

MEETING
STATE OF CALIFORNIA
STATE LANDS COMMISSION

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ORIGINAL

JAMES F. PETERS, CSR, RPR
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APPEARANCES

COMMISSIONERS

Cruz M. Bustamante, Chairperson, also represented by
Lorena Gonzalez

B. Timothy Gage, Director of Finance, represented by
Annette Porini

Kathleen Connell, State Controller, also represented by
Cindy Aronberg

STAFF

Paul Thayer, Executive Officer

Jack Rump, Chief Counsel

Curtis Fossum, Senior Staff Counsel

Kim Korhonen, Executive Secretary

Paul Mount

Jennifer Reischman

Jane Smith

ALSO PRESENT

Alan Hager, representing the Attorney General

Nancy Saggese, representing the Attorney General

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PROCEEDINGS

COMMISSIONER CONNELL: Call the meeting to order. Mr. Bustamante, the Lieutenant Governor, is delayed in an airline flight and so he will be here when he arrives. I don't want to keep the public waiting, so we'll begin the meeting.

May we have roll call, please.

SECRETARY KORHONEN: Kathleen Connell, State Controller, Member State Lands Commission, Lorena Gonzalez, alternate for the State Lands Commission, and Annette Porini also alternate State Lands Commission.

COMMISSIONER CONNELL: Thank you. May I have a motion to confirm the minutes of February the 5th?

ACTING COMMISSIONER PORINI: Move approval.

ACTING BOARD MEMBER GONZALEZ: Second.

COMMISSIONER CONNELL: Okay, it's been moved and seconded.

We are not on the Executive Officer's report.

EXECUTIVE OFFICER THAYER: Good morning, Madam Chair. In the interests of saving time, because I know we have a long meeting, I'd like to just discuss one item, which is to report on our progress with respect to our budget in the Legislature for the next fiscal year.

We've had our budget heard by both the Assembly and the Senate Subcommittees. Both of those Committees

1 reported out our budget. The primary new features there
2 are confirmation, extension of funding for our grant lands
3 program. And the audits I know are of great interest to
4 the Commission conducted on our off-shore oil platforms
5 and other production facilities, originally that's a
6 two-year.

7 COMMISSIONER CONNELL: We were funded for that.

8 EXECUTIVE OFFICER THAYER: Yes, by both the
9 subcommittees.

10 COMMISSIONER CONNELL: Excellent.

11 EXECUTIVE OFFICER THAYER: We are awaiting
12 additional action on one element of your budget. We've
13 asked for additional funding to address hazards in public
14 waterways. These sometimes are dangerous to boaters,
15 sometimes to members of the public. They consist of
16 things like old abandoned pilings where we don't know what
17 they are anymore. And yet it poses a hazard to the public
18 who wants to recreate on their land.

19 So we have the request in for some money for
20 that, and that's been postponed. In consideration that's
21 been postponed until May, pending the May Revise to
22 determine if there's sufficient funds available for that.
23 But on the whole, the prospects looked good for everything
24 else.

25 COMMISSIONER CONNELL: Excellent, thank you. Do

1 other members of the Commission have any questions
2 regarding our budget?

3 Congratulations on making it through. I'm glad
4 we're not asking for much, because we're spending too
5 much, aren't we, Annette, on the energy, daily.

6 Is there anyone in the audience who wants to
7 speak on an item on the consent calendar?

8 If not, then I'm going to take the remaining
9 group of consent items up as a group for a single vote,
10 and we will now proceed with that vote. May I have a
11 motion that we approve everything on the consent calendar?

12 EXECUTIVE OFFICER THAYER: Madam Chair, there
13 were -- staff wanted to withdraw one item, which is Item
14 100 for a future meeting. That has to do with a
15 presentation on our progress on the audits, as I just
16 mentioned. We have had a letter of opposition come in on
17 Item 74 and 75. These are repair of the bluffs in Solana
18 Beach. And therefore, according to our rules, we can't
19 keep these on consent.

20 COMMISSIONER CONNELL: Okay, 74 and 75 and 100
21 need to be removed?

22 EXECUTIVE OFFICER THAYER: That's right. And we
23 would propose to hear 74 and 75 today and 100 at a later
24 date.

25 COMMISSIONER CONNELL: May I have a motion

1 that --

2 ACTING COMMISSIONER GONZALEZ: The Lieutenant
3 Governor wanted to remove 109.

4 COMMISSIONER CONNELL: One hundred nine.

5 ACTING COMMISSIONER GONZALEZ: Venoco lease
6 obligations.

7 COMMISSIONER CONNELL: All right. You have 74,
8 75, 100 and 109. Seventy-four, 75 and 109 will be heard
9 today. Number 100 will be deferred till next time. May I
10 have a motion to that effect?

11 ACTING COMMISSIONER PORINI: Move approval.

12 ACTING COMMISSIONER GONZALEZ: Second.

13 COMMISSIONER CONNELL: Okay. It's been moved and
14 seconded. That has unanimous approval of the consent
15 calendar.

16 That now takes us to the items on the regular
17 calendar. Item 112 concerns the price of gas produced on
18 the Long Beach unit. And, as you recall, the members of
19 the public who are here, this subject was discussed at our
20 last meeting. We asked staff to negotiate with the City
21 to seek solutions to the disparity in prices.

22 Mr. Thayer, will you begin the staff
23 presentation.

24 EXECUTIVE OFFICER THAYER: Thank you, Madam
25 Chair. The staff is happy to report that we think we've

1 reached an agreement with the City that will benefit all
2 concerned and will meet with the approval of the
3 Commission. I'd like to call on Paul Mount of our staff
4 to give the presentation.

5 COMMISSIONER CONNELL: I'm afraid, I can't see
6 Mr. Mount because of my television set. Well, that's
7 fine, I'll just avoid seeing you, Mr. Mount. No offense,
8 I'll just look at whatever you have to put on the
9 projection.

10 MR. MOUNT: Good morning, Commissioners. I'm
11 Paul Mount with the State Lands Commission. I'm happy to
12 report that we reached an agreement with the City of Long
13 Beach concerning the dry gas pricing.

14 And let me review just briefly some of the events
15 that have occurred in the past. The 1992 agreement
16 provided that the dry gas was based on the Long Beach
17 WACOG, the Weighted Average Cost Of Gas.

18 (Thereupon an overhead presentation was
19 presented as follows.)

20 MR. MOUNT: Plus, there was a ten percent
21 transportation component of that. There was some
22 provisions in that '92 agreement to allow renegotiation of
23 the gas price, which was triggered last fall.

24 --o0o--

25 MR. MOUNT: What triggered that was the fact that

1 prices have increased dramatically since last fall. I
2 note that the SoCal WACOG price, which is the bottom draft
3 or the bottom line there, was much lower than the Long
4 Beach WACOG beginning in November of last year, which
5 caused great concern to the City and also the Commission.

6 --o0o--

7 MR. MOUNT: In February we brought this issue to
8 the Commission and there was a tentative agreement reached
9 that the ten percent of the Long Beach WACOG was changed
10 to half of the actual transportation costs. In other
11 words, it wasn't based on ten percent of the WACOG, it was
12 actually transportation costs, so we shared that 50/50.

13 The other one was that it was effective December
14 19th for a period until the Commission met again.

15 --o0o--

16 MR. MOUNT: We now reached a new agreement. And
17 the new agreement provides for a ceiling of \$7.51 per
18 MMBTU and a floor of \$2.92 per MMBTU.

19 All savings on the price of tidelands gas will be
20 passed on to Long Beach rate payers and this agreement
21 will remain in effect until January 1st, 2003.

22 --o0o--

23 MR. MOUNT: There was one slide missing in here.
24 I went too fast. The agreement is retroactive to November
25 1st, 2000. The City will pay the State 100 percent of the

1 Southern California gas WACOG versus the Long Beach WACOG,
2 which was a high price because of the cost of gas at the
3 border and the transportation costs.

4 They will also pay to the State half the total
5 transportation costs, which amounts to about 15 cents per
6 MMBTU. And if rolling blackouts occurred, the State will
7 agree to pay the City the difference between the spot
8 market price and the southern California gas WACOG. The
9 reason being is the Long Beach unit would be shut down.
10 Gas would not be produced from the Long Beach unit, and
11 the City would have to buy makeup gas from outside at a
12 higher price if there's rolling blackouts.

13 COMMISSIONER CONNELL: I need to talk about that.
14 If you're going to roll beyond this slide, we need to come
15 back to this item. So please note that I have a question
16 on that item.

17 MR. MOUNT: The one before this.

18 COMMISSIONER CONNELL: The one that you're just
19 talking about, rolling blackouts. Do you want to complete
20 your presentation or do you want us to ask questions as
21 you go through, what would be best for you.

22 MR. MOUNT: That finishes my presentation.

23 COMMISSIONER CONNELL: Good. Let us talk about
24 rolling blackouts an item that at least Annette and I are
25 becoming increasingly familiar with. If we are projecting

1 34 days of rolling blackouts this summer, has anyone an
2 analysis of what the cost could be if the State is paying?

3 I have real serious concerns with this item being
4 part of the contract.

5 MR. MOUNT: We have done an analysis. Basically,
6 the reason this is part of the contract is because the
7 City is required to pay that to the Southern California
8 Gas Company in the event that they cannot meet their
9 customer's demands.

10 In other words, they need to purchase from SoCal
11 gas makeup gas that does not exist from the Long Beach
12 unit. So if there's a blackout that shuts down the Long
13 Beach unit, the City would have to go buy gas at a higher
14 price.

15 COMMISSIONER CONNELL: I'm aware of that. But
16 what are you anticipating to be the exposure to the State
17 here, since -- without trying to divulge confidential
18 information that I have on what we're paying now for gas
19 at the State level, I mean for energy at the State level,
20 I am very, very concerned what the exposure might be to
21 the State, particularly in an increasingly expensive spot
22 market with no cap on this.

23 I just don't really feel good about signing an
24 agreement today with no cap on what the State's exposure
25 is, particularly without a financial analysis. And I know

1 both Annette and I are privy to confidential information
2 that we can't reveal in this meeting on spot market
3 prices, but I think it's fair to say publicly that those
4 markets have gone increasingly higher in the last two
5 weeks. And I am very, very concerned what the exposure
6 would be to the State here.

7 Do we have some idea of if you gave us the amount
8 that you're currently paying in today's market and how
9 much you thought you were going to purchase, we could run
10 a financial analysis using the information that we have
11 available, Annette, but I do think that we ought to have
12 some sense of what the exposure is here.

13 EXECUTIVE OFFICER THAYER: Paul, Can you as well
14 in answering that question, talk a little bit about the
15 buffering that's available when there are short-term
16 blackouts in terms of makeup gas and that kind of thing.

17 MR. MOUNT: The good news is that the blackouts
18 only occur for about a period of an hour to two hours at
19 the most. So that would have very little effect on the
20 gas supplies to the City of Long Beach. If the blackouts,
21 in fact, occurred for periods of 12 to 24 hours, there
22 might be an impact, which we would have to assist the City
23 in.

24 But because the blackouts are anticipated only to
25 be an hour or two, it really should have no impact. And

1 this is only in the extreme case where blackouts occurred
2 say more than 12 hours.

3 COMMISSIONER CONNELL: Is that written in the
4 contract that we don't have to pay if it's a short-term
5 blackout?

6 MR. MOUNT: We have to pay if they have to make
7 up more than ten percent of their demand. And we --

8 COMMISSIONER CONNELL: Over a month or over a
9 week?

10 MR. MOUNT: It's daily. It depends on what time
11 of year. In the summer months, it could be over a
12 month -- averaged over a month. In the winter months, it
13 could be averaged over a day. It varies depending on the
14 time of year and the gas supply.

15 So that the worst case would be in the winter
16 months, when you have a blackout for 12 hours, we might
17 have some exposure there, which could amount to maybe
18 \$5,000 to \$10,000, let's say on the order of.

19 In the summer months, when we can average over a
20 longer period of time, the exposure is almost nil, because
21 we can average over a longer period of time and also the
22 amount that they have to make up can be reduced so that
23 they only need to have 75 percent of their supply. The
24 other 25 percent they can vary and not have to pay a
25 penalty.

1 It gets somewhat complicated. And I'm not
2 prepared at this meeting yet to talk about the
3 complications of it, but we can tell you that our exposure
4 is minimal because of the fact that the outages will be
5 short, and it should not really impact the overall.

6 COMMISSIONER CONNELL: Have you had this clause
7 analyzed by the Department of Water Resources?

8 MR. MOUNT: No, we have not.

9 COMMISSIONER CONNELL: I think we need to do
10 that, Paul. We're in daily contact with the Department of
11 Water Resources, and I realize that a lot of this
12 information, unfortunately and I certainly don't fault our
13 staff here, has not been made public. So it is very
14 difficult for you to be aware of some of the concerns that
15 I and I think the Governor might share here.

16 But I do believe that to begin with that you're
17 going to see a concentration of blackouts within a couple
18 of months this summer. So contrary to your belief that it
19 might not trigger a market exposure for the State, it will
20 because we are anticipating these blackouts are going to
21 be in a concentrated period of time this summer.

22 And so if you're doing it on a monthly basis,
23 these 34 days that we're talking about are going to be
24 extended through a period of three to four months, so that
25 you would have a significant number of those days within a

1 period of a month conceivably. In fact, they could all be
2 within a couple of two or three months.

3 And there is a huge difference between what the
4 spot market prices are and now what the spot market prices
5 are anticipated to be by DWR as we move into the summer
6 months. And I just have to have a sense of what we're
7 talking about here before I finalize an agreement. I am
8 very, very concerned that we know what we're talking about
9 in terms of long-term exposure.

10 And now is this a multi-year contract?

11 MR. MOUNT: It only goes until the year January
12 2002, so it's only two years.

13 COMMISSIONER CONNELL: During the highest part of
14 the energy crisis.

15 EXECUTIVE OFFICER THAYER: What I would propose
16 if you would like us to look into that further and
17 certainly you're right, you and the representative from
18 Finance, have information perhaps we weren't privy to, but
19 we could continue the interim measure, which I think
20 before --

21 COMMISSIONER CONNELL: I want to acknowledge
22 Mayor O'Neill. Thank you for joining us. Do you want to
23 come forward, at some point, and offer your comments? I'm
24 sorry, I just noticed you in the audience.

25 LONG BEACH MAYOR O'NEILL: Yes, that's fine.

1 EXECUTIVE OFFICER THAYER: If we were to put this
2 over until June, but continue the interim arrangement that
3 the Commission had approved in February, I think the
4 savings to the City would be fairly similar to what this
5 deal is.

6 COMMISSIONER CONNELL: I don't want to do
7 anything to penalize the City. This is not the City's
8 problem, let me assure you, Mayor O'Neill. I appreciate
9 that. On the other hand, I don't want to sit here today
10 and take action on an item where we don't have an
11 understanding of the financial impact to the State. And I
12 am very concerned that we write this contract in a way
13 that we are aware of some cap for the State as we move
14 through the summer months.

15 ACTING COMMISSIONER PORINI: That's fine with me.
16 I just want to see if our staff has already done an
17 analysis of the gas spot market?

