizations. So, the makeup of  
5 the committee was -- there was a very minor part -- there's  
6 only two out of the whole 24.

7 COMMISSIONER McCARTHY: Two what?

8 MS. SALZMAN: Two environmental representatives.  
9 And there were a number of homeowner --

10 COMMISSIONER McCARTHY: From what I know about  
11 Marin environmentalists, that makes it about even.

12 (Laughter.)

13 MS. SALZMAN: Oh, no. We might speak loudly.

14 COMMISSIONER McCARTHY: Thank you..

15 MS. SALZMAN: Okay. Thank you.

16 COMMISSIONER McCARTHY: Our Chairman has joined us  
17 now. We have heard from two witnesses who posed some  
18 differences or qualifications to the proposed resolution  
19 before us. And, Mr. Chairman, I don't know if there are any  
20 others in the audience that likewise would want to pose any  
21 differences with what is proposed before you move to those  
22 in favor of the resolution.

23 CHAIRMAN DAVIS: Does anyone else care to speak in  
24 opposition to the item before the Commission?

25 Seeing no one, the only other -- first, let me

1 apologize. I missed -- I didn't miss. I got up at 5:30  
2 today, and L.A. was fogged in. And so, I drove to Burbank,  
3 just missing their flight, so I had to wait till twelve  
4 o'clock to get up here. And our holiday party was going on,  
5 so I had to attend that. And I have to leave at 3:30 to see  
6 the Governor. And I'm determined to spend at least 10  
7 minutes honoring our departing Lieutenant Governor.

8 So, to accommodate all those needs, I'd appreciate  
9 your indulgence.

10 COMMISSIONER MCCARTHY: So this is a celebration?

11 (Laughter.)

12 CHAIRMAN DAVIS: And your are many, many  
13 contributions to the Lands Commission.

14 So hearing no other person in opposition, the only  
15 other name I have here, I assume in support of the matter,  
16 is John Briscoe.

17 MR. BRISCOE: Mr. Chairman and Mr. Chairman of a  
18 moment ago, I'm John Briscoe, representing the Catholic  
19 Youth Organization, not the California Youth Authority --

20 (Laughter.)

21 CHAIRMAN DAVIS: Is that correct?

22 MR. BRISCOE: That's true. We've been in these  
23 negotiations for six years. You could say that perhaps the  
24 question of title has been brewing for 130 years, because  
25 this property was sold by the State for money to my client's

1 predecessors, and this is, in one case, Archbishop Alemany  
2 himself of San Francisco.

3           The two prior speakers reminded me of a wonderful  
4 practical joke that was played on me several years back  
5 when, on behalf of the Port of Oakland, I settled a case  
6 with an environmental group. And the head of the  
7 environmental group and I were having a Calistoga together  
8 in a tavern to congratulate ourselves on having accomplished  
9 peace.

10           He was shuffling in his pocket, and he took out  
11 and quickly showed something that appeared to be a small red  
12 book. And I said, "What was that?"

13           And he said, "Oh, that's the -- that's the little  
14 red book of guerilla no-growth tactics."

15           And I said, "There really is such a thing?"

16           He said, "Oh, yes." And he said -- I asked if I  
17 could see it.

18           He says, "Sure."

19           And I opened it up, and there was only one word in  
20 it, "Delay."

21           And I'm afraid that's what is being requested of  
22 this Commission today.

23           We thought that this time we settled what our  
24 predecessors did 130 years ago. We've been in negotiations.  
25 We've been delayed two -- it was a two-year period when the

1 Lands Commission would not negotiate with the Archdiocese of  
2 San Francisco.

3 We want this deal to go through. We've got many,  
4 many, many other regulatory and environmental hurdles to  
5 accomplish before anything can be done with this property.

6 And if I can amplify just briefly on what Mr.  
7 Hight said. He alluded to a case pending before the  
8 California Supreme Court.

9 If we are successful in that case, I believe  
10 there's a substantial likelihood that what would be the true  
11 state of title here is fee simple in St. Vincent's,  
12 unencumbered by any public trust interest, out to here  
13 (indicating on map), the outer edge of the marsh today, and  
14 another parcel of property owned by St. Vincent's in the bay  
15 out to the low water mark, subject to the public trust.

16 That is a very plausible outcome if the California  
17 Supreme Court agrees with Judge Robie and with the Court of  
18 Appeal and, in effect, returns it to the Court of Appeal.

