

MEETING
STATE OF CALIFORNIA
STATE LANDS COMMISSION

STATE CAPITOL
ROOM 4202
SACRAMENTO, CALIFORNIA

MONDAY, SEPTEMBER 17, 2001

9:30 A.M.

JAMES F. PETERS, CSR, RPR
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APPEARANCES

COMMISSIONERS

Cruz M. Bustamante, Chairperson

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

Kathleen Connell, State Controller, also represented by
Cindy Aronberg

STAFF

Paul Thayer, Executive Officer

Jack Rump, Chief Counsel

Curtis Fossum, Senior Staff Counsel

Paul Mount

Jeff Planck

Jim Porter

Alan Scott

Lynda Smallwoos

Kirk Walker

ALSO PRESENT

Alan Hager, representing the Attorney General

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1 Chairman. Good morning Mr. Chair and members of the
2 Commission. I don't have that many items really to report
3 this morning. I would like to note that I think things
4 went fairly well on Tuesday with respect to our own staff.
5 As you were probably aware as with other state agencies,
6 we were directed by the Governor to send all nonessential
7 people home.

8 However, such with respect to our staff
9 concerning with oil operations, some of those remained at
10 work on Tuesday checking with the oil terminals and oil
11 platforms to make sure everything was proceeding
12 accordingly there.

13 I think there's -- we all like to learn from real
14 drills like this. And I think the one thing that we'll
15 probably do is put in some kind of voice message machine,
16 because our staff was a little uncertain when they went
17 home on Tuesday whether or not there were supposed to
18 report back on Wednesday. And so I think the one thing we
19 noted is that we needed some sort of central way of
20 conveying information to our staff, and we're going to
21 come up with some way to do that.

22 Other than that, I don't have anything else to
23 report on, other than also to announce the results of some
24 of the legislation that I know members were interested in.
25 There were three bills in particular that were taken up by

1 the Legislature and passed all three of them on Friday.
2 One was the cruise ship terminal of San Francisco, bill AB
3 1839 that's been sent to the Governor for signature. The
4 AB 93, which establishes an airport authority for San
5 Diego and transfers the airport operation from the
6 existing port to that authority, that also was passed by
7 the Legislature and sent to the Governor. And finally, AB
8 1, Senator Alpert's bill that would establish a Rigs to
9 Reefs program, was also passed by both the House and the
10 Senate to the Governor.

11 And that would conclude my report.

12 CHAIRPERSON BUSTAMANTE: Are there any items to
13 take off consent?

14 EXECUTIVE OFFICER THAYER: Yes, there's one item,
15 Item 17.

16 CHAIRPERSON BUSTAMANTE: And the reason?

17 EXECUTIVE OFFICER THAYER: Seventeen, that was an
18 item that the Coast Guard, which is the applicant, asked
19 us to take it off. So that will be heard at a future
20 meeting?

21 CHAIRPERSON BUSTAMANTE: Any others?

22 EXECUTIVE OFFICER THAYER: That's all that we
23 have at the moment. I believe there are some speaker
24 slips in for two of the items.

25 CHAIRPERSON BUSTAMANTE: Is there any members

1 that have any items to be taken off.

2 ACTING COMMISSIONER PORINI: I do have an item.
3 Item 65, the Department Finance just hasn't been able to
4 complete their work on that.

5 CHAIRPERSON BUSTAMANTE: Sixty-five. So there
6 will be Item number 17 and number 65.

7 EXECUTIVE OFFICER THAYER: Yes.

8 CHAIRPERSON BUSTAMANTE: Any other requests for
9 taking off consent. Would that be to be seen today or to
10 be postponed?

11 ACTING COMMISSIONER PORINI: If we could postpone
12 it to our next meeting.

13 CHAIRPERSON BUSTAMANTE: Okay, so 17 and 65 will
14 be postponed to the next meeting.

15 Motion on that?

16 EXECUTIVE OFFICER THAYER: The one other -- I
17 think there are two slips or several slips, speaker's
18 slips, indicating people who wanted to speak, and those
19 should probably be removed. I think they're on Items 82
20 and 84. I'm sorry, if that hasn't been.

21 CHAIRPERSON BUSTAMANTE: Eighty-two or 92?

22 EXECUTIVE OFFICER THAYER: Eighty-two.

23 CHAIRPERSON BUSTAMANTE: I don't show anything on
24 the speaker slips. I see 15, only if it's taken off
25 consent and that's the only one I have.

1 EXECUTIVE OFFICER THAYER: Then I might -- I've
2 spoken with the representative from Senator O'Connell's
3 office before we started the meeting and she indicated
4 that she and one other person wanted to speak. You might
5 ask if anybody in the audience would want to speak on any
6 of those items.

7 Yes, here we have 82 and 84.

8 CHAIRPERSON BUSTAMANTE: Okay, move that from the
9 consent to the regular calendar. Okay, the motion would
10 be moving 17 and 65 to postpone it and item 82 and 84 to
11 regular.

12 Could I have a motion?

13 ACTING COMMISSIONER ARONBERG: I have a question
14 on 65. Is there any reason for the postponement, the
15 Controller is quite anxious to get this item moving and
16 under way?

17 ACTING COMMISSIONER PORINI: Yes. As I stated
18 earlier, the Department of Finance just has not been
19 unable to complete our work on it and it requires both
20 Section 2267 in the BCP and just because of the end of the
21 legislative session we've been unable to complete that
22 work.

23 ACTING COMMISSIONER ARONBERG: Is there any time
24 line on when it might be done?

25 ACTING COMMISSIONER PORINI: Well, BCP's were

1 just due on Friday, so I believe we'd have our work
2 completed by our next meeting.

3 ACTING COMMISSIONER ARONBERG: Okay, thank you.

4 CHAIRPERSON BUSTAMANTE: Is there a motion?

5 ACTING COMMISSIONER PORINI: Move approval of the
6 consent calendars, with the exceptions of Items 17 and 65,
7 which will be deferred until our next meeting and Items 82
8 and 84, which we'll hear later in the morning on the
9 calendar.