18 MR. MOUNT: Yes, we have.

19 ACTING COMMISSIONER PORINI: So you do have an
20 analysis of what the spot market is?

21 MR. MOUNT: Yes, we've done it for a number of
22 different projects, so we do have an understanding of
23 that. The real issue was that we weren't going to be shut
24 down long enough to really significantly impact the supply
25 of gas to the City. And therefore, given that assumption

1 that it would be no longer than two hours, we didn't feel
2 that we would have to pay this at all, even if over a
3 month's period we had three, four, five shutdowns.

4 The worst case scenario shows that we would still
5 generate enough gas from the Long Beach unit not to
6 trigger the penalties.

7 COMMISSIONER CONNELL: Does the fire in last
8 night's refinery affect this at all?

9 MR. MOUNT: It has no effect except that we do
10 supply oil to the refinery. And if, for some reason, the
11 refinery cannot take the oil and we cannot move it to
12 another location, we would have to, in fact, reduce
13 production from the Long Beach unit. I can't really
14 specifically answer the question yet, because we don't
15 have enough information, but it's possible that we would
16 have to curtail some production at Long Beach because of
17 the refinery fire, but we just don't know that yet.

18 COMMISSIONER CONNELL: For those of you who are
19 not southern Californians, we had a very significant fire
20 that began yesterday afternoon at the TOSCO Refinery. And
21 unfortunately it burned for a period of time, so I don't
22 know what the losses are yet in that refinery or what
23 impact that's going to have on the markets. There's been
24 some initial discussion.

25 I would have no problem approving, on an interim

1 basis, the, you know, continuing an interim arrangement.
2 I just think that we need further analysis on the
3 financing, and I think we ought to do this under
4 constructive understanding what the ceiling is that the
5 State might hold.

6 I mean the gas shortages here now are becoming
7 almost as serious a problem as some of the electricity
8 shortages, as we move into peak pricing periods on gas.
9 By the way, this Commission was prophetic in announcing in
10 this very room a year ago, if you remember we had a
11 discussion on gas prices, and we thought they would go up
12 to \$3 a gallon. Then I recall looking at that -- of
13 course, that was not something we wanted to encourage
14 people to believe at that time, but it appears that we are
15 approaching our worst case scenario, that was in one of
16 your staff reports then I believe.

17 Are there any other questions the Commission has
18 of the staff report? I want to thank you for a very
19 detailed report.

20 EXECUTIVE OFFICER THAYER: I would be -- of
21 course, I'm sure the Commission wants to hear from the
22 City, but I believe the interim solutions we're talking
23 about here, continuing an interim arrangement, affords a
24 similar savings to the City, but perhaps the Mayor and her
25 staff can respond.

1 COMMISSIONER CONNELL: Yes, I do believe, Mayor
2 O'Neill is here and we also have two other individuals who
3 have asked to speak here today. If you would like to come
4 forward Mayor, and then I believe Henry -- I know, I'm
5 going to ruin your name Henry Taboada; is that correct?

6 LONG BEACH CITY MANAGER TABOADA: Taboada.

7 COMMISSIONER CONNELL: Okay, sorry. I apologize.
8 And also we have -- that's it. I think those are the two
9 that we will recognize, if you want to come forward.

10 LONG BEACH MAYOR O'NEILL: Good morning. Thank
11 you very much. Actually, I came to say congratulations to
12 all of us over what happened last February at the meeting
13 that we had. And I was very much impressed, I must say,
14 with the understanding of the problem that we had in the
15 City of Long Beach, at the time that our prices had
16 quadrupled.

17 And right at the meeting it was determined that
18 the State Lands staff would work with the City staff in
19 coming to an understanding. And there was an agreement
20 that we reached back through November, I believe it was.
21 And I'm here to actually thank you for this leadership,
22 because our staff, Chris Garner, worked diligently with
23 your staff in coming to this agreement and to this
24 arrangement.

25 And it's my understanding that this agreement has

1 been reached by the staff. I do understand the question
2 that you asked today, and we are here to say that we
3 desperately need to have a decision on this. If you
4 continue with the understanding that we had in February
5 until your June meeting, that is understandable and I
6 also -- that's something that we can live with, but the
7 agreement that was reached is something that we are all in
8 agreement with. And I am very pleased with the leadership
9 that you showed in taking action on that in February.

10 COMMISSIONER CONNELL: Thank you. And I
11 apologize for the uncertainty that this might impose on
12 the City. I just feel that we need to.

13 LONG BEACH MAYOR O'NEILL: If we continue with
14 what our understanding is, we just needed immediate
15 relief, and you were the first group that gave us that
16 immediate relief. And it was something that we really
17 could hang our hat on to go further with our concerns for
18 our residents, because it has been a disaster for us.

19 Thank you very much.

20 COMMISSIONER CONNELL: Thank you.

21 Now, let's make sure that this is on a meeting in
22 June. It doesn't require consent. We have a variety of
23 reasons to have a meeting in June, so this is just another
24 reason for doing so. But I would urge you -- I'm not
25 looking for you. I was looking for --

1 EXECUTIVE OFFICER THAYER: Paul is right there.

2 COMMISSIONER CONNELL: Paul, I would urge you to
3 discuss with the Department of Water Resources, because
4 they're now beginning to run some analysis, too, on the
5 gas situation. And if you have any problems getting their
6 support or their cooperation, you can either call the
7 Department of Finance or our offices, because we're in
8 daily contact with them, and we encourage them to meet
9 openly with you and to share information, so that your
10 report can be as complete as possible.

11 MR. MOUNT: Very fine.

12 ACTING COMMISSIONER PORINI: Do we need to take
13 any action to continue the agreement? Do you need any
14 formal action?

15 EXECUTIVE OFFICER THAYER: Why don't we do it,
16 just to make sure, because I don't have --

17 COMMISSIONER CONNELL: Well, then I will ask for
18 a motion. Annette, would you put that into a motion,
19 please.

20 ACTING COMMISSIONER PORINI: Yes. I would move
21 that we continue our interim agreement with the City of
22 Long Beach until our next meeting.

23 ACTING COMMISSIONER GONZALEZ: Second.

24 COMMISSIONER CONNELL: It has now been moved and
25 seconded and that then passes with a unanimous action of

1 the Commission.

2 All right. Mr. Thayer, Item 114 is off calendar;
3 is that correct?

4 EXECUTIVE OFFICER THAYER: That's right.

5 COMMISSIONER CONNELL: We are then moving to Item
6 115, which is a local -- Oh, I'm sorry 113. Item 113 is
7 annual plan and budget for Long Beach. And staff if you
8 will begin your presentation on this item.

9 EXECUTIVE OFFICER THAYER: Thank you, Madam
10 Chair. And once again Paul Mount will make the
11 presentation on this item.

12 (Thereupon and overhead presentation was
13 presented as follows.)

14 MR. MOUNT: There's two approvals required here.
15 One is for the five-year program plan, and then another
16 approval is required for the one-year annual plan. That
17 was established by the Optimized Waterflood Agreement back
18 in '92.

19 So Long Beach has submitted to the State a
20 program for total expenditures and net income for the Long
21 Beach unit for the next five years. In front of you, you
22 see that program. That forecast is \$17 for oil price and
23 \$5 per MCL for gas price.

24 And also the forecast includes an FY '01 to '02.
25 The assumption is that a power plant would be built to

1 power the Long Beach unit. However, we, at this time, do
2 not anticipate that to be the case. It would require that
3 all parties agree to build a power plant, if, in fact, we
4 do.

5 So if we do not build the power plant, that net
6 income for FY '01 and '02 will increase approximately \$28
7 million, so that will have more revenue and income for
8 that year.

9 --o0o--

10 MR. MOUNT: Then based on the five-year program
11 plan, the one-year plan was established, and it just
12 reflects the numbers that were in the five year plan. We
13 think it's a good plan. It provides for expenditures that
14 protect the environment and safety in the Long Beach unit
15 and always provides the State and other unit participants
16 revenue for the next five years.

17 Are there any questions?

18 COMMISSIONER CONNELL: You know, it's my
19 understanding that this is only a partial review of the
20 budget, is that correct, that it only deals with the
21 construction of the gas fired electric generating
22 facility, Paul?

23 EXECUTIVE OFFICER THAYER: This particular
24 proposal is for the entire budget for the whole Long Beach
25 unit. Contained within that budget, though, is a

1 provision for the gas powered plant, electrical generation
2 facility. And so what we're proposing that the Commission
3 do is only approve that part of the budget that deals with
4 the rest of the operation of the unit, but not to
5 approve -- to, in fact, modify the budget, but to require
6 further Commission approval of any power plant
7 expenditures.

8 COMMISSIONER CONNELL: Good, because that was my
9 question. I think that we still have some unanswered
10 questions, as I read the materials.

11 EXECUTIVE OFFICER THAYER: That's correct.

12 COMMISSIONER CONNELL: I think the other
13 Commission members probably had concluded the same thing.
14 So we have the staff recommendation. Can you repeat the
15 staff recommendation?

16 MR. MOUNT: The staff recommendation is to
17 approve the five-year program plan and also the Long Beach
18 unit annual plan.

19 EXECUTIVE OFFICER THAYER: With those changes.

20 MR. MOUNT: With the provision that all parties
21 must agree to expend monies for the purchase and building
22 of a power plant.

23 COMMISSIONER CONNELL: Are there any public
24 comments?

25 Beverly, did you wish to be acknowledged on this

1 item.

2 LONG BEACH MAYOR O'NEILL: No, thank you.

3 COMMISSIONER CONNELL: Any other members of the
4 public who wish to be acknowledged on this item?

5 If not, then I would -- is there discussion by
6 the Board?

7 ACTING COMMISSIONER PORINI: No.

8 COMMISSIONER CONNELL: Then I would like a
9 motion.

10 ACTING COMMISSIONER GONZALEZ: I would move to
11 accept the staff's recommendation.

12 ACTING COMMISSIONER PORINI: Second.

13 COMMISSIONER CONNELL: It's been moved and
14 seconded. And that's a unanimous decision of the Board.

15 Then we are now on Item 114. And 114, City of
16 Long Beach.

17 EXECUTIVE OFFICER THAYER: Item 114, is expressly
18 focused on the Long Beach power plant. And staff
19 therefore would like to withdraw that, because we don't
20 believe we're ready to make a recommendation to the
21 Commission.

22 COMMISSIONER CONNELL: Excellent.

23 Number 115. We are now on San Diego, San Diego
24 Unified Port District. And this is consideration of a
25 contract for acquisition of a parking lot for the

1 Convention Center by the San Diego Unified Port District
2 within the City of San Diego.

3 And we have a number of people that I believe
4 want to speak on this item as well. If we could begin
5 with staff recommendation.

6 EXECUTIVE OFFICER THAYER: Thank you, Madam
7 Chair. And Curtis Fossum, staff attorney, will make the
8 presentation for the Commission.

9 COMMISSIONER CONNELL: I appreciate that.

10 SENIOR STAFF COUNSEL FOSSUM: Good morning,
11 Commissioners. The contract before, a purchase and sale
12 agreement, dated February 8th of 2000, was submitted to
13 the Commission staff for review on February 22nd of 2000.

14 This is the fifth time the Port has brought an
15 agreement to the Commission that proposes the expenditure
16 of Port trust revenues to acquire land in support of Port
17 operations. Another acquisition project involving the
18 expansion of Lindbergh Field is being reviewed by staff
19 and will be presented to you in a few months.

20 The statutory criteria for review of this
21 proposal are three-fold. First, that the contract is
22 consistent with the terms of the grant. Second, that the
23 income from the property be deposited to an appropriate
24 trust fund. And third, that the contract is in the best
25 interests of the State.

1 The San Diego Convention Center is being expanded
2 nearly double in capacity. It's been open only ten years
3 and yet it's already served seven million guests and
4 generated over \$4 billion in regional economic benefits.
5 It was selected for the second year in a row as one of the
6 top three convention centers in the world by Europe's
7 largest meetings industry publication.

8 When completed, the convention center is expected
9 to support 6,000 jobs and have a \$1.5 billion annual
10 impact on the regional economy. The need for additional
11 parking facilities arises from an unanticipated shortfall.
12 The 1995 EIR for the convention center expansion project
13 did anticipate a shortfall of parking, that at certain
14 times it would exceed 2,000 vehicles. The 1995 EIR
15 identified anticipated parking deficits on as many as 115
16 days out of the year.

17 The expansion project eliminated 1,700 spots that
18 were on the convention center site. When the EIR was
19 drafted, there was a mitigation parking plan that was
20 adopted that identified a number of existing parking
21 facilities in the vicinity of the convention center that
22 would be available. However, since '95 a significant
23 change has taken place in the neighborhood of the
24 convention center that has eliminated one-third of those
25 spaces.

1 In November 1998 voters in San Diego approved a
2 memorandum of understanding between the City and the
3 Padres organization, which provides for the construction
4 and operation of a new downtown baseball park and
5 development of an area of San Diego directly across the
6 street from the convention center. This is shown on your
7 Exhibit B in the agenda. And for the audience the
8 redevelopment area is this area in San Diego.

9 COMMISSIONER CONNELL: Could you actually go
10 through the geographic boundaries of these various sites.
11 I would like to see the proximity of the convention center
12 to the ballpark and the relationship of both of those to
13 the proposed parking.

14 SENIOR STAFF COUNSEL FOSSUM: Right. The
15 existing convention center, you can just see the corner of
16 it here on this graph, and the expansion, which is
17 doubling the size, is this area in here. The ballpark
18 redevelopment area is outlined in this entire area here.
19 The ballpark itself is located here and the parking lots,
20 the subject of this calendar item, are right here. It's
21 four city blocks right at that location.

22 Also, on the photograph here, you'll notice that
23 this is the convention center expansion site. The parking
24 area is here and the Port's waterfront is along here. The
25 two closest hotels on Port property, the Hyatt is located

1 here and the Marriott right adjacent to it. The distance
2 between those two lots -- excuse me, those two hotels and
3 the entrance to this convention center expansion is
4 roughly the same distance to the parking lots.
5 Approximately 2,200 feet for the parking lots, 2,000 feet
6 to the Marriott and 3,000 feet to the Hyatt, I believe.

7 The effect of the redevelopment has eliminated
8 many of the parking facilities identified for the expanded
9 convention center. Of the 28 lots that were open in March
10 of 1999, only eight are expected to remain open when the
11 convention center expansion is operative in six months.

12 The City approached the Port with a request to
13 assist in this redevelopment project by participating with
14 a commitment of \$21 million for land acquisition and
15 infrastructure costs including public parking. The
16 negotiations between the Port and the City began in late
17 1998 and lasted until early 2000, when the City and Port
18 approved the contract that is before you today.

19 After the submittal in February of last year,
20 your staff requested additional information from the Port
21 in order to try and fully understand this transaction and
22 determine whether it meets the legal criteria for
23 approval.

