

1           They're going for a marina. Well, if they're  
2 going for the marina, that's realistic, that's part of the  
3 associated uses. The marinas and harbors are fine.  
4 They're going there for a hotel. They're going for  
5 stores, shops, specialty shops. Those are not incidental  
6 uses. Those are destination uses. And, as such, they are  
7 prohibited under the sacred grant and tidelands trust,  
8 which is, as you know, the tidelands is owned by the  
9 people of California and is administered by the State  
10 Lands Commission and has been granted to the City of Long  
11 Beach to do whatever it's going to do with it.

12           Now, when they talk about economic viability of  
13 Long Beach, you need to think about the fact that Long  
14 Beach has a long record of living off the oil money and  
15 not doing well economically. The original downtown of  
16 Long Beach was composed of small shops, older people, a  
17 lot of sailors used to come in, there was aerospace.

18           Those little small shops were the subject of  
19 redevelopment back in the sixties and seventies, where  
20 they completely destroyed, gutted and tore out the  
21 downtown. Instead of fixing the downtown buildings, which  
22 is where development should be, you shouldn't move your  
23 buildings to the coast, you should keep your buildings a  
24 little bit offset from the coast, instead of fixing these  
25 buildings, instead of supporting small merchants, they

1 came in with the redevelopment agency and bought them all  
2 out and destroyed the downtown in the process and kept  
3 building out into the ocean as if the record of sale here  
4 in the central city is going to be somehow fixed when they  
5 build closer to the ocean and out into the ocean as they  
6 continue to fill-in the harbor and do more shenanigans  
7 with the harbor expansion.

8 And in conclusion, I wish that you would not  
9 consider this staff report as final because we don't. We  
10 wish that you would continue the audit. And if you don't,  
11 I think the people of the State of California will be  
12 vastly disappointed in you. We expect that when you go to  
13 the beach, there's going to be a beach, not moving  
14 theaters. We expect when you go to the beach, you're  
15 going to be able to go into the water and not be inundated  
16 with sewage and trash. That's what we require. People  
17 that live on the ocean shore have this responsibility, and  
18 Long Beach has not met up to it.

19 CHAIRPERSON BUSTAMANTE: Thank you, sir. He  
20 raises a question about the Coastal Commission. Has this  
21 been before the Coastal Commission, staff?

22 MR. KORTHOF: Can I briefly expand on that? As a  
23 matter of --

24 CHAIRPERSON BUSTAMANTE: I'm asking the staff a  
25 question. You can stay there for a minute if you'd like.

1 Just wait a minute.

2 EXECUTIVE OFFICER THAYER: Let me confirm with  
3 Jennifer, who worked on this, but my understanding is that  
4 the master plan for the port was amended for the city.  
5 Jennifer, do you want to -- yes, please, and that the  
6 Coastal Commission approved it.

7 MS. REISCHMAN: Jennifer Reischman, staff of your  
8 Commission.

9 The EIR was done in 1994 and the Coastal  
10 Commission certified that EIR as an LCP amendment for the  
11 City of Long Beach. When this project came to the Coastal  
12 Commission back in 1998/1999 initially, the Coastal  
13 Commission put various conditions on the City for the City  
14 to determine that this project was in conformance with the  
15 granting statutes.

16 And the City did comply with those and those  
17 conditions have been met and accepted by the Coastal  
18 Commission.

19 CHAIRPERSON BUSTAMANTE: So when was that that it  
20 was accepted by the Coastal Commission specifically?

21 MS. REISCHMAN: Specifically, those --

22 CHAIRPERSON BUSTAMANTE: Was it this last year,  
23 this year?

24 MS. REISCHMAN: They were -- there were three  
25 conditions and they were accepted, I believe, in 1999 and

1 2000.

2 CHAIRPERSON BUSTAMANTE: Was this particular  
3 piece included in that?

4 MS. REISCHMAN: Yes.

5 CHAIRPERSON BUSTAMANTE: Okay.

6 COMMISSIONER CONNELL: What were those  
7 conditions?

8 MS. REISCHMAN: The first condition was that the  
9 project, the Queensway Bay Phase 2, that's the issue here,  
10 was in conformance with the granting statutes, and the  
11 City of Long Beach had to submit a letter to the executive  
12 Director of the Coastal Commission stating that these uses  
13 were in conformance with granting statutes.

14 The other condition was in terms of a public  
15 parking lot, and it was the same condition placed on the  
16 City that the parking lot was consistent with the granting  
17 statutes. And the third condition was actually placed on  
18 the staff of the State Lands Commission, stating that the  
19 subdivision for this 18-acres, in terms of financing, was  
20 consistent with the public trust doctrine and the granting  
21 statutes.

22 CHAIRPERSON BUSTAMANTE: Thank you.

23 MR. DENEVAN: My name is Lester Denevan, citizen  
24 of Long Beach. I want to ask for ten minutes to speak on  
25 this issue for which I'll give you the reasons. First of

1 all, in January of last year, I initially raised this  
2 question.

3 CHAIRPERSON BUSTAMANTE: I'm sorry I have to ask  
4 who is speaking on it?

5 MR. DENEVAN: Pardon?

6 CHAIRPERSON BUSTAMANTE: You'd like to ask who is  
7 speaking on it?

8 MR. DENEVAN: I'd like to speak for ten minutes.  
9 I'm a city planner is my background. I'm addressing  
10 technical issue, which I can't address in three minutes.

11 CHAIRPERSON BUSTAMANTE: I've allowed those  
12 speakers to give the time they've been allowed to give,  
13 which is the three minutes, so you have three minutes,  
14 sir.

15 MS. DENISON: It takes three minutes to do the  
16 handouts. I can't even enter these on the record?

17 CHAIRPERSON BUSTAMANTE: You can submit them for  
18 the record.

19 MS. DENISON: In any context at all or just put  
20 them on your desk?

21 CHAIRPERSON BUSTAMANTE: You can do it anyway  
22 you'd like.

23 MS. DENISON: Well, the matter is that you cannot  
24 act on these handouts and this information unless you sit  
25 down and read through my materials. Also, you had eight

1 months to prepare your report. We had ten days to  
2 respond. I have a letter which is half completed. I  
3 didn't have enough time to address all those issues in  
4 this letter. I'm asking just, respectfully, to be allowed  
5 ten minutes to speak.

6 CHAIRPERSON BUSTAMANTE: Okay. I'm not going to  
7 allow you ten minutes to speak, sir. What you can do is  
8 you can pass out those items. All the discussion that  
9 we're having right now will not be counted against you.  
10 If you'd like to pass out documents, we can have staff  
11 help in passing out documents, so that either I have them  
12 here in front of me and the staff has them in front of  
13 them, so that time will not be taken off of your time to  
14 speak.

15 MR. DENEVAN: Well, I'll be addressing these  
16 quickly. I'll try to very quickly go through my report,  
17 but I have to refer to these before I can pass them out.

18 CHAIRPERSON BUSTAMANTE: So we'll get them after  
19 you speak then.

20 MR. DENEVAN: Yes. There's a key issue involved  
21 here and that is what is called incidental uses, and that  
22 term has been used a number of times in this report. And  
23 there's a question of what is incidental use.

24 And the question is, which of the primary uses  
25 proposed in the Queensway Bay project, is it commercial

1 uses or park uses?

2           So in the total context of this report and the  
3 LCP, we have four office buildings already built. We have  
4 another one accommodated in the local coastal program. We  
5 have a Hyatt hotel. We have a planned additional hotel in  
6 the Queensway Bay. We have Shoreline Village. We have  
7 500,000 square feet of retail streets and parking to  
8 accommodate commercial uses.

9           That is incidental to what? I'll leave that to  
10 the staff when I complete my statements.

11           I think that to be credible you should look into  
12 the matter of how many acres of commercial versus how many  
13 acres of parks. We didn't have 133 acres of parks in  
14 1955.

15           Going on as fast as I can, this brings me to the  
16 question of Lands Commission responsibilities for a  
17 sufficient oversight and due diligence. Sufficient  
18 oversight, if you make a decision today based on  
19 information just put on your desk or do you take it back  
20 and study it with due diligence.

21           I do have a handout concerning some of these  
22 matters. I have a paper that I prepared in 1975 on park  
23 acreage. So I have documentation, the city does not, on a  
24 number of these issues. So another problem is that the  
25 City has not done an adequate job on authentication of

1 some of their statements. I was going to speak on the  
2 Queen Mary fiasco, because of the fact that there are some  
3 analogies between Queensway Bay -- the Queensway Bay  
4 project.

5 Queensway in -- oh, about 1980, there were  
6 millions of dollars spent on the Queen Mary but similar  
7 uses are proposed in the Queensway Bay project. And the  
8 City was challenge by the State Attorney General, who  
9 recommended taking the City to court on that. So here is  
10 a potential of deja vu all over again, because we have  
11 similar uses. And also the question of predominance of  
12 use. Is it parks, museums or commercial development.

13 I have the material here, which I'll pass out at  
14 the end of my conclusion. I don't have time to go into  
15 this in detail about the Queen Mary, I'll move on.

16 The redevelopment plan, I have a map which I'll  
17 pass along. This is a redevelopment plan for the  
18 Queensway Bay area and adjoining privately owned land.  
19 The State of California requires conformity between the  
20 redevelopment plan and the zoning and the general plan.  
21 Now, if you read the map, it says it here in regard to  
22 these major sites along Tina Avenue. There is a legend  
23 here and it says recreation, public activities and related  
24 facilities. That includes 500,000 square feet of retail  
25 uses. I'll pass it along to the staff.



1           Moving on to the Environmental Impact Report.  
2   The Environmental Impact Report provided for an increase  
3   of about ten acres of park space. In fact, the City  
4   has -- and is experiencing a loss of 9.57 acres. The City  
5   has not authenticated their numbers. I can authenticate  
6   my numbers, which I got from the California Department of  
7   Parks and Recreation. These are called 6(f)3 maps. They  
8   show the existing parks, parks to be taken, parks to be  
9   replaced. These are down to a scale of one one-hundredth  
10   of an acre boundaries and all the information on those  
11   parcels. Simple addition and subtraction, was there a  
12   gain or a loss in park acreage?

13           I think this is a very important issue, though,  
14   because the Environmental Impact Report is effective and  
15   you are a quote, "responsible agency." That's the legal  
16   term, "responsible agency." So look at these things and  
17   save the audit recommendation until you've seen my  
18   materials, the material of other people, give me my time  
19   to complete my letter. I was up till 4:00 a.m. this  
20   morning trying to complete it, a ten-day deadline since I  
21   got the public notice.

22           So I'll have to conclude then with the handouts,  
23   and I hope you will study these very carefully and not  
24   make a hasty decision. All I ask is to continue the  
25   public hearing till next time, take these items under

1 consideration, take into consideration that there are  
2 people in all these that have not fully responded to these  
3 issues, and that we need more time to prepare our  
4 response. You had eight months, we had ten days.

5 Thank you.

6 COMMISSIONER CONNELL: May I ask a question, Mr.  
7 Chair? When did the public receive information about the  
8 staff report, was it ten days?

9 EXECUTIVE OFFICER THAYER: I believe that we  
10 mailed copies to all of the people who showed up at the  
11 workshop. They would have gotten them about ten days ago,  
12 yes. And the other thing I should mention is that  
13 throughout this process, we've received several letters  
14 from Mr. Denevan and considered them in preparing the  
15 staff report. He spoke at the workshop. In fact, the  
16 workshop was over and I volunteered to stay longer in  
17 order to hear him out. He had extensive comments at that  
18 point.

19 And since that time, we've probably received  
20 about ten letters from him that we've used in preparing  
21 the report. We believe we've responded to the issues that  
22 he's raised in those letters, particularly for example on  
23 the parks issue. One of the appendices of the report  
24 consists of the letters that were written back and forth  
25 between the City and the State Department of Parks and Rec

1 and the United States Department of Interior dealing with  
2 some of the concerns about whether or not there was  
3 adequate park replacement that was occurring.

4 So we believe we're fairly familiar with the  
5 concerns that Mr. Denevan has over this long period of  
6 correspondence.

7 COMMISSIONER CONNELL: Well, Mr. Denevan. This  
8 issue that you raise of having inadequate time is an issue  
9 that I hear frequently. I sit on over 50 boards and there  
10 is always this concern of the public, and I certainly  
11 appreciate it and respect your need to respond in a timely  
12 fashion.

13 My only question here is the need to take action  
14 at some point to move this forward. And I am not the one  
15 to determine here today what is an adequate amount of time  
16 for the public to have reviewed this. How long was our  
17 staff report on this matter?

18 EXECUTIVE OFFICER THAYER: This is the volume  
19 here. Most of it consists of the appendix. The staff  
20 report is 42 pages.

21 CHAIRPERSON BUSTAMANTE: Any other questions?  
22 Thank you, sir.

23 MR. DENEVAN: Can I leave you with one question  
24 on the redevelopment plan. Could I have a response from  
25 staff of the Commission on what that redevelopment plan

1 says for Long Beach?

2 CHAIRPERSON BUSTAMANTE: It sounds like a pretty  
3 encompassing question. Could you be a little bit more  
4 specific, if you want us to --

5 MR. DENEVAN: Well, of course there's a simple  
6 map which is readily interpreted. It has a legend. I  
7 have an accompanying letter, which goes into more detail  
8 explaining the situation. I did go to the Redevelopment  
9 Agency last November and I asked for a copy of the  
10 redevelopment plan, which has been amended from time to  
11 time.

12 And so I got this packet and then I said well --

13 CHAIRPERSON BUSTAMANTE: We need to focus on the  
14 question, sir. What is your question specifically?

15 MR. DENEVAN: Okay, well then the question is why  
16 is the city contradicting its own redevelopment plan,  
17 because we have the evidence in front of you. And there  
18 is the State law that requires conformity with the general  
19 plan. That is a major legal issue to be challenged in  
20 court.

21 CHAIRPERSON BUSTAMANTE: Does the staff have any  
22 evidence of there being a conflict between the  
23 redevelopment and general plans?

24 MS. REISCHMAN: No, The LCP sees those plans.  
25 And the Queensway Bay plan was an amendment certified by

1 the Coastal Commission to the LCP in 1980.

2 CHAIRPERSON BUSTAMANTE: Thank you.

3 MR. DENEVAN: That doesn't overrule State law.  
4 Take a look at it, that's all I ask.

5 CHAIRPERSON BUSTAMANTE: In terms of the public  
6 trust document?

7 MR. DENEVAN: Well, in terms of your  
8 responsibility for oversight, and that involves looking  
9 into these matters of actually half a dozen things of  
10 which have taken place and are taking place illegally.  
11 That's your responsibility. The buck stops there.

12 CHAIRPERSON BUSTAMANTE: Correct. Thank you,  
13 sir.

14 MS. STOKER: Hello. My name is Adrea Stoker, and  
15 I live in Long Beach, and I'm going to speak of flagrant  
16 abuses that require an audit of the Queensway Bay.

17 I'm going to speak on revenue bonds in the  
18 tidelands projects in conjunction with the sale of 117  
19 million of revenue bonds by the Aquarium of the Pacific.  
20 The city of Long Beach acting as a trustee of the State  
21 tidelands fund hypothecated the fund for 20 years as  
22 backing for a new nonprofit corporation bonds.

23 This nonprofit corporation had no assets or track  
24 record. This method of financing an authorization of sale  
25 of revenue bonds was approved on the same day the method

1 and amount was presented to the public for the first time.  
2 Up to that point, only admission revenues to the aquarium  
3 would be used to back the bonds.

4 Significant preparation and decisions had been  
5 made out of the public's view. The lawsuit against all  
6 citizens and entities including the State of California  
7 was made that day. The process and the means of decision  
8 making constituted a gross disregard of the public and  
9 public interests and was a clear abuse of discretion.