19 So, it's with some reluctance that I go to the  
20 Board of Trustees of the Catholic Youth Organization and  
21 recommend a settlement. Because one way of looking at it is  
22 we're giving up the so-called exchange parcel; we're giving  
23 up a substantial piece of property there that was bought and  
24 paid for by the parishioners of the Archdiocese over a  
25 period of years from the State.

1           There has been no offer on the part of the State  
2 to refund the money that was accepted in return for these  
3 lands. We're giving up 66 acres in the public trust parcel,  
4 or we're giving a public trust easement, which the United  
5 States Supreme Court ten years ago defined as a very  
6 pervasive easement, perhaps tantamount to the fee. And  
7 we're giving up contiguity to the bay.

8           And you can see I've got fiduciaries that I'm  
9 advising. They are fiduciaries of this property on behalf  
10 of the parishioners of the Archdiocese. And they're saying,  
11 "Should we give all of this to the State?"

12           And, as I say, I have advised them that there are  
13 some great difficulties with that, and each has to wrestle  
14 with his own conscience. And in conjunction with the  
15 Archdiocese' general counsel, and on balance, we have  
16 recommended this settlement. I think it was Justice Holmes  
17 who made a remark about needing to do things on occasion in  
18 acceptance of the shortness of life. And that's what we're  
19 doing.

20           We don't like it. It's just one exaction of a  
21 long series of exactions before any development, which will  
22 be very minor -- this is Marin County again. But we ask  
23 that you approve it today so that we can get on with all of  
24 those other problems. Because any income derived from  
25 development of this is dedicated to the welfare of the

1 children who are benefited by the Catholic Youth  
2 Organization.

3 We don't want any further delay.

4 COMMISSIONER McCARTHY: Are there any other  
5 questions? Well, I'm sorry.

6 CHAIRMAN DAVIS: It comes naturally. It's okay.  
7 (Laughter.)

8 CHAIRMAN DAVIS: Any comments or questions from --

9 COMMISSIONER PARKER: I don't have any questions  
10 or comments of Mr. Briscoe.

11 CHAIRMAN DAVIS: Thank you, Mr. Briscoe.

12 Is the staff ready with its recommendation?

13 EXECUTIVE OFFICER HIGHT: Yes, Mr. Chairman. The  
14 staff recommends the settlement as before you. We don't  
15 believe that any of the information that has been presented  
16 today affects our prior judgment on this issue, and we  
17 believe that this settlement is in the best interest of the  
18 State, and the Attorney General's Office supports the  
19 recommendation.

20 COMMISSIONER McCARTHY: May I ask a question?

21 CHAIRMAN DAVIS: Sure.

22 COMMISSIONER McCARTHY: I want to offer this  
23 inquiry as an answer to Mrs. Salzman's larger objection to  
24 the issue. But I want to ask you, why do we not refer  
25 specifically to wildlife, fisheries and wildlife? Why don't

1 we start incorporating that in our resolutions? Are we  
2 limited to the language of the State Constitution?

3 EXECUTIVE OFFICER HIGHT: No. We just compared it  
4 back to the language of the statute. So, we can certainly  
5 expand that on future settlements.

6 MR. BRISCOE: Mr. Chairman?

7 CHAIRMAN DAVIS: Yes.

8 MR. BRISCOE: If I could, in discussions last  
9 evening, Bob, I don't know if you were on the phone at that  
10 particular moment with the representative -- I could have  
11 mentioned this earlier.

12 In discussions last evening with Dennis Egan of  
13 the Attorney General's Office, who has reviewed this on  
14 behalf of the Commission -- and, Bob, you may have been  
15 distracted at this particular point -- he asked that the  
16 interest of wildlife be specifically enumerated when the  
17 public trust purposes are called out in the full text of the  
18 agreement.

19 So, the formulation that will be found there is  
20 the public trust for commerce, navigation, fisheries, and  
21 wildlife -- something -- and public recreational  
22 opportunities. So, there will be the five public trust  
23 purposes enumerated and not just the three.