10 CHAIRPERSON BUSTAMANTE: Is there a second?

11 ACTING COMMISSIONER ARONBERG: Second.

12 CHAIRPERSON BUSTAMANTE: Let the record show that
13 it passed unanimously.

14 Off to the regular calendar.

15 Item number 88, Consideration of Adoption of the
16 Policy on the Public Trust.

17 Mr. Thayer, we'll come back to 82 and 84?

18 EXECUTIVE OFFICER THAYER: Yes, sir.

19 CHAIRPERSON BUSTAMANTE: So I think the first
20 item on regular discussion scheduled is Item number 88?

21 EXECUTIVE OFFICER THAYER: Yes, Mr. Chair. This
22 is an item that was requested to be put on the calendar by
23 the Commission. The Commission wanted to review the
24 public trust doctrine, which is the primary common law
25 basis for many of the Commission's decisions and for us to

1 develop a policy that will express that doctrine and
2 provide guidance to the Commission, applicant's that come
3 before the Commission and local governments that
4 administer the grants of tide and submerged lands that
5 have been made by the Legislature.

6 The Commission staff has worked closely with the
7 Attorney General's office in developing this policy. That
8 policy is included as Exhibit A in this calendar item.
9 We've also worked with the Attorney General's office. In
10 fact, that office is primarily responsible for developing
11 the background paper, Exhibit B. I think Jack Rump will
12 continue the presentation. We have both Commission staff
13 and Attorney General's staff that would like to explain
14 that policy.

15 CHIEF COUNSEL RUMP: Yes. If you remember at
16 your last meeting, you asked staff and the Attorney
17 General's office to research further the importance of the
18 public trust, particularly the legal principles involved
19 in helping pull together the policy. Perhaps it would
20 state clearly what the Commission's goals and objectives
21 are and their respective roles.

22 We have with us today someone who has worked with
23 the Attorney General's office for many years, Jan Stevens,
24 and who has also written a lot of the articles and teaches
25 extensively on this subject. So perhaps the best way to

1 get started is to have Jan have a presentation so you have
2 a background. And certainly we'll be available to answer
3 questions that arise.

4 MR. STEVENS: Thank you, Governor and members,
5 January Stevens. I'm formally an Assistant Deputy
6 Attorney General and I had the pleasure of working with
7 this Commission for about ten years and struggling through
8 some of the labyrinthian intricacies of administering the
9 public trust, which, of course, is the Commission's
10 primary responsibility among the State agencies of
11 California.

12 The Commission is the trustee of the public trust
13 doctrine designated by the Legislature responsible for all
14 trust in the ungranted lands of the State, and for a
15 considerable fee, of supervision over the granted ones.

16 So I have appreciated the Commission's stalwart
17 efforts through the years. I think Mono Lake was a
18 particular example of the role that it had to play in
19 preserving California's waters, as well as many
20 developments on the coastline in southern and northern
21 California as well.

22 Since then, I've taught part time and done some
23 work for the Attorney General's office, and I appreciate
24 the chance to come back and talk about the trust in
25 general.

1 I think the two important things about the trust
2 that struck me through the years are that it's extremely
3 old and it's extremely amorphous. It's a common law
4 doctrine that really is based in Roman and Spanish
5 medieval law that was accepted in England in the middle
6 ages. And it's based on a --

7 CHAIRPERSON BUSTAMANTE: We're not going to go
8 back that far are we?

9 (Laughter.)

10 MR. STEVENS: I realize your time is limited.

11 (Laughter.)

12 CHAIRPERSON BUSTAMANTE: A few centuries.

13 (Laughter.)

14 MR. STEVENS: I would be happy to talk about
15 other drafters of the trust.

16 (Laughter.)

17 MR. STEVENS: -- but I understand you may have
18 some limitations here, and I appreciate it. And if you
19 finish before I do, please let me know.

20 (Laughter.)

21 CHAIRPERSON BUSTAMANTE: I think we have.

22 (Laughter.)

23 MR. STEVENS: Okay. Basically, I guess the two
24 things really that have struck me are that it is a
25 universally adopted doctrine, which is accepted in every

1 society. And that in California it's one that's also
2 rooted in and supported by both federal and State
3 constitutional provisions.

4 So it's something more than a mere common law
5 doctrine that can be altered as well by courts or the
6 Legislature. The second thing is that the Commission
7 really channels -- is channeled in administering the trust
8 by the legislation, which provide guidance to it, and
9 which the legislature has the power to adopt as the
10 ultimate arbiter of the public trust.

11 So, basically, it's a common law doctrine
12 described as antediluvian by some courts, but
13 nevertheless, one which still has considerable validity,
14 holding in effect that the tidelands and the submerged
15 lands of California are held in trust for the people of
16 the State for purposes of Commerce, navigation and
17 fisheries, and in more recent years, as the Supreme Court
18 has said, for purposes such as ecological preservation,
19 recreation and other appropriate water oriented uses.

20 So the public trust basically arose in the United
21 States as a limitation on alienation. The 19th Century
22 was a century in which the primary disposition of the
23 public lands was to be for privatization, something which
24 has been pushed several times later, but nevertheless was
25 the prevailing doctrine.

1 And tidelands, among other lands of the public,
2 were subject to purported dispositions in all sorts.
3 Probably the primary case was the Illinois Central Case,
4 in which the entire Chicago waterfront was conveyed by the
5 Legislature to the Illinois Central Railroad. The
6 Legislature had second thoughts and purported to revoke
7 the trust, and the US Supreme Court laid down a rule which
8 is applicable in California and has been implemented by
9 the Legislature as well as the Commission, and that is
10 that these waters are held in trust for the people so that
11 they may enjoy their navigation, carrying on commerce and
12 use them free from the interference of private parties.

13 And the language of the court and other courts in
14 dealing with this in the 19th Century is impressive, I
15 think, because it portrays a determination and an
16 indignation over purported abdications by the Legislature
17 of the people's rights in its public waters.

18 The earlier case in which Illinois Central was
19 based said that, "The State cannot consistently with
20 nature and the Constitution of a well ordered society make
21 such a direct and absolute grant. It would be a grievance
22 which could never be long born by a free people." And
23 this was 30 years after the revolution.