10 In committing the tidelands funds as collateral,  
11 it was required by the bond houses to also receive the  
12 resolution of the Port of Long Beach to commit harbor  
13 revenue funds for 20 years also as a portion of that  
14 collateral. Ten percent of net proceeds of the harbor  
15 revenue bonds could be transferred to the tidelands funds,  
16 but this is not an automatic pass through.

17 They are not permitted to be hypothecated by the  
18 City of Long Beach without the consent of the Legislature  
19 under the Constitution of the State of California. This  
20 was done, however, in violation of the State Constitution.  
21 It also violated the City Charter of the City of Long  
22 Beach and the laws of the State of California, which would  
23 be governing actions of committing future legislators to  
24 certain financial arrangements.

25 The City immediately filed suit to prevent later

1 actions against it and the bond, including against the  
2 State of California through what is known as a validation  
3 suit. When no one responded, mainly because the Court  
4 accepted the City's plea -- nobody responded because of  
5 insufficient notice, the Court accepted the City's plea  
6 and entered a judgment. This locked any legal attempts to  
7 address any issues at a later date. And it was not  
8 Freedland versus the City of Long Beach. In fact, it was  
9 the City of Long Beach versus all.

10 The City set the precedent of using the tidelands  
11 funds for committing sufficient funds to back the bonds.

12 CHAIRPERSON BUSTAMANTE: One minute.

13 MS. STOKER: Hmm?

14 CHAIRPERSON BUSTAMANTE: You have one minute  
15 left.

16 MS. STOKER: Something was going on here, which  
17 only became known when all the information was released to  
18 the public following a vote of the trustees. Because of  
19 the validation case and the judgement against all of the  
20 issues, our chance to bring legal actions were dismissed.

21 It protected the bond holders and the City from a  
22 lawsuit. We believe the action is illegal and can still  
23 cause the State of California to be liable in a case  
24 brought by the bond holders. The situation gets much  
25 worse when you pull out of bond reserves to pay the

1 interest and principal. To face the music of the bond  
2 holders would expose their actions and cause significant  
3 loss of services to the public.

4 To remedy this situation, the city agrees to pull  
5 \$134 million of revenue bonds, restating the collateral of  
6 a nonprofit bond including commitment of tidelands funds  
7 and harbor revenues with one additional caveat. The City  
8 of Long Beach would do whatever necessary to make the  
9 tidelands funds whole, so that all bond commitments would  
10 be paid. This clearly places the City's general fund at  
11 risk for the bond payments. This makes the bond a general  
12 obligation bond and not a revenue bond.

13 The voters of Long Beach, the only body capable  
14 of authorizing such a debt, were not asked to approve nor  
15 did they vote on this action. This is clearly a violation  
16 of the spirit and purpose of Proposition 13, which gave  
17 voters control over future bond and indebtedness against  
18 the general fund of the City.

19 This back-door method used by the trustees can  
20 also be readily identified in the \$47.5 million of revenue  
21 bonds authorized for construction of a parking garage on  
22 the Queensway Bay project. In fact, the report clearly  
23 spells out the illegal action in the City, on page 20 of  
24 the report, bulletin .4 in answer to question eight reads  
25 that the City's general fund shall contribute up to 1.69



1 million --

2 CHAIRPERSON BUSTAMANTE: Ma'am, I don't mean to  
3 interrupt you, but you've already been at five minutes,  
4 could you please wrap up.

5 MS. STOKER: All right, yes. These facts are  
6 significant omissions to the report.

7 Please audit.

8 Thank you.

9 CHAIRPERSON BUSTAMANTE: That was a quick wrap  
10 up.

11 COMMISSIONER CONNELL: May I just mention  
12 something, Cruz. We are not here today, in my view at  
13 least, I'd like confirmation of the Attorney General and  
14 staff on this, to comment on the revenue bond, general  
15 bond issuance of the City of Long Beach. This is a matter  
16 that is before the City of Long Beach and its various  
17 entities.

18 We are here today simply to review the tidelands  
19 trust. Now, if you have concerns about the issuance of  
20 the debt by the City of Long Beach rather it be revenue or  
21 general fund backed, that is really a discrete issue that  
22 cannot be presented before this board, just so that you  
23 understand the limitations of this board.

24 We do not comment on bond indebtedness of cities  
25 throughout California as we deal with their tidelands

1 matters; is that not correct, Attorney General?

2 ASSISTANT ATTORNEY GENERAL SAGGESE: That's  
3 correct.

4 COMMISSIONER CONNELL: Yes, we don't have that  
5 discretion.

6 MS. STOKER: What Commission do I go to?

7 COMMISSIONER CONNELL: Well, Attorney General, do  
8 you have any suggestions here?

9 ACTING COMMISSIONER PORINI: The Treasurer's  
10 office does monitor the issuance of bonds throughout the  
11 cities and counties, so that might be the appropriate  
12 place.

13 COMMISSIONER CONNELL: You might want to check  
14 with the State Treasurer's office to see whether they  
15 have, indeed, done a complete review of this matter. They  
16 were given a somewhat limited authority though, I think,  
17 in that. Following Orange County, I don't think they have  
18 any pervasive authority to monitor, do you?

19 I think it's very limited. I think it's limited  
20 to debt service coverage not to anything else.

21 CHAIRPERSON BUSTAMANTE: Can we get at least some  
22 kind of segment, so we do not have to go through a whole  
23 process at this particular point. Can staff and the  
24 Attorney General's office say if they know any  
25 improprieties in the letting of the bonds?

1 COMMISSIONER CONNELL: They wouldn't have  
2 examined it.

3 ASSISTANT ATTORNEY GENERAL SAGGESE: I did not  
4 examine that issue.

5 EXECUTIVE OFFICER THAYER: Jennifer, you looked  
6 through some of these, right?

7 MS. REISCHMAN: I looked into specifically the  
8 bonds and how --

9 CHAIRPERSON BUSTAMANTE: This is not the first  
10 time this issue was raised, is that correct?

11 EXECUTIVE OFFICER THAYER: That's correct.

12 CHAIRPERSON BUSTAMANTE: And so we did look into  
13 it?

14 MS. REISCHMAN: I looked at the bonds in relation  
15 to the tidelands trust fund and not specifically the  
16 City's aspect and jurisdiction.

17 CHAIRPERSON BUSTAMANTE: So then maybe you can  
18 provide -- I'm sorry, Ms. Stoker, Adrea Stoker, perhaps  
19 you can give her a place where she might be able to raise  
20 the issue.

21 MS. REISCHMAN: I will look into that for you.

22 CHAIRPERSON BUSTAMANTE: Okay, thank you.

23 Thank you, Ms. Stoker.

24 MS. MANN: Good afternoon. My name is Diana  
25 Mann, and I chair an organization in Long Beach called ECO

1 Link. And we're a coalition of environmental  
2 organizations and members of the Sierra Club, Audubon,  
3 Surf Rider, the Friends of the Colorado Lagoon, Friend's  
4 of the San Gabriel River, et cetera, et cetera, et cetera,  
5 et cetera.

6 And all these groups combined represent about  
7 10,000 plus individuals in the City of Long Beach and  
8 we're really cranky about having a shopping mall built at  
9 the Queensway Bay. That was not the intent when there was  
10 a proposition passed, I believe that was Proposition A.

11 Proposition A passed in 1960 by -- approximately  
12 60 percent of the people of Long Beach indicated that --  
13 here's the -- you have a copy of the measure in this  
14 document, but what you don't have is you don't have the  
15 argument for it.

16 The argument for it says interesting things like  
17 "blessed with the natural resources of the ocean" and also  
18 "unusual beauty", et cetera, of the area. And putting a  
19 shopping mall, which you can put anywhere, on top of -- in  
20 the State -- on a beach front is just super stupid.

21 But I'd like to just point out that the measure  
22 included the building of parks and open space and  
23 noncommercial recreation allowed as authorized under the  
24 State Lands grants. No part of this law has ever been  
25 changed by a subsequent vote of the people as required by

1 the Charter of the City of Long Beach.

2 Prop A is still a law in Long Beach. Park open  
3 spaces are the predominant approved uses. The trustees  
4 are not following the law as approved by the voters.  
5 Rather, they are doing everything in their power to  
6 circumvent it.

7 It looks to me that the people -- all these folks  
8 I'm talking to you about are pretty cranky, and we're  
9 trying to stop the project. And every time we look under  
10 rocks we find oodles of things that are inappropriate and  
11 illegal. And we're trying to bring this to your attention  
12 so you will possibly do an audit to actually clear up a  
13 lot of these things.

14 An illegal and abusive discretion is clearly  
15 within the purview of the State Lands Commission to  
16 address through an audit, litigation or other avenues that  
17 may be necessary.

18 The second thing I wanted to address is the  
19 Coastal Permit. Condition number 25 requires that the  
20 applicant provide written documentation to the Executive  
21 Director, including specific citation of the relevant  
22 sections of the applicable State tidelands grant.

23 In fact, no legal opinion or document regarding  
24 the authorization used was ever submitted to the  
25 Commission. In a November 5th, 1999 letter hereby

1 submitted into the record, which staff notes is in  
2 compliance of this condition, merely deals with the  
3 ability of this trust to lease the property. That's it,  
4 just lease the property.

5 This is clearly an omission of the applicant  
6 trustee and in violation of conditions placed by the State  
7 Commission. Such a violation should be viewed as an abuse  
8 of discretion.

9 And I've got one more quick one. The use of  
10 funds for the Queensway Bay development. This was just  
11 another example of what I think that should be looked  
12 into. In the report, the trustee's staff indicated that  
13 these funds were interest in oil money -- with interest on  
14 the oil money mandated by the City for restoration of the  
15 Queen Mary upon turnover of the ship from the port to the  
16 City.

17 In fact, the funds we're designated because the  
18 ship, especially the hull, was an extremist based upon  
19 several inspections. Grant consideration of this  
20 condition was expressed by the City that it did not have  
21 the funds to fix it, and the Port should be responsible  
22 prior to the turnover.

23 Evidently, the ship was not in such bad shape  
24 since it has been over eight years since the turnover and  
25 the funds have not been spent nor the ship fixed.

1 Instead, the fund was used as a slush fund for planning  
2 projects other than the restoration of the Queen Mary, a  
3 trust asset paid for 230 times over by the people of  
4 California and documented in this report.

5 Only an out-of-court settlement granted the  
6 people from knowing just how much indiscretion was  
7 associated with the Queen Mary development.

8 CHAIRPERSON BUSTAMANTE: Thirty seconds.

9 MS. MANN: This should be listed under serious  
10 abuse of discretion, taking from the harbor fund and used  
11 a slush fund for this and several other projects.

12 And that's my conclusion. And, please, I'd like  
13 to recommend that this is terribly incomplete, terribly  
14 incomplete. And we're not going to go away and we're  
15 going to continue to hammer this until we get some sort of  
16 justice, okay.

17 And if I was a bird and a fish and anyone else,  
18 you would have my vote, too, so I just want to put that  
19 out there. The habitat is being hurt by this, too.

20 CHAIRPERSON BUSTAMANTE: Thank you.

21 COMMISSIONER CONNELL: Mr. Chair, I have a couple  
22 of questions for staff. Help us understand, what is the  
23 definition under state law for the use of commercial or  
24 the application of commercial uses to a tidelands area. I  
25 realize this is somewhat of a gray area, but I would like

1 to have clarification of how far apart from the use of  
2 marine related matters or uses can we go?

3 EXECUTIVE OFFICER THAYER: I'd like to defer to  
4 the Attorney General's office on that, since Nancy has  
5 worked in this field. This has been her area of expertise  
6 for years, and included some specific topics that were in  
7 Long Beach.

8 ASSISTANT ATTORNEY GENERAL SAGGESE: The  
9 principle of necessarily incidental is what we're talking  
10 about. It's true that the public trust doctrines speak in  
11 terms of commerce, navigation and fishery. But along  
12 about the late 1950s and early 1960s, the courts were  
13 asked to decide what else might be allowed on tidelands.  
14 And the courts upheld that, since the object is to bring  
15 the public to the shoreline that uses can be made of the  
16 property that is ancillary to their complete enjoyment of  
17 the property. And they have specifically stated that  
18 restaurants and hotels and in the case of Martin versus  
19 Smith, shops and parking areas.

20 CHAIRPERSON BUSTAMANTE: Has a theater ever been  
21 considered to be an ancillary use?

22 ASSISTANT ATTORNEY GENERAL SAGGESE: Not to my  
23 knowledge.

24 COMMISSIONER CONNELL: So this is paving new  
25 ground?



1 ASSISTANT ATTORNEY GENERAL SAGGESE: It would be.

2 COMMISSIONER CONNELL: Well, I can see how  
3 restaurants obviously support tourism. Tell me, as an  
4 attorney, how you have concluded that movie theaters do?

5 ASSISTANT ATTORNEY GENERAL SAGGESE: Well, movie  
6 theaters in and of themselves probably would not, so the  
7 analysis really focused on the entire Queensway Bay  
8 development plan. And in that context, looking at the  
9 number of acres, looking at where they're situated,  
10 looking at the fact that they are not on the waterfront  
11 and looking at the fact that they are public, they draw  
12 the public to the area, and all of those things together  
13 in this particular case brought us to the conclusion that  
14 they were an integral part of the development plan and  
15 would be consistent with the trust.

16 If this were the only feature of it or a mass of  
17 just theater complexes, they probably wouldn't pass.

18 COMMISSIONER CONNELL: Maybe --

19 CHAIRPERSON BUSTAMANTE: It's not on shore?

20 ASSISTANT ATTORNEY GENERAL SAGGESE: No, it's  
21 across a four lane highway upland from the shore.

22 MS. MANN: May I make a comment as far as that  
23 movie theater that they can't lease the property. I mean,  
24 they couldn't make their leases and the reason why that  
25 theater is so important is because without it, they

1 wouldn't get any leases either. And then all these  
2 theaters went bankrupt and they went oh, my gosh what are  
3 we going to do now, so they went and found another one.  
4 It's an independent theater to go in there, because they  
5 can't lease that property.

6 COMMISSIONER CONNELL: Is that the Edwards  
7 theater chain that went bankrupt?

8 MS. MANN: Several theaters went bankrupt.

9 CHAIRPERSON BUSTAMANTE: Where's the four lane  
10 highway?

11 EXECUTIVE OFFICER THAYER: It is right here.

12 COMMISSIONER CONNELL: Can you go over and show  
13 with your finger. Maybe this is impossible.

14 MR. PALKER: Commissioners, I don't have a  
15 speaker's slip. I represent the developers and can  
16 address many of the questions that are raised and I can do  
17 it now or after the other speakers.

18 CHAIRPERSON BUSTAMANTE: We're in the opposition  
19 and you want to speak in opposition?

20 MR. PALKER: No, I'd rather not.

21 (Laughter.)

22 MS. MANN: Please, I'll give you my three  
23 minutes.

24 MR. PALKER: I can answer those questions at the  
25 time you want to.

1 EXECUTIVE OFFICER THAYER: This is the four lane  
2 road right here.

3 CHAIRPERSON BUSTAMANTE: What is your name, sir?

4 MR. PALKER: Tony Palker with Developers  
5 Diversified.

6 COMMISSIONER CONNELL: What were you saying,  
7 Paul?

8 EXECUTIVE OFFICER THAYER: I think this is the  
9 four lane road right here. It's Shoreline Drive, what's  
10 the name of it? Shoreline Drive. And then the  
11 restaurants and such are proposed along this area here.  
12 The movie theater is in this area over here.

13 CHAIRPERSON BUSTAMANTE: On the other side away  
14 from the shore?

15 EXECUTIVE OFFICER THAYER: Yeah, here's the water  
16 right here. So we have restaurants along here, then you  
17 cross this road, and this is going --

18 CHAIRPERSON BUSTAMANTE: So is it four or six  
19 lanes?

20 EXECUTIVE OFFICER THAYER: Six.

21 COMMISSIONER CONNELL: Well, does it really  
22 matter whether it's four or six lanes? Well, let me  
23 approach it from a different viewpoint. Is it tidelands  
24 land?