24 COMMISSIONER McCARTHY: Is there any reason why we  
25 can't include those enumerations in this resolution?

1 EXECUTIVE OFFICER HIGHT: No.

2 COMMISSIONER McCARTHY: If the Commission should  
3 decide to act today.

4 CHAIRMAN DAVIS: Who represents the Attorney  
5 General?

6 MR. SIEGEL: I do. Dan Siegel.

7 CHAIRMAN DAVIS: You're in support of this  
8 agreement?

9 MR. SIEGEL: We feel that this is -- from a legal  
10 point of view, it's very sound. We have not been directly  
11 involved in negotiations; though, we have been monitoring  
12 them.

13 There was a tentative agreement reached about  
14 three or four years ago in which -- which we felt was  
15 acceptable. Since that time, the agreement has been  
16 improved substantially, so that there's now this exchange  
17 parcel, which the State will also be acquiring interest in.  
18 We feel it's a much better agreement than the prior one,  
19 which we also had found acceptable.

20 And, obviously, in the agreement -- any settlement  
21 agreement over a complex issue like this is preferable to  
22 expensive, costly, long-term litigation.

23 (Thereupon, a previous witness, Mr. Nelson,  
24 stood up to be recognized.)

25 CHAIRMAN DAVIS: Well, we've already recognized

1 you.

2 MR. NELSON: Since Mr. Briscoe got two  
3 opportunities, May I have a short opportunity?

4 Thank you.

5 What I want to clarify, Mr. Chairman, since you  
6 weren't here at the beginning, so that it's crystal clear,  
7 what we're requesting is merely a 30-day continuance to look  
8 into the complex issues surrounding this settlement.

9 We're not here technically opposing this  
10 settlement. We're illustrating our reasons for requesting a  
11 continuance.

12 And lastly, I want to state for the record and  
13 before the Commission that I am very offended by Mr.  
14 Briscoe's little story about his conversation with an  
15 environmentalist who pulled out a red book, which symbolizes  
16 communism and environmentalists, who ridiculed that -- from  
17 that perspective. And my impression was it was an effort to  
18 demean our point of view. The folks that come here to speak  
19 in the public interest, we do it for free. We don't get  
20 paid. We do it because we love this land, and we want to  
21 see that the land is protected in the public interest.

22 So, again, lastly, all we're requesting is a 30-  
23 day continuance to study the very complex issues surrounding  
24 the reaching of the settlement.

25 Thank you, Mr. Chairman.

1           COMMISSIONER McCARTHY: Let me make a comment if I  
2 may. My history before this Commission has been that I've  
3 responded to as much possible consideration and discussion  
4 on as wide a level as I could.

5           This will be a new Commission at the next meeting.  
6 I will be gone. This Commission membership has been hearing  
7 this issue now for some time. So, that's one point.

8           Maybe a new Commissioner can look into the  
9 background over several years and learn the issue, but  
10 there's an element of fairness here, I think. And that  
11 would not stand up, in my mind, if there was some outrageous  
12 omission of public participation in this matter.

13           Secondly, what strikes me is that the staff we  
14 have in matters like this does not look for opportunities to  
15 develop land, but rather takes quite seriously the public  
16 trust issue. And, at least under this membership of the  
17 Commission, around the State, we very actively lean on the  
18 side of the public trust and public participation in such  
19 matters, and I think to the irritation of a number of  
20 parties that did want to proceed expeditiously with various  
21 kinds of development of lands.

22           We've had a number of very hot Commission meetings  
23 on a range of subjects around the State. One piece of  
24 wisdom that I've gathered, after spending three decades in  
25 this line of work, is that, at some point, you have to make

1 a decision. And if you try to make the process reasonably  
2 democratic, and rational, and intelligent, and there are  
3 still opportunities -- as in this case, because so much of  
4 this is open to decision by local government in Marin  
5 County, where other public forums will be involved and  
6 objections can be raised -- at some point, we have to make a  
7 decision -- never in haste, hopefully not for the wrong  
8 reasons. But I think we must bring some of these things to  
9 a close.

10 And I think it's time to do that today. I'm  
11 disposed to act on this. If there's some way I could  
12 incorporate amendments into this to address some of the  
13 issues of, I thought, two articulate and reasoned witnesses,  
14 Mr. Nelson and Ms. Salzman.

15 If there are other things I could suggest the  
16 Commission incorporate to address some of the things you're  
17 talking about into the language that is before us -- I don't  
18 know how my two colleagues on the Commission would react to  
19 that -- I would be quite willing to do so.