24 Justice Field in the Illinois Central case said,
25 "It is inconceivable that the Legislature could divest the

1 State of the control and management of the harbor and
2 invest it in a private corporation."

3 This is a subject of concern to the whole people
4 of the State. While certain improvements can be made in
5 the navigation and waters and commerce, docks, piers and
6 other purposes are appropriate for improvement under the
7 public trust doctrine. The parcels can't be disposed of
8 if there is any detriment to the public interest in the
9 land and the waters remaining.

10 So basically California entered the 20th Century
11 subject to the Illinois central rule and adopted it early
12 on. The California Legislature, like other legislatures,
13 was bent on disposing of the public lands and the
14 tidelands. And at the beginning of the century a
15 tidelands grant running the whole length of the State
16 essentially was challenged in People versus California
17 Fish Company, which held that the Legislature could not be
18 presumed to intended to convey title to all of the
19 tidelands without retaining a public trust over them.
20 This was simply inconceivable and possibly invalid.

21 This did not mean, as Justice Field had said in
22 Illinois Central, "That certain improvement can be made,"
23 that ports can be developed, that piers can be built, that
24 small parcels can be disposed of and freed of the trust if
25 it's done in furtherance of an overall plan for

1 improvement of public trust purposes.

2 In the 20th century, two things happened. One is
3 that the courts recognized that the trust extends beyond
4 commerce, and the principles of the 19th Century, commerce
5 navigation and fisheries, and it does extend to
6 environmental purposes and preservation. And these are
7 things to which the trust lands can be dedicated as well.

8 The second thing is that the concept of multiple
9 development was looked at and was approved. Perhaps, one
10 of the best examples really was in a Wisconsin case, in
11 which there was a plan for improving an entire lake by
12 filling part of it, building park lands, and at the same
13 time providing navigation in other areas. The Court
14 upheld this on the basis that public bodies were going to
15 retain control of the entire area. Even though the lake
16 was going to be diminished, it was a small parcel compared
17 with the whole portion of the Lake.

18 No one use of the lake was going to be greatly
19 impaired or destroyed, and that the Legislature could
20 probably determine that the public could enjoy lesser uses
21 of some things, such as waterskiing and swimming in favor
22 of other things as part of this overall improvement plan.

23 Now, in California, of course, the courts have
24 dealt with propriety of trust uses in a number of
25 different ways, and you still have some before you now

1 increasing complexity and greater sophistication.

2 But the Appellate courts have upheld developments
3 which encourage the public and provide for utilization of
4 the tidelands and the coast lands for trust-related
5 purposes, such as enjoying the water. The court has
6 upheld restaurants, parking lots and other commercial
7 developments of that sort, which draw the public to the
8 waterfront and provide convenience for the public in that
9 extent.

10 The Legislature or its designee, the Lands
11 Commission, does also have the ability to prioritize trust
12 uses. Obviously, there are some trust uses, such as
13 marinas, which may be incompatible with others, such as
14 nature watching areas. These are hard choices that have
15 to be made. The Supreme Court has held, for instance,
16 that a bridge, a highway bridge, could be built over an
17 navigable river even if it destroys navigation for a wide
18 variety of water craft, because this is simply the kind of
19 decision and prioritization that has to be made.

20 If there was any bright line, I think it is based
21 on the principle of inalienability that these lands cannot
22 be placed beyond the ability of future Legislatures or
23 Lands Commissions to deal with them in light of the
24 changing nature of trust needs.

25 The California court has also said in National

1 Audubon, that this is a continuing duty of supervision,
2 and, in essence, that trust lands are not subject to being
3 frozen into a particular type of a use, but that they can
4 be evaluated. And the purposes to which they can be put
5 can be changed by the Commission or by the Legislature to
6 suit additional needs.

7 The last thing, I guess, is the idea that the
8 Commission travels down a channel, which is established by
9 the Legislature. And legislative prioritization and
10 legislative guides are provided. For instance, the
11 exchange statute, Public Resources Code 6307 is basically
12 a reflection and a detailed implementation of what Justice
13 Field said in 1892 about the public trust nature of the
14 Chicago waterfront and Lake Michigan, that certain lands
15 can be exchanged if they meet the principles of equal
16 value and if other factors are provided.

17 Compensation is another factor, which appeared in
18 Illinois Central. If good faith improvements are
19 constructed on property and the State chooses to exercise
20 the trust to change the use of that property, compensation
21 may be appropriate, and the Legislature has determined by
22 statute in much greater detail what the circumstances are
23 for that kind of thing.

24 The Legislature has prioritized trusts in a
25 number of ways, Fish and Game Code 5937 is a great example

1 which the Court has implemented as saying that this means
2 water cannot be used in a manner so as to destroy or
3 impair the fisheries below dams.

4 The Legislature has established some commissions
5 and administrative bodies, which have been construed as
6 also implementing trust doctrines, the BCDC in San
7 Francisco Bay, to some extent the Coastal Commission
8 implements the trust. But basically the Lands Commission
9 is the body at which the buck stops. And it's the Lands
10 Commission determination of nongranted lands that
11 really -- to which the Legislature has delegated this kind
12 of function.

13 CHAIRPERSON BUSTAMANTE: As you mentioned the
14 Legislature can change, by statute, any of those
15 provisions.

16 MR. STEVENS: That's right.

17 CHAIRPERSON BUSTAMANTE: Except where it runs
18 into Constitutional conflicts.

19 CHAIRPERSON BUSTAMANTE: Except when it amounts
20 to an abdication of the trust over an entire body of water
21 or a purpose which conceivably is entirely inconsistent
22 with the trust. And this, I think, is based on several
23 constitutional principles. There's been a great debate
24 over --

25 CHAIRPERSON BUSTAMANTE: Maybe we can go through

1 just one or two of them.

2 MR. STEVENS: Okay. In California, Article 10,
3 Sections 3 and 4, which provide for the public's right to
4 access to the navigable waters and which can place
5 limitations on the extent to which these can be sold, even
6 if the trust remains upon it.

7 The gift clause is another constitutional
8 provision which has been invoked in a number of cases here
9 and elsewhere, say that basically the State cannot make a
10 gift of a valuable asset of this sort by making a grant,
11 which is irrevocable and beyond its control.