25 EXECUTIVE OFFICER THAYER: Yes.

1           COMMISSIONER CONNELL: Well, isn't the question  
2 then if it's tidelands land whether or not we have the  
3 same requirement, whether it's got a road going through it  
4 or not? I mean, we faced this issue in the Ballona  
5 Wetlands, so I'm particularly informed about the fact that  
6 it doesn't matter whether there's a road going through it  
7 or not. We recently had that legal argument before the  
8 courts in California in the Ballona Wetlands.

9           CHAIRPERSON BUSTAMANTE: Why do we have a six  
10 lane road through tidelands?

11          COMMISSIONER CONNELL: Well, that's a good  
12 question.

13          EXECUTIVE OFFICER THAYER: Well, roads are  
14 frequently accepted in most port areas, for example for  
15 transportation --

16          CHAIRPERSON BUSTAMANTE: Six lane roads?

17          EXECUTIVE OFFICER THAYER: Well, if that's what's  
18 necessary to deal with the traffic situation in the area.  
19 In fact, actually I think highways are considered --  
20 highway bridges are considered trust uses, uses for the  
21 commerce and navigation.

22          And I think the other analogy would be the  
23 Controller is absolutely right, that there are  
24 restrictions on uses of applied tidelands no matter where  
25 they are. But where their incidental uses are often

1 prohibited or you don't want to have them there is when  
2 they're displacing actual trust uses.

3           So for example, if there was a boat yard there  
4 that was required somewhere and someone was proposing to  
5 put in a restaurant there, then you could only have one or  
6 the other, because it would belong on the shore, the boat  
7 yard had to be there. Then the public trust use, you  
8 know, in most needs studies would prevail. You would  
9 approve the boat yard there.

10           But that does not mean that in inland areas where  
11 other public trust uses aren't suitable, because it's not  
12 along the waterfront, that you can't look more carefully  
13 because it's an incidental use and it may help to promote  
14 the use of the actual waterfront.

15           COMMISSIONER CONNELL: So we don't have to make a  
16 find that there would have been a better use, for example,  
17 a park or anything else when we approve this.

18           EXECUTIVE OFFICER THAYER: Well, I think the  
19 first thing, of course, you don't -- the action before the  
20 Commission today is not approval or nonapproval. We have  
21 a staff report which kind of looks at the situation and  
22 then the Commission can decide what direction it wants to  
23 go after that.

24           If this is before the Commission to decide one  
25 way or another, then it might very well have to look at

1 that question about what's the most valid use there, but  
2 in fact that's the city's decision is to decide, you know,  
3 which is the use that's most appropriate. What is a  
4 legitimate purview for the Commission is whether or not  
5 the City has chosen a use that's entirely prohibited by  
6 law, and that's what I think some of the witnesses are  
7 saying is that they believe some of this is inconsistent  
8 with the trust document or trust grant and that's what  
9 we're talking through here.

10 MR. McCABE: Commissioners, Jim McCabe, Deputy  
11 City Attorney, if this would be an appropriate time?

12 MR. MAY: Point of order, Mr. Chairman. Is this  
13 a debate? Are we going to cross examine?

14 CHAIRPERSON BUSTAMANTE: What is it you're  
15 asking?

16 MR. McCABE: I thought I might be able to clarify  
17 some of the --

18 CHAIRPERSON BUSTAMANTE: What?

19 MR. McCABE: Some of the issues we've been  
20 talking about.

21 CHAIRPERSON BUSTAMANTE: Let's go ahead and do  
22 the other speakers.

23 MR. McCABE: That's fine.

24 MS. CANTRELL: Good afternoon. Ann Cantrell, I'm  
25 Conservation Chair of the local Audubon Society, and I was

1 born in Long Beach, as I like to say, when it was a Long  
2 Beach. There was 11 miles of Long Beach and now there are  
3 less than six.

4 Maybe what would help is if you would look at  
5 Exhibit 6. I guess we're not the only ones that haven't  
6 had a chance to really go through this report. You have  
7 to put a blank page under the first overview so that you  
8 can see what the map looked like.

9 Back in 1964 when this tidelands was filled,  
10 you'll see Ocean Boulevard up at the north and all this  
11 area was filled with land, it was tidelands that was  
12 filled. And as has already been told to you, the people  
13 of Long Beach had voted to put an elongated park along  
14 this area. It was to be a passive park, a promenade.

15 The next overview will show you what has happened  
16 in 1980, when the swimming lagoon and the Shoreline  
17 Village was there. And Shoreline Park is the area that is  
18 right adjacent -- it says downtown harbor. Right north of  
19 that was a park called Shoreline Park.

20 The City has taken over 20 acres of this park.  
21 That's where the aquarium is now smack dab in the middle  
22 of it and the parking garage. And they say that they have  
23 mitigated this by putting an events park across the bay at  
24 the Queen Mary.

25 Our argument is that this is not one for one

1 mitigation of equal value, that the people that live in  
2 downtown Long Beach have to go clear across the Queensway  
3 Bay, as you can see on your exhibit, that's that white --  
4 Queensway Bridge, that's that white bridge that goes  
5 across to where the Queen Mary is.

6           One of our arguments is that there has not been  
7 mitigation for the land that was taken. They dredged the  
8 lagoon. They took the tidelands out and they have created  
9 a new tidelands at the mouth of the LA River as  
10 mitigation.

11           So when you're told that this is to bring people  
12 to the tidelands, what they're going to see is not ocean.  
13 They're going to see boat harbors. They're going to see  
14 restaurants. They're going to see a movie theater. And  
15 by the way, Edwards theater pulled out. Another theater  
16 was up for lease, it pulled out. Now, we have a third  
17 theater that is supposed to be the quote "anchor" for this  
18 commercial development.

19           IMAX is no longer in the picture. When the staff  
20 had the hearing in July, they were told that IMAX was a  
21 part of this development. They are not a part of the  
22 development. And I could see where it might have a little  
23 bit of connection with the ocean if you had movies there,  
24 educational movies.

25           But what we have now are just plain old movies.



1 It's a tourist trap. It is not -- maybe restaurants and  
2 hotels are incidental uses for the tidelands, but this is  
3 18 acres of commercial use. All that red that you see up  
4 there is commercial use. You'll see that there's very  
5 little green left for the parks, and that is why we are  
6 asking you to do a real audit.

7 This staff report, although very complete, all  
8 their answers came from the City. They didn't do any  
9 research of their own that I can determine. They didn't  
10 look into things that have been brought up today. And I  
11 think that this project is doomed for failure, and we  
12 would like you to help us save the last bit of our  
13 shoreline.

14 Thank you.

15 (Applause.)

16 CHAIRPERSON BUSTAMANTE: Thank you.

17 COMMISSIONER CONNELL: Mr. Chair, may I ask a  
18 question, again, of staff and the Attorney General. Where  
19 else in the State have we approved or are there tidelands  
20 where there are commercial movie theaters built on the  
21 tidelands property?

22 EXECUTIVE OFFICER THAYER: There are no others.  
23 I think as we indicated earlier, this would be a first  
24 time there. And we do not -- you know, in most  
25 circumstances, we would not be in favor of them, but we

1 believe it's an elemental part of this project that it  
2 makes this project work all the other public trust uses.

3           There are other kinds of developments like that  
4 in other places where an incidental use in one place is  
5 not an incidental use in another place. It wouldn't be  
6 approved. It's not limited to movie theaters in terms of  
7 things. Sometimes things require a particular context if  
8 they're going to be permitted.

9           So, no, this would be a first time for this. And  
10 it's not likely to be easily found consistent with the  
11 trusts anywhere else. You'd have to have all the same  
12 elements that are the case here, where there's 300 plus  
13 acres, where the side is removed from -- the waterfront is  
14 not easily accessible to the waterfront and therefore it  
15 does not displace other public trust uses.

16           COMMISSIONER CONNELL: Well, would you consider a  
17 park a public trust use?

18           EXECUTIVE OFFICER THAYER: Absolutely.

19           COMMISSIONER CONNELL: Does it displace that?

20           EXECUTIVE OFFICER THAYER: Yes, it does, but of  
21 course, the further inland you get the less maritime this  
22 is, but you're right we could put a park there.

23           COMMISSIONER CONNELL: I just came back from a  
24 short visit to San Francisco with my young son and we  
25 enjoyed the development of the piers there. I'm trying to

1 recall, I can't think of -- although there's tremendous  
2 commercial development along those piers, as you know, in  
3 San Francisco, I don't think that any of those are movie  
4 theaters. I think there's a video arcade at one point.  
5 There's lots of food and restaurants, which are, of  
6 course, needed given the numbers of tourism. There's the  
7 aquarium. They have an underwater aquarium now. There's  
8 the boats to Alcatraz.

9 I'm trying to think of any other commercial -- I  
10 don't believe there -- are there, Attorney General?

11 ASSISTANT ATTORNEY GENERAL SAGGESE: No, there  
12 are not.

13 CHAIRPERSON BUSTAMANTE: There's a wax museum and  
14 there's about 47 shops that sell T-shirts and sweat  
15 shirts.

16 (Laughter.)

17 COMMISSIONER CONNELL: But they're not on the  
18 tidelands. They're across the street.

19 CHAIRPERSON BUSTAMANTE: Oh, across the street.

20 ASSISTANT ATTORNEY GENERAL SAGGESE: There are no  
21 movie theater's there.

22 COMMISSIONER CONNELL: In San Diego, are there  
23 any?

24 ASSISTANT ATTORNEY GENERAL SAGGESE: No.

25 COMMISSIONER CONNELL: There are not any in LA, I

1 know that for a fact, because we're struggling in LA. The  
2 reason I raise this question is because I know, having met  
3 recently with the harbor group in LA that they are very  
4 anxious to find a way to regenerate the Ports of Call,  
5 it's called, the harbor in LA. And as you are probably  
6 aware, they have fallen on bad economic times as well.

7 So then does this become a precedent for the Port  
8 of LA to put movie theaters in its harbor area?

9 ASSISTANT ATTORNEY GENERAL SAGGESE: Only if they  
10 can fulfill the same context, you know, factually. If it  
11 is the same sort of a development acres wise, ratio wise,  
12 how many acres it would take up versus the rest of the  
13 development, where it's situated, how much of the rest of  
14 it is --

15 CHAIRPERSON BUSTAMANTE: Is there anything in the  
16 report that talks about this specifically and how rare a  
17 situation this would have to be?

18 ASSISTANT ATTORNEY GENERAL SAGGESE: It only says  
19 that in the context of this case, that it is found to be  
20 incidental.

21 CHAIRPERSON BUSTAMANTE: So there is no policy,  
22 there is no clear statement about how this is -- not only  
23 is it -- it is not to be viewed as precedent-setting, but  
24 that it is a rare -- there's nothing in the report that  
25 says anything like that, is that right?

1 EXECUTIVE OFFICER THAYER: I think the paragraph  
2 on page 15, the largest paragraph two-thirds of the way  
3 down discusses this most extensively and notes that such  
4 uses are not traditionally public trust uses. Where they  
5 also may be necessarily incidental to promote public  
6 trust, the specific context for them in the Queensway Bay  
7 Development Plan leads staff to conclude they are not  
8 barred.

9 CHAIRPERSON BUSTAMANTE: Is there any swap? I  
10 know that in many cases when we're putting together  
11 something where you have something that is not as valuable  
12 in terms of a main mission that there is often times some  
13 kind of swap of property or land or something that gives  
14 us the ability of being able to enhance the public trust  
15 at the same time giving up a less valuable property that  
16 is perhaps commercially viable, but not as viable for the  
17 public trust? Has something like that been looked at  
18 here?

19 EXECUTIVE OFFICER THAYER: I don't think it has.

20 CHAIRPERSON BUSTAMANTE: I'm sorry, sir. We'll  
21 get you in as soon as we're done here. Thank you for  
22 waiting.

23 SENIOR STAFF COUNSEL FOSSUM: In fact, we have  
24 had that done right on this property itself, Mr. Chairman.

25 CHAIRPERSON BUSTAMANTE: What about with this

1 particular piece of --

2 SENIOR STAFF COUNSEL FOSSUM: Well, if I can  
3 allude to it, the road if you see in here, the tidelands  
4 boundary has actually been modified at the request of the  
5 City of Long Beach. The State Lands Commission, when they  
6 moved the street here in order to modify the traffic in  
7 that area, another piece of fill tidelands was cutoff and  
8 it would have been behind a second layer of streets, if  
9 you will.

10 And the Commission, a few years ago, accepted  
11 title for that property from the City of Long Beach and  
12 exchanged it with the adjacent developer on this side, and  
13 in exchange got a piece that's in this corner right here.  
14 I'm sorry about the shaking.

15 CHAIRPERSON BUSTAMANTE: You're saying a deal was  
16 cut earlier that would have mitigated for all of the  
17 eventual commercial uses?

18 SENIOR STAFF COUNSEL FOSSUM: No. I'm saying  
19 that there have been times when a piece of property that  
20 was no longer needed for trust uses, was, in fact --

21 CHAIRPERSON BUSTAMANTE: Okay. Well, that's not  
22 the question.

23 SENIOR STAFF COUNSEL FOSSUM: -- bought for a  
24 piece that was.

25 CHAIRPERSON BUSTAMANTE: You're answering a

1 question I'm not asking. You're answering a question I'm  
2 not asking.

3 SENIOR STAFF COUNSEL FOSSUM: I'm sorry, I  
4 misunderstood your question.

5 CHAIRPERSON BUSTAMANTE: Well, the question is  
6 not whether we've ever done it ever in the universe. The  
7 question is have we done it, have we looked into it for  
8 this piece of property, for this new commercial use for  
9 the theater and what it does for other land that could  
10 enhance our public trust, that would be more valuable to  
11 us, but not as commercially viable to this particular  
12 project?

13 EXECUTIVE OFFICER THAYER: We have not looked at  
14 that. I don't believe the City has. The City, of course,  
15 can answer that.

16 CHAIRPERSON BUSTAMANTE: Okay, because we do that  
17 regularly, don't we?

18 EXECUTIVE OFFICER THAYER: We do it occasionally,  
19 yes.

20 CHAIRPERSON BUSTAMANTE: Well, what about the  
21 refinery plants in San Diego?

22 EXECUTIVE OFFICER THAYER: In San Diego?

23 CHAIRPERSON BUSTAMANTE: What about the -- we  
24 probably could go through the agenda and rip off quite a  
25 few different things where we attempt to try to find more

1 valuable land that enhances our effort that deals with  
2 public trust, and is often times something where we try to  
3 make this -- I believe that the term that was used for me  
4 was win, win, win, win, win. And this piece here seems to  
5 fall a little short of that.

6 But, I mean, if there was no deal cut earlier and  
7 we have a new deal on the table and the deal seems to have  
8 a piece of property here that perhaps you can say that  
9 since it's across a six lane highway on the other side, it  
10 is a part of the trust, then what does the trust get in  
11 trying to provide for a piece of that trust land that  
12 perhaps isn't as valuable as the public trust, because  
13 it's on the very edge of it? Yet, we don't seem to get  
14 anything for it except for giving up a piece of that trust  
15 land.

16 COMMISSIONER CONNELL: I'm not so sure -- if you  
17 look at your comment, I'd like to continue this suggestion  
18 on page 15.

19 EXECUTIVE OFFICER THAYER: Yes.

20 COMMISSIONER CONNELL: This is why I raised the  
21 discussion, Cruz. I mean, I'm not so sure that I  
22 understand the staff's comment here. It says,  
23 "necessarily incremental means that these uses are  
24 necessary to accommodate visitors to the public trust  
25 lands." How does a movie theater accommodate visitors to



1 public trust lands?