20 It seemed to me that the concerns, the points that  
21 you raised -- and I tried to go over that issue by issue --  
22 was responded to satisfactorily for me by the Commission  
23 staff here, both by the Executive Officer and by the  
24 gentleman who's been assigned as the lead from our staff on  
25 this issue.

1           Finally, I want to mention that I'm not sure --  
2 Mr. Briscoe and I have had -- I won't the use the word  
3 "unpleasant," -- but some differences over a period of time  
4 on this issue. And I don't know that Mr. Briscoe is all  
5 that enthusiastic about resolving this thing, because I  
6 think he's got a feeling he's got a case before the Supreme  
7 Court that he can win that was referred to in the testimony.

8           And we're not all together certain that he's  
9 wrong. So, this is not one of those nice, neat, little --  
10 we're-on-the-right-side, we've-got-the-law-on-our-side, we-  
11 can-uphold-a-very-critical-set-of-principles. This is one  
12 we can lose. So, we have to incorporate that.

13           We don't know. We could put up the best fight we  
14 could with people who share a lot of the perspective the  
15 neighbors down there share, but we have to make some  
16 judgment calls.

17           And my judgment call is to take what we've got and  
18 settle this piece of it,, and move on to the next steps.  
19 I'm going to vote yes on this issue.

20           CHAIRMAN DAVIS: I'm going to construe that the  
21 Lieutenant Governor's comments is a motion in favor of the  
22 staff recommendation, incorporating --

23           EXECUTIVE OFFICER HIGHT: The additional language  
24 on wildlife.

25           CHAIRMAN DAVIS: Would you like to offer any

1 thoughts?

2           COMMISSIONER PARKER: Yes, Mr. Chairman. I can  
3 follow along the line the Lieutenant Governor was  
4 suggesting, and adding -- seeing if there was any additional  
5 language that we might be able to add in this action that  
6 would be addressing the comments of the individuals who  
7 spoke, and particularly in the area of the location or the  
8 positioning of the creek, where we might be able to add some  
9 language in there that talks about -- I recognize this is a  
10 future issue. But from the standpoint of the location of  
11 our land that we would have in our public trust, from the  
12 standpoint of dealing with local government in positioning  
13 that creek, that there would be an effort on our part to  
14 look at the restoration of that following some natural flow.  
15 And from the standpoint of again addressing the issue that  
16 has been raised of some concern.

17           EXECUTIVE OFFICER HIGHT: I think that you can  
18 direct staff to -- in the event or when the creek is  
19 realigned -- to work with the county and the local agencies  
20 to see that the State's interest and the creek coincide, and  
21 if there are any difficulties between the two points.

22           COMMISSIONER PARKER: I would add that if that is  
23 acceptable to the maker of the motion.

24           I would also have an interest in settling this  
25 particular item. Shortly after I started sitting on State

1 Lands a year ago, this item came to my attention. And I had  
2 an opportunity to hear about the long time that there have  
3 been discussions and negotiations.

4 I also share the feeling that I don't think the  
5 staff would be in a position of negotiating away an  
6 opportunity on our part that would not be the most  
7 advantageous to the State.

8 I have visited this facility in the past. And  
9 they do wonderful work for the young children and boys  
10 there. But irrespective of that, in the interest of the  
11 public trust, I would think a settlement would be a positive  
12 way to be able to move forward on our part and the State's  
13 interest. So, I would concur with our moving forward.

14 CHAIRMAN DAVIS: I'm going to make it unanimous,  
15 and I want to again salute the two people who came and spoke  
16 on behalf of the environmental community.

17 As you can tell, the pains with which all the  
18 members are expressing their support for this shows you  
19 where our natural instincts lie. And believe me, our staff  
20 is at least as sympathetic and maybe more so to the  
21 environment than we are on virtually every matter that comes  
22 before us.

23 So, when I was talking to Mr. Hight earlier today  
24 about just personal views on this issue -- I'm sure you  
25 wouldn't mind me sharing this remark -- he said, "We got a

1 better deal than we expected we would get." And this is a  
2 good settlement for the State, and clearly achieves our  
3 public trust responsibilities.

4 We'll treat the motion as amended, hearing no  
5 objection --

6 COMMISSIONER McCARTHY: That includes both --

7 CHAIRMAN DAVIS: Includes the wilderness language  
8 and the direction to the staff to work with all parties  
9 relating to any alteration in the flow of the creek.