12 And under the Federal Constitution, the
13 admissions clause has been construed as placing this
14 limitation on the Legislature and perhaps even on State
15 Constitutional drafters on the basis that the State
16 promised, as a condition of its admission, to keep its
17 waters navigable forever free.

18 CHAIRPERSON BUSTAMANTE: Thank you.

19 Mr. Thayer.

20 EXECUTIVE OFFICER THAYER: This concludes staff's
21 presentation. Jan Stevens, as we've indicated, is a long
22 time scholar in this field and he has reviewed along with
23 other the Attorney General's -- Deputy Attorney General's
24 the draft policy that's before you for adoption.

25 We believe that that policy represents well the

1 overall goal and mission and responsibilities of the State
2 Lands Commission and we would recommend that you adopt it.

3 CHAIRPERSON BUSTAMANTE: Thank you. And thank
4 you, Jan. I think that you've laid out for the people who
5 are here and who are watching this the complexities of the
6 public trust. As we started getting into the issue last
7 meeting, it was clear that we needed to find some process
8 by which we can make determinations, so that the policy is
9 intact and that future Commissions would have something
10 for reference.

11 I think that the effort that's been made here, I
12 think, does that. I think it both talks about the
13 complexity as well as the need for balancing. It talks
14 about how you just cannot give away the public trust and
15 there are various specific items that can and cannot be
16 done within this doctrine. I appreciate the thoroughness
17 of the review.

18 I also wanted to say thank you to Long Beach for
19 allowing themselves to be the first. I apologize. And
20 yet I'm glad that we were able to have something that
21 prompted this activity. So sorry for being the first Long
22 Beach, but we, I believe, will now have a policy that will
23 guide future Commissions. Although there was a delay, I
24 think that we've been able to come to an appropriate
25 accommodation to ensure that all perspective clients in

1 the future understand exactly what we're dealing with and
2 clearly understand the legislative process now and we
3 hopefully will have an opportunity to be able to move
4 forward on these kind of activities in the future with an
5 understanding of what we can and cannot do.

6 Is there any comment by any of the Members?

7 Okay.

8 EXECUTIVE OFFICER THAYER: I think there are
9 several members in the audience that have submitted slips
10 that wish to speak on this matter.

11 CHAIRPERSON BUSTAMANTE: On Item 88?

12 On Item 88, I have Douglas Wong.

13 MR. WONG: Thank you very much, Lieutenant
14 Governor and Honorable Members of the Commission. Ladies
15 and gentlemen, good afternoon. My name is Douglas Wong.
16 I'm Executive Director of the Port of San Francisco. It
17 is truly an honor to be here this morning. On half of the
18 Port and the City and County of San Francisco, we'd like
19 to thank State Lands staff for their professionalism and
20 their due diligence in assisting San Francisco on trust
21 matters of statewide significance.

22 Paul Thayer, Dave Plummer, Blake Stevenson and
23 their staff have been instrumental in public trust matters
24 involving the Ferry Building, Pier 1, Mission Bay, leading
25 to significant enhancements of public access, ferry berths

1 and other trust assets in the city and county of San
2 Francisco.

3 We in San Francisco support the policy and we
4 look forward to a continuing and fruitful working
5 relationship with the Commission in carrying out our duty
6 as trustee/grantees. Thank you very much.

7 CHAIRPERSON BUSTAMANTE: Thank you.

8 We also have Norm Ryan.

9 MR. RYAN: Lieutenant Governor, Honorable Members
10 of the Commission, staff, and audience, my name is Norm
11 Ryan. I'm a resident of the City of Long Beach. I also
12 am a public finance banker, managing director for Morgan
13 Securities.

14 My understanding of the land uses tends to be
15 limited to CFD's, melo rooses, assessment districts,
16 things of that nature. One of the things that we've
17 encountered, that has caused a lot of headache in BCFDs in
18 the State of California is loose definitions.

19 In the proposal, on Item 88, they talk about an
20 exchange of equal or greater value, but they don't
21 necessarily define what that is. Language like that in
22 the past in regards to CFDs, assessments districts and so
23 on have allowed developers and local authorities to play
24 with the numbers.

25 I think that if you were to adopt this item, you

1 might want to consider an amendment to stipulate exactly
2 who determines what the value is. If you decide that
3 anybody petitioning you can hire their own appraiser,
4 let's say, then I would suggest that you then consider how
5 the regular private sector conducts their business. When
6 you're buying a piece of property, you don't rely on the
7 seller's appraisal of what the property is worth. You
8 won't go out and hire it yourself.

9 And is the value an appraisal, an assessment and
10 as-is bulk value. You know, using general terms, I think
11 will invite future headaches. If you weren't using more
12 specific and exact language, if not amended, then I would
13 recommend that you not adopt Item number 88.

14 Thank you.

15 CHAIRPERSON BUSTAMANTE: Paul, would you like to
16 talk about that.

17 EXECUTIVE OFFICER THAYER: Yes, sir. Thank you.
18 Two things. First, I think the policy replicates what's
19 in the statute, and the statute provides that standard
20 alone. Ultimately, the arbiter of that is the Lands
21 Commission. And, as I know you're aware, we have
22 independent appraisers on our staff, Registered
23 Appraisers, and we do not accept the appraisal of
24 applicant's without review and frequently conducting our
25 own appraisal. And we've done that on Queensway Bay, the

1 item that's coming up.

2 CHAIRPERSON BUSTAMANTE: What happens in a
3 situation where there's a very, very specific, very
4 complicated piece of property, do we bid out and get other
5 appraisals, do we seek out --

6 EXECUTIVE OFFICER THAYER: We have the expertise
7 on staff. This is of such great importance to the Lands
8 Commission and its worth, that we not accept cart blanch
9 the applicant's reputation of the value of the land. We
10 believe it's important, just as we have surveyors, we
11 didn't accept the boundary description that's certainly
12 made by applicants for these kinds of proposals. We have
13 professional staff that are registered and certified to
14 provide that independent expertise to the Commission.

15 CHAIRPERSON BUSTAMANTE: Thank you. Mayor
16 Beverly O'Neill.

17 LONG BEACH MAYOR O'NEILL: I'm speaking 89.

18 CHAIRPERSON BUSTAMANTE: Okay. Up at the top it
19 says 88. Thank you. Thank you, Mayor.

20 And Cantrell, do you wish to speak on 88?

21 MS. CANTRELL: Good morning, Commissioners. Ann
22 Cantrell, Long Beach, California. I thank you for this
23 report today, because there's been a lot of confusion
24 about what is allowed under the public trust doctrine.