24 In addition to information from the Port, staff
25 also has received and reviewed information submitted from

1 representatives of former Port Commissioner Harvey
2 Furgatch. The agreement before you is a relatively
3 complex contract involving elements of price, phased
4 payments, partial satisfaction, title exceptions,
5 environmental remediation obligations, liability,
6 indemnification and repurchase rights.

7 The lots involved are located -- the walking
8 distance that I mentioned before, the 2,200 feet, is
9 approximately a ten to 15 minute walk.

10 COMMISSIONER CONNELL: From the convention center
11 to the parking lot?

12 SENIOR STAFF COUNSEL FOSSUM: From the expanded
13 convention center. Because the convention center has two
14 wings, the existing convention center, its entrance is
15 here. The eastern convention center, the expanded one, is
16 in this area and that is approximately 2,200 feet from the
17 parking.

18 COMMISSIONER CONNELL: How is the City proposing
19 to get people there? Are they going to be running a
20 shuttle facility?

21 SENIOR STAFF COUNSEL FOSSUM: I think there's the
22 discussion of a shuttle possibility. This is an overflow
23 parking facility. There will be closer parking, except
24 much of the closer parking -- part of the problem is the
25 convention center will be opening very soon. The

1 redevelopment project may take many years. There may be
2 additional parking facilities that are going to be needed.

3 In fact, the Port has notified me that they are
4 looking for additional parking above and beyond this 800
5 space lot that is before you today, because they expect
6 additional parking needs. There's a hotel planned, that
7 you can see on this particular diagram here, that is not,
8 at this point in time, gone forward. There would be
9 substantial parking available there, but that's probably
10 quite a few years away.

11 There are something in the neighborhood of 8,000
12 parking spaces in this general vicinity proposed when the
13 redevelopment project is complete, but that could be years
14 away. And so clearly there is a shortfall that the Port
15 anticipates that this lot would be used for. In addition,
16 they have identified other needs that they may have for
17 the lots in staging for the convention center. So that is
18 part of their application to us as well as general parking
19 for the convention center itself, which would include
20 other uses such as staging.

21 COMMISSIONER CONNELL: May I ask a series of
22 questions, at this point? Are you completed with your
23 staff report?

24 SENIOR STAFF COUNSEL FOSSUM: Absolutely. I'm
25 not completed, but I'd be happy to answer any questions.

1 COMMISSIONER CONNELL: Well, why don't you
2 complete your report and then I will open it up for
3 questions by myself and members of the Commission.

4 SENIOR STAFF COUNSEL FOSSUM: Fine. The Port
5 characterizes the proposed acquisition as essential to
6 support the expanded convention center. The expansion of
7 the convention center is intended to enhance the use of
8 Port's visitors serving facilities and increase the
9 economic and utility value of the Port properties
10 resulting in numerous public benefits.

11 The staff's review of information included in the
12 EIRs and appraisal, survey information, hazardous material
13 site reports, and other studies and information submitted
14 both pro and con.

15 The primary issue involves the effect of
16 restrictions on title to value and utility. These issues
17 go to the fundamental question of whether the transaction
18 is in the best interests of the State. Based upon staff
19 analysis, this acquisition would not qualify as
20 economically desirable solely from an income
21 capitalization approach.

22 The Port appraiser's sales comparison approach
23 also does not fully support the transaction in the
24 purchase and sale agreement. The most recent information
25 from the Port describes the lot as containing 233,762

1 square feet. However, the appraisal assumes that the
2 lands acquired will total 318,309 square feet, which is a
3 36 percent greater area.

4 The purchase and sale agreement allows for
5 certain title exceptions and CC&Rs that could severely
6 devalue the property. This includes provisions relating
7 to the MOU between the City and the Padres. For example,
8 the provision that all game and event day net revenues go
9 to the Padres, and that the first \$250,000 of net revenues
10 from other days be placed into a capital reserve fund,
11 could eliminate any income to the Port.

12 As a result of disagreement with the methodology
13 and conclusions contained in the Port's appraisal, staff
14 conducted an independent analysis, which determined that
15 the highest and best use of the property if unencumbered
16 by the title and use restrictions in the MOU, free and
17 clear of environmental conditions that exceed regulatory
18 thresholds and available for immediate development
19 consistent with the legally permissible uses with high
20 density development, with a value as much as \$22,075,000.

21 Staff has also estimated that the market value of
22 the fee simple of the property encumbered by the title and
23 restrictions of the MOU is only \$12.4 million. How the
24 property will be managed to benefit the convention center
25 and what income is anticipated to be generated goes both

1 to the issues of utility to the convention center and
2 income to the Port.

3 Therefore, staff sought information, as had been
4 suggested by Mr. Furgatch, on the proposed operating
5 agreement or lease. Last month the Port conveyed a draft
6 letter of intent outlining the proposed convention center
7 parking lot lease. The staff takes exception to the
8 provision in the proposed lease, which gives the exclusive
9 use to the Padres during 125 days of home games and
10 events.

11 It is therefore staff's conclusion that the
12 proposed acquisition as provided in the February 8th
13 purchase and sale agreement and the draft letter of intent
14 involving the proposed lease agreement should not be
15 approved as submitted. This is because of the problems
16 with utility and value.

17 However, staff recommends approval of a modified
18 purchase and sale agreement together with a lease or other
19 operating agreement that provides sufficient detail to
20 understand the full costs and benefits of the transaction.
21 In order to find that the subject contract is in
22 compliance with the review requirements of PRC Section of
23 6702, staff recommends Commission approval that would
24 incorporate the following elements in a revised contract:

25 Conveyance of title to the property shall not be

1 encumbered by CC&Rs related to limitations on use. It
2 shall be delivered to the Port by the City as an operating
3 parking lot and the price shall be no more than \$21
4 million. The provision that provides for exclusive use by
5 the Padres during home games and events shall be
6 eliminated. Any right to repurchase the property within
7 five years by the City shall include a CPI adjustment in
8 addition to the \$21 million.

9 Should the Port desire to use the property for a
10 different use or to sell it, then the City shall be
11 responsible to either remediate the site to a level
12 consistent with its highest and best use or purchase the
13 property at the remediated value or compensate the Port
14 for the diminution in value from the highest and best use.

15 The Port shall be responsible for the first \$1
16 million in remediation costs for a value diminution.
17 There shall be no parking validation agreements which
18 result in reducing the Port's income. There shall be no
19 \$250,000 annual payment into a capital reserve fund out of
20 gross revenues or net revenues due to the Port as
21 described in the MOU. The parking lot shall be operated
22 so that they open for the general public parking. The use
23 of the lots may be restricted to parking use only during
24 game days and not more than ten event days. And finally,
25 the terms of any agreement for use of the subject lots

1 shall not exclude members of the public from using the
2 lots for accessing the convention center or any other Port
3 public trust properties.

4 That completes the staff's recommendation. And
5 I'm available to respond to any questions you have.

6 COMMISSIONER CONNELL: Okay. This is a very
7 complex matter. And I'm going to now suggest that in
8 order to have a clear understanding of some of the issues,
9 that we go through every one of the conditions that you're
10 asking us to consider in order to modify. It sounds to me
11 like we're rewriting the entire legal agreement in order
12 to get to a point of comfort here. And I want to make
13 sure that we understand the significance of every one of
14 these conditions and how we arrived at value, because
15 there seems to be a huge difference in our understanding
16 of value of this land and that of the City and the Padres.

17 And, of course, our interests here, let me remind
18 the public, are to make sure that this land area is
19 getting the highest and best use from the viewpoint of the
20 Port and the State of California. The State of California
21 is a surrogate trustee for the Port here, and that is our
22 interest. So our interests might be different from both
23 the City and clearly different from that of the Padres.

24 And we always try to respect the need for a city
25 to define its own land use, but when it relates to Port

1 geography, then we need to be protective of the State and
2 particularly concerned about the precedent nature of any
3 of our agreements up and down the coast. If we do this
4 for the City of San Diego, Mayor O'Neill might find this
5 is a great idea for the City of Long Beach or the City of
6 Los Angeles might choose to pattern a future agreement
7 under a similar kind of definition.

8 So we need to make sure that whatever we do here
9 today not only stands a full review locally as to the
10 agreement as to price and use, but also will withstand
11 whatever is done statewide and other agreements as it
12 relates to this type of land for use as a parking lot.

13 Let me begin with an opening question. We have a
14 number of people who want to speak today and I will
15 recognize all of you before we entertain any motions, so
16 rest assured, we're not going to move through this item
17 quickly.

18 I am concerned what would the status have been or
19 what would the staff recommendation have been here,
20 Curtis, if we had not a Padres ball field and we just had
21 the convention center?

22 SENIOR STAFF COUNSEL FOSSUM: I would assume that
23 the staff's recommendation would be to approve a parking
24 lot that if it was needed by the San Diego Unified Port
25 District -- in fact, they fully acknowledge that this is

1 not their first choice as far as a parking lot. They
2 would have preferred closer parking. However, because of
3 the redevelopment project, it's the closest available
4 surface parking that can be located, and I just read an
5 article in the paper last week where one of the Port
6 Commissioners said if you can find us a closer parking
7 lot, we'll buy it, but we tried and we can't locate one.

8 So I think the point is is that this is not going
9 to be a primary parking lot for the convention center, but
10 it is a parking lot that they identify as needed for their
11 overflow parking needs. There may be, in fact, times -- I
12 mean, what I mentioned to you about it being one of the
13 top three convention centers in the world, I just found
14 that this weekend going over the -- on the web site for
15 the convention center to find out more information about
16 it. It is a highly beneficial convention center to the
17 region down there, and they do have needs that they have
18 identified, as far as the Port's concern that this is the
19 best they could do in the market that's down there at this
20 time. And that's what their response is to that issue.

21 COMMISSIONER CONNELL: Well, when did the second
22 stage of the convention center -- what was the action of
23 the City in that regard, didn't they require parking on
24 site?

25 SENIOR STAFF COUNSEL FOSSUM: Absolutely. They

1 had a very interesting response to the mitigation needs in
2 the EIR. They came up with a parking program. And the
3 parking program identified, I think, maybe a couple dozen
4 different parking lots in the San Diego area that the
5 owners of, by letter agreement, said that they would make
6 available to the convention center when they had needs for
7 parking.

8 However, many of those, the majority of those
9 probably, I would venture, have been eliminated in the
10 last five years, because of the expansion not only of the
11 ballpark, but the redevelopment project that's going
12 around, and parking is no longer the highest and best use,
13 if you will, in that area, because there are so many
14 anticipated valuable properties that are being proposed
15 for development for hotels. There's a hotel that's just
16 being approved, I believe, it's a Westin, in fact, just
17 like we're here right here at this location, which is
18 right across the street from the convention center that
19 went for a very high price, I believe, and somebody
20 probably from the Port could identify it. But the value
21 of it was nearly astronomical as far as values down their.

22 The prices of these properties are being driven
23 up. And so we took a look at it, the staff of the
24 Commission took a look at this from the standpoint of what
25 is this piece of property worth for development potential,

1 knowing that this may not always be the parking lot that
2 the Port will need. There may be other developments that
3 take place in the future, and they may be able to turn
4 this around and use it for additional purposes or convey
5 it to other parties in the future. And if economically
6 that makes sense, then we analyzed that.

7 And so that's how I actually -- we came to the
8 conclusion that the value of the property did exceed,
9 potentially did exceed \$22 million.

10 COMMISSIONER CONNELL: Well, if we were not using
11 it as a parking lot, what would the Port propose that they
12 use it for?

13 SENIOR STAFF COUNSEL FOSSUM: Well, again, from
14 an investment standpoint, if they did acquire this
15 property and in a few years it was no longer needed for
16 parking purposes, they could put it on the market
17 presumably for a highest and best use. It could be
18 offices, at that time, or it could be residences. It
19 could be a lot of things. They themselves probably would
20 not develop, I would venture, because it is a distance
21 from the rest of the Port property, but it does have the
22 potential for generating future income.

23 COMMISSIONER CONNELL: The only reason they're
24 about to acquire this is because they need the overflow
25 parking then for the convention center?

1 SENIOR STAFF COUNSEL FOSSUM: That's their
2 motivation. They expressed it to us.

3 COMMISSIONER CONNELL: At what time did the
4 discussion with the Padres regarding this piece of land
5 occur historically?

6 SENIOR STAFF COUNSEL FOSSUM: The newspaper
7 reports --

8 COMMISSIONER CONNELL: Was the City discussing
9 using this land for parking related to the Padres'
10 expansion for cars or the Port?

11 SENIOR STAFF COUNSEL FOSSUM: The Environmental
12 Impact Report for the Padres identifies it also as parking
13 for their needs. And it's pretty clear that if a parking
14 structure is constructed in that location during baseball
15 season it's likely to be heavily used by the Padres. And,
16 in fact, the Port is considering leasing it to the Padres
17 for operational purposes.

18 However, as we point out in the staff report, our
19 conditions that we are recommending for your restriction
20 on this title would ensure that it's available for the
21 rest of the public and particularly the convention center
22 attendees and those using Port property, so that it
23 wouldn't be designed in a way that makes it not usable for
24 the convention center and focused on the Padres, if you
25 will.

1 COMMISSIONER CONNELL: I appreciate that, but my
2 question was more directed at the historical time line
3 here.

4 SENIOR STAFF COUNSEL FOSSUM: The time line --

5 COMMISSIONER CONNELL: Who considered the use of
6 this property first as a parking lot? Was it the City, in
7 its negotiation with the Padres or was it the Port in its
8 discussion of the need to expand parking at the convention
9 center?

10 SENIOR STAFF COUNSEL FOSSUM: I believe that
11 whoever did the redevelopment project area design
12 identified it as a parking area. And the Port in
13 negotiating with the City and the Padres -- well, not with
14 the Padres, with the City in trying to locate acceptable
15 parking, this was identified by the parties ultimately as
16 being the area that was available. And the other areas
17 were not put on the table or -- I don't know the details
18 of it.

19 COMMISSIONER CONNELL: So the redevelopment plan
20 designated this as a parking area, correct?

21 SENIOR STAFF COUNSEL FOSSUM: I believe that's
22 the case.

23 COMMISSIONER CONNELL: That was when? What was
24 the year of that?

25 SENIOR STAFF COUNSEL FOSSUM: I'm afraid I'm not

1 able to answer that.

2 COMMISSIONER CONNELL: And that subsequent to
3 that the City began negotiating with the Padres and
4 discussed uses of this?

5 SENIOR STAFF COUNSEL FOSSUM: The City and the
6 Padres negotiated a Memorandum Of Understanding in 1998
7 when they were looking at moving the Padres to the
8 downtown area. And although I'm not all that familiar
9 with the sequence of events in that redevelopment, the
10 electors in the City approved this redevelopment project,
11 this MOU between the City and the Padres, and the
12 redevelopment agency of the City and the Center City
13 Development Corporation in November of 1998.