2 EXECUTIVE OFFICER THAYER: They can occasionally  
3 be attractions as well as accommodating. So, for example,  
4 some of the restaurants, some of the hotels, there are  
5 people that are coming to stay there don't necessarily use  
6 the trust lands, but they often do use it, the same way  
7 with movie theaters.

8 The people who go out to a restaurant who want to  
9 experience the tidelands there, may do that as part of an  
10 evening.

11 COMMISSIONER CONNELL: Well, I can understand a  
12 movie theater like at Zion National Park, where they  
13 have -- of course, that is national land, so they are very  
14 protective of the land. But in any area immediately  
15 outside those national parks, the only kind of movie  
16 theater they allow is one that is an IMAX that shows  
17 movies related to the park.

18 So I can see where if it was necessary to  
19 accommodate visitors to public trust lands, the movie  
20 would fall into that category if it enhanced the person's  
21 understanding of what they were seeing along the  
22 shoreline.

23 But I want to understand how we get to the point  
24 of accommodating visitors to public trust lands with a  
25 movie theater. Now, if it's only an economic issue, I

1 have a problem with it.

2 (Applause.)

3 COMMISSIONER CONNELL: If it means that it's only  
4 done to protect the other uses there, I have a problem,  
5 not because of Long Beach, because I respect what has been  
6 done in Long Beach in Queens Bay, but because I'm  
7 concerned about the precedent nature that it reflects up  
8 and down the coast. And I can assure you that the next  
9 motion or the next movement in this direction will be the  
10 City of Los Angeles who we just finished winning a  
11 lawsuit -- or I should say negotiated a settlement with  
12 the use of their harbor trust funds already.

13 And that will be the next movement forward,  
14 because they have an absolutely failed Ports of Call that  
15 they're going to have to resuscitate.

16 EXECUTIVE OFFICER THAYER: There are ports up and  
17 down the state that are looking at issues like the one  
18 we're looking at here in terms of what development is  
19 appropriate and what isn't. And you're absolutely right,  
20 they're all looking at issues like office space,  
21 residential. We're hearing that both in San Diego and San  
22 Francisco. LA is looking at that preliminarily as well.  
23 So it's a constant battle to determine what the  
24 appropriate uses are, you're absolutely right.

25 COMMISSIONER CONNELL: Well, this is a very

1 critical issue then for the Commission that wasn't, I  
2 don't think, adequately spelled out here in this one line  
3 statement in your staff report. I do not want to be on  
4 record as to having voted for something where we use the  
5 term necessarily incremental and then find out that we've  
6 opened Pandora's box and that we have up and down the  
7 coast applications based on a precedent-making decision  
8 that we have on a one-line statement that isn't further  
9 defined here.

10 With no public policy, I am very concerned about  
11 what we do in that relationship. I am not prepared to  
12 take action today on a one-line statement that says is  
13 necessarily incremental without further definition of what  
14 that means.

15 I do not want to be in this position a year from  
16 now, where we have an application from the City of Los  
17 Angeles that says it's necessarily incremental also based  
18 on the economics of that project, because I know that area  
19 well and I know that will be the argument, and a fair  
20 argument, that the City of Los Angeles will put before  
21 this board. And I want to know how I say no to the City  
22 of Los Angeles and say yes to the City of Long Beach  
23 today. And without a public policy before me, how do I do  
24 that, Paul?

25 EXECUTIVE OFFICER THAYER: You know, again, I

1 think our response is that when we looked at it in the  
2 context of this particular development, we believe it to  
3 be incidental. That doesn't mean that it would be  
4 appropriate in other circumstances and it will be a case  
5 by case judgement in terms of the overall package of  
6 improving this. And that certainly that was the  
7 discussion that occurred before it was written in  
8 analyzing the situation.

9 CHAIRPERSON BUSTAMANTE: Well, I think that --  
10 first of all, I think the issue of incidental or ancillary  
11 is, I think, an inappropriate established way of being  
12 able to deal with things that have not yet been done. I  
13 disagree that a movie theater meets that qualification.  
14 That's why I was thinking that in attempting to try to  
15 find something that allows us to be able to show that, in  
16 fact, that we are keeping the public trust in finding some  
17 property that enhances the tidelands area more than that  
18 piece of property.

19 That piece of property might enhance the economic  
20 conditions of what's taking place there. I think that the  
21 City of Long Beach is not only right but has probably an  
22 obligation in order to be able to attempt to figure out  
23 how to make that work economically. I think that staff  
24 has made a sincere effort in trying to establish those  
25 facts.

1           I think that what we've -- it kind of begs the  
2 question however, that since we're in a situation here  
3 where we're looking for the economic viability of a  
4 project, it really begs the question, how did we get  
5 ourself in this situation in the first place?

6           And if we're adding a piece of commercial venture  
7 to a project for the purposes of allowing it to become  
8 economically viable, then we shouldn't have gotten  
9 ourselves into that situation in the first place. And so  
10 what we're doing is that we're compounding the problem  
11 here rather than trying to figure out how to mitigate the  
12 problem in a way that, in fact, gives us that win, win,  
13 win, win, win situation that we talked about at the very,  
14 very beginning of my tenure here on the State Lands  
15 Commission.

16           So, first of all, Madam Controller, I think that  
17 your concerns are not only valid, but I don't know that  
18 they got far enough. I don't know that a one-line  
19 sentence -- I mean, I think that they deal with the issue  
20 of ancillary. I think they deal with the issue of  
21 incidental. I think that what we're not dealing with is  
22 the bigger picture here. And I think you raise that point  
23 very clearly that how do you deal with LA and San Diego  
24 and some of the others in this situation?

25           I think that is the big picture here. We've kind

1 of stumbled our way into this thing. The City of Long  
2 Beach doing all that it possibly can to make this thing  
3 economically viable and, you know, frankly if I was in  
4 their position, I'd be doing the exact same thing.

5 And as staff, I think you bring us to a point  
6 here, where we have to make a decision on policy and on  
7 something that is of a greater, as was stated more  
8 eloquently than I earlier, by several of the people who  
9 spoke, by saying that we have a duty and a responsibility  
10 to protect the public's trust.

11 And I think that we've kind of like gone off a  
12 bit here, and we've gotten to a point where now what we're  
13 doing is that we're providing economic stability to pieces  
14 that we shouldn't be involved with perhaps in the first  
15 place if it's going to -- so I think that we weren't  
16 forward thinking enough, I think, in terms of trying to  
17 figure out perhaps at the time that we did it, maybe it  
18 was viable, maybe each and every phase that took place  
19 seems to make it even better.

20 But now we're adding clearly things that are  
21 not -- that are clearly commercially viable, but are not  
22 in line with the public trust. And we're stretching and  
23 bending and we're trying to wrap something around in a way  
24 that allows us to be able to deal with what clearly is a  
25 problem for the City of Long Beach.

1           And as much as I would like to be able to assist  
2           them on that, I think I have to side with the Controller  
3           that there is a problem here that we need to deal with and  
4           I think in a much greater fashion and, you know, I don't  
5           know that it's frankly, at this point, up to the staff to  
6           resolve. I don't know that it's up to the City of Long  
7           Beach to resolve.

8           I think, frankly, this is a public policy  
9           question that we're going to have to address as a board,  
10          and we're going to have to figure out exactly how we're  
11          going to do our job. I think that we've come to a  
12          juncture here that forces us to do that.

13          MR. McCABE: Would the Commission allow me to  
14          make a brief comment from a legal point of view on the  
15          questions that your --

16          COMMISSIONER CONNELL: Before you do that, I  
17          would like to just comment. I sit on another board, I  
18          believe Annette sits with me on that board, on one of the  
19          debt boards that is dealing with this issue and the public  
20          policy construction as well, which is the issue of  
21          redevelopment association's powers throughout California.

22          We are now having to redefine them as well. The  
23          economics have dramatically changed from 10, 15, 20 years  
24          ago. And what might have been viewed as an appropriate  
25          use then, has no longer been effective and viable as a

1 use. And we're finding that in redevelopment areas as  
2 well, where we allowed certain uses for the idea of making  
3 it economically viable to support revenue bonds, because  
4 our key there was at the beginning of the redevelopment  
5 law, was obviously to try to resurrect parts of cities  
6 that were decaying and not habitable.

7 And in willing to do that, we stretch further and  
8 further and further that line of what is an acceptable  
9 use. We're now finding that some of the things that we  
10 did are not working anyway, even though we stretched it.  
11 And some of these redevelopment projects that have movie  
12 theaters are in the same situation as Long Beach found  
13 themselves in with this recent decision by Edwards theater  
14 to close their chain.

15 I mean, it has affected redevelopment areas up  
16 and down the State, because they are, in fact, major uses  
17 in redevelopment areas that are not next to land.

18 What I'm suggesting here, Mr. Chair, is that we  
19 do an entire public policy review of this matter before we  
20 take action today. I am very concerned that we not do  
21 anything that limits this ability of this board to keep in  
22 mind the important environmental principle here for which  
23 we sit as Commissioners, and that is the protection of the  
24 limited amount of land. It is a finite amount of  
25 resources. And once it is gone, it is gone. And so I am



1 very concerned that we not set a precedent here that opens  
2 up the tidelands to ancillary uses that may not be the  
3 highest and best use of this land along the coastline.

4 I mean, I do not want this to be happening in  
5 Santa Barbara, in Ventura County and other areas where  
6 they have run into difficulty and find that sandwiching a  
7 commercial use is an effective way of supporting a  
8 project.

9 On the other hand, I appreciate the need for  
10 cities to take care of their harbor-related uses if they  
11 have an economically viable project. I just think as we  
12 travel along the coast, many of us will see that there are  
13 other areas that are going to come in eager to use this as  
14 the vehicle for changing their own use of land along the  
15 coast.

16 CHAIRPERSON BUSTAMANTE: We're going to ask for a  
17 brief response, because we have spent a lot of time on  
18 this particular issue, if you'd like to add something, and  
19 then we're going to the last citizen that would like to  
20 speak.

21 MR. McCABE: Absolutely, Mr. Chair. I want to  
22 assure the Commission from a legal point of view that --

23 CHAIRPERSON BUSTAMANTE: Your name.

24 MR. McCABE: I'm sorry, James McCabe, Deputy City  
25 Attorney. I identified myself before. From a legal point

1 of view, there's no precedent setting value here at all.  
2 Everything that the Commission does, and the Commission  
3 can make that clear on a case by case basis, is on the  
4 particular facts brought before it, that this is a very  
5 small part of a commercial area, that that commercial area  
6 is, in turn, a very small part of a larger project.

7 I point out respectfully to the Commission as  
8 well, that on the question of parts and what is being  
9 taken away and what is being given, I have sat in meetings  
10 with the Department of the Interior and the State  
11 Department of Parks, where they made it very clear that we  
12 have, to their full satisfaction, since there was State  
13 funding involved, replaced park land with other park lands  
14 within the Queensway Bay project.

15 So I --

16 CHAIRPERSON BUSTAMANTE: I mean that's an  
17 important point here. Can you speak specifically to that?

18 MR. McCABE: Yes, I believe I can, your Honor. I  
19 beg your pardon, Commissioner.

20 CHAIRPERSON BUSTAMANTE: I appreciate the --

21 (Laughter.)

22 MR. McCABE: I'm out of my usual venue. I  
23 apologize.

24 CHAIRPERSON BUSTAMANTE: Can you be specific  
25 about that?

1           MR. McCABE: Surely. The park land that has  
2 been, as it were, taken away by this project, and perhaps,  
3 Mr. Thayer could speak more particularly to the exact  
4 number of acres, I don't have that material with me, that  
5 land was funded in part by federal money funneled through  
6 the State of California. And we have taken that park area  
7 and provided mitigation elsewhere. We have provided --

8           CHAIRPERSON BUSTAMANTE: Where was that  
9 mitigation, that's what I'm trying to get at?

10          MR. McCABE: Sure. The mitigation was in an  
11 events park created near the Queen Mary, especially for  
12 special events for all citizens.

13          CHAIRPERSON BUSTAMANTE: This was nontrust land  
14 that was now put into trust?

15          MR. McCABE: No, this was improvements made on  
16 land that was not previously park. Monies spent to --

17          CHAIRPERSON BUSTAMANTE: So it was money spent  
18 not land acquired?

19          MR. McCABE: That's correct. And that was  
20 previously Port land not available to park use at all.  
21 There was other Port land not available for parking at all  
22 that was made into a boat launch ramp for the general  
23 public, something that's a singular need in all coastal  
24 communities as you well know.

25          There was a wetlands mitigation area created on

1 the Wesley portion of what I call Queensway Bay.

2 CHAIRPERSON BUSTAMANTE: There's additional land?

3 MR. McCABE: This was money spent to create  
4 wetlands where there weren't wetlands before, but they  
5 weren't tidelands.

6 CHAIRPERSON BUSTAMANTE: Is that true?

7 EXECUTIVE OFFICER THAYER: I believe the Coastal  
8 Commission required that. And, again, I refer you to the  
9 back of the report here where the Park discusses a 1995  
10 letter reviewing a 20-acre conversion. It's the very last  
11 appendix to the reports, number 11, a 1995 letter from the  
12 Department of Interior approving this conversion of 20  
13 acres followed up by a July 5, 2000 letter from the  
14 Department of Parks and Rec noting that the conversion had  
15 been approved since 1995 and specifically stating does the  
16 City diligently comply with the terms and services  
17 approval, including submission of their reports. The  
18 condition will be complete and all complete, et cetera.

19 So the agency with oversight over this converging  
20 issue, I'm specifically commenting on this, and we  
21 believe --

22 CHAIRPERSON BUSTAMANTE: That's not what I was  
23 looking for.

24 You know, I think, from my viewpoint, I think  
25 you're right, the issue of ancillary is not precedent

1 setting. The issue of this kind of commercial venture,  
2 however, I believe is.

3 And, although, I could probably also make a  
4 strong case that a restaurant is also a commercial venture  
5 and probably under my definition probably wouldn't be  
6 acceptable, that there is already tremendous precedent set  
7 for this activity and that activity has already been, I  
8 guess, at this point, done. It's not something that I can  
9 comment or retract.

10 This is something, in fact, that we can now say  
11 that this is a completely new commercial venture, one of  
12 what could be a whole group of others that are similar to  
13 it that would in the future be considered. And so  
14 although ancillary has been established already with this  
15 particular kind of ancillary activity, I don't believe  
16 has, this is a little bit different twist on this issue.

17 So what I'd like to do is I'd like to go to  
18 the --

19 MR. McCABE: Sure. I'd suggest to the  
20 Commissioners that necessarily all projects bring a use or  
21 say they bring a use that hasn't been done before. Again,  
22 there is no precedent-setting value as such here. And the  
23 Commission can certainly make clear that since we're on  
24 such a critical time path here that this use will be  
25 allowed without precedent and subject to a commission

1 review of its overall policy standards on these kinds of  
2 issues.

3 Thank you.

4 CHAIRPERSON BUSTAMANTE: I appreciate that. That  
5 was not said and that was not stated in that same fashion  
6 in this report. That would have given me a little bit  
7 better feeling about this whole thing. However, I don't  
8 think it covers it all. I mean, if you were to carve that  
9 out of the public lands trust and replace it with another  
10 piece that was more valuable, that would give me even  
11 greater -- well, it would make me feel much better.

12 Why don't we go out to the last gentlemen and  
13 he's been standing there very patiently for a long time.  
14 Thank you, sir.

15 MR. MAY: Thank you, Mr. Chairman and  
16 Commissioners. My name is Don May for the California  
17 Earth Corps. And perhaps not too patiently, because I  
18 would first like to respond to some of the issues that  
19 we're just raised.