25 There was one comment that was made by Mr.

1 Stevens, which I wanted to clarify. I think he indicated
2 that California Law, Article 10 says that you can't sell
3 the land even if the trust has been lifted; is that
4 correct?

5 EXECUTIVE OFFICER THAYER: He is in the back of
6 the room and can respond to that.

7 CHAIRPERSON BUSTAMANTE: Mr. Stevens. We'd
8 appreciate it if you could be here for this.

9 MR. STEVENS: I'm sorry. Yes.

10 MS. CANTRELL: Did you hear my question?

11 MR. STEVENS: Lands in which the trust has been
12 lifted, can they be sold?

13 MS. CANTRELL: Yes.

14 MR. STEVENS: I think they have been very often.
15 If the trust has been terminated, effectively all the
16 findings have been made by the Legislature, this is
17 something that my colleague, Mr. Hager and Mr. Rump as
18 well, I think could answer. And it's my understanding
19 that that indeed could be one of the purposes for lifting
20 the trust.

21 MS. CANTRELL: I'm sorry. What was it you said
22 about Article 10, I must have misunderstood you?

23 MR. STEVENS: Well, that imposes a general
24 prohibition on transfer of lands within a certain distance
25 from incorporated cities. And I think the Legislature has

1 also adopted a statute subsequent, which prohibits the
2 sale of all tidelands. So it's a little more complicated
3 than the initial question.

4 As an abstract matter, lands which are not
5 subject to the public trust can be sold by the State, if
6 the Legislature provides for their sale.

7 MS. CANTRELL: So after the trust is lifted, then
8 the lands can be sold?

9 MR. STEVENS: Yes, but they do have to meet the
10 limitations that are in Article 10 and presently in the
11 Public Resources Code.

12 MS. CANTRELL: Thank you very much.

13 MR. STEVENS: Not too many sales are going to
14 take place.

15 CHAIRPERSON BUSTAMANTE: Okay.

16 Don May.

17 MR. MAY: Thank you very much, Mr. Chairman and
18 Commissioners. My name is Don May representing California
19 Earth Corps. And I'm delighted to -- I think you should
20 be honored to have Mr. Stevens here as an eminent
21 authority. I certainly would not dare to question
22 anything he says.

23 However, looking at the Exhibit B that's before
24 you and particularly the Section 8, which is the matter of
25 concern before us today, one of the things that is missing

1 here is the criteria for exchanges of land. And one of
2 those, in fact, the major one is this needs to be done to
3 settle boundary and title disputes. And absent that, it
4 is very, very rare to have ever allowed an exchange of
5 land. So perhaps a little more there looking at that
6 criteria.

7 The other is that the exchange must be consistent
8 with the original purchases -- the original purposes of
9 the 1911 Trust agreements. That is to say, and from your
10 report, the very situation where the abandonment of public
11 trust is consistent with the purposes of trusts, Section
12 6307 authorizes the Commission to exchange land of equal
13 value of the best interests of the State for improvement
14 of navigation, aid in reclamation, flood control purposes,
15 enhanced configuration of shoreline for improvement of
16 water and upland, on navigable river sloughs, streams,
17 lakes, estuaries, streets so forth and will not
18 substantially refer to the right of navigation of fishing.

19 Those are the constraints underwhich you can
20 consider a swap of land. Further, and I think it's
21 important that the land --

22 CHAIRPERSON BUSTAMANTE: Wait a minute, is that
23 the issues that are being raised are not covered in the
24 policy?

25 MR. MAY: Those issues are not.

1 CHAIRPERSON BUSTAMANTE: Staff, are those issued
2 not being covered?

3 EXECUTIVE OFFICER THAYER: I think the policy
4 covers, generally, all aspects of the public trust
5 doctrine. We don't get into details about how we
6 implement all aspects of it.

7 That's absolutely correct, but there is a
8 discussion in the background paper, which specifically
9 mentions that Section 6307, which Mr. May refers.

10 CHAIRPERSON BUSTAMANTE: So the reference is to
11 the specificity in the policy as a generic statement.

12 EXECUTIVE OFFICER THAYER: That's right.

13 CHAIRPERSON BUSTAMANTE: But it's covered in the
14 background paper.

15 EXECUTIVE OFFICER THAYER: That's right.

16 CHAIRPERSON BUSTAMANTE: So it's not that it
17 wasn't thought of.

18 MR. MAY: Yes. For those very rare cases in
19 which boundary disputes and title disagreements arise, you
20 are going to have some very little -- in fact, the
21 Legislature has very little latitude in how it approaches
22 those.

23 The other thing which is not covered here is when
24 you do an exchange of land, the land which is exchanged,
25 which the State receives has to be available for public

1 trust uses and not constrained for something else.

2 And, in fact -- and it goes on to look at all of
3 the -- list all of those uses. I might just point out
4 that active recreation use is not amongst them. You may
5 not use exchanged lands for active recreation, a soccer
6 field is not a fishing area. So that with those
7 amendments to cover and define that area exactly, we would
8 be in full agreement with both Exhibit A and Exhibit B and
9 would urge your adoption.

10 Thank you.

11 EXECUTIVE OFFICER THAYER: On the latter point,
12 there is a distinction between kinds of recreational uses
13 that can occur on public trust lands. And the document
14 does make reference, not -- to this distinction not with
15 respect just to recreation, but generally in terms of
16 uses, that the uses cannot be strictly local in nature.

17 So, for example, if a building ballpark is one
18 where there's been some controversy and there's some
19 question about whether or not that's an appropriate use,
20 because it only serves the local population, it doesn't
21 serve statewide visitors that kind of thing.

22 So recreation is certainly an allowable use of
23 public trust lands, but there some restrictions as to the
24 types of recreation that can go on there.

25 CHAIRPERSON BUSTAMANTE: And how specific do we

1 have to have that in the policy?