14 And about that time, once that had been designed,
15 then they began negotiations with the Port. And, frankly,
16 if that redevelopment project had not been approved by the
17 voters, the Port probably would not have needed this
18 parking lot because the parking lot that --

19 COMMISSIONER CONNELL: When was that?

20 SENIOR STAFF COUNSEL FOSSUM: November of '98,
21 because the parking lots that had been --

22 COMMISSIONER CONNELL: But that was subsequent to
23 the discussion with the Padres?

24 SENIOR STAFF COUNSEL FOSSUM: I don't know. It's
25 kind of a chicken and an egg a little bit.

1 COMMISSIONER CONNELL: Is there anyone here from
2 the City?

3 Would you sign up to speak because we're going to
4 need to get the City's perspective on this time line.

5 SENIOR STAFF COUNSEL FOSSUM: I believe what
6 happened was that the voters had turned down, in the past,
7 various proposals for ballparks. This particular vote in
8 the City of San Diego, had it not been approved by the
9 people of the City, there might not have been additional
10 parking needs for the convention center, because the
11 redevelopment project has, in fact, post-1995 when the
12 parking plan was established, has now taken away those
13 identified parking needs, available parking areas that
14 would have been available had the redevelopment project
15 not gone forward.

16 So in a sense, the Port kind of got squeezed,
17 because they had a plan for parking, but it got eliminated
18 because of the redevelopment project.

19 COMMISSIONER CONNELL: I'm beginning to
20 understand this now. Is it fair to say historically --
21 and hopefully the City representative when he speaks will
22 verify the time line being, basically the formation of a
23 redevelopment plan. The redevelopment plan was approved
24 by the voters. And, at some point, the City began
25 negotiating with the Padres for expansion or location of

1 the Park to that downtown location?

2 SENIOR STAFF COUNSEL FOSSUM: I think they
3 probably negotiated it prior to the election.

4 COMMISSIONER CONNELL: At about the same time
5 conterminous with that discussion was a decision of the
6 convention center authority to expand their convention
7 center?

8 SENIOR STAFF COUNSEL FOSSUM: They had
9 established that three years previous.

10 COMMISSIONER CONNELL: And what did they think
11 they were going to do for parking then? They were going
12 to take some of the land in the redevelopment area?

13 SENIOR STAFF COUNSEL FOSSUM: They were -- I
14 would say they were fortunate if you look at it from the
15 standpoint of obligations and compliance with obligations
16 and that they -- fortunate in a sense, maybe unfortunate
17 ultimately, but fortunate in the sense that they did not
18 have their own parking identified. What they had were
19 commitments from private parking operators that they said
20 we will have parking available for you when you bring
21 conventions to town, and when you have trade shows and so
22 forth. And we'll be happy to have your people come down
23 here and we'll give you maps on how to get to our parking
24 facilities. And what happened was that land became more
25 valuable after 1995, and so it was eliminated.

1 COMMISSIONER CONNELL: So that was the
2 development of the Westin Hotel, et cetera.

3 Okay, fine, I think we understand that sequence.
4 Then we get into the question of level of criteria for
5 approval. You kind of glossed over that. What are the
6 legal criteria that we must review as Commission Members
7 prior to approving this type of action?

8 SENIOR STAFF COUNSEL FOSSUM: Well, in the Public
9 Resources Code there is a sequence of Sections 6701
10 through 6707 I believe or 6, 6702(b) is the section that
11 lays out what that criteria is. And the criteria is
12 basically that the project is supposed to be consistent
13 with the statute underwhich the lands are to be held. The
14 type of use, for example, is parking a trust use?

15 Secondly, that revenues that are generated and go
16 to the Port will be put into a Port trust account, and so
17 those revenues will be used for other trust purposes.

18 And finally, a standard that gives a lot of
19 leeway, frankly, to those of you who are in the position
20 of making decisions is it's in the best interests of the
21 State.

22 In the California Code of Regulations, there's a
23 few more details that lay out the kind of issues that the
24 Commission is to look at. And the staff report goes over
25 those, if I can find it.

1 COMMISSIONER CONNELL: Has the Attorney General
2 reviewed this contract?

3 ASSISTANT ATTORNEY GENERAL HAGER: Contract?

4 CONNELL: I mean the agreement we're discussing
5 today?

6 ASSISTANT ATTORNEY GENERAL HAGER: The calendar
7 item, yes.

8 COMMISSIONER CONNELL: Did you agree to the
9 conditions?

10 ASSISTANT ATTORNEY GENERAL HAGER: Yes.

11 COMMISSIONER CONNELL: You are comfortable with
12 these conditions from a legal viewpoint, you feel it meets
13 the criteria?

14 ASSISTANT ATTORNEY GENERAL HAGER: Yes.

15 COMMISSIONER CONNELL: So you are recommending
16 this today?

17 ASSISTANT ATTORNEY GENERAL HAGER: Yes.

18 COMMISSIONER CONNELL: Go ahead.

19 SENIOR STAFF COUNSEL FOSSUM: In the Section 2802
20 of the California Code of Regulations, just on page five
21 of your staff report, there's a list of a half a dozen
22 items that the Commission is used to analyzing whether the
23 use is consistent with 6702.

24 And we certainly looked at all of those. And
25 staff did, and I think we've addressed those in the staff

1 report. The economic viability clearly was one that we
2 were struggling with from the standpoint of the type of
3 information that the Port had submitted to us in their
4 appraisal, and we found that we could not support their
5 appraisal, so our independent analysis was used to
6 determine what the highest and best uses would be of the
7 property, and what the value of the property would be if
8 we had to go out and purchase it, for example.

9 COMMISSIONER CONNELL: I would actually prefer,
10 Paul, as I've noted before, is that we always do our own
11 economic analysis. I think we should always be
12 independent of any groups that come before this
13 Commission, whether it's the City or a private entity, so
14 that we cannot be accused of just duplicating their work.
15 We certainly have a capacity at the State level to do our
16 own economic analysis.

17 EXECUTIVE OFFICER THAYER: And that's why we have
18 appraisers on staff, certified appraisers, who look very
19 carefully at this, so we would be able to offer the
20 Commission an independent perspective on this.

21 SENIOR STAFF COUNSEL FOSSUM: They are available
22 to respond to your questions if they get into that level
23 of detail.

24 COMMISSIONER CONNELL: I think we should get into
25 that level of detail. I think it's important to establish

1 a public record here on value today.

2 We'll move on, Curtis.

3 SENIOR STAFF COUNSEL FOSSUM: Yes.

4 COMMISSIONER CONNELL: We're now on appropriate
5 for development mix.

6 SENIOR STAFF COUNSEL FOSSUM: Right, and given
7 that the City of San Diego has come up with this
8 redevelopment area, as the staff report reflects, I
9 believe this is appropriate for a developmental mix, the
10 parking lot is. It's conducive to public access. That's
11 certainly the motivation for the Port is to provide an
12 area that will allow the public to access its public trust
13 lands by parking on this lot.

14 Environmental protection, we believe that that's
15 satisfied. And, again, the other wise and best interests
16 of the State is certainly kind of the amorphous decision
17 making that comes with looking at the project as a whole.
18 So the staff's conclusion is that as modified by the
19 recommendations that you'll find in the proposed findings
20 by the Commission, that a contract that included those
21 provisions would, in fact, comply with all those elements
22 of both the Code of Regulations as well as the Public
23 Resources Code.

24 COMMISSIONER CONNELL: That then brings us --
25 does everyone on the Commission understand the legal

1 criteria for approval? Do they have any questions?

2 All right, then I think we should move to the
3 conditions that you've outlined. You've outlined all of
4 them in some detail and rather quickly. Let's go through
5 each one of them now, if we can. And let's go through
6 them in some detail, so that we understand why we feel
7 these conditions are important if we move forward today,
8 should the Board decide to move forward today on modifying
9 the agreement in proposing a modified agreement here.

10 Let's start with the appraisal, if we can.

11 SENIOR STAFF COUNSEL FOSSUM: On the purchase --

12 COMMISSIONER CONNELL: Well, actually, before I
13 do that, maybe it would be appropriate to take a
14 five-minute break and then call upon all of the local
15 people, first, and then we will go through all of the
16 requests for speaking.

17 We have a number of people who wish to address
18 the Commission. I want to entertain all of you in
19 adequate time, so why don't we take a five-minute break
20 here. We'll come back and we will begin with a public
21 discussion by all of those who have been kind enough to
22 submit requests to speak. And then we will go back into
23 our discussion on some of the conditions that you want to
24 outline, Curtis.

25 SENIOR STAFF COUNSEL FOSSUM: Thank you.

1 COMMISSIONER CONNELL: Thank you.

2 (Thereupon a brief recess was taken.)

3 COMMISSIONER CONNELL: I'll call the meeting back
4 to order.

5 I would like to try to engage everyone from the
6 public that is here first, and then we will go from the
7 public testimony back into a discussion of the specifics
8 of the staff recommendation and modifications of the
9 agreement as they were proposed. I would like to just
10 announce to members of the audience, the reason I am
11 wearing a green ribbon today and a pin is that this is
12 National Victim's Rights week across the country.

13 And I sit as a Member of the Board of Control
14 with the Governor. And this is a very important day in
15 the Capitol. Unfortunately, I cannot be there. And I
16 told them I would wear these pins today, because we do
17 each year in Sacramento, at the Capitol, a ceremony
18 honoring all of those who have become victims of crime in
19 California.

20 For those of you who don't know, the Board of
21 Control was established by the Legislature some time ago
22 and provides financial support for victims of crime, for
23 psychological support, for medical support if they have
24 been injured and need to be at a hospital and receive
25 medical care, funeral expenses for families whose members

1 have been taken way from them by a result of crime.

2 So it's a very important program that we support
3 here in the State, and I think it behooves us all to show
4 respect for those who have been unfortunately
5 disadvantaged by crime in their immediate families. So
6 it's something that we, as the Board of Control, support
7 each year as an annual celebration of those families who
8 have been victimized by crime.

9 Now, I'd like to move now back into the agenda.
10 And we are going to call upon representatives of the Port
11 and the City, and we also have, I believe, Craig Brown
12 here today. Craig, would you come forward and identify
13 yourself for the record and then I'm going to start with
14 the representatives of the Port, David Chapman and Frank
15 Urtasun, I hope that's correct. Is that correct?

16 MR. URTASUN: Urtasun, yes.

17 COMMISSIONER CONNELL: Thank you. And then we
18 will go to Leslie, if we may, for the City.

19 MR. BROWN: Thank you, Madam Chair. I'm Craig
20 Brown and I represent Mr. Furgatch on this issue.

21 By and large, we agree with much of what you've
22 heard this morning. We probably come to a slightly
23 different conclusion, however.

24 One of the key events I want to talk about just
25 briefly, because it kind of sets the stage for this, is

1 the election that was pending in November of '98 to
2 approve this project. Low and behold shortly before that
3 election, the project came up \$21 million short. And, in
4 fact, there was an agreement in late October for the Port
5 to fill that gap with infrastructure improvements.

6 You're going to find throughout this that the \$21
7 million number is consistent even though many of the
8 details change. For example, in September of 1999 the
9 parking lots were \$14 million of the contribution and
10 there were some other items totaling seven million for \$21
11 million. In October of '99 the other improvements were
12 dropped, the parking lots became worth \$21 million.

13 Given that background, I want to talk about how
14 useful these particular lots are to the Port, at least in
15 your view. The Port attracts major conventions. It makes
16 commitments five, seven years in advance to these
17 convention holders. Obviously, a key item of negotiation
18 is how much parking is available.

19 So these fringe parking lots fill the need for
20 big conventions committed five to seven years in advance
21 sometimes. The Padres' schedule is put out a year in
22 advance, so how is this going to be resolved when the Port
23 wants to commit five to seven years in advance these
24 parking lots to some convention holder, yet they can't
25 tell whether the Padres are going to need them.

1 Second, the Port had a study done by a company
2 called ACE Parking -- excuse me, the Port had a study done
3 by ACE Parking, who concluded they were too remote, that a
4 shuttle service would be needed, and that a shuttle
5 service was economically prohibitive. That was their
6 consultants.

7 COMMISSIONER CONNELL: And this is the Port?

8 MR. BROWN: This is the Port's consultant ACE
9 Parking. It said, "The location of these surface lots are
10 too far away from the convention center to attract
11 convention center visitors or employee's without the use
12 of a shuttle. Implementing a shuttle system is
13 economically prohibitive." That was their consultant.

14 By the way, in addition to being -- good morning,
15 Governor.

16 COMMISSIONER CONNELL: I would just like to
17 reference the fact the Lieutenant Governor is now with us.
18 Mr. Bustamante, we are on an extended discussion of Item
19 115, the Port of San Diego. We're taking public
20 testimony.

21 MR. BROWN: Good morning.

22 COMMISSIONER CONNELL: You were on the shuttle
23 system.

24 MR. BROWN: Yeah, the shuttle is cost
25 prohibitive. There's also, as you might note, some active

1 railroad tracks between these lots. And the convention
2 center is obviously making them even more unattractive.
3 There are other lots closer. They may have been
4 designated for other purposes in the redevelopment plan,
5 but there are clearly other lots closer that are not now
6 built upon.

7 Finally, on this particular point, the lots are
8 in the City's urban plan for use as a sports arena. And
9 at least as brought to the Commission, the City retains
10 the right to take them back. In other words, the Port
11 needs them, but if the City wants them for a sports arena,
12 they go back. Now, your staff has proposed a modification
13 on the price, but I think it gets to the fundamental issue
14 of how valuable these lots are to the Port, if they're, in
15 fact, willing to give them back to the City upon their
16 call.

17 COMMISSIONER CONNELL: How does that work again,
18 Craig?

19 MR. BROWN: As we understand the agreement, the
20 City retains the rights to repurchase these lots. The
21 City's urban plan for this area has these lots designated
22 a site of a sports arena. So Madam Chair, what I'm trying
23 to speak is the value of these particular lots to the
24 Port. If they're so valuable, why are they willing to
25 give them back up.

1 Your staff has more than adequately discussed
2 value. I'm not going to repeat their remarks. We agree
3 with everything they said on that.

4 In conclusion, the real issue is is this project
5 ready for prime time, should you vote on it today and
6 delegate it to the staff as a ministerial duty?

7 First, as you heard from the staff, the size of
8 the lot was reported eight days ago to you as
9 substantially smaller than the Port reported to your staff
10 in July of 2000, 36 percent I believe was the number your
11 staff cited. If you don't know the size, how do you know
12 the value.

13 The methodology for the appraisal was questioned
14 by staff. We agree with that. There's at least two
15 pieces of pending litigation, one brought by the Port
16 itself to validate the actions. You know, they were quite
17 controversial in the past. Mr. Furgatch has a lawsuit
18 that was argued in the District Court of Appeals just
19 recently that at least has a reasonable chance of
20 prevailing based on some other court decisions.

21 Finally, they are proposing to use rental car
22 revenue as part of this package. Those rental car fees
23 were put on to build a parking structure. We're not sure
24 that a tailgate lot for the Padres is the same thing as a
25 parking structure.

1 Finally, you've got a lease that's in draft. You
2 don't even have a lease agreement before you that is
3 complete. The project has been under negotiations for at
4 least two years, and yet you don't even have a complete
5 lease agreement. In fact, a 1999 version of the lease
6 that we obtained under Public Records Act or a court case
7 I'm not sure which, was far more complete and far more
8 detailed than the lease that's before you today in our
9 judgment.