20 One of our Board members, Evan Gossage, who  
21 operates our San Francisco office, in fact, is owner  
22 operator of the Sausalito Marina, which is the subject of  
23 the case that was quoted as precedential in here. Like  
24 it's precedence Jack London square in Oakland, also  
25 precedential, both had book stores, like the Barns and

1 Noble here. And the court records will show that that was  
2 raised and that this was a inseparable part of the project  
3 and it's a small part in both cases. The Court review  
4 will show that the book stores we're withdrawn as not  
5 being a visitor or added any ocean dependent, marina  
6 dependent type of usage. I would suggest that your own --  
7 the cases cited by your staff are precedential and this  
8 one as well, and you should take a look at those.

9           Second of all is with the issues that were just  
10 raised, it should be pointed out that the land swaps all  
11 involve tidelands. There is no gain to the public. There  
12 is no gain of public resource of sovereign land under  
13 that. There was, in fact, a taking. And not only that,  
14 but under the other agencies where part of the land was  
15 taken to the Queensway project under the Coastal  
16 Commission, which requires a four to one mitigation, they  
17 got less than a 1 to 1.

18           All the way around this there are significant  
19 issues that have been raised in terms of land use, which  
20 are not addressed by the staff, and that's the first thing  
21 that I would bring up.

22           Although, as the Mayor said --

23           CHAIRPERSON BUSTAMANTE: Do we start your three  
24 minutes now?

25           (Laughter.)

1           MR. MAY: Start my three minutes now. As the  
2 Mayor said in the last eight years there's been a great  
3 deal changed. That's true, the EIR in 1994 addressed a  
4 very different project. In fact, one which was pretty  
5 much within what we view as appropriate land uses.

6           Since then, if you look, for instance, at the  
7 movie theater that was just discussed, it draws not on  
8 tourists, but 60 percent, according to the documents on  
9 this, 60 percent would be drawn from the Pine Street  
10 Theater which is just up the street.

11           That's the City's problem. The City had a whole  
12 Pine Street investment revitalization program having at  
13 last got Pine Street pretty much at least close to break  
14 even, now seeks to undermine it by drawing off 60 percent  
15 of its customers to an adjacent, not land trust -- and not  
16 public trust type of uses.

17           We think that's entirely inappropriate and we  
18 agree with the Mayor that a whole lot has changed. On to  
19 my direct testimony, we do think --

20           CHAIRPERSON BUSTAMANTE: A minute and a half  
21 left.

22           MR. MAY: I'll really hurry. We thank you for  
23 convening the workshop and thank the staff for their  
24 report, but the one I would really like to make is the  
25 comments and, in fact, the narratives are not the staff's.



1 I'll introduce this. This is the answers to the  
2 questions that your staff asked the party in interest.  
3 The answers are from an interested party, the director of  
4 the project. They are not staffed, if you look at this  
5 and I'll give it to you, those will show both the  
6 narratives on 12, where it starts out saying the City says  
7 to the end of the narrative, and each of the questions as  
8 pointed out there are directly written by the interested  
9 party not the City Attorney and certainly not the City  
10 Auditor, but the director of the project.

11 The responses that you got are the same ones  
12 we've been getting. In fact, that was the motivation for  
13 us asking for a workshop and an audit, and that is they  
14 have three big problems.

15 Number one, they're not responsive. As you found  
16 when you ask a question, you get an answer to a different  
17 question. And as we pointed out that the several  
18 stakeholders --

19 CHAIRPERSON BUSTAMANTE: Thirty seconds --

20 MR. MAY: Well, that's okay. The second one is  
21 they're partially responsive and let me point out that  
22 because this is direct financial error here, where this  
23 says their response was that no tidelands funds were used.  
24 In fact, some of the -- up in front of the city council,  
25 and on up the aquarium shortfall would be made up. They

1 only answered half of it, they said we're looking at the  
2 options.

3 The option that they have looked at in front of  
4 the city council is to use tidelands funds to make up the  
5 a aquarium shortfall. Second, the answer is that variance  
6 would direct official data in response to a simple  
7 question on page 38, is the convention center subsidized  
8 by the City?

9 The answer is, no, quote "Fiscal Year 2000 the  
10 profits placed \$882,241 dollars in the tidelands fund."  
11 That's in direct opposition to the City auditor's report.  
12 It says it lost two and a half million dollars, taken from  
13 the tidelands fund.

14 You know, this is where you have three big  
15 errors. Number one, they don't answer the question, and  
16 this is not staff --

17 CHAIRPERSON BUSTAMANTE: We're now summarizing  
18 for the third time?

19 MR. MAY: We're summarizing. We're not --

20 CHAIRPERSON BUSTAMANTE: This is the longest  
21 three-minute presentation in history.

22 COMMISSIONER CONNELL: Similar to Bill Clinton's  
23 inaugural speech.

24 CHAIRPERSON BUSTAMANTE: Well, remember the first  
25 part of it is in response to the City Attorney.

1           We have the mayor who would like to come up and  
2 we have the developer, and I believe probably the  
3 assistant, I think, it was the City Attorney, that they  
4 all seem to want you.

5           Do the Members of the Commission have any  
6 questions of this last three-minute presentation?

7           Seeing none, thank you.

8           MR. MAY: Thank you, Mr. Chairman. Please read  
9 the whole thing, because there is significant omissions  
10 and errors that are directly made that must be addressed.

11          Thank you.

12          CHAIRPERSON BUSTAMANTE: Thank you. Madam Mayor.

13          LONG BEACH MAYOR O'NEILL: Thank you very much.  
14 I just -- the words that I actually want to say is that  
15 we, as a city, have tried very hard to cooperate with  
16 everything that you have asked us to do. I think we  
17 started last summer for really with some hearings on this  
18 issue in working with the staff and also with the  
19 Commission.

20          The problem that I find that I'm facing is that  
21 the City is not financially solvent. We have been  
22 dependant on so many other things that we cannot be  
23 dependent on anymore. Some of the problems that we're  
24 facing in that area are caused by the fact that the area  
25 is not developed.

1           We have gone through many trials with the  
2 developers in their own internal organizations. And I  
3 just need to know where we are with you. I don't know  
4 whether this is entirely precedent setting, when you're  
5 talking about theaters. I know that there are other areas  
6 that are going to be trying to develop the areas that they  
7 have and they feel the theaters bring people in and out.

8           I would not want it on water front. It's setback  
9 from it. But the problem that I have is, I don't know  
10 what you're really asking of us. Are we talking about  
11 months and months of time, more questions. I think  
12 that -- I have great respect for the people that spoke to  
13 you today, because they have a very great passion in what  
14 they believe in. I think if it weren't the theater, there  
15 would be other reasons not to develop that area whether  
16 it's a theater or whatever it is.

17           So I need to know, as a city, we are struggling.  
18 We have tried very hard to comply with everything that we  
19 needed till we are a landlocked city, and we are growing.  
20 And we're facing the same problems that California is,  
21 expanding, so we have neither land to expand in, so we  
22 either go up or out.

23           And I need direction from this body for where we  
24 go from here with that, because it's been probably over a  
25 year, and now we have a new element, which I respect that

1 you have. I don't see it in the same way you do, but I do  
2 respect the fact that you have to face that.

3 CHAIRPERSON BUSTAMANTE: I know that we have  
4 required, as for a state for cities to go after retail  
5 markets in order to have viability in their cities. That  
6 is an issue that clearly is having a dramatic impact and  
7 that's why -- it's having a dramatic impact and that's why  
8 there is so much of an emphasis instead of on building of  
9 homes and families in communities, we're seeing tremendous  
10 shift to retail. And I understand that and that's --

11 LONG BEACH MAYOR O'NEILL: We just had a shift  
12 because we had to. We shifted because --

13 CHAIRPERSON BUSTAMANTE: I understand that. And  
14 I don't think that anybody here is questioning it, at  
15 least I'm not questioning it. I think we have a different  
16 issue, I think, before me. And it's not about your  
17 management, and it's not about whether or not this --

18 LONG BEACH MAYOR O'NEILL: I understand that.

19 CHAIRPERSON BUSTAMANTE: This is something that  
20 makes your project more economically feasible. And I  
21 think, as I said earlier, if I were the Mayor, I mean, I  
22 would be pushing this, you know, as strong as you are.

23 The unfortunate thing for you is that the people  
24 who spoke in opposition are right. You know, they raise  
25 an issue here, from what I can tell being a lay person,

1 they raise an issue that this is an activity that is  
2 within the public trust.

3 And the Controller raises an even bigger issue as  
4 to are we going to continue to allow this in every  
5 jurisdiction that we're going to have review over, and  
6 allow this kind of activity to take place on public trust  
7 land. I don't know where we're at to be honest with you.

8 LONG BEACH MAYOR O'NEILL: And I think this is  
9 something you probably do need to --

10 CHAIRPERSON BUSTAMANTE: I don't know where we're  
11 at on this. I know that we've allowed the City -- we have  
12 been a co-conspirator in getting us to this point,  
13 allowing all this activity to take place. And now it's  
14 kind of like we're going to pull the rug out from  
15 underneath you, because you're trying to make something  
16 that we've allowed to do now, allow it to fold or become  
17 less viable.

18 LONG BEACH MAYOR O'NEILL: Is it because of the  
19 theater?

20 CHAIRPERSON BUSTAMANTE: I think that the theater  
21 is -- it is the theater. It is --

22 LONG BEACH MAYOR O'NEILL: If it weren't a  
23 theater, it would be all right?

24 CHAIRPERSON BUSTAMANTE: Well, it's not just the  
25 theater, it could be other like commercial ventures. I

1 don't know that I would have the same opinion if it was  
2 something else. I mean, it's kind of like if I saw it.

3 LONG BEACH MAYOR O'NEILL: I think up and down  
4 the coast, there may not be theaters, but there are book  
5 stores, there are restaurants, there are all the things  
6 that draw people.

7 CHAIRPERSON BUSTAMANTE: And I think that this  
8 issue brings -- the issue of the theater brings a whole  
9 new element to this whole equation. And I think it's  
10 something that we're going to have to deal with as a  
11 policy body on whether we're going to allow this.

12 When you say something is not precedent setting,  
13 and you do it anyway, it still is precedent setting. And  
14 the question is how do we do something, how do we assist  
15 you in allowing you to get through this phase, which I  
16 would like to figure out how to do, but still not set a  
17 whole new range of commercial activities that we would  
18 then allow in into this mix?

19 LONG BEACH MAYOR O'NEILL: But then that means  
20 with each proposal from wherever you were, you would have  
21 to see what everything was that was going in there, is  
22 that what you're saying or just not theaters?

23 CHAIRPERSON BUSTAMANTE: Yeah. No, it would be  
24 more than just theaters. It would be all kinds of things  
25 that have not been previously allowed that someone could

1 equate to this same kind of activity as a movie theater.  
2 It may not be a movie theater the next time. It may be  
3 something akin to movie theaters.

4 LONG BEACH MAYOR O'NEILL: But what's been  
5 allowed before is allowed now?

6 CHAIRPERSON BUSTAMANTE: Well, kind of, sort of.  
7 And sometimes it's not and sometimes it is, but why would  
8 we want to open up a whole new barrier.

9 LONG BEACH MAYOR O'NEILL: No. I'm not talking  
10 about theaters, I'm talking about --

11 CHAIRPERSON BUSTAMANTE: What's next, we're going  
12 to open up an IKEA.

13 LONG BEACH MAYOR O'NEILL: Somebody mentioned  
14 book stores. And if the bookstore is not good, does that  
15 mean that from today on there may not be one?

16 CHAIRPERSON BUSTAMANTE: A Wall-Mart will bring a  
17 lot of people down there too.

18 COMMISSIONER CONNELL: The Mayor is asking --

19 CHAIRPERSON BUSTAMANTE: I don't mean that to be  
20 disrespectful, but what's going to be next in terms of  
21 what -- and I know that this is not -- this is not  
22 Wall-Mart and so I don't want to take it to the limit of  
23 that comment, but it's still -- what is the next piece?  
24 It's only to dramatize, maybe over dramatize the point.  
25 What's the next piece that brings -- that's the part I'm



1 concerned with, Madam Mayor.

2 COMMISSIONER CONNELL: I'd like to try to assist  
3 the Mayor's question. I think it was a very fair  
4 question. I mean, I think that as Beverly knows, she sat  
5 on a commission I chaired on called SMART, which was an  
6 effort to try to change us away from a retail focus in  
7 cities and counties to one that was based on a more  
8 balanced land use. And Beverly has attempted to do that.

9 So when the Legislature failed to take action on  
10 the law that would have reallocated revenues to cities and  
11 counties so that they would be encouraged to do housing  
12 and more balanced development. And at the rate we're  
13 going spending money, that's probably not likely to happen  
14 because it means a net reduction to the State.

15 But I do think it's a fair question, how long is  
16 it going to take us to come to this conclusion? I am  
17 unprepared today though, Beverly, to vote for something  
18 that has a movie theater in it, largely because I think it  
19 becomes a question, for me, of whether or not the shopping  
20 center in a tidelands area is anymore appropriate than it  
21 is anywhere else. And I, you know --

22 LONG BEACH MAYOR O'NEILL: I think that's a  
23 misnomer, but it is a commercial development.

24 COMMISSIONER CONNELL: I think the commercial  
25 development is the least of my concerns. I think it's the

1 movie theater. I can support, as I saw in San Francisco,  
2 the kind of supported uses that were related to the use of  
3 the pier there.

4 But I think this is a whole new ground that we're  
5 breaking, and I am very leery of what it suggests. I  
6 mean, I can envision ten years from now if we go this  
7 route that we're going to have movie theaters up and down  
8 the coast and I see no way to prevent that, because if we  
9 allow it to occur in Long Beach, I think that the same  
10 kind of salient argument can be made as we look at  
11 tidelands property throughout California, and that is my  
12 concern. And that is why I've asked for the public policy  
13 here.

14 I have no disagreement with staff that there is  
15 not a management issue here. I am very comfortable as the  
16 Chief Auditor of the State to say there is not a  
17 management issue here. I want the citizens to understand  
18 that. There's not a financial issue here. That is a land  
19 use issue here which goes into an arena that we have not  
20 explored yet as a Commission.

21 And that is what has deeply concerned me in  
22 reading the report and looking at the location of these  
23 theaters. I am very, very concerned of what it suggests  
24 and I am not an attorney, and I often times benefited from  
25 the fact that I am not, because I think sometimes

1 attorneys are forced to look at things more narrowly. And  
2 I can understand why the attorney for Long Beach doesn't  
3 think it's precedent setting, but I can assure you from  
4 the political viewpoint, from the public policy viewpoint,  
5 it definitely is.

6 If we move on this matter today, and it becomes a  
7 reality where there are going to be movie theaters in Long  
8 Beach, it becomes a powerful argument for cities up and  
9 down the coast to place those kinds of uses in their  
10 tidelands.

11 LONG BEACH MAYOR O'NEILL: May I just ask where  
12 we are then? I need some direction, are we talking about  
13 taking it back to staff, are we talking about looking at  
14 our plans again and bringing them back?

15 COMMISSIONER CONNELL: Paul, what are you  
16 suggesting?

17 EXECUTIVE OFFICER THAYER: Just as an idea for  
18 the Commission to consider, I think the City has been in  
19 this planning process for a long period of time. They've  
20 received approvals for a lot of their development already  
21 from a number of different agencies.

22 LONG BEACH MAYOR O'NEILL: Actually, it's been  
23 going on since I've been Mayor, but two years before that.

24 EXECUTIVE OFFICER THAYER: Certainly a long time.  
25 And I guess what I would propose is that there's two

1 issues before us, what do we do for Long Beach, how do we  
2 deal with the specific situations that they're in right  
3 now and get them through the planning process in a way  
4 that won't cause a precedent that the Commissioners are  
5 concerned about and how do we address the larger public  
6 policy issue, which, you know, as I indicated earlier  
7 you're absolutely right. This is the first maybe of a  
8 wave, and we're already getting staff consultations with  
9 the major courts.