2 EXECUTIVE OFFICER THAYER: I don't think we need
3 to go through each type of use that's allowable under the
4 public trust doctrine to describe exactly how it is.
5 Instead, we spoke more generally and said, number one,
6 recreation is an allowable use, but we also said that
7 strictly local uses are not allowable, and in combination
8 that addresses the issue that Mr. May raised.

9 He's quite correct in saying that not all
10 recreational uses are permitted.

11 CHAIRPERSON BUSTAMANTE: Thank you, sir.
12 Rod Chisessi.

13 MR. CHISESSI: I'm waiving on my request to speak
14 and reserving it for Item 89.

15 Thank you.

16 CHAIRPERSON BUSTAMANTE: All right. Don May.
17 That was just him, right.

18 Richard Dongell.

19 MR. DONGELL: Dongell, yes. Mr. Chairman, I'd
20 like to waive my time to speak on this item.

21 Thank you very much.

22 CHAIRPERSON BUSTAMANTE: Lester Denevan.

23 I was hoping for another waiver.

24 (Laughter.)

25 CHAIRPERSON BUSTAMANTE: Welcome.

1 MR. DENEVAN: Lester Denevan, City of Long Beach.
2 I was very interested to hear the statements by the Deputy
3 Attorney General of the State concerning the Commission as
4 trustees for the tidelands. And so it's really
5 interesting that a \$120 million project in Long Beach was
6 allowed to go forward without even notification of the
7 Lands Commission.

8 Now, this was only brought up two years ago by
9 myself. And I think as trustee, you should be having
10 oversight, at least of these larger projects.

11 The City has --

12 CHAIRPERSON BUSTAMANTE: Before we go on. We've
13 not had any notification of our discussions of this
14 project? I thought we've -- in the last several meetings
15 that we've raised this agenda item, I thought we've
16 noticed the meetings properly.

17 EXECUTIVE OFFICER THAYER: We, of course, have
18 been working on this for about a year and a half since Mr.
19 Denevan brought it to our attention.

20 CHAIRPERSON BUSTAMANTE: Hasn't Mr. Denevan
21 appeared before this body at least two or three times?

22 EXECUTIVE OFFICER THAYER: Yes, sir.

23 CHAIRPERSON BUSTAMANTE: So there has been prior
24 notice of this meeting of all of these activities of this
25 policy and this project.

1 MR. DENEVAN: For this project, you're addressing
2 I understand from your staff is the theaters and the book
3 store and Cost Plus. And I think that you have to look at
4 the entire project, which envelopes many, many acres of
5 the downtown shoreline. And that's necessary so you can
6 judge in total context of which is being developed on the
7 tidelands.

8 If the City moves forward with this project,
9 they're going to take a substantial portion of former
10 recreational space for commercial development, and you
11 should have some idea about the relationship of the
12 different projects. For example, also your Deputy
13 Attorney General --

14 CHAIRPERSON BUSTAMANTE: Mr. Denevan, are you
15 here to talk about the Queensway Bay Project?

16 MR. DENEVAN: Yes, but also I want to address the
17 question up and down the State of the question of say
18 there's a permitted use of hotels. And I've talked to Mr.
19 Fossum and he has said that it's a permitted use. I said,
20 well, say there's a beach up the coast, they wanted to
21 build a second hotel, a third hotel, a fourth hotel, they
22 can do it.

23 Finally, the recreational uses are crowded out.
24 I'd like you to imagine that you are trustees of the
25 Golden Gate Park in San Francisco. I think you would be

1 ready to go ahead and build two or three hotels in Golden
2 Gate Park. How about 8, 10, 20 or 40 plus a Cost Plus?
3 That will accomplish public access to show a park or to
4 Golden Gate Park.

5 CHAIRPERSON BUSTAMANTE: Mr. Denevan, I know that
6 you're a strong advocate on behalf of your community. I
7 would like, if we're going to be addressing this
8 particular policy, if you could address your concerns to
9 the policy itself. Is there a section in the policy
10 that -- or are you just disagreeing with the entire
11 policy?

12 MR. DENEVAN: I think it should be clarified what
13 your responsibilities are for these major projects which
14 have never been presented to you. There have been some in
15 the past, why not in cases like this, if you in deed are
16 the trustee. This should be necessary legislation that
17 you have authority and you don't have to sit back, and the
18 City will not even have the courtesy to notify you of
19 what's going on.

20 Thank you.

21 CHAIRPERSON BUSTAMANTE: Thank you, Mr. Denevan.
22 Is there any staff comment?

23 EXECUTIVE OFFICER THAYER: No. As we've
24 discussed before, the Legislature in granting these
25 tidelands under these circumstances to local governments

1 has set up different rules and in most cases they do not
2 require direct notification of us when the local
3 government is going forward with the project, because, in
4 fact, they're standing in our stead. They're like the
5 local State Lands Commission. It's their responsibility
6 to decide to pick between public trust uses.

7 We do receive notification frequently in the form
8 of CEQA consultation where we have an opportunity to find
9 out early on, and we've established now a free person
10 granted lands program for the last year or so, where we
11 try and work cooperatively so that things aren't being
12 done in a vacuum.

13 So the law does not give us the direct role.
14 Nonetheless, we see that in our general oversight role, we
15 want to continue to work with local government and, in
16 fact, share information early on, which I think is what
17 Mr. Denevan is urging.

18 CHAIRPERSON BUSTAMANTE: I think Mr. Denevan is
19 urging that anything that is happening on the land in
20 which we are responsible, we should be made aware of it
21 before it happens.

22 EXECUTIVE OFFICER THAYER: And the present law
23 does not -- the grant which transferred the property from
24 us -- or from the Lands Commission's jurisdiction to local
25 governments does not provide for that. It gives

1 independence to local governments to proceed.

2 CHAIRPERSON BUSTAMANTE: That's by statute?

3 EXECUTIVE OFFICER THAYER: That's by statute.

4 CHAIRPERSON BUSTAMANTE: All right. I guess
5 we'll have to run some legislation, Mr. Denevan.

6 (Laughter.)