10 Therefore, our conclusion is that we recommend
11 that you accept the staff recommendation to deny. We
12 think the staff conditions are absolutely reasonable, but
13 we think it belongs back with you. If there's a decision
14 to spend \$21 million of trust money, it longs back with
15 this Commission. It gives the public another chance to
16 deal with it. It is a complex transaction. With all due
17 respect to staff, we think it belongs back with you.

18 COMMISSIONER CONNELL: So you are -- let me make
19 sure I understand, you are in agreement with the general
20 tone of the modifications suggested by our staff, but you
21 would prefer, what, Craig, that --

22 MR. BROWN: That they work the details out.
23 There's lots of conditions. I would be surprised if
24 they're all going to be as clear as they are in the staff
25 report when they're negotiated and put into a lease. And

1 that given the fact that the complexity and the size, that
2 I'll be back before you, so that people like Mr. Furgatch
3 and others can come in here, make a case before this \$21
4 million of trust funds are committed.

5 COMMISSIONER CONNELL: Fine. I just wanted to
6 make sure that I understand what you were saying.

7 CHAIRPERSON BUSTAMANTE: Craig, if you're looking
8 at this thing, I mean, the convention center seems to need
9 more parking. And it seems to me that with or without a
10 sports arena, or however that affects what's taking place
11 here, wouldn't you think that the Port involved with this
12 activity should be taking place anyway? I mean shouldn't
13 they just be going through this, as a matter of course,
14 with or without a sports arena?

15 MR. BROWN: With or without those conditions,
16 Lieutenant Governor, I think it's proper for -- it would
17 be appropriate for them to acquire some parking, whether
18 this is the right lot or not is a matter of question.
19 Value is a matter of question. But more significantly, if
20 they need to solve their parking problem, why would there
21 be a condition that allows the City to take these lots
22 back when they want them for whatever other use they want.

23 In other words, this is not a long-term fix to
24 the Port's parking problem. It's only a long-term fix if
25 the City never demands the lots back. Yet, one of the

1 conditions of the agreement before you is the City can
2 take the lots back.

3 COMMISSIONER CONNELL: Well, why did you put
4 those conditions in there?

5 EXECUTIVE OFFICER THAYER: That wasn't our
6 condition to begin with. It was a condition the City put
7 on the deal. The City is actually acquiring these lots.
8 They're the ones that are doing eminent domain to acquire
9 them. And they had a number of conditions they wanted to
10 put on the sale, then on to the Port for parking.

11 Our conditions strip away most of those, the deed
12 restrictions in terms of uses and that sort of thing that
13 accept that deal with value. Our remedy for this
14 particular one, in which the City for just five years,
15 it's not forever, but for five years, the City retained
16 the right to buy it back. They wanted to be able to do
17 that at the purchase price of \$21 million. We thought
18 that was inappropriate, because the value of the property
19 will go up. And so our conditions say no, you have to at
20 least pay CPI on top of that. And then after five years,
21 the Port doesn't have to sell it back.

22 COMMISSIONER CONNELL: Cruz, let me just continue
23 this line of questioning, because we started this earlier.
24 I'm a little concerned this didn't come out in the staff
25 discussion. I'm concerned because we are making a

1 judgment here that we need this land for parking for the
2 Port, for the convention center expansion. Now, the
3 convention center is not going to go away. It's going to
4 stay there, this second expansion of the convention center
5 will be permanent.

6 So if we felt that we needed these lots in order
7 to enhance our parking activity at the convention center,
8 and that's the action that underlines our decision today,
9 that this is a direct relationship to a Port activity,
10 i.e. the convention center, then why would we want to be
11 in a position of allowing the City to ever be able to
12 recapture this lot? I don't understand the thinking
13 there.

14 EXECUTIVE OFFICER THAYER: I think --

15 COMMISSIONER CONNELL: It undermines the basic
16 argument we're making.

17 EXECUTIVE OFFICER THAYER: I think, again, it
18 wasn't a deal that was worked out by staff. And I think
19 the Port should respond to your question, but my
20 understanding of what the Port's response would be is that
21 these lots are the closest ones left that can be used for
22 parking. They run some risk that the City may repurchase
23 them, in which case the Port's not out any money. They
24 got their money back and they're back to where they would
25 be. If they didn't go forward with this deal, they would

1 have to look for other parking. They believe that the
2 other parking that might be available is even further out.

3 They would rather buy this property subject to a
4 potential that it be repurchased, but have these lots at
5 the closest proximity to the convention center as a
6 potential alternative and run the risk of having them
7 bought back than saying no to this deal and then
8 automatically having to look further and giving up on this
9 potential deal.

10 COMMISSIONER CONNELL: Well, did they try to
11 negotiate this condition?

12 EXECUTIVE OFFICER THAYER: I believe they did. I
13 think you should ask that of the Port.

14 CHAIRPERSON BUSTAMANTE: Which is a good segue
15 way because we have David Chapman who is the attorney up
16 next and perhaps you can come up. Craig, is there
17 anything else you'd like to say before you step down?

18 MR. BROWN: No, Lieutenant Governor. I think the
19 key point is it's the \$21 million to fill the gap. That's
20 what it was before. It's what we believe it still is.

21 CHAIRPERSON BUSTAMANTE: Thank you.

22 MR. CHAPMAN: Thank you, Members of the
23 Commission and staff. My name is David Chapman. I'm the
24 attorney for the Port of San Diego.

25 I made notes on a number of comments that were

1 made earlier and I'd like to address each one of them, but
2 maybe I should start with the one before you right now,
3 which is the repurchase issue. And it might be useful --
4 first of all, the observation is correct by Mr. Thayer
5 that these were -- this and other provisions of the
6 agreement were requirements of the City of San Diego.
7 They were negotiated heavily.

8 The Port would have preferred this provision not
9 be in the agreement, but this is the basis upon which
10 these lots, which are very important to us, can be
11 acquired. It might be useful to read the actual
12 provisions of the agreement, however, with respect to this
13 item, Section 12 of the purchase agreement and it
14 commences with language I'll read as follows.

15 "The parties," that is the City and the Port,
16 "acknowledge that the law presently applicable to the
17 purchaser, the Port, prohibits purchaser from selling,
18 disposing or otherwise conveying the lots after it
19 acquires them."

20 The point there the present lot does not permit
21 the Port to sell these lots back after it's acquired them.
22 That's acknowledged in the agreement and the City
23 understands it.

24 The law would have to change in order for this
25 provision to be implemented, and it's entirely unclear

1 whether that would ever occur.

2 COMMISSIONER CONNELL: What law has changed?

3 MR. CHAPMAN: The law that governs the Port of
4 San Diego, which presently prohibits us from selling land
5 that we own.

6 COMMISSIONER CONNELL: So you're saying that even
7 if we put this condition in that, the City can
8 retroactively take back this land, that we wouldn't be in
9 a position to -- that the Port wouldn't be in a position
10 to sell it?

11 MR. CHAPMAN: The provision in the agreement is a
12 conditional right the City has. And the condition
13 precedent to its implementation would be a change in State
14 law.

15 CHAIRPERSON BUSTAMANTE: Well, why would you set
16 up something that sounds like it's going to be a court
17 case?

18 MR. CHAPMAN: It won't be a court case. It would
19 be a matter for the Legislature. Unless the Legislature
20 changes the law, we will not be able to resell the land to
21 the City. The City understands that. And the resale
22 provision in the agreement expressly acknowledges that.

23 CHAIRPERSON BUSTAMANTE: So if the City
24 understands that, then why is the provision in there?

25 MR. CHAPMAN: The City insisted that not

1 withstanding that constraint that they would like the
2 opportunity if, in fact, at some point in the future the
3 law changed.

4 CHAIRPERSON BUSTAMANTE: Okay. If the law
5 changed.

6 MR. CHAPMAN: If the law changed.

7 ACTING COMMISSIONER PORINI: Maybe the City can
8 comment on that.

9 COMMISSIONER CONNELL: Yes, I think the City
10 should comment on that.

11 CHAIRPERSON BUSTAMANTE: Where's the City?

12 Why don't you come on up and just on this point,
13 so we can finish this point off. While you're coming up,
14 now my understanding is that any restrictions on the
15 property, including this five years, would have the
16 overall effect of lessening the value of the land, if
17 there are other restrictions on it.

18 Now, this for me, is an important point, because
19 I don't know if the property is of substantial value, if
20 there are -- if you have the ability of being able to take
21 back or sell back or, you know, I think this is a very
22 important point here, not because of anything other than
23 just the total value of the property itself. So maybe the
24 City could respond and then you could follow up.

25 MR. GERARD: Thank you, Members of the

1 Commission. My name is Leslie Gerard. I'm an Assistant
2 City Attorney for the City of San Diego. At the time we
3 negotiated this agreement, we fully understood and
4 understand today the restrictions on the ability of the
5 Port to sell surplus land. In order to sell surplus land,
6 as I understand it, there has to be a finding that it's no
7 longer needed for trust purposes.

8 We knew that. We understood it. What we
9 anticipated or designed by this provision was to
10 anticipate perhaps an exchange of properties, if we
11 decided in the course of our land use planning for the
12 area, that we wanted to build something there. And, yes,
13 Mr. Brown is correct, the current land use plan shows it
14 reserved for a future sports arena. I'll just point that
15 given our experience with the ballpark and the stadium,
16 it's going to be years before we build another sports
17 facility in San Diego.

18 If we wanted those lots for some land use
19 planning purpose, the idea would be we would have to
20 identify some land that the Port would be willing to
21 exchange of equal value. And I think the idea was that we
22 would identify some land -- maybe, we'd have to go out and
23 get it by eminent domain and then that land would then be
24 available for parking to serve the convention center.

25 But we fully understand, and I don't believe the

1 provision reads that we have an absolute right to demand
2 that if we write a check for 21 plus million dollars, we
3 get the property back the day after the transaction.

4 CHAIRPERSON BUSTAMANTE: Well, that's not the way
5 it seems like staff interpreted it, because they
6 immediately began the process of talking about CPI and the
7 whole process of buybacks.

8 MR. GERARD: If you look at the actual language
9 of the agreement, I believe it talks about a reacquisition
10 right not a repurchase right, but we fully understand the
11 limitations of the Port District Act. And we're not going
12 to march into court and ask a court to --

13 CHAIRPERSON BUSTAMANTE: What is the staff
14 response to that?

15 EXECUTIVE OFFICER THAYER: I think I'd like
16 Curtis respond to some of this because it's legal, but,
17 yes, I neglected to say and should have mentioned that
18 there is this restriction that could create trouble for
19 repurchase by the City.

20 Staff concentrated on the Port value of it,
21 because it seemed like the most important part of this
22 deal is whether or not it was worth \$21 million. And
23 this, in effect, in that present value of the \$21 million
24 purchase, if you're having to sell it four or five years
25 down the road at \$21 million, is less than \$21 million.

1 The net result would be that that would be a diminution in
2 value, so we wanted to make sure the Port was getting its
3 value for \$21 million.

4 CHAIRPERSON BUSTAMANTE: And without encumbrances
5 is the staff's position that the property then is worth
6 the \$21 million?

7 EXECUTIVE OFFICER THAYER: In fact, our
8 appraisers ended up saying that the upper range of worth
9 there was a little over 22 million. So, yes.

10 COMMISSIONER CONNELL: What's the lower range?

11 EXECUTIVE OFFICER THAYER: I'd have to ask our
12 appraisers to find out. It's \$17,500,00.

13 COMMISSIONER CONNELL: Well, that's a huge
14 difference between \$17,500,000 and \$21 million.

15 EXECUTIVE OFFICER THAYER: And even the \$22
16 million, and correct me if I'm wrong on this, reflects an
17 estimate. The highest and best use is probably apartment
18 buildings, and we calculated the number of units that
19 would be placed on this area of property, and how much
20 those units would sell for.

21 We didn't pick the highest prices for apartment
22 buildings, because we understand in that area they might
23 not have a maximum sale. So our maximum range there is
24 not unrealistic. We cut that down to what they
25 theoretically could have been if you were saying well, in

1 someplace in San Diego we've sold apartments for such and
2 such value, it was a higher value than what's estimated
3 here. We said how much could you sell them right here?
4 And that's the upper range is \$22 million, but it's a
5 realistic estimate.

6 CHAIRPERSON BUSTAMANTE: So the higher range is
7 for apartments and the lower range is for?

8 EXECUTIVE OFFICER THAYER: I think for --

9 SENIOR STAFF COUNSEL FOSSUM: Lower density
10 apartments.

11 CHAIRPERSON BUSTAMANTE: What's the appraisal for
12 parking?

13 SENIOR STAFF COUNSEL FOSSUM: Twelve four, if
14 it's restricted. It has to do with the restriction on the
15 land.

16 CHAIRPERSON BUSTAMANTE: Without restrictions.

17 SENIOR STAFF COUNSEL FOSSUM: Well, the
18 property -- it's the property value itself as land that we
19 were looking at, what's the potential value. If you were
20 a developer and you went and bought this piece of property
21 and put apartments on it, what kind of rate of return
22 would you expect to find on your investment, and what
23 would you be willing to pay for the property for that
24 investment.

25 And that's how the values basically were reached

1 at the 17 to 22 figure. If you looked at it as a
2 restricted use where the only thing you could ever put on
3 this piece of property was parking, staff's estimate of
4 value on that was \$12.4 million.

5 And Paul is correct on the CPI adjustment,
6 because there was the provision that if the law was -- if
7 the Legislature enacted and said it's okay for the Port to
8 swap lands or sell these lands to the City, because we
9 found a higher and better use for them and the Legislature
10 stepped in, we still thought that there ought to be an
11 adjustment to the \$21 million in the repurchase price so
12 that it reflects some kind of a return on investment to
13 the Port. And that's why --

14 CHAIRPERSON BUSTAMANTE: So if we were to have
15 this five year clause in which an exchange of property
16 would take place, are we going to exchange a \$21 million
17 property that we're purchasing for seventeen five?

18 SENIOR STAFF COUNSEL FOSSUM: Absolutely not. It
19 would be 21 plus the CPI.

20 COMMISSIONER CONNELL: Well, I don't know that
21 that's what you can conclude. I mean, what you're
22 doing --

23 CHAIRPERSON BUSTAMANTE: Is that's what's
24 guaranteed in the document?

25 SENIOR STAFF COUNSEL FOSSUM: I believe that's

1 the way the restriction is written that if the Port were
2 to reconvey -- say four years from now the Legislature
3 said, you know, we really think --

4 CHAIRPERSON BUSTAMANTE: No, exchange. Assuming
5 that the --

6 SENIOR STAFF COUNSEL FOSSUM: Either. If the
7 Legislature authorized either a sale to the City or an
8 exchange of the property for other property with the City,
9 we would -- the Commission's approval would require it as
10 recommended.