10 San Francisco has a cruise ship proposal, which  
11 has some proposals in it that will raise the same kind of  
12 concerns. And so what I would like to do is try and  
13 arrange something before June that might take up the  
14 Lieutenant Governor on some of his ideas that there be a  
15 swap here and something else can be done so that this  
16 project might be able to go forward, but perhaps the  
17 public trust can benefit from additional lands obtained  
18 somewhere else in the form of a swap.

19 So there are other mechanisms, and there are  
20 maybe some that we don't know today, but that will prevent  
21 this kind of precedent from being set.

22 CHAIRPERSON BUSTAMANTE: You can also persuade,  
23 me, Paul, had there been able to been some effective  
24 argument that in the development of this, either this  
25 project or in other projects, that the City of Long Beach

1 has enhanced other areas of the public trust lands here.  
2 And that, in fact, they were doing it strictly for the  
3 mitigation of this particular use.

4 If we're able to somehow establish that  
5 someplace, that would go a long way to making me feel  
6 better about this process. But just the taking without  
7 any mitigation of any kind, I think is, you know, it's  
8 abrogating our responsibility here. So I really think --

9 LONG BEACH MAYOR O'NEILL: That's in addition to  
10 the theater situation.

11 CHAIRPERSON BUSTAMANTE: Well, no, it's the  
12 theater and what have we done in order to resolve that  
13 issue in terms of mitigating on behalf of the public  
14 trust.

15 LONG BEACH MAYOR O'NEILL: It's not the theater  
16 itself.

17 CHAIRPERSON BUSTAMANTE: The point was made  
18 earlier, would a project help or would a park help your  
19 project? Probably not. So if we're giving up something  
20 that could have been a park, what are we getting in return  
21 for an ancillary use of the public land of public trust  
22 lands. And so you're suggesting before the next meeting  
23 you could explore that with the City and the developer?

24 EXECUTIVE OFFICER THAYER: We'd like to explore a  
25 variety of options. I'm sure we can't think of them all

1 here today, but if there's somehow that either the public  
2 trust has its property exchanged for other properties or  
3 other -- there may be other mechanisms we don't know.

4 But I think we've heard the Commission loud and  
5 clear on this, and we would look for somehow to deal with  
6 this particular situation, and then I think we also have  
7 to deal with the changing waterfront issues, and that may  
8 appropriately be an oversight.

9 CHAIRPERSON BUSTAMANTE: I want to make sure that  
10 the Mayor knows that, you know, we're not attempting to  
11 put something on the table here at the last minute to try  
12 to squeeze you for something else. That's not really the  
13 intent here. We really do believe that there is a  
14 responsibility for us to find some mitigation for what  
15 we're giving up.

16 And they are right about several things, one of  
17 which is that it's finite in terms of the land. And for  
18 us to give up something, there needs to be something given  
19 back. I know that last year --

20 LONG BEACH MAYOR O'NEILL: It was mitigated.

21 CHAIRPERSON BUSTAMANTE: -- there was four for  
22 one. I don't know what we've accepted. My guess is that  
23 we probably have accepted less than that in the past.  
24 Let's find something of equal value. Let's find something  
25 that we can have a win, win situation here.

1           LONG BEACH MAYOR O'NEILL: Our city manager has  
2 equal value.

3           CHAIRPERSON BUSTAMANTE: Can we go through this  
4 very quickly because I think we're at the end of this.

5           LONG BEACH CITY MANAGER TABOADA: City Manager  
6 Henry Taboada, City of Long Beach.

7           Commission members, what we are faced with here  
8 for the City of Long Beach as the Mayor has so eloquently  
9 stated is that we have timing considerations that make  
10 this a critical project for us, at this point in time,  
11 based on the market conditions, based on lease conditions,  
12 based on a whole set of factors that make it almost -- not  
13 acting today, almost undermines the project in its  
14 totality.

15           We've already gone through a situation where a  
16 theater that backed out of the project caused all of the  
17 other leases to have to be renegotiated based on having  
18 acquired another theater operator. So we already  
19 understand the mechanics of the project when we don't have  
20 the theater.

21           Mr. Palker who is the representative of the  
22 developer will state to you that the theaters comprise  
23 70,000 square feet of second floor space below which are  
24 uses which we believe are consistent with tidelands uses.  
25 We have available to us in our tidelands account \$600,000

1 worth of credit if we are able to secure additional  
2 tidelands funds or tidelands property with that money.

3 We've been unable to do that in the City of Long  
4 Beach, because we have nowhere to go. As the Mayor  
5 pointed out, we're fully built out. We have nowhere to go  
6 to spend this \$600,000 for any additional tidelands  
7 property.

8 I'm willing to offer up that \$600,000 to buy  
9 70,000 square feet or as much as that \$600,000 will buy  
10 anywhere in the State of California, anywhere where it can  
11 be used because it sits unused in our treasury unable to  
12 use it, because we have no property we can obtain that is  
13 within the tidelands area that we don't already own.

14 So we can't spend it. It's a credit that's due  
15 us, because we gave land to the tidelands in that amount  
16 and it was a swap that we did. And I think that if we  
17 could do that, and also give us credit for the fact that  
18 the theaters don't occupy ground floor space, then I think  
19 we fashion a solution that would allow us to go forward  
20 with our project and still not create the kind of  
21 precedent that is being suggested here.

22 CHAIRPERSON BUSTAMANTE: It's an interesting  
23 proposal. The fact that it's not on the ground floor, I  
24 don't know that that has any relevance, but I think it's  
25 an interesting proposal. Unfortunately, you're stating as



1 you're offering it, there's nothing that we can use it  
2 for --

3 LONG BEACH CITY MANAGER TABOADA: In the City of  
4 Long Beach.

5 CHAIRPERSON BUSTAMANTE: -- unless -- in the City  
6 of Long Beach. So what would we use the \$600,000 for if  
7 that was what we eventually ended up with a number anyway,  
8 which I don't know it is, but I mean would there be an  
9 enhancement of existing public trust land that currently  
10 doesn't have the kinds of amenities that a specific trust  
11 account could establish that would be administered by  
12 perhaps a local board? Would that be a way of -- I mean,  
13 I'm grasping a little bit here.

14 LONG BEACH CITY MANAGER TABOADA: If you want to  
15 keep it within the boundaries of the City of Long Beach,  
16 we could enhance currently owned State Lands property,  
17 which is not developed or is not improved.

18 EXECUTIVE OFFICER THAYER: This \$650,000 that  
19 he's referencing actually came from a prior swap. It's  
20 not a new proposal dealing with this one. And, in fact,  
21 it had to do with a pipe, one of the exchanges that  
22 occurred that we talked about earlier.

23 And, basically, that money is supposed to be used  
24 to buy new trust lands, because old trust lands were lost.  
25 And so basically the mitigation cycle of the previous deal

1 is not yet complete, and that that money is intended to be  
2 used by --

3 CHAIRPERSON BUSTAMANTE: So it's nothing new.

4 EXECUTIVE OFFICER THAYER: We couldn't even  
5 complete the last swap to figure out where to spend it.

6 LONG BEACH CITY MANAGER TABOADA: That's why I  
7 offered to give it up to any person in California, where  
8 it would make sense --

9 CHAIRPERSON BUSTAMANTE: Right, but that's 650  
10 that we already have.

11 LONG BEACH CITY MANAGER TABOADA: But it is  
12 \$650,000 that is in the hands of the City's account for  
13 the City of Long Beach.

14 COMMISSIONER CONNELL: But we don't end up net  
15 ahead. We have an obligation it seems to me to mitigate  
16 the last part.

17 SENIOR STAFF COUNSEL FOSSUM: It's not actually  
18 in the City's account. It's in a Kapiloff land bank  
19 account. The agreement provided -- the City identified  
20 somewhere in the first ten years after the agreement that  
21 the Commission would attempt to purchase that land, but I  
22 believe the period of time has lapsed and the State can  
23 already spend it anywhere in the State it wants.

24 LONG BEACH CITY MANAGER TABOADA: We have a  
25 letter on file that gives us an extension on that

1 deadline, I believe which we can offer you.

2 CHAIRPERSON BUSTAMANTE: I'm not going to say  
3 that, you know, it was not -- it was an interesting  
4 proposal. That's the kind of creative thinking that I  
5 would want to have. This one probably doesn't go far  
6 enough, but, you know, we're looking for that kind of how  
7 do we enhance the public lands. And we are giving up  
8 something, and I think it's something in return, even if  
9 it's a bank someplace, waiting for the opportunity, I  
10 think that that's an important piece of trying to mitigate  
11 for, you know, a use that is pretty -- for me, it's  
12 outside ancillary.

13 LONG BEACH CITY MANAGER TABOADA: Again, we're  
14 willing to do anything that makes sense to both this body  
15 and --

16 CHAIRPERSON BUSTAMANTE: I appreciate that and  
17 that works well with the staff's recommendation right now.

18 Yes, sir.

19 MR. PALKER: My name is Tony Palker, I represent  
20 the developers of Diversified Realty. We are the  
21 developer of the retail entertainment project. I'll try  
22 to keep my points very brief and on point to the simple  
23 question, does the Queensway Bay retail entertainment  
24 project conform to the tidelands grant and the questions  
25 that you have been discussing for the past hour or more.

1           First of all, I'd like to say that the property  
2 we are talking about, let's make it clear, is currently  
3 largely paved and fenced parking lot used from time to  
4 time for parking. It is largely inaccessible to the  
5 public.

6           The project itself, our project, represents 18  
7 acres out of the entire 316 acres of the overall Queensway  
8 Bay master plan. Our project itself will only have a  
9 commercial coverage of approximately ten acres, meaning  
10 approximately ten of our 18 acres are covered by  
11 buildings, the remaining eight or so are essentially  
12 private, but open to the public. We have many  
13 requirements from the Coastal Commission to provide open  
14 areas to the public, such as a 17 and half thousand square  
15 foot public viewing deck on the second floor of the  
16 building to provide views of the water and access to the  
17 water that currently are not available.

18           We're providing bridges across shoreline drive to  
19 help link the downtown to the waterfront. So we have a  
20 large town plaza area in excess of an acre in size, while  
21 technically private, is part of the public area of the  
22 project, open and accessible to the public.

23           So we have a very large amount of property which  
24 is essentially open to the public to provide access to the  
25 public. The question that has been raised as to some of

1 the uses. I think, really what we have to do is look back  
2 as to what the modern interpretation of uses that are  
3 bringing people to the water.

4 Much of this site used to be the Pike Amusement  
5 Center, which brought many, many people to the water out  
6 of the greater Los Angeles area. The pike amusement zone  
7 was an appropriate used at a former era and other projects  
8 are appropriate to help bring people there today.

9 As I stated previously, most of this land is  
10 currently not available or usable to the public. We have  
11 done extensive market studies to determine how many people  
12 you will be able to now bring to the site and to the  
13 water. And we estimate that upon completion of this  
14 project, combined with the convention center on one side  
15 of us, and the aquarium on the other, there will be  
16 approximately seven and a half million people visiting the  
17 water.

18 Currently, we estimate there are about four  
19 million people at the convention center and the aquarium.  
20 In other words, because of the variety and totality of the  
21 uses, we will increase to, three and a half million more  
22 people will visit this small 18-acre site in concurrent  
23 use, because currently there is nowhere to go and nowhere  
24 to park.

25 CHAIRPERSON BUSTAMANTE: That raises a whole lot

1 of other issues, but, you know, some pretty serious  
2 issues, so let's -- you know, let's not use the numbers  
3 to overstate the case here. We know that the property  
4 that we're talking about isn't the most valuable piece of  
5 property in the whole trust lands, but the basic sticking  
6 point here is that you are adding another type of  
7 commercial venture, and the public trust is receiving  
8 nothing for it.

9 So can you focus on that so that we can move  
10 toward that because, you know, frankly I'm one who'd like  
11 to be able to figure out how to do this, if we can figure  
12 out how to enhance the public trust here.

13 MR. PALKER: If I understand what the question  
14 is, is how the project will enhance the public's ability  
15 to use and enjoy the shoreline asset. And if that is the  
16 question, the variety of uses that we are contemplating,  
17 which range from restaurants, shops and the cinema and the  
18 IMAX and possibly a hotel use it is the mix of those uses  
19 that together in the unique mix that is created, which  
20 allows that to occur and allows -- it allows parking to be  
21 built. It allows people to come to the water and provides  
22 for these variety of uses.

23 It is not simply a used where you can look at  
24 each one of the uses by itself as a discrete use and look  
25 at that individual component. It is the combination. The

1 restaurants along the water are there, in part, because of  
2 the cinema. The cinema, in part, feeds off of the retail,  
3 and et cetera.

4 CHAIRPERSON BUSTAMANTE: I understand. You're  
5 following the same sort of direction. Let me put you in a  
6 different space. How does it provide more open space?  
7 How does it enhance wetlands? How does it enhance  
8 tidelands? How is it with any migration? How does it  
9 help with species? How does it help with -- I mean, how  
10 does doing this help those kinds of activities, not  
11 bringing three million more people to an 18-acre site.  
12 That has, I'm sure, some value, but it's not, I don't  
13 think, the kind of public trust value that we were looking  
14 for.

15 MR. PALKER: You've really, I think, raised two  
16 issues. One is a natural environment, one is the built  
17 environment. Issues that pertain to the natural  
18 environment, such as habitat, wetlands and species, to be  
19 quite honest, are issues that the current use of the  
20 property was set in motion probably prior to the second  
21 world war.

22 It's been paved for in excess of three decades.  
23 So from the natural environment, what we would do in our  
24 proposal or virtually any other proposal that I can  
25 imagine on this property, even if it were to be a park, we

1 would not increase natural environment. As for a built  
2 environment, your question about providing more open  
3 space, as I stated previously, much of this project at  
4 least eight of the 18-acres does not include second floor  
5 space on essentially roof tops on buildings. It is going  
6 to be created as public open area.

7 And through the coastal permit, it very clearly  
8 states certain of these areas must be open to the general  
9 public. It is through this development that this open  
10 area will be created and amenities will be provided for  
11 the public.

12 COMMISSIONER CONNELL: I don't think anyone is  
13 denying that it would be an attractive development. The  
14 question is whether or not this is a used that is  
15 conducive to the tidelands trust requirements and whether  
16 or not these uses wouldn't be better off somewhere else in  
17 the city.

18 I mean there is no reason for those specific uses  
19 to be on the tidelands trust area if there is not a direct  
20 connection, in my opinion, to tidelands used And I'm not  
21 hearing you make that connection.

22 MR. PALKER: I think that maybe I have not made  
23 it clear as I've been on this project for three and a half  
24 years, and kind of viewed the overall connection. If I  
25 may step back with what our master planning approach was



1 to this before we talked about specific uses or tenants.

2 The intent was that at one-time Ocean Boulevard,  
3 if I can used this the pointer right here? Ocean  
4 Boulevard which was roughly located along this line here,  
5 Ocean Boulevard, which was historically the edge was  
6 pulled away from the waterfront, beginning I believe in  
7 the 1920s, through development of the Pike Amusement Zone,  
8 a series of piers, et cetera, on the property.

9 Essentially, what happened was the downtown CBD  
10 was disconnected from the water. Over time that area was  
11 filled, a large barrier of essentially an elevated freeway  
12 was built which has subsequently been taken down and the  
13 improvements along the edge were created.

14 Earlier in the planning process commencing in the  
15 early 1990s, the City with their design architect created  
16 an edge to the water as I've pointed out here trying to  
17 reestablish essentially a seawall, an edge on the water.  
18 That, however, left a substantial void between Ocean  
19 Boulevard and the edge of the water, a void which  
20 disconnected the downtown and disconnected people's access  
21 to the water and people largely were very uninterested in  
22 going to the water, because there was nothing. Is was  
23 sort of in the middle of nowhere.