7 Traci Wilson KleeKamp.

8 Did I do the last name okay?

9 MS. WILSON-KLEEKAMP: You did great. Traci
10 Wilson-KleeKamp. Good morning, how are you all?

11 I would like to continue on with what Mr. Denevan
12 was saying in terms of when you have a large project
13 that's going on, that's got a lot of -- that's been going
14 on maybe eight or ten years, a lot of obstacles come up,
15 the market changes and whatnot, and the uses or the
16 different elements of the project are changing, I think
17 that the public who's supposed to benefit from this
18 project should have someone that's providing some
19 oversight, since they are talking about public lands.

20 The other thing I'm concerned about, since I'm a
21 mom and I care about kids, and I care about open space and
22 recreation is that how do you decide that when there is a
23 local master plan established for recreation that the
24 State's public benefit supercedes the local city's
25 benefits for recreation.

1 In other words, how do you decide that the people
2 of California deserve to get passive recreation over a
3 part of town that has historically not had adequate
4 recreation, not had adequate open space, has poverty and
5 not a lively local economy, and they've been promised park
6 land and football fields and all that you, and you provide
7 a swap on a piece of property that they were promised was
8 going to be active recreation?

9 So I think that, again, there needs to be some
10 oversight in that, whose needs come first, the local area
11 or the State? And I think that's a little arbitrary, who
12 enforces it?

13 CHAIRPERSON BUSTAMANTE: Well, as far as the swap
14 is concerned, it was on a piece of property that its value
15 had diminished substantially as a result of the project.
16 The swap was for a piece of property that was furthest
17 away and would not have been, had any kind of site
18 activity, would not have been open space. It's on the
19 second floor of a facility.

20 And what we did was that we swapped a piece of
21 property that was of minimal value for a piece of property
22 that we believe is of extensive value for the State, both
23 locally and for all the citizens of the State of
24 California.

25 In addition, we were able to direct over \$600,000

1 toward the rehabing of a marsh land and a wetland area
2 that we believe also enhanced open space for the State of
3 California.

4 MS. WILSON-KLEEKAMP: Well, I have a few
5 questions you. Number one, I thought that that grant for
6 the \$600,000 had expired in 1997?

7 CHAIRPERSON BUSTAMANTE: We have established
8 that.

9 MS. WILSON-KLEEKAMP: And the other part I didn't
10 understand is how do you determine that the parcels that
11 are on Queensway Bay, which I think you're talking about,
12 in terms of value, are less valuable than the parcels that
13 you're supposedly swapping? And what does that have to do
14 with the fact that there was a master plan for recreation
15 or there was promised active recreation?

16 In other words, I understand you're saying --

17 CHAIRPERSON BUSTAMANTE: We're just dealing with
18 our part. And in our part --

19 MS. WILSON-KLEEKAMP: I'm just saying that you're
20 arbitrarily deciding that that recreational use is not
21 necessary. And I'm asking what is your definition, your
22 criteria for deciding that you guys don't need active
23 recreational area?

24 CHAIRPERSON BUSTAMANTE: It must be an assessed
25 value of the properties to just find out to make sure that

1 the value of the property that we were giving up versus
2 what we were taking control of. In other words, that
3 was -- not taking control of, but being put into the
4 public trust was of more value than just in terms of
5 dollars.

6 And then the size of the property is substantial.
7 If you were to see a map, you would see the substantial
8 nature of the properties that we're talking about, versus
9 that area which is up against a roadway, is the furthest
10 point away from the water, is substantially more like open
11 space and more potentially a recreation than that very
12 small piece of property could have been.

13 We're not talking about the entire Queensway Bay
14 project. We're talking about that piece that we swapped,
15 which is a very small piece.

16 MS. WILSON-KLEEKAMP: I can't tell what the
17 difference is between the piece you're swapping and the
18 parcel -- the pieces that are all surrounding it. They're
19 all the same to me.

20 CHAIRPERSON BUSTAMANTE: We can provide that
21 information to you after the meeting.

22 MS. WILSON-KLEEKAMP: Well, as far as I'm
23 concerned, the tidelands are priceless pieces of land, so
24 I'm also not understanding how you determine what their
25 value is. They're not supposed to be purchased and you --

1 the City is using their own appraiser, I don't understand
2 how you come up on the valuation.

3 CHAIRPERSON BUSTAMANTE: We did our own. But you
4 can also talk in the next item, if you're opposed to it.

5 MS. WILSON-KLEEKAMP: Okay, thank you.

6 CHAIRPERSON BUSTAMANTE: Christopher Johnson.

7 MR. JOHNSON: Thank you. I choose to waive my
8 comments.

9 CHAIRPERSON BUSTAMANTE: Bry Laurie Myown.

10 Did I say that correctly?

11 MS. MYOWN: Yes, thank you.

12 Thank you, Lieutenant Governor. I don't mind you
13 using Long Beach as an example at all. I'm grateful for
14 the opportunity to have the public trust explained to us.
15 I have never heard of it until quite recently.

16 And, like Mr. May, I believe I urge adoption of
17 this item. Because I think it has been so differently
18 interpreted than I would interpret it on behalf of Item
19 89, I do have a couple of questions.

20 In a mixed-use development, in Exhibit B, there
21 is some language about any permanent structure serving the
22 public's rights of access to the beach and not serving
23 financial -- and not providing financial incentives to
24 make the rest of the project work. And I apologize if I'm
25 mixing up items here, it's really hard to distinguish the

1 two agenda items.

2 But if the purpose of an exchange is to exchange
3 out uses that you had determined would not serve the
4 public trust and yet what remains in is all of the capital
5 improvements and parking structure that the City intends
6 to sell bonds to build, it seems to me there would have to
7 be some sort of pro rata, some commensurate reduction in
8 the parking, roadways, et cetera, because they are now
9 really serving those uses that you have determined were
10 not serving the public trust.

11 CHAIRPERSON BUSTAMANTE: I think those are issues
12 for the next item.

13 MS. MYOWN: Okay. Another question is, again
14 because of Item 89 since the land that you want to bring
15 back in is immediately adjacent to the port and by a
16 freeway, which we all know probably needs to be improved
17 and enlarged, is a transportation use that serves the port
18 a use to which that land could be put in the future under
19 a public trust doctrine, would that be a public trust use?

20 And if not, would such a freeway improvement on
21 what is now being planned as park space be an issue where
22 State or federal legislation would trump the public trust
23 use?