11 CHAIRPERSON BUSTAMANTE: It would be a minimum 21
12 plus CPI.

13 SENIOR STAFF COUNSEL FOSSUM: And if it's past
14 the five years and they did, it would have to go by an
15 appraised value, and again a minimum. So if the value had
16 just dropped, you know, off the charts and it turned out
17 being worth \$10 million, repurchase price would still be
18 \$21 million. So the Port would not lose any money, but
19 there's an escalation of value, if it goes up to 40, the
20 Port gets 40.

21 COMMISSIONER CONNELL: You're telling me we've
22 established a floor of \$21 million dollar?

23 SENIOR STAFF COUNSEL FOSSUM: Yes, I believe
24 that's correct.

25 CHAIRPERSON BUSTAMANTE: Anything else on this

1 point? Would you like to hear from the appraiser?

2 ACTING COMMISSIONER PORINI: After we've heard
3 all the testimony.

4 COMMISSIONER CONNELL: I would like to hear about
5 the shuttle system being prohibitive. You know, the Port
6 study that the shuttle system to this parking lot is
7 prohibitive. I mean, it seems to me that asking tourists
8 to walk this distance to an outlying lot fails to provide
9 the kind of support that we want for our -- you know, that
10 the City would want for its convention center.

11 Why is it prohibitive, and how do you anticipate
12 people would be able to use this facility then if they're
13 going to have to have walk?

14 MR. CHAPMAN: Well, I think there are a number of
15 responses to that. It is true that an early study done by
16 ACE Parking, a consultant to the Port District, did
17 conclude that these -- the location of these lots was
18 undesirable and would be problematic to serve the parking
19 requirements of the convention center. That study was
20 done at or around the time we commenced the evaluation of
21 alternatives that were available to us for parking to
22 serve the convention center in our discussions with the
23 City.

24 ACTING COMMISSIONER PORINI: What year would that
25 be?

1 MR. CHAPMAN: Pardon me?

2 ACTING COMMISSIONER PORINI: What year?

3 MR. CHAPMAN: Early '99.

4 The Port is not making this transaction. No one
5 can make this transaction unilaterally. No one can
6 identify the parking and obtain the parking that would
7 serve the convention center unilaterally. The Port
8 district cannot do that unilaterally. We have to deal
9 with the landscape and the reality of the geography of
10 this area.

11 We negotiated intensively with the City of San
12 Diego for alternative locations. We examined with other
13 parties alternative locations. The need for parking for
14 the convention center is unquestioned, as Mr. Fossum
15 addressed. There is a woeful lack of adequate parking
16 because of the redevelopment in this area that is already
17 occurring even though the ballpark is not proceeding. And
18 the convention center needs parking.

19 Are these the best parking lots for the
20 convention center that we would like to be able to obtain?
21 They clearly are not.

22 Are they the only parking lots that we can obtain
23 to serve the requirements of the convention center?

24 They clearly are.

25 There will be difficulties. They will not be

1 preferred, but as your staff report indicated, the
2 distance of these parking lots from the entrance to the
3 eastern portion of the expanded convention center is no
4 greater than, and with respect to the Hyatt, more than
5 1,000 feet less than the distance that one would have to
6 walk as an attendee at a convention from one of the
7 existing convention center hotels to the convention
8 center.

9 CHAIRPERSON BUSTAMANTE: Thank you. Any other
10 points? You said you had some.

11 MR. CHAPMAN: Well, there were a number of issues
12 that were raised.

13 CHAIRPERSON BUSTAMANTE: Hold on a minute? Did
14 you have any more?

15 COMMISSIONER CONNELL: I just had one question on
16 that, Mr. Chair. You concluded on the time line that this
17 was 1999 or your discussion of the shuttle parking. When
18 did you get involved in looking at this land as an
19 alternative to parking arrangements?

20 MR. CHAPMAN: It would be in '99.

21 COMMISSIONER CONNELL: In 1999?

22 MR. CHAPMAN: Right, that's when we started to
23 examine what alternatives were available to us.

24 COMMISSIONER CONNELL: Did you do that
25 independent of the City or did the City come to you?

1 MR. CHAPMAN: No, we did it independently. I
2 think we've dealt with the repurchase issue. There was
3 some suggestion by the earlier speaker that there's a
4 problem with these lots related to the fact that
5 commitments are made to conventions coming into the area
6 many years in advance. Whereas, the schedule for the ball
7 games is only one year in advance. And the reality, as I
8 understand it, that while commitments for conventions in
9 the future are made, one does not get to the level of
10 detail of identifying for individual conventions where the
11 participants are going to park.

12 The assumption is that parking will be available
13 to serve the requirements of the convention center, not
14 that special entitlements will be granted seven years in
15 advance in any particular parking facilities. These lots
16 will be available. The problem will be if they're not
17 available. In that case, we've got a convention center
18 that cannot adequately park the events that will be coming
19 to it.

20 There was a suggestion that closer lots are
21 available. We tried hard to find closer lots. There are
22 none available to us closer than these.

23 CHAIRPERSON BUSTAMANTE: Okay.

24 MR. CHAPMAN: I believe --

25 CHAIRPERSON BUSTAMANTE: We have a question here.

1 COMMISSIONER CONNELL: Yes. Who gets priority
2 then? How does this parking arrangement work? We spend
3 \$21 million, the Port, to purchase these parking lots, how
4 much priority is determined? I mean the Padres sit down
5 on their schedule of events and they say they need the
6 activity at a certain point in time. My question to you
7 is how do we assure that the public, being the convention
8 center public, gets priority at that table? How does that
9 work in the lease negotiation or the purchase agreement?

10 MR. CHAPMAN: I think we're fairly tightly
11 constricted with the conditions that are proposed by your
12 staff. But the answer to the question is that we are
13 acquiring the property encumbered. We would prefer it to
14 be unencumbered, but we are acquiring the property subject
15 to the encumbrance of the arrangement made between the
16 City and the Padres, to which we were not a party. And
17 that that encumbrance, as it's narrowed down considerably
18 by the conditions that your staff has proposed, will give
19 rights to the Padres to the lots only on days when they
20 are having games, essentially 81 days a year. And then
21 only for an appropriate period before and after the actual
22 game.

23 In all other events, other than very limited
24 numbers of days, which will certainly be less than ten, I
25 would expect for special events, even in all other

1 respects the lots will be available for public parking,
2 that is to serve the requirements of the convention
3 center. And they will be designed in such a way as to not
4 impair the ability of the convention center to use them
5 for staging, staging of trucks and buses, which is a
6 significant problem also.

7 This is a very densely developed, and will be
8 more densely developed area which severely constrains on
9 the ability to serve all of the needs that are going on
10 down there.

11 COMMISSIONER CONNELL: So what will you do in the
12 part of the time you don't have these parking lots
13 available? I mean, you figure 90 days out of 360, that's
14 25 percent of the time that you can conceivably assume
15 that we will have no use of the parking lot? What do you
16 do on those occasions?

17 MR. CHAPMAN: Well, with respect I think you
18 overstate the burden. The number of days is roughly
19 correct. The Padres might like to think it would be a
20 little more if they're more successful than they have been
21 recently, but that doesn't appear likely in the near term.

22 COMMISSIONER CONNELL: Well, we wish them well,
23 all of our California teams.

24 (Laughter.)

25 MR. CHAPMAN: Well, the Padres may need more than

1 the rest.

2 (Laughter.)

3 COMMISSIONER CONNELL: If there are Padres'
4 representative here note for the record that was not a
5 statement by an elected official.

6 (Laughter.)

7 CHAIRPERSON BUSTAMANTE: Can we go over points
8 that absolutely have to be corrected for the record.

9 MR. CHAPMAN: I think the only one that I'd like
10 to respond is the one that Commissioner Connell just
11 raised.

12 Let's use the number of 90 days. We are told by
13 the Padres and by the City representatives by virtue of
14 how they're arrangements are working, all but perhaps ten
15 to 15 days a year will be evening games. So --

16 COMMISSIONER CONNELL: Will be what?

17 MR. CHAPMAN: Evening, night games. There will
18 be relatively few day games. The number of day games
19 will, for the most part, occur on Sundays. The number of
20 day games that will occur during the week, I would not
21 want to represent to you a number except to say that it
22 will certainly be less than ten a year we are told.

23 And we think that while that's clearly less than
24 perfect, make no mistake, we would prefer to have the lots
25 available for convention center parking all of the time,

1 every day of the year. They will not be, but the burden
2 on them will be mostly in the evening, which will be less
3 impactful to the events going on at the convention center.
4 And during those days where there are conflicts, we will
5 simply have a tighter parking situation than we would
6 prefer.

7 COMMISSIONER CONNELL: Thank you.

8 CHAIRPERSON BUSTAMANTE: Do you receive revenue
9 from the Padres?

10 MR. CHAPMAN: The Padres will get the revenue
11 during those game day events that are occurring where
12 they're operating the lots.

13 CHAIRPERSON BUSTAMANTE: You will receive
14 nothing?

15 MR. CHAPMAN: At that point, we believe not,
16 although they effectively now -- we will receive all the
17 other revenues.

18 COMMISSIONER CONNELL: So they get the revenues
19 on the day they operate the lot. That was part of the
20 City agreement as well.

21 MR. CHAPMAN: That's a function of the MOU
22 between the City and the Padres that serves as a burden on
23 our acquisition of the property's encumbrance.

24 CHAIRPERSON BUSTAMANTE: My guess is anytime
25 you're going to have major facilities for mixed uses,

1 there's going to be a bit of an overlap. Would you -- I
2 mean on something of some kind somewhere, it seems like
3 you're using a major facility for more than one purpose
4 and have very little overlap, in this particular case. As
5 much as you'd like to have no encumbrance on it.

6 MR. CHAPMAN: We concur.

7 CHAIRPERSON BUSTAMANTE: Okay. Do we have
8 anything else?

9 MR. CHAPMAN: That's all, I'm sorry.

10 COMMISSIONER CONNELL: I had two other points
11 that were raised by Craig Brown and I'd like your response
12 to them, so that we have them on the record. I think that
13 would be helpful.

14 CHAIRPERSON BUSTAMANTE: Please, go ahead.

15 COMMISSIONER CONNELL: We now understand the
16 repurchase agreement by the City. And we've gone through
17 that. Let's go through the difference in understanding
18 the size of the parking lot, and then your response to the
19 fact that the lease agreement is in draft.

20 MR. CHAPMAN: With respect to the size of the
21 lots, the certain acquisition we will have, and it's
22 reflected in the square footage that's in your staff
23 report, the 233,000 square feet will be the actual lots
24 themselves. At the time the appraisal was conducted, and
25 at this time, there remains uncertainty with respect to

1 square footage of the streets that bisect the four lots
2 both east and west and north and south.

3 Discussions are continuing with the City with
4 respect to street closures. We have hopes that at least
5 one of the streets will be closed, although perhaps not
6 vacated. If that occurs, an arrangement at no additional
7 cost to the Port will be included to allow that area to be
8 added to the parking lot area, so we will get additional
9 benefit at no additional cost.

10 Greater benefit if both streets are closed, but
11 unfortunately we had hoped that that would be resolved.
12 With both streets being closed leading to the higher
13 square footage in time for this meeting that has not been
14 resolved, and it is only prudent for you to consider the
15 transaction based on the four lots themselves, that's the
16 lower square footage. Although, we anticipate that you
17 can't make your decision based on our anticipation that we
18 will get greater benefit as those decisions are made with
19 regard to the streets.

20 COMMISSIONER CONNELL: And the lease agreement
21 and draft.

22 MR. CHAPMAN: The lease agreement, we had engaged
23 the Padres in negotiations once we concluded the agreement
24 with the City. We moved along the way toward a lease
25 agreement. There was nothing concluded. We had several

1 drafts put together. There was no inclusive agreement.
2 We had a conversation with our bond counsel, because our
3 agreement with the Padres -- or with the City, pardon me,
4 provides that the agreement will conclude only if we are
5 successful in issuing a bond secured by the proceeds from
6 the rental car transaction fee that we are presently
7 collecting, that is designed to defray impacts of rental
8 cars on parking in the convention center area, that there
9 were problems with the way we were headed. And that we
10 ultimately concluded that it would not be prudent to
11 proceed with an arrangement with the Padres until we knew
12 that we had your approval of our agreement and we knew
13 terms of that approval.

14 I think the staff report before you, the
15 recommendation that you're going to be asked to approve
16 and that we would hope you would approve, reflects the
17 wisdom of that course. Any agreement we would have
18 concluded with the Padres would have to be renegotiated
19 substantially. And now we will have guidance as to what
20 that agreement should look like.

21 COMMISSIONER CONNELL: Are you prepared to bring
22 your final agreement with the Padres back before this
23 board?

24 MR. CHAPMAN: If it were your pleasure, we would.
25 We do concur and would hope you would approve the staff

1 recommendation, which would allow that review with the
2 guidance set forth and the conditions to be done by the
3 Executive Director just in the interests of time, but
4 obviously we'll defer to your decision in that regard.

5 CHAIRPERSON BUSTAMANTE: Next up, we --

6 SENIOR STAFF COUNSEL FOSSUM: Mr. Chair, if I
7 could, Curtis Fossum, senior staff counsel. I would like
8 to make a couple of points of clarification from what was
9 just stated as to what the staff reports recommendations
10 would require.

11 If you look on page 16, Item G there, "The
12 parking lot shall be operated so that they are open for
13 general public parking and not the exclusive use of the
14 Padres."

15 Only the issue of the use of the lots during game
16 days is restricted to parking. So on other than game
17 days, the lots can be used for other purposes that the
18 Port may have of the property, the staging and so forth.
19 So there's really no restriction on public parking at all.
20 If you or I or any member here wants to go and use those
21 lots, whether to go to the convention center, event or a
22 Padres game they're open for public parking.

23 What's different is that you may pay more on a
24 Padres day game. And that basically would affect the
25 value of -- it could impact on what the individual who's

1 attending one of those things pays, but they're still
2 open. You can go out and park at the facility any time
3 you would like. It's going to be open for general public
4 parking.

5 CHAIRPERSON BUSTAMANTE: Okay.

6 COMMISSIONER CONNELL: Is that your
7 understanding?

8 MR. CHAPMAN: Yes, it is. And I apologize for
9 misstating the effect of the staff recommendation. We
10 understand that. The Padres have been informed of the
11 conditions that are proposed for the approval. They
12 understand they will have to live with them. That's fine
13 with us. And I believe, although we haven't concluded any
14 arrangement, that the City would have no objection to
15 that.

16 COMMISSIONER CONNELL: So you are not going to
17 exclude people if they don't have a Padres' ticket in hand
18 when they get to that parking lot?

19 MR. CHAPMAN: Absolutely not. There was never
20 any intention of requiring a passport of any sort for
21 entrance to this parking lot.

22 CHAIRPERSON BUSTAMANTE: Is the Chairman of the
23 Port here? Frank, do you want to add anything here or do
24 you feel like you have to add anything?

25 MR. URTASUN: Mr. Chairman, I'm hesitant, as

1 Chairman of the Board, to get involved in the discussion
2 amongst attorneys, but I just wanted to stand before you
3 to say I want to thank staff for the work that they've
4 done. They've exhausted all efforts in looking at this
5 transaction.