10 COMMISSIONER McCARTHY: Mr. Chairman, I don't know  
11 who's in the audience regarding the CYO or the home in Marin  
12 County, because other than seeing Mr. Briscoe at these  
13 Commission meetings, I don't recognize anybody. But I want  
14 to thank you for five or six years of patience on the issue.

15 CHAIRMAN DAVIS: I was going to say that that  
16 makes the motion unanimously approved.

17 I thank the staff and the Attorney General for the  
18 work you have done. I thank all of you on both sides of the  
19 issue for taking the time to be here.

20 Is there any other items?

21 EXECUTIVE OFFICER HIGHT: No other official  
22 business before the Commission.

23 CHAIRMAN DAVIS: I would like to take the  
24 privilege of the Chair first to signal my respect and  
25 affection for our departing colleague.

1           COMMISSIONER McCARTHY: Mr. Chairman, we don't  
2 know if there are people in the audience who may not share  
3 that point of view. They may want to leave.

4           (Laughter.)

5           (Thereupon, Ms. Salzman and Mr. Nelson  
6 exited the hearing room.)

7           CHAIRMAN DAVIS: Obviously not a universal  
8 feeling. I have known him for 20 years. We used to have  
9 leadership meetings in Jerry Brown's office when he was  
10 Governor, talked about the state of the universe,  
11 metaphysics --

12          (Laughter.)

13          CHAIRMAN DAVIS: -- space satellites, and maybe  
14 what was happening to a bill in Ways or Means, maybe not.  
15 And Jim Mills would be reading some treatise. The Governor  
16 would be expounding on --

17          COMMISSIONER McCARTHY: You want all this recorded  
18 for posterity?

19          (Laughter.)

20          CHAIRMAN DAVIS: Suffice it to say, it was a very  
21 challenging time for the Speaker of the Assembly, now our  
22 Lieutenant Governor, whose principal charge was to move  
23 legislation through his House that the Administration  
24 supported.

25          And I gained a great deal of admiration for his

1 patience, his persistence, and his fundamental decency.

2 Bob Hight just prepared a brief list of things  
3 that have happened since we've shared eight years together  
4 on the Lands Commission. And this is not a complete list.

5 Early in '87, we had hearings on whether or not  
6 ARCO should be able to build three new rigs, some 224 wells  
7 off UC Santa Barbara campus. We decided two to one that it  
8 shouldn't.

9 That precipitated lots of lawsuits, but led to a  
10 very favorable resolution, in which land was deeded to the--  
11 or the leases were deeded back to the State. And I think an  
12 innovative settlement occurred in Long Beach just recently  
13 that the Department of Energy wanted to come out and review.  
14 So, that was a very solid piece of work.

15 We declared a marine sanctuary in Fort Bragg in  
16 order to get the high school band to parade in our honor.

17 (Laughter.)

18 CHAIRMAN DAVIS: We had hearings on the use of  
19 high-energy air guns, and we learned more than we wanted  
20 about potential impacts on fish larvae.

21 We had hearings on plastic pollution and medical  
22 waste, hearings on dredging and disposal impacts on State  
23 waters, a series of hearings on the Valdez-type oil spill  
24 and after the American Trader/Huntington Beach accident,  
25 this Commission co-sponsored -- actually sponsored the Oil

1 Spill Prevention Act, which was a major piece of  
2 legislation, the most significant environmental piece, at a  
3 minimum most significant coastal protection act of that  
4 year.

5 We subsequently settled a very long-standing  
6 lawsuit with the oil companies in the courts since the mid-  
7 seventies; received \$320 million and various concessions,  
8 turning pipelines into common carriers, something that's  
9 quite significant.

10 We acquired in that settlement 5,000 acres of  
11 Burton Mesa chaparral in Santa Barbara County.

12 We played a constructive role in the enactment of  
13 the Desert Bill, having to balance our obligations as a  
14 trustee for the State Teachers' Retirement Fund with the  
15 environmental interests and the interests of Senator  
16 Feinstein and many other dissidents in Washington.

17 And the final item says 159 meetings. This is  
18 obviously the staff complaining.

19 (Laughter.)

20 CHAIRMAN DAVIS: 159 meetings totaling 200 hours.  
21 That can't be right. That's about 20 meetings.

22 EXECUTIVE OFFICER HIGHT: Well, we added them up.

23 CHAIRMAN DAVIS: It says here a total of 200  
24 hours, equaling five full weeks. That's all we did in eight  
25 years?