24 The attempt of the plan is to create a series of  
25 pedestrian roads, small vehicular routes, pedestrian foot

1 paths, open areas or gathering areas to relink the entire  
2 downtown area to the water, connecting essentially along  
3 two major spines. One is on Pine Avenue, which is the  
4 existing CBD going right down to the water's edge right  
5 here, and the second one is a more diagonal path, leading  
6 from essentially Pine and Seaside Way at the northwest  
7 corner of the convention center diagonally to the aquarium  
8 that was built.

9 So, essentially, there are two major pathways or  
10 connection points that our project represents that we are  
11 building as part of our project, including in that is a  
12 large pedestrian foot bridge over Shoreline Drive, which  
13 is a large barrier to the water.

14 Throughout that we have then created  
15 approximately 7 or 8 subparcels that surround these  
16 connections. And it is on those parcels that the  
17 buildings, the commercial establishments, if you will, are  
18 developed.

19 So essentially to ask to try to address that  
20 question, the overall concept of this plan from day one,  
21 since 1994 when the City started, since 1997 when we  
22 started, has been to reestablish the connection from  
23 Shoreline to Ocean. We have done that through a variety  
24 of infrastructures we're putting in.

25 COMMISSIONER CONNELL: And I understand that

1 would be an important priority for the City, but we are  
2 sitting here as a Lands Commission, where our  
3 responsibility is singularly to focus on protection of the  
4 tidelands. So I still don't have any greater assurance  
5 that anything you're proposing, while it may be viable in  
6 terms of connecting the CBD to the shoreline, helps us  
7 come to the difficult decision we have before us of  
8 whether we are in deed enhancing and protecting the  
9 tidelands.

10 And there's nothing in this project that you've  
11 defined that does that.

12 CHAIRPERSON BUSTAMANTE: I think we're going to  
13 have to bring this to a close. I'll let you go ahead and  
14 speak.

15 MR. McCABE: I'll be brief and to the point.

16 I want to assure Commissioner Connell and the  
17 Commission as a whole that this project brings a great  
18 deal to the tidelands trust. It is common knowledge in  
19 Long Beach that, and I believe with the Commission, that  
20 the tidelands trust fund is perpetually short of money  
21 these days. There is not enough money to do the repairs,  
22 and infrastructure work that we would like to do.

23 We've spent \$40 million on Rainbow Harbor with  
24 money borrowed from the federal government. And we have  
25 helped with the building of an aquarium on which some

1 nearly \$200 million has been spent. Both of these  
2 projects will become a drain on the tidelands fund unless  
3 we can bring these people to the tidelands to provide  
4 rents and other benefits to the tidelands trust.

5 This is absolutely essential. We can't make a  
6 viable trust use of the aquarium, the Queen Mary, the  
7 Promenade, the Rainbow Lagoon without bringing these  
8 people in this way to this project.

9 Respectfully, we've been before the Commission  
10 for quite awhile on this issue and this is an enormous  
11 hardship on the City to call it into question at this  
12 point. I assure the Commission that we bring a lot to the  
13 trust fund.

14 Just on a procedural matter, do I take it that it  
15 may be the decision of the Commission to hold this matter  
16 over to a future time, may that be on the June calendar?

17 CHAIRPERSON BUSTAMANTE: At this point, it's very  
18 possible. I think that the Commissioners have to speak  
19 and try to come to some kind of a conclusion here as soon  
20 as all the testimony is done. I think that you are the  
21 last of that testimony.

22 MR. PALKER: If I could just answer Commissioner  
23 Connell's final question that she raised about specific  
24 land uses. If you go back to the mix, it is not  
25 dissimilar from Shoreline Village to the Embarcadero in

1 San Francisco. The Embarcadero of San Francisco and many  
2 of these other areas, many of these are really based upon  
3 those existing uses on the tidelands on the waters.

4 COMMISSIONER CONNELL: Yes, I agree. The  
5 Embarcadero has, you know, has an entirely different  
6 focus. It was done many, many years ago, and it was in  
7 the tip of the San Francisco area as you know. It was  
8 not -- it's not in anyway near the water in the way that  
9 your land would be. The Embarcadero is in the middle of  
10 the commercial district down on market.

11 MR. PALKER: I should have not used the term  
12 Embarcadero. I should have used the term Pier 39, Pier  
13 45, Fisherman's Wharf that area of San Francisco.

14 CHAIRPERSON BUSTAMANTE: Okay. What's the  
15 pleasure of the Commissioners at this point?

16 COMMISSIONER CONNELL: Well, you know, I respect  
17 the time sensitivity here to the City, but I am certainly  
18 not willing to move forward on a matter that imposes this  
19 new precedent on other actions of the Board in the future  
20 at other locations throughout the State.

21 I don't know what we can do to resolve this  
22 matter within the next 30 days. I mean, I've listened to  
23 some very definite positions that appear to be far apart  
24 and I am concerned that we do give an up or down signal to  
25 the City of Long Beach certainly within a limited period

1 of time.

2 If there is no way to soften the suggested used I  
3 cannot move forward, Mr. Chair, on the idea of movie  
4 theaters in a tidelands trust. So I've got to hope that  
5 the staff, within the next 30 days, can come up with some  
6 innovative discussion of how we can deal with this matter,  
7 because, as it now stands, I certainly couldn't support  
8 it.

9 ACTING COMMISSIONER PORINI: That's fine. I,  
10 too, am concerned with the timeliness of the process and  
11 would encourage staff to keep Commissioners abreast of  
12 discussions that you have with the various participants as  
13 we go along.

14 CHAIRPERSON BUSTAMANTE: I think that makes this  
15 thing unanimous, Paul. You know there is, I believe, a  
16 tremendous need for the Commission itself to reflect just  
17 a little bit and to ask staff to come up with at least the  
18 draft of some policy with regard to this type of  
19 commercial used. There were a lot of charges that were  
20 leveled today, a full range of things, and I think that  
21 when you cut through it all, I think that we're facing an  
22 issue that's a very large public policy issue that we have  
23 to, in fact, face.

24 And so I would suggest that as you are involved  
25 with your discussions with the City developers that you

1 make every effort to figure out how we, in fact, in some  
2 kind of a different commercial used that we establish not  
3 only a precedent, but the right kind of precedent, that  
4 we -- if we're going to establish a precedent here, it's  
5 got to be one that, in fact, is either extremely so rare  
6 that it never takes place again or that it is in such a  
7 situation where the mitigation is appropriate to the kind  
8 of used that we're talking about.

9           In this particular case, I think that it's clear  
10 that it's on the very edge of public lands, but still on  
11 public lands. And so in order for us to be able to deal  
12 with this issue in what I think is a responsible fashion,  
13 we need to figure out how to deal with that as an entire  
14 public policy of this board, so when we're faced again,  
15 because we will be -- that we have some precedent that, in  
16 fact, makes sense as a precedent to have.

17           So I would hope that the sooner that you could do  
18 that with the City, the better, so that it doesn't prolong  
19 any activities. I feel very, very badly about the  
20 situation that I believe that we have been a part of to  
21 put them in this situation without giving them -- without  
22 ever indicating that this kind of activity would have this  
23 kind of reaction by the Commission, and for that I  
24 apologize.

25           However, we are also faced with a much larger

1 public policy issue here, and I think we have to resolve  
2 that before we move forward.

3 COMMISSIONER CONNELL: I'd like to suggest, Mr.  
4 Chair, that we put this on the June agenda. We are going  
5 to have a June meeting, because there are some other items  
6 that we deferred to June prior to your arriving at the  
7 meeting. So we will be having a June meeting. And I do  
8 think that this could go on the agenda for June. And if  
9 you could give us a status report, if you have not  
10 resolved or you're finding that there is no tenable  
11 compromise here, we need to know that and we need to so  
12 indicate as a Commission to the City of Long Beach.

13 So I would like to have it slated as an action  
14 item so that if necessary we can take action if you  
15 reached a conclusion, whether it's positive or negative as  
16 it relates to the City of Long Beach. I think we need to  
17 position it as quickly as we can.

18 CHAIRPERSON BUSTAMANTE: I would echo that and I  
19 would basically tell all the sides that I think that we've  
20 clearly gotten a sense of the issues that are involved  
21 here, so this is not an opportunity to gen up, you know,  
22 40 or 50 members, because by the next meeting, I'm going  
23 to have this changed, so that we can go into any new  
24 debate that's necessary without covering all the old  
25 ground.



1 I think that the opposition made the case very  
2 clear. I think it was very eloquent. I think that the  
3 City also has made their case. We have a responsibility  
4 to effectively deal with this in a public policy format.  
5 And I think that that's what we're hedging on, because  
6 that's what we have to come up with, so let's try to  
7 resolve this as an action item.

8 COMMISSIONER CONNELL: Do we need an actual  
9 motion on my part to make that action clear or is that  
10 just -- I think it's pretty clear.

11 CHAIRPERSON BUSTAMANTE: It is the unanimous  
12 consent of the Board that, in fact, we used this as an  
13 action item come June.

14 EXECUTIVE OFFICER THAYER: Let me just clarify  
15 what we're bringing back, because obviously the staff is  
16 going to, you know, we're going to carry out --

17 CHAIRPERSON BUSTAMANTE: One is hopefully a win,  
18 win, win, win. And the second is a policy in the  
19 establishment of having ancillary include anything  
20 remotely, like a movie theater or any other like kinds of  
21 situations, as to how we would deal with that in the  
22 future. And I'm glad I don't have to write the first  
23 draft.

24 EXECUTIVE OFFICER THAYER: We'll work with the  
25 Attorney General's office on that. Both issues are tough,

1 and I think that the first one we at least should have  
2 some idea. We should be able to fix it or we'll know that  
3 there's problems. And I think the problem that the City  
4 Manager illustrated about they're not being swapable land,  
5 indicates how difficult that's going to be nonetheless.

6 CHAIRPERSON BUSTAMANTE: Should there be some  
7 activity, what is the requirement of getting a sense of  
8 the Commission as to what they think that you're at least  
9 in the ballpark so that we don't get to June and nobody's  
10 heard about what's taking place, and then it's -- is there  
11 a requirement in terms of -- do we have to meet in that  
12 June meeting to actually hear any potential deal before  
13 we --

14 COMMISSIONER CONNELL: Yeah, I think that would  
15 be what would be needed. But I would just urge, and  
16 again, I think it's a matter of staff staying close to  
17 Board Members over the course of the next several weeks.  
18 I mean, if you present us with a report that is, you know,  
19 quite diverted from what we talked about today, it's not  
20 likely we're going to get to a Commission decision.

21 You can obviously brief individual board members  
22 throughout the course of the interim period between now  
23 and our June date without violating any State law. I  
24 would urge that you do so.

25 And that if you come up with some creative

1 solutions, you try it on the various board members and  
2 then you can get a sense of the tone of the Board, so  
3 you're not surprised by actions that may occur in the June  
4 meeting.

5 CHAIRPERSON BUSTAMANTE: Now, in terms of  
6 surprises that might occur in the public, at what point  
7 are those offered, should you have a staff recommendation,  
8 at what point is that then given to the public?

9 EXECUTIVE OFFICER THAYER: We generally try and  
10 get those reports down anywhere from a week to two weeks  
11 in advance. This one because we'll probably be  
12 negotiating this -- you know, we'll get it out as soon as  
13 we can. It's hard to do much sooner than that given the  
14 time.

15 CHAIRPERSON BUSTAMANTE: Let's shoot for a target  
16 of ten days, and I think anything less than that is not  
17 going to be well received, but I think we should shoot for  
18 a target since we're not -- although we may not be legally  
19 obligated, I think we have a responsibility, an obligation  
20 to get it out as quickly as we can, so let's shoot for a  
21 ten days target.

22 EXECUTIVE OFFICER THAYER: We will.

23 CHAIRPERSON BUSTAMANTE: Is there anything else  
24 by the members?

25 EXECUTIVE OFFICER THAYER: If I could just

1 respond to the second point that the Controller made or  
2 that you made, in terms of eventually wanting to work out  
3 a public policy on that, we might want to look at that on  
4 a slightly larger --

5 COMMISSIONER CONNELL: Well, you're going to have  
6 to look at a longer timetable. And I certainly appreciate  
7 that. I mean I can think of, you know, a half dozen  
8 circumstances up and down the coast where this issue is  
9 going to become precedent setting in the next year.

10 CHAIRPERSON BUSTAMANTE: Why don't you make sure  
11 you give the staff those specific items so that they take  
12 a look at it.

13 EXECUTIVE OFFICER THAYER: Sure. And we'll stay  
14 close with your offices as we develop that policy as well,  
15 but that might not be ready for the June meeting.

16 CHAIRPERSON BUSTAMANTE: We better have a fairly  
17 clear idea.

18 EXECUTIVE OFFICER THAYER: Certainly. But again,  
19 I'm just aware of a number of different projects and it's  
20 just going to take some analysis to figure out how we want  
21 to respond to that.

22 CHAIRPERSON BUSTAMANTE: I understand. I think  
23 in order to meet the City's requirements, I think we're  
24 going to have to move very quickly on this, Paul.

25 EXECUTIVE OFFICER THAYER: I agree.

1           CHAIRPERSON BUSTAMANTE: Okay. What is the next  
2 item, since -- ma'am, did you --

3           MS. CANTRELL: I just heard Mr. Thayer say that  
4 he'd be talking about the developers and the City. I was  
5 wondering if the public is going to have any input?

6           (Applause.)

7           COMMISSIONER CONNELL: Certainly. Mr. Thayer  
8 always speaks to members of the public and that has always  
9 been the history of this Commission, so, of course, they  
10 will be speaking to you. They have been speaking to you  
11 on an ongoing basis, as you know, so they will certainly  
12 be encouraged to do that again.

13          CHAIRPERSON BUSTAMANTE: It may not be all 50  
14 people, but I'm sure that all the folks who are here will  
15 have an opportunity to have input.

16          MS. MANN: Could the meeting be in the local  
17 area. My name is Diana Mann and I'd like to request that  
18 the meeting, the June meeting, be held in the local area,  
19 so that Long Beach public can attend.

20          CHAIRPERSON BUSTAMANTE: Where are we scheduled  
21 for the next meeting?

22          EXECUTIVE OFFICER THAYER: We don't have a  
23 particular location established yet. And I'm not sure --  
24 there's going -- there might be a Tahoe item on the  
25 Calendar.

1           COMMISSIONER CONNELL: Let me just speak to that  
2 issue. That came up during the break before you arrived,  
3 Mr. Chair. We try to schedule meetings related to the  
4 geography of the concerns of residents. We had this  
5 meeting specifically scheduled here at my request, so that  
6 we could have all the southern California items before the  
7 Board.

8           Unfortunately, some of them have now been  
9 deferred to June, Veneco being one which is a Santa  
10 Barbara item. This one now being a second, but we also  
11 have a need to address northern California concerns. And  
12 the Lake Tahoe people, you know, have a concern to hear  
13 their matters before a board in northern California, so  
14 you know, we'll try to balance that. But just as a  
15 Commissioner, I can tell you we kind of group items with  
16 the sensitivity to having local residents.

17           Obviously, it was more convenient for you to come  
18 here today. Likewise, it would be very difficult for the  
19 Lake Tahoe people to travel to southern California, but  
20 that will be a decision of the staff.

21           EXECUTIVE OFFICER THAYER: We'll just look ahead.

22           CHAIRPERSON BUSTAMANTE: Thank you, ma'am.

23           So are we done with this item?

24           EXECUTIVE OFFICER THAYER: Yes. Is there any  
25 further action?

1           CHAIRPERSON BUSTAMANTE: Let's go to the next  
2 item.

3           COMMISSIONER CONNELL: No, I don't think there's  
4 any action. I think that you've done the audit. Now,  
5 we're pulling out of this audit. Fortunately, we did ask  
6 for the audit. I'm glad I, you know, pursued that. We  
7 have now had this more serious matter. I'm comfortable  
8 with the information on the audit. I think it has  
9 broached a number of issues that we're discussing today.