6 While I have not taken this matter back before
7 the Board of Port Commissioners on the modified
8 recommendations of staff, I believe that we can live with
9 those modifications as staff has presented them to you.

10 CHAIRPERSON BUSTAMANTE: Okay. Leslie -- I'm
11 sorry.

12 COMMISSIONER CONNELL: Paul, did you want to say
13 something?

14 EXECUTIVE OFFICER THAYER: I was just going to
15 add a small clarification which was although the Port
16 staff has represented to us right along that they didn't
17 expect that, at some time, the parking lot attendants
18 would require tickets to show that your were attending the
19 game day, nonetheless, some of the documents specifically
20 say that the Padres would have exclusive use of these
21 parking lots. And that led to the staff condition here to
22 ensure that that wouldn't occur. So that we believe the
23 only impact of the Padres use of the parking lot would be
24 one of competition for available spaces.

25 So if your convention center starts at 9:00

1 o'clock with some session, all the convention center
2 people can show up there and park and if there aren't
3 spaces available when the Padres games start at 12:00,
4 then that's the effect of that. It's whoever gets there
5 first. And in a practical matter, I suspect it would be
6 the convention center uses that will get there first.

7 CHAIRPERSON BUSTAMANTE: Okay.

8 MR. GERARD: Thank you. My name is Leslie
9 Gerard, again, Assistant City Attorney for the City of San
10 Diego. And I'd be happy to try to respond to any,
11 questions but I just would like to --

12 CHAIRPERSON BUSTAMANTE: Just tell us what you
13 think you have to tell us.

14 MR. GERARD: I want to point out something that I
15 think was touched upon by Mr. Fossum. And the City really
16 wears kind of two hats in this context. We have a
17 redevelopment project that we want to implement, and it's
18 a very important redevelopment project. It is generating
19 parking needs. It is also gobbling up available land to
20 provide for parking.

21 The other hat we wear is we operate the
22 convention center, although we subcontract that out to the
23 convention center corporation. But by agreement with the
24 Port, we operate the convention center. We see a definite
25 need for parking to serve the convention center expansion.

1 Remember, the expansion does not have parking below grade
2 like the original center does. The expansion does not.
3 And as was reported by staff, the available parking in the
4 area is being gobbled up because of the redevelopment
5 that's going on.

6 And with regard to the distance, I would point
7 out that I have gone -- this is my own personal
8 experience. I have gone to events at the convention
9 center and I have had to park at the Hyatt or I've had to
10 park at other facilities that are a distance away, because
11 the on-site parking is not available. It is not a burden
12 to walk, for example, from the Hyatt Tower to the
13 convention center. It's rather quite close.

14 Personally, the idea of a shuttle makes
15 absolutely no sense, because if you can look at the
16 diagram, it isn't that far of a walk. It would be a nice
17 pleasant walk to the expansion, which these lots will be
18 designed to serve.

19 So the City of San Diego saw an opportunity here
20 to, yes, provide parking for the convention center
21 expansion, which is a burden on the Port. And yet, at the
22 same time, because shared parking is a good idea, because
23 you don't want empty parking spots, that the parking would
24 be available to serve the redevelopment project, in
25 general, when it is not being used for convention center

1 parking.

2 So we propose to you that this is a marvelous
3 opportunity, especially given the severe escalation in
4 prices that we are experiencing in trying to acquire the
5 land necessary for the redevelopment project.

6 It was pointed out that the acquisition for the
7 hotel lots on the westside of the ballpark, I think if you
8 extrapolate those prices to the parking lot, you would get
9 a value in excess of \$30 million for these lots. And as
10 development goes east, I, with all confidence, would be
11 able to state to you that the value of these lots will
12 sky-rocket. With the commercial/residential development,
13 the value of these lots will make a \$21 million dollar
14 sale value a bargain by today's standard.

15 CHAIRPERSON BUSTAMANTE: Thank you.

16 COMMISSIONER CONNELL: Are you telling me we can
17 arbitrage?

18 MR. GERARD: I am not an expert on whether the
19 State or the Port can arbitrage, but if you wanted to sell
20 them to us in the future, I'm not sure it would make
21 economic sense for us to buy them back from you.

22 CHAIRPERSON BUSTAMANTE: I just want to make sure
23 that anymore predictions aren't made because the
24 Controller, I'm sure, is very prepared to be able to pick
25 you up on every single point.

1 (Laughter.)

2 COMMISSIONER CONNELL: Which is my responsibility
3 for the State.

4 CHAIRPERSON BUSTAMANTE: Yes, ma'am, it is.

5 MR. GERARD: Thank you very much. And I do
6 appreciate the time that staff has put into this. I have
7 been in conversations with them, and I appreciate their
8 efforts. Thank you very much. We support your approval
9 of this project.

10 CHAIRPERSON BUSTAMANTE: Thank you, Madam
11 Controller, for the complete review. We appreciate it.
12 Is there any other questions or concerns? Any other items
13 from staff on this issue?

14 Has the action to deny the original proposal been
15 taken up yet?

16 EXECUTIVE OFFICER THAYER: No.

17 CHAIRPERSON BUSTAMANTE: It would be appropriate
18 then to receive a motion to that effect.

19 CHAIRPERSON BUSTAMANTE: Is there a motion?

20 ACTING COMMISSIONER PORINI: Let me ask for
21 clarification. I apologize, I had to leave the table for
22 a moment. The action would be two-fold, first to deny the
23 original proposal and then to adopt the modifications
24 stated in staff's recommendation?

25 CHAIRPERSON BUSTAMANTE: Yes. Like I said, it

1 could all be made in one motion.

2 EXECUTIVE OFFICER THAYER: Certainly. And
3 there's actually, when you read it, the recommendation to
4 the Commission. There are other sort of more boilerplate
5 ones dealing with CEQA and this kind of thing, and
6 normally it's done all in one vote, but you can bifurcate
7 them.

8 ACTING COMMISSIONER PORINI: So moved.

9 CHAIRPERSON BUSTAMANTE: And the motion has been
10 made. Is there a second?

11 COMMISSIONER CONNELL: I'll second that.

12 CHAIRPERSON BUSTAMANTE: Okay, let the record
13 reflect that the motion is made, seconded and is approved
14 unanimously by the Board.

15 EXECUTIVE OFFICER THAYER: Thank you.

16 Now, item 116 was pulled; is that correct?

17 EXECUTIVE OFFICER THAYER: No decision was made
18 on that yet as I understand. You may wish to do that or
19 direct staff to do some additional work on that?

20 COMMISSIONER CONNELL: May I suggest, Mr. Chair,
21 Mayor O'Neill is in the audience and she has been very
22 patient. We have one of her items, maybe we could go to
23 her item.

24 CHAIRPERSON BUSTAMANTE: Which item is she here
25 for?

1 COMMISSIONER CONNELL: It's 117. You might be
2 take that out of order.

3 CHAIRPERSON BUSTAMANTE: That's going to be a
4 long one. Yeah, I don't mind at all. Why don't we take a
5 five-minute break and then come back to that and we'll
6 come directly to that item okay.

7 (Thereupon a brief recess was taken.)

8 CHAIRPERSON BUSTAMANTE: We're back in session
9 and we are going to be taking up Item number 117. And
10 those who are in support of the project -- let's see, it
11 doesn't say here on these items who's in support and who's
12 in opposition. Could we then get all those who are in
13 support of the project to lineup against that wall over
14 there. And Madam Mayor, would you like to start us off.

15 Welcome.

16 LONG BEACH MAYOR O'NEILL: Thank you very much.
17 It's nice to be back to this august body. I thank you
18 very much for it. I feel like this is almost Long Beach
19 day, there have been so many agenda items.

20 Members of the Commission, Mr. Chairman, I thank
21 you for your actual monitoring of Long Beach's use and
22 development of the tidelands. And we feel that we are
23 proud of our record of maintaining the tidelands, making
24 them usable and attractive for the people of California.

25 As you know, Long Beach has changed a great deal

1 in the last eight years. And our focus, now that we have
2 lost the Navy and we had downsizing with aerospace, our
3 focus is on the downtown waterfront, is on tourism and
4 that's one of the three Ts of our recovery, we have
5 tourism, trade and technology.

6 We have a beautiful waterfront. We maintain six
7 miles of public beach and our bike path is part of the
8 regional bike trail system. The project that's before you
9 today has been in some phase of planning since I became
10 Mayor in 1994. And this is the final piece in the
11 waterfront development, that's been on the agenda of our
12 Council over 20 times since I have become Mayor.

13 Queensway Bay is designed to be a major visitor
14 destination in this region, this area. It already
15 includes within its 300 acres a convention center, the
16 Queen Mary, Rainbow Harbor, Shoreline Park and the Long
17 Beach Aquarium of the Pacific.

18 We're now about to break ground on the final
19 phase of Queensway Bay, which is 18 acres of commercial
20 development on the waterfront, and this will complete the
21 visitor destination.

22 I know that it has been studied by staff. We
23 appreciate that study. We have spent \$40 million on
24 Rainbow Harbor and the infrastructure improvements to
25 prepare for this development. This is not a new idea. It

1 has been with the Coastal Commission I think eight times.
2 It has been in front of you -- this is the, I think, last
3 audit that we hope that we go through. So I thank you and
4 your staff for the opportunity to review the land use at
5 the Queensway Bay. And I hope you will agree with me that
6 our focus has been to bring visitors to the tidelands,
7 which is consistent with tidelands law, and I thank you
8 very much for the opportunity to speak to you.

9 CHAIRPERSON BUSTAMANTE: Any comments from the
10 members?

11 COMMISSIONER CONNELL: Yes, I requested that
12 audit and I am just delighted to see the expectation that
13 the Queensway Bay project was being managed appropriately,
14 has been fulfilled, and that we have a clean audit report,
15 I think, which helped the Mayor and her defenses against
16 those who always want to criticize the activities of these
17 developments.

18 I personally, as you know, Mayor, have
19 experienced Queensway Bay. I bicycle down there.

20 LONG BEACH MAYOR O'NEILL: Yes, you told me you
21 bike down there.

22 COMMISSIONER CONNELL: I want to clarify for the
23 record, I didn't bicycle from LA down to Long Beach.

24 (Laughter.)

25 COMMISSIONER CONNELL: I bicycled once I got to

1 Long Beach, Beverly, around the development and through a
2 large part of the adjacent area. I am not of the athletic
3 caliber to bicycle down there easily at least. But it has
4 certainly come a long way from what it once was.

5 LONG BEACH MAYOR O'NEILL: Yes, it is a beautiful
6 area. We're very proud of our city.

7 COMMISSIONER CONNELL: You should be
8 congratulated on it.

9 LONG BEACH MAYOR O'NEILL: Thank you.

10 CHAIRPERSON BUSTAMANTE: Thank you, Madam Mayor.
11 Staff, do you want to make your presentation?

12 EXECUTIVE OFFICER THAYER: Certainly. I'll try
13 and be brief, but I wanted to introduce -- the point of
14 this item is two-fold. One is to introduce the report to
15 you that was prepared in response to the Commission's
16 concerns over issues raised by citizens last year. The
17 second purpose of the audit report is to consider whether
18 or not additional audits should occur at Long Beach.

19 As you recall, last year several citizens showed
20 up during the public comment period at several Commission
21 meetings and raised issues concerning primarily whether or
22 not this project that the Mayor referred, the Queensway
23 Bay project, was consistent with the public trust grant,
24 the grant by the Legislature of tide and submerged lands
25 to the city and the public trust doctrine.

1 In response, we had a workshop last July. It
2 lasted about seven hours, forty-five people showed up and
3 testified. There was extensive comment both pro and con
4 with respect to the Queensway Bay project, and then the
5 overall management of the tide and submerged lands by Long
6 Beach. We've also received a number of letters.

7 CHAIRPERSON BUSTAMANTE: And all those pro and
8 con are on the record?

9 EXECUTIVE OFFICER THAYER: Absolutely. And, in
10 fact, the report I think that was distributed contains the
11 transcript so that all the comments we received are
12 available to the Commissioners and anybody else in the
13 public.

14 CHAIRPERSON BUSTAMANTE: I wanted that stated
15 again for the record.

16 COMMISSIONER CONNELL: Did you note that on our
17 web site? Can we refer people to -- do we have on our web
18 site a list of all of our publications from our public
19 meetings. I think it would be very helpful.

20 EXECUTIVE OFFICER THAYER: Yes. This report is
21 on the web site.

22 COMMISSIONER CONNELL: Excellent. Thank you.

23 EXECUTIVE OFFICER THAYER: But, yes, we try and
24 put reports that are of great importance to people on the
25 web site, so that they'll have access as you've requested.

1 The staff report contains an overall analysis of
2 the tidelands management of Long Beach, the legislative
3 grant history, the City's jurisdiction and what our
4 jurisdiction is, what our remaining jurisdiction is and a
5 list of the citizens' concerns.

6 The second half of the report is actually sort of
7 an item by item response to the main concerns that were
8 listed. We took questions, pretty much verbatim from the
9 workshop, and then tried to respond to them. And then,
10 finally, as I indicated, there's a number of appendices
11 including the public transcript as well as some other
12 letters in response to these issues.

13 We have three types of issues generally that were
14 raised. One is whether or not the uses at Long Beach are
15 consistent with the legislative grant, some of the
16 commenters had some concerns that perhaps Parks should --
17 only Parks should be allowed or harbor uses only. And
18 they had particular concerns with some of the uses that
19 were proposed in the Queensway Bay project.

20 The second general issue of concern was whether
21 or not Long Beach was properly managing their tidelands in
22 a larger sense, whether it was a good idea to bring the
23 Queen Mary, what kind of deals that have been setup with
24 hotels there, what were the legal arrangements and the
25 financial arrangements for the convention center and the

1 aquarium.

2 The third aspect that was discussed by some of
3 the commenters were various aspects of Long Beach
4 management, which didn't really touch on the jurisdiction
5 of the State Lands Commission. For example, they
6 discussed the placement park policies, the National Parks
7 Service, and Coastal Commission, debris in the harbor
8 area, redevelopment policies, that kind of thing. That's
9 a third category that was mentioned in the workshop.

10 The report that I mentioned, the staff report,
11 contains the results of the staff research and analysis of
12 these concerns. The analysis found that the legislative
13 grant and amendments do authorize most, if not all, of the
14 full panoply of public trust uses, which are generally
15 allowed on trust lands under the jurisdiction of the
16 Commission.

17 The report also noted that legitimate uses of
18 public trust lands at Long Beach include the parks and
19 wildlife habitat advocated by many of the people who spoke
20 at the workshop, but that the uses allowed there are also
21 included inside the museum, aquarium, boating facilities,
22 et cetera.

23 And finally, the trust lands can also contain
24 what are called incidental uses, not also necessarily
25 trust uses themselves, but are necessary for the full

1 public enjoyment of the trust lands. And example of that
2 includes things like restrooms or hotels or restaurants
3 and other visitor's certain uses.

4 Most other ports up and down the coast have these
5 uses, have approved these uses whether it's San Diego or
6 LA or in the Bay Area.