1 (Laughter.)

2 CHAIRMAN DAVIS: We have a resolution to present  
3 to you. I know Theresa wants to offer her comments. I know  
4 she doesn't want me to keep her boss waiting, so I'm going  
5 to at least show this.

6 Russ Gould, the Finance Director, signed this. I  
7 signed this. And we refrained from having ou sign this.

8 (Laughter.)

9 CHAIRMAN DAVIS: But you have our affection and  
10 great support, and the knowledge that the people of  
11 California are indebted to you for the many years of  
12 service, not just on the Lands Commission, not just as  
13 Lieutenant Governor, but as Speaker of the Assembly, before  
14 that as a member of the Assembly, before that as a  
15 Supervisor in and for the County of San Francisco.

16 You were a wonderful public servant, and it's my  
17 pleasure to give you this.

18 (Applause.)

19 COMMISSIONER McCARTHY: Thank you. Thank you.  
20 And I said a few words before you came, Mr. Chairman. And I  
21 would only close by saying thank you for this. I'll have it  
22 in an appropriate place where I can look at it, and have my  
23 memories, pleasant memories, about the meetings. Actually,  
24 average may not be bad. We had a few 20-minute meetings  
25 that I conducted.

1 EXECUTIVE OFFICER HIGHT: Yes. We had one one-  
2 minute meeting. We set an all-time record.

3 COMMISSIONER McCARTHY: But we had a few that  
4 lasted five or six hours.

5 EXECUTIVE OFFICER HIGHT: Yes. Correct.

6 COMMISSIONER McCARTHY: I think. We all remember  
7 those best.

8 (Laughter.)

9 COMMISSIONER McCARTHY: And I've enjoyed it, and I  
10 thank each of you for your professionalism and for your  
11 sense of public service.

12 As I've said often in recent months, there's  
13 nothing better than being useful when you're pursuing some  
14 public policy goals. And it's been great.

15 Thank you very much.

16 (Applause.)

17 COMMISSIONER PARKER: Thank you. Lieutenant  
18 Governor, I just wanted to add a couple of comments. One of  
19 them is that this has been a high water mark for me this  
20 last year.

21 (Laughter.)

22 COMMISSIONER PARKER: Obviously, your years in  
23 public service have provided you with a perspective that for  
24 me, especially for me this last year, has been invaluable.  
25 Clearly, you have represented the public trust in the land

1 of the State California. And I really appreciate having the  
2 opportunity to sit with you.

3 I also would point out, in my representing  
4 Finance, that during your career as both the Chair and  
5 member of the Commission, that about \$3 billion worth of  
6 general fund revenue has been collected for the State during  
7 your time. And we certainly have to look and see if we can  
8 that benchmark up as you leave us. Because, clearly, giving  
9 our fiscal situation, we'll need every dime we get.

10 COMMISSIONER McCARTHY: You're going to be our  
11 spokesman. We have to recall that about 40 percent of the  
12 State Lands budget has been cut.

13 (Laughter.)

14 COMMISSIONER McCARTHY: We're going to count on  
15 this articulate Commissioner to give a little bit of it  
16 back. We'll see.

17 (Laughter.)

18 EXECUTIVE OFFICER HIGHT: We have one final thing,  
19 Mr. Chairman. On behalf of the staff, we have a small  
20 plaque to give you to show our appreciation.

21 COMMISSIONER McCARTHY: Thank you very much, Bob.  
22 Thank you. Thank you, folks.

23 (Applause.)

24 CHAIRMAN DAVIS: That's going to cut into that \$3  
25 billion.

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(Laughter.)

COMMISSIONER McCARTHY: That's your contribution.

CHAIRMAN DAVIS: We stand adjourned.

(Thereupon, the meeting was adjourned  
at 3:30 p.m.)

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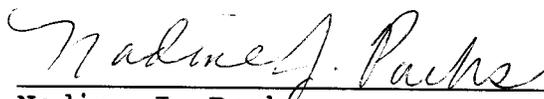
## CERTIFICATE OF SHORTHAND REPORTER

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I, Nadine J. Parks, a shorthand reporter of the State of California, do hereby certify that I am a disinterested party herein; that the foregoing meeting was reported by me in shorthand writing, and thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I hereunto set my hand this 20th day of January, 1995.

  
\_\_\_\_\_  
Nadine J. Parks  
Shorthand Reporter