10          CHAIRPERSON BUSTAMANTE: Maybe we can have an  
11 amended version of the staff report at the June meeting as  
12 well, so that we can include all of the audit activity.

13          MS. MANN: Excuse me, this is a report. It's not  
14 an audit. I think we asked for an audit.

15          CHAIRPERSON BUSTAMANTE: This is a report on the  
16 audit.

17          MS. MANN: I don't think we've had an audit.

18          EXECUTIVE OFFICER THAYER: I think the staff  
19 believes that this constitutes a management audit. We  
20 looked at all the land uses that have been occurring and  
21 how they were dealt with.

22          CHAIRPERSON BUSTAMANTE: Okay. All right, thank  
23 you all. This will be moved to the June calendar.

24          The next item is, what item. Did we decide here,  
25 but was 104 --

1 EXECUTIVE OFFICER THAYER: I think 116 we didn't  
2 decide actually it was going the do the shoreline  
3 protective. You had indicated, I think, that you thought  
4 about putting that over.

5 CHAIRPERSON BUSTAMANTE: So we're deferring Item  
6 116.

7 Okay. If there's no --

8 EXECUTIVE OFFICER THAYER: The two remaining  
9 items that I have are 74 and 75 that deal with seawalls in  
10 San Diego and then 109. We weren't sure whether you're  
11 alternative path to 109 should be taken, which is the  
12 Venoco deferral to be taken off the consent calendar.

13 Do you want that heard now or in June?

14 CHAIRPERSON BUSTAMANTE: I think that we've  
15 already talked about in June. The representative of  
16 Venoco indicated that they were going to leave as a result  
17 of that postponement until June.

18 COMMISSIONER CONNELL: Actually, he's still here.

19 CHAIRPERSON BUSTAMANTE: We thought you'd left.  
20 We were going to -- we weren't going to backdoor you while  
21 you were gone.

22 In the meantime, you will pursue a review of all  
23 of the activities that are taking place and be able to  
24 come back to us with --

25 EXECUTIVE OFFICER THAYER: Some additional



1 information regarding on what Venoco has done to comply  
2 with their present deferral requirement.

3 COMMISSIONER CONNELL: What are we doing on 74  
4 and 75, I'm unclear? Are we deferring them?

5 CHAIRPERSON BUSTAMANTE: No, we were going to go  
6 through 74 and 75.

7 EXECUTIVE OFFICER THAYER: Are you prepared for  
8 that report?

9 CHAIRPERSON BUSTAMANTE: We are. Is there anyone  
10 here? I don't have any requests to speak. Is there  
11 anyone here that is interested as a member of the public  
12 to speak on this issue?

13 Go ahead, staff report. Maybe we can do this one  
14 quickly.

15 MS. SMITH: Good afternoon, Mr. Chairman and  
16 members of the Commission. My name is Jane Smith. I'm a  
17 public land management specialist with the Land Management  
18 Division in Sacramento. I am here to present information  
19 on Calendar items 74 and 75.

20 The project includes the filling of a seacave  
21 approximately five feet in depth at the toe of the bluff  
22 within an existing 15-foot high 74-foot long notch  
23 overhang, and the construction of a two and one half foot  
24 thick concrete seawall over the face of the fill.

25 The project extends across the northern half of

1 the bluff adjacent to 311 Pacific Avenue and across the  
2 entirety of the bluff adjacent to 319 Pacific Avenue in  
3 Solana Beach in San Diego County.

4 Each of you has been provided with a set of three  
5 photographs. The first photograph shows the sight before  
6 the seacave fill. The second photograph was taken during  
7 construction of the fill and the installation of soil  
8 nails to stabilize the upper bluff.

9 The third photograph is provided to show both the  
10 project site and the adjacent completed seawall to the  
11 south. At its meeting on December 19th, 2000, the City of  
12 Solana Beach, by unanimous vote, determined that an  
13 emergency existed and authorized the project.

14 On January 17th, 2001, staff of the California  
15 Coastal Commission issued emergency permit 6-01-001-G  
16 authorizing the filling of the seacave and the  
17 installation of the soil nails to be placed into the upper  
18 bluff for stabilization.

19 On January 25th, 2001 staff of the California  
20 State Lands Commission issued a letter of non-objection on  
21 to the applicants in order that the emergency work could  
22 be performed. Litigation has been filed in the Superior  
23 Court of the County of San Diego on behalf of Calbeach  
24 Advocates against the City of Solana Beach, its community  
25 development director and the applicants, Jonathan and Dawn

1 Corn and J. Harold and Ninni Scism, challenging the City's  
2 approval of the project as an emergency. That litigation  
3 is still pending.

4 On March 13th, 2001 the California Coastal  
5 Commission, by unanimous vote, authorized the work  
6 completed under the emergency permit and also authorized  
7 the construction of the seawall face. The Coastal  
8 Commission's permit contains several conditions, including  
9 the requirement that the applicants secure a lease from  
10 the California State Lands Commission, that the seawall  
11 notch fill be monitored annually to assure that the fill  
12 erodes at the same rate and retains similar color and  
13 texture as the natural bluff face, and that the  
14 applicant's pay an in-lieu mitigation fee in the amount of  
15 \$18,772.

16 You have before you, I believe, written comments  
17 that have been submitted for the record by Jim Jaffee on  
18 behalf of Calbeach Advocates by Dr. Ronald Lucker and  
19 Robert Baker on behalf of the Solana Beach Coastal  
20 Preservation Association and from Bill and Linda Gabriel.

21 Based on the information that has been provided  
22 to staff and the approval of the project by both the City  
23 of Solana Beach and the California Coastal Commission,  
24 staff is recommending approval of Items 74 and 75 as  
25 presented.

1 I or other members of the Commission staff will  
2 be happy to answer any questions you may have. That  
3 concludes my presentation.

4 CHAIRPERSON BUSTAMANTE: Thank you. Where are  
5 those letters as you said that --

6 In the blue folders.

7 COMMISSIONER CONNELL: I have a question, if I  
8 may, to staff here. I am concerned about the sand and the  
9 impact that this construction of the seawall has had on  
10 the sand. I know that there was a concern originally by  
11 local beach advocates about this issue of causing a loss  
12 of public beach and that the sand was lost. Are they  
13 replacing the sand?

14 MS. SMITH: Are you asking are they replacing the  
15 sand?

16 COMMISSIONER CONNELL: Yes.

17 MS. SMITH: Well, I believe that that's the  
18 requirement that the Coastal Commission has made that  
19 requires them to pay the \$18,772 into an in-lieu  
20 mitigation fee that could be used to acquire sand for the  
21 beach.

22 COMMISSIONER CONNELL: So that's already being  
23 done. We don't need to take action today to make sure  
24 that occurs?

25 MS. SMITH: That's a condition of the Coastal

1 Commission permit.

2 COMMISSIONER CONNELL: So if that is in deed  
3 required by the Coastal Commission, are there any other  
4 concerns that have been raised by adjacent property owners  
5 or by local residents that we need to be aware of prior to  
6 taking this action?

7 MS. SMITH: Well, I believe you have comments  
8 from Mr. Jaffee on behalf of Calbeach Advocates who have  
9 concerns about not only the City and the Coastal  
10 Commission, but the State Lands Commission's continued  
11 approval of these kinds of projects. I think their  
12 primary concern links to the fact that an Environmental  
13 Impact Report should be done.

14 While I don't believe that they are opposing the  
15 issuance of a lease for these projects, there are certain  
16 concerns that they would like to see imposed on the  
17 applicants. And the other letters that you have received  
18 in your packages are all from residents of Solana Beach,  
19 property owners, who are in support of the project.

20 COMMISSIONER CONNELL: Well, how could you do an  
21 EIR if it's an emergency circumstance?

22 EXECUTIVE OFFICER THAYER: I think that that's  
23 correct. It's difficult to do. And I think the real  
24 answers will come out when the City completes its EIR,  
25 which it is doing, on a shoreline erosion ordinance, which

1 it's proposing to adopt.

2 And that provides the venue where it can look at  
3 the impacts that are kind of up and down the coast there  
4 and are broader than just this particular project.

5 CHAIRPERSON BUSTAMANTE: That's what you do the  
6 EIR on, the individuals building --

7 COMMISSIONER CONNELL: Right. It certainly seems  
8 necessary to me that we allow these property owners to  
9 protect their property and to not allow further erosion of  
10 the bluff.

11 EXECUTIVE OFFICER THAYER: That's the issue.

12 CHAIRPERSON BUSTAMANTE: How did we get to a  
13 point where it was deemed an emergency? Who declared it  
14 so?

15 MS. SMITH: Well, I believe the City of Solana  
16 Beach, pursuant to a resolution that it issued at its  
17 meeting on December 19th, 2000, based on the testimony  
18 that the City Council heard, deemed that an emergency did  
19 exist, as well as staff of the Coastal Commission  
20 subsequent to the action on January 17th, 2001.

21 CHAIRPERSON BUSTAMANTE: And in the Coastal  
22 Commission's request for the mitigation fee, if that's the  
23 appropriate term, this mitigation, I mean the sand wall is  
24 going to be forever, so is the \$18,770 an amount that they  
25 believe will last for a period of time that would equal

1 the length of the seawall?

2 MS. SMITH: Well, I'm not exactly -- I'm not  
3 fully briefed on the Coastal Commission's mitigation fund.  
4 I know that they have a very complex formula that their  
5 staff utilizes in trying to calculate the area occupied by  
6 the structure, the amount of sand that is expected to be  
7 lost.

8 And based on that formula, the Coastal Commission  
9 staff has developed, they have arrived at what they  
10 believe to be an appropriate dollar figure and that is the  
11 \$18,772.

12 CHAIRPERSON BUSTAMANTE: Seventy-two dollars,  
13 excuse me.

14 Now, these seawall projects are taking place, and  
15 having to ensure that people's property is taken care of  
16 is an important thing to do. But I have a concern that by  
17 having these take place, there may be an aggravated effect  
18 of what's taking place along the coast. And I would hope  
19 that the EIR would address that, but I don't know that an  
20 EIR by the City of Solano is going to be the defining  
21 activity in which we should base our public policy.

22 And my concern is that this is taking place in  
23 other ports along the coast. And so are we at a point at  
24 which any particular beach or the coast, as a whole, is  
25 being put in a situation where the mitigation of \$18,772

1 is just not going to mitigate the actions that we are  
2 providing in the aggregate?

3 And I know it wasn't said well, but I think you  
4 know what I mean.

5 EXECUTIVE OFFICER THAYER: I think I get the  
6 point or I hope I do. And I think the first thing I  
7 should point out is the Coastal Commission I think only  
8 has this mitigation fee policy set up in the San Diego  
9 area, and that the money that -- I just spoke with Dwight  
10 Sanders, who represents the Lands Commission at the  
11 Coastal Commission Meetings, indicates that this is money  
12 that goes to sandbag the local area government there for  
13 regional projects.

14 This fee, in fact, isn't established for other  
15 places up and down the coast and hasn't been used as a  
16 solution by the Coastal Commission in other places.

17 COMMISSIONER CONNELL: What do they do there?

18 EXECUTIVE OFFICER THAYER: In other places the  
19 location require offers to dedicate. So for example,  
20 generally, the public ownership starts at a mean high  
21 tideline or where the tide submerged lands starts. The  
22 Coastal Commission will sometimes say, okay if you're  
23 putting in a shoreline protective device, we're going the  
24 require you dedicate the next 20 feet up the beach as  
25 well.



1           And so in Malibu that's the most common thing,  
2   that there will be additional public access dedicated as a  
3   condition for approving shoreline protection to make up  
4   for that impact.

5           COMMISSIONER CONNELL: Can I ask a rather  
6   elementary question here, why does the City of Solana  
7   Beach or the City of San Diego continue to permit houses  
8   this close to the bluff that we have this kind of erosion  
9   problem, because I can envision that we're just going to  
10   have seawalls along the coast down there. I mean, what  
11   does that suggest about the judgment of the local planning  
12   department here?

13           CHAIRPERSON BUSTAMANTE: These are existing?

14           EXECUTIVE OFFICER THAYER: These are existing,  
15   but, you know, it's true up and down the coast, that in  
16   most places local governments would not deny a permit if  
17   there's some way it could be approved, but they don't  
18   allow for very much erosion.

19           COMMISSIONER CONNELL: Why don't we try to speak  
20   with the Coastal Commission about a broader policy here.  
21   I think we're missing an opportunity. I mean, I have no  
22   problem with this permit today because I really want to  
23   protect these homes.

24           I have a broader concern about why we are  
25   allowing cities throughout, you know, California to

1 continue to place homes in jeopardy. There was one down  
2 in Laguna Beach, as you know, just two weekends ago, which  
3 a whole number of homes slipped off the coast, I mean off  
4 the cliff into the land below. Not only is this risky for  
5 the public, who may be down below, unfortunately at the  
6 moment when these properties slip, but it's costly to the  
7 environment.

8           So I think we need to have a broader discussion  
9 with the Coastal Commission on what their role is in  
10 assuring that we have greater forward planning so that we  
11 don't have homes so close. And certainly if we're going  
12 to allow these seawalls, we should get something in  
13 return, because we talked about it earlier, Cruz. We seem  
14 to be giving away public, you know, authority here without  
15 much exchange for something in return for the private  
16 owners. Now, if they do that in Malibu --

17           CHAIRPERSON BUSTAMANTE: They also charge for  
18 right of way?

19           COMMISSIONER CONNELL: Why don't they do that in  
20 San Diego. Why would they do that in San Diego? Why  
21 would it be a proposal that would impact Malibu  
22 differently than San Diego?

23           EXECUTIVE OFFICER THAYER: The Commission is  
24 reviewing the different circumstances up and down the  
25 coast. Different solutions were better in different

1 places. It is true that the Coastal Act generally  
2 prohibits new development from occurring where it will,  
3 from the beginning, require shoreline protective devices.

4 So there are policies in place that try and  
5 prevent that from happening. But the flip side of that,  
6 of course, is the people who say that if you own a lot,  
7 you should be able to develop it. And there's a lot of  
8 pressure on them that way.

9 It's a much larger issue in our staff report  
10 which we'll take up again in June. We look at some of  
11 this. In fact, the Resources Agency recently issued a  
12 draft State policy, which is 20 or 30 pages long, that  
13 looks at the complexity of the issue. It involves things  
14 like sand supply that's cut off from the Coast because of  
15 dams constructed inland and sand no longer moves down the  
16 river. It involves a development approval that you're  
17 talking about.

18 COMMISSIONER CONNELL: I'll move approval of this  
19 item.

20 ACTING COMMISSIONER PORINI: Second.

21 CHAIRPERSON BUSTAMANTE: There is a motion and a  
22 second on approval of the staff recommendation on this  
23 item. Is there anything else that you have to tell us  
24 about this?

25 EXECUTIVE OFFICER THAYER: No, that will be the

1 end of your regular calendar and we'd be ready for closed  
2 session.

3 CHAIRPERSON BUSTAMANTE: Let the record show that  
4 the motion passes unanimously, and that we adjourn this  
5 part of the public meeting and go into closed session.

6 (Thereupon the California State Lands  
7 Commission meeting was adjourned at 2:30 p.m.)

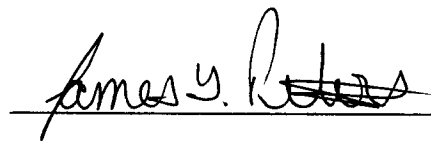
CERTIFICATE OF REPORTER

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing California State Lands Commissioner meeting was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of May, 2001.



JAMES F. PETERS, CSR, RPR  
Certified Shorthand Reporter.  
License No. 10063