7 The movie theaters that are proposed here at
8 Queensway Bay are fairly unusual for tidelands as outlined
9 in the report. Due to the unique circumstances at
10 Queensway Bay, we think they are consistent with public
11 trust and they're a fundamental part of the overall
12 project.

13 Staff also found that Long Beach had made some
14 changes for funding projects, like the aquarium and some
15 of the hotels that may require use of trusts in the
16 general funds that could also be used for other purposes.
17 And these choices that were made, that were not
18 inconsistent with the grant, are the public trust
19 doctrine.

20 The report also details with respect to the
21 jurisdictions of the City and Commission, this is
22 important to understand what are the City's
23 responsibilities and what are the Commission's
24 responsibilities with respect to management of these
25 lands.

1 In general, the City has been granted management
2 of these lands by the Legislature. And basically, it's
3 their responsibility to make choices among the different
4 competing public trust uses. The State Lands Commission
5 does retain oversight generally over these Long Beach
6 trust lands as it does over any other granted lands.

7 And I think the office of the Attorney General
8 had written a memo, which is quoted in this report, that I
9 wanted to just mention briefly, which describes what
10 remaining authority there is with the Lands Commission.

11 This is on page 8, "The Lands
12 Commission has the authority, although
13 not the general duty, to systematically
14 investigate, audit and review the
15 administration of all tidelands granted.

16 "The State Lands Commission's
17 supervisory authority includes the power
18 to seek corrective measures by grantees.
19 However, the State Lands Commission
20 shall not ordinarily purport to
21 substitute its judgement over that of
22 the local grantee."

23 And the final point, "Except in the
24 most flagrant cases, the nature of
25 enforcement action of the State Lands

1 Commission is a matter of discretion.
2 All accusations or information of a
3 serious character coming from a
4 responsible source may warrant further
5 staff inquiry or investigation,
6 particularly when they fall into
7 categories of fraud, collusion et
8 cetera."

9 We think that the staff report carries out the
10 responsibilities that are outlined in this Attorney
11 General's memo, which describes what the Commission should
12 and shouldn't be doing with respect to oversight.

13 The Commission's remedies are also somewhat
14 limited. Should it find fault with what's going on here,
15 it can generally take several different courses of action.
16 One, it could advise the City of its concerns, and, in
17 fact, request the City make changes to its management. It
18 could suggest grant amendments to the Legislature, wherein
19 the legislative grant to the City could be constrictive or
20 expanded to address the concerns, or it could file suit to
21 overturn some of the City's decisions.

22 And these remedies actually are very similar to
23 the ones that were available to the general public, who
24 also might go to the Legislature and ask for changes, also
25 might sue, also might note their concerns to the City.

1 In Long Beach, in particular, State law does also
2 require the Commission to approve city expenditures of
3 tide and submerged lands oil and gas revenue, with the one
4 expressed area of the law keeps the Commission involved
5 with day-to-day kinds of decisions.

6 In conclusion, the Commission staff has
7 thoroughly investigated the concerns that were raised at
8 the workshop and by the members of the public before the
9 Commission last fall to determine if there's been any
10 abuse of discretion in Long Beach's management of the tide
11 and submerged lands. The time and effort put into this
12 matter by those concerned, the members of the public,
13 evidenced their sincerity and conviction of those citizens
14 in bringing their concerns to the Commission.

15 Their collected vision for what this City's water
16 plant should look like appears also to be consistent with
17 the tidelands. However, the City has chosen different but
18 equally valid uses for the waterfront. And therefore, the
19 staff concludes that the uses proposed or that are
20 occurring at Long Beach are consistent with the
21 Legislative grant. And Long Beach has not mismanaged its
22 tidelands and has not deferred revenues to nontrust
23 purposes.

24 With respect to the third category of issues
25 raised, allegations concerning matters not directly within

1 the Commission's jurisdiction, the Commission sent letters
2 to the different agencies that were involved in these
3 other issues notifying them of the concerns that we
4 raised. And we have not heard of further issues that
5 these other agencies had with those problems, but we
6 wanted to make sure that if they were brought to our
7 attention, that they would be passed on to the appropriate
8 agency for resolution. I think copies of those letters
9 are also in your appendix and staff report.

10 Before concluding, I'd like to acknowledge the
11 work put into this report by the Commission staff. Some
12 of them worked now a year on this project, notably the
13 sand and lands team of Jennifer Reischman and Grace Scott,
14 Curtis Fossum of our staff and Nancy Saggese to my right
15 from the Attorney General's office helped with the legal
16 analysis. And they're available to answer questions as
17 they come up.

18 That concludes staff presentation.

19 CHAIRPERSON BUSTAMANTE: Lorena. I tried all the
20 subtle ways.

21 (Laughter.)

22 CHAIRPERSON BUSTAMANTE: Any other questions?

23 ACTING COMMISSIONER PORINI: No.

24 CHAIRPERSON BUSTAMANTE: Okay. We can start with
25 the support side. We're going to have to make sure --

1 let's see there is 1, 2, 3, 4, 5, 6, 7 -- it looks like
2 there's about 15 folks here. What I want to do is I want
3 to limit -- I want to limit people. I don't want to limit
4 the numbers and I don't know exactly how to limit either
5 the support or opposition, so what I think I'm going to do
6 is I'm going to put a 20-minute limit on each side. You
7 guys can figure out how long you want to speak and who
8 speaks, but both on the support and opposition. I'm going
9 to limit both sides to 20 minutes.

10 MR. KORTHOF: Mr. Chairman, I'm just a member of
11 the general public. I just want to make my speech. I
12 don't want to be included in the 20-minute side.

13 CHAIRPERSON BUSTAMANTE: You're not in support or
14 opposition?

15 MR. KORTHOF: I'm in opposition.

16 CHAIRPERSON BUSTAMANTE: We're going to leave it
17 in the 20-minute period of time.

18 MR. KORTHOF: I just want to speak three minutes.

19 CHAIRPERSON BUSTAMANTE: There's nothing that
20 says you get three minutes here.

21 MR. KORTHOF: It says on the agenda.

22 CHAIRPERSON BUSTAMANTE: The agenda says three
23 minutes?

24 All right, then I will stand corrected, sir. And
25 everybody who speaks, since it's on the agenda, will be

1 getting their three minutes.

2 Sir, could you state your name for the record?

3 MR. KORTHOF: Doug Korthof, K-o-r-t-h-o-f.

4 CHAIRPERSON BUSTAMANTE: He'll be coming back to
5 speak.

6 Okay, please go ahead.

7 LONG BEACH CITY MANAGER TABOADA: Thank you, Mr.
8 Chairman, members of the Commission, Henry Taboada City
9 Manager for the City of Long Beach and I'll be brief.

10 I think the Mayor's statements and those of the
11 staff report were very comprehensive, conclusive and in
12 support of the City's position that we, in fact, are
13 safeguarding the trust and are operating it in an
14 effective and lawful manner. I would only add that the
15 Queensway Bay development project, which is the smallest
16 part of the Queensway Bay 300-acre project, it's an
17 18-acre project, we view as the critical mass for that
18 development project.

19 And that critical mass is what brings people to
20 the project and therefore brings it to the entire
21 Queensway Bay area, and, in fact, is what exposes the
22 maximum number of people to the City's waterfront and to
23 the coastal access issues that are being addressed.

24 We look at the Queensway Bay development project
25 then as the critical mass for the entire Queensway Bay

1 project and one which brings, again, the maximum number of
2 people to the Queen Mary, to the aquarium, the convention
3 center, to Shoreline Village, which, again, increases the
4 access to the coast and to the waterfront for all of the
5 city's visitors.

6 And, in fact, it is, as the Mayor stated, one of
7 our keystones of our economic recovery from base closure
8 and aerospace downsizing.

9 So that really is what I would add to this
10 discussion, and simply support the staff recommendation
11 that you take no further action on this matter.

12 Thank you.

13 MS. KRAMER: Good morning. Thank you for the
14 opportunity to speak to you this morning. My name is
15 Lovetta Kramer and I'm Vice President of the Queen Mary,
16 located at the southwest end of Queensway Bay in Long
17 Beach.

18 As you may know, the Queen Mary was brought to
19 Long Beach in 1967 to revitalize the shoreline of Long
20 Beach and to stimulate tourism. Since the arrival Of the
21 Queen Mary, we have seen the development of the Long Beach
22 Marina, Shoreline Village, the expanded and refurbished
23 Long Beach Convention and Entertainment Center, Long Beach
24 Aquarium of the Pacific and the construction of a Hyatt,
25 Hilton, Renaissance and Westin hotels along the coastline

1 of Long Beach.

2 The final piece in the puzzle is the development
3 of the Queensway Bay project. The Queen Mary is in full
4 support of the Queensway Bay plan and the completion of
5 the title plans along our coastline. We encourage the
6 Coastal Commission to support and approve of this integral
7 part of the City of Long Beach's coastal development plan.

8 Queensway Bay will provide another opportunity
9 for residents and visitors to come to Long Beach and
10 appreciate the ambiance of our coastline and our
11 shoreline.

12 Once again, thank you.

13 MR. McCABE: Chairman Bustamante, Commissioners,
14 My name is Jim McCabe, Deputy City Attorney for the City
15 of Long Beach. You've heard from enough lawyers today, I
16 won't tax you further with that contribution.

17 But, again, our proposed development that is at
18 issue here is in support of the tidelands, brings visitors
19 to the tidelands and brings economic viability to the
20 several tidelands projects, the aquarium, the Queensway
21 Bay, the commercial Rainbow Harbor as part of Queensway
22 Bay. And I won't tax you with my legal analysis. If any
23 of the comments from the opposing parties should raise any
24 issues for you, I'd be happy to address them.

25 Thank you very much.

1 CHAIRPERSON BUSTAMANTE: Okay, Thank you.

2 Opposition. We need you up against that right
3 wall again. I apologize, if these had that they were in
4 support or opposition, I could better manage those. Could
5 you give me your name, please.

6 Ann Denison, Long Beach.

7 CHAIRPERSON BUSTAMANTE: Please, go ahead.

8 MS. DENISON: We were at this hearing and many
9 citizens who joined their voices with us first want to
10 thank you for your effort to investigate what is occurring
11 in the Long Beach tidelands, especially as it relates to
12 Queensway Bay and the commercial project that has been
13 proposed by the trustee of these lands, the City of Long
14 Beach.

15 However, we believe this preliminary report,
16 although extensive in its scope and information is
17 incomplete or inaccurate and many essential facts and
18 aspects, leading its staff authors to what we believe are
19 flawed conclusions and unjustified recommendations under
20 the law.

21 Based upon our preliminary analysis and inquiry,
22 since receiving the report within the past ten days, we
23 would like to make three points in this regard.

24 First, with your information contained in this
25 report and your investigation thus far, we feel strongly

1 that evidence exists that the actions either taken or
2 proposed by the City of Long Beach in relation to various
3 projects within State tidelands Queensway Bay are illegal
4 under local and State laws.

5 These illegalities relate to the authorized use
6 of the lands under local laws and State grants into the
7 financing of the project within these lands, which
8 apparently places State and City general obligation at
9 risk, contrary to State Constitutional Law and State voter
10 approved legislation relating to approval of a debt as per
11 Proposition 13.

12 Second, within the context of the projects and
13 actions mentioned in this report, there have been severe
14 abuses of discretion under their mandate as trustees under
15 the State grant of tidelands, for example, the trustees
16 acting as fiduciary officers of this city and trust have
17 failed to perform realistic or authentic due diligence in
18 regards to projects or financing. Their many abuses are
19 only now under scrutiny and extreme project failure, that
20 is the aquarium, coming to light and having to be dealt
21 with publicly.

22 Due diligence reports upon which hundreds of
23 millions of dollars of bonds were based and sold, and
24 which after two short years have proven to be 90 percent
25 off of projections, two and a half million in attendance

1 projected, 250,000 actual. These are not mistakes. These
2 are manipulations or abuses of discretion warranting your
3 action as responsible overseers of State interest.

4 Third, the proposed development of Queensway Bay
5 is an unauthorized use under state tidelands grant. The
6 report recommends no action in regard to the Queensway Bay
7 project, based upon a conclusion that the commercial use
8 proposed by this trust is incidental to authorized use and
9 recreation under the State tidelands grants.

10 In fact, this is the first interpretation or
11 opinion of the case that is being issued in a report to
12 use. The City trustee has put nothing in writing nor has
13 it responded to pertinent conditions placed upon it by
14 other State agencies and board's coastal commerce.

15 In actuality, the policy and design of the City
16 for the use of the property is to create a commercial
17 project that extends the commercial downtown into the
18 available lands. Recreation has never been discussed,
19 included or bragged about either by the staff or trustees.
20 The trustees' actions in investments in recreation have
21 been to remove or keep them away from the area. Rather,
22 economic development in the context of downtown
23 development has been their focus, motivation and source of
24 pride.

25 This project, much like any other commercial

1 development, consists of 500,000 square feet not including
2 four acres of eight-story parking structure of
3 restaurants, movies and retail shops that are not in any
4 way unique to tidelands or water usage nor incidental to
5 any other uses. Commercial is the usage and as such is
6 not authorized under the State grant tidelands.

7 CHAIRPERSON BUSTAMANTE: Thirty seconds.

8 MS. DENISON: In fact, authorization such as
9 parks and open space are being removed and being legally
10 replaced. This project utilizes precious land that was
11 one of Long Beach's and one of California's prime
12 heritage. The beach deserves to be utilized according to
13 these legislative authorized possibilities and not a place
14 to build another shopping center.

15 Thank you.

16 CHAIRPERSON BUSTAMANTE: Thank you, ma'am.

17 Next, somebody.

18 MR. KORTHOF: I'm Doug Korthof from Seal Beach.

19 CHAIRPERSON BUSTAMANTE: Thank you.

20 MR. KORTHOF: I wish to respond to some of the
21 statements made by the officials of Long Beach.

22 First, the recovery plan for Long Beach is not
23 relevant to the tidelands trust. That's an economics
24 issue. Economics are not, in my view or in the view of
25 the Coastal Commission when they judge projects, the

1 economic viability of one part of a project in order to do
2 something good for the habitat in another part is not
3 relevant.

4 Similarly here, the economic health of Long Beach
5 is not relevant to the sacred grant of tidelands trust,
6 which is important to all the people of California.

7 Secondly, when they say that it is essential to
8 Long Beach and its ambiance and the Honorable
9 Commissioners stated that Long Beach is much better than
10 it was, let me take you back to a time when there was, in
11 fact, in Long Beach a beach. And if you went to Long
12 Beach, you could actually go to Long Beach and there was
13 habitat. There wasn't trash.

14 Development was confined to the city portion of
15 the city. And this could be the case again, if the State
16 tidelands trust is honored, if the grant of tidelands is
17 honored, then the city would have to pull out of these
18 lands it has illegally, in my view, taken over for
19 purposes that are not related to beachfront ocean or
20 harbor uses.

21 Now, they stated that tourism is essential, that
22 the purpose of these structures and this project is to
23 drive tourism to Long Beach. What are the tourists going
24 there for? They're going for a convention center. Now,
25 what does the Convention Center have to do with the beach?