24 CHAIRPERSON BUSTAMANTE: Again, I believe that
25 those are issues on the next item. This item is regarding

1 the overall policy. Have you had a chance to take a look
2 at the policy?

3 MS. MYOWN: Yes, I have read both and my question
4 is in this policy statement. It is not clear to me if
5 public transportation uses that serves the Port would be
6 within the aegis of this policy statement?

7 CHAIRPERSON BUSTAMANTE: Paul.

8 EXECUTIVE OFFICER THAYER: In general -- I'm
9 going to ask for some backstopping from the attorneys. In
10 general, my understanding is the facilities that assist
11 the Port in conducting commerce, which is one of the
12 public trusts uses, would be consistent with the trust.
13 And as Jan Stevens indicated in his own presentation and
14 at least one circumstance, a bridge was found to be
15 consistent with the trust even though it interfered with
16 other trust uses. It was a case of prioritization as to
17 which particular trust use was most important in that
18 environment.

19 And the policy, which we presented to you for
20 your adoption, recognizes that, that there are sometimes
21 hard choices to be made, and if the Commission had both
22 some flexibility and some ability to choose between
23 mutually exclusive uses.

24 MS. MYOWN: So regardless of the currently stated
25 use of that land that's discussed in Item 89, the

1 Commission could prioritize in the future a freeway
2 improvement there that would serve the Port would be an
3 allowed use; is that correct?

4 EXECUTIVE OFFICER THAYER: Well, the first entity
5 that would review a new use there would be the City. The
6 City will have a long-term lease from us and in all
7 likelihood legislation will be enacted to transfer the
8 property newly coming into the trust to the City for its
9 management, just as the legislature has done with all of
10 the other tide and submerged lands in the State.

11 CHAIRPERSON BUSTAMANTE: Mr. Hager.

12 ASSISTANT ATTORNEY GENERAL HAGER: Yes. The
13 comment that I would like to make that the decision as to
14 which of several proper trust uses in this case is left to
15 the trust grantee, which is the City of Long Beach.

16 MS. MYOWN: Thank you very much.

17 CHAIRPERSON BUSTAMANTE: I have two others here,
18 but it looks like they scratched it out and replaced it
19 with 89, so I'm going to assume that we're done.

20 Is there someone?

21 Yes, ma'am please come up. State your name for
22 the record.

23 MS. MANN: My name is Diana Mann, and I promise
24 to be real quick.

25 I'm going to borrow this for one second. I have

1 a couple of quick questions. While you're talking about
2 public access, does that mean paid public access or free
3 public access?

4 EXECUTIVE OFFICER THAYER: I think Ms. Mann is
5 referring to, Jan, your comments about public access and,
6 you know, Article 10 of the Constitution. Is there any
7 distinction between free or paid public access?

8 MR. STEVENS: No, I don't think so really.

9 MS. MANN: Okay, I think that needs to be kind of
10 clarified. And then I'd like to address your values. You
11 talk about the land value purchased and you have those
12 going out there and measuring it and determining what it
13 is. If you're a little kid, and you -- what kind of
14 values do you have? And if you don't have the resources
15 to play in a park and the park disappears and it's not
16 available to you, then you're talking about the value of
17 that land to the community.

18 And I think that there's a big discrepancy in
19 your value system, if you don't value open space and park
20 land and our valuable resource.

21 Add I'd like to hold this up, if you can see
22 this. Okay, one of the things that Mr. Stevens said was
23 that your responsibility for public trust is ongoing.
24 Well, if it's ongoing, what's this going to be like in
25 another 50 years? This is a mess. I don't want to punish

1 you. I don't want to punish the -- what's the saying that
2 you punish the sons for the sins of the father.

3 But we've got a real serious problem here,
4 because what happened and what's missing out of Mr.
5 Stevens' report is the fact that we have a responsibility
6 to protect our natural resources. And that as far as
7 California is concerned our wetlands are diminished beyond
8 that land. You all know that. Our wildlife is diminished
9 and sick and ill. And we have an obligation to protect
10 that.

11 And one development after the other going into
12 the action of destruction is not protecting our tidelands.
13 So if you continue -- as you continue, we're going to be
14 deeper and deeper in trouble. And I think that there has
15 to be some sort of a provisions in there to protect
16 resources for the future children's children.

17 And then just very quickly, I'd like to mention
18 that it says that, "The Constitution is a policy of
19 conservation and protection of the state lands and waters
20 for the benefit of all citizens recognizing that the
21 State's wetlands, estuaries and beaches are apart of its
22 common heritage." Okay, we lost ours.

23 And there's another little thing I'd like to
24 read. This is -- and I'm not an attorney, I'm just a kid
25 on the block that is real concerned about our environment.

1 And I tell you what, going through the trust -- the public
2 trust doctrine wasn't a fun thing, but I did extract some
3 information out there that says that we're missing the
4 boat.

5 It says here, "The State's Constitution has
6 recognition of public rights with the respect to the shore
7 and other natural resources is not self-executing, but
8 must be carried into effect by legislation," which you had
9 mentioned before.

10 So where are we with this? I mean, you know,
11 with the future, does the Legislature decide every time a
12 city makes a super stupid decision about their waterfront
13 properties, what is it that the public does?

14 Anybody got an answer to that?

15 CHAIRPERSON BUSTAMANTE: I think you have to deal
16 with the Legislature. When they make a change in the
17 actions or in the authority or in the parameters of the
18 public trust, they have that ability to do so to a certain
19 extent. Anything else beyond that, I guess the people
20 have to either go to court or deal with their legislators.

21 MS. MANN: You know, that's not fair, you know.

22 CHAIRPERSON BUSTAMANTE: It's the system.

23 MS. MANN: What's your job? I mean your job is
24 to implement all this stuff, you know. And if it's the
25 public, every time we turn around, do you know how many

1 cases that the citizens of Long Beach has against -- the
2 City of Long Beach is taking our parks. You know, it's
3 over and over and over again. And, you know, we don't
4 have the financial resources. And I Chair an organization
5 called Ecolink. We're a coalition of environmental
6 organizations and we're linked to citizens all up and down
7 our coast. And we're all trying our damndest to protect
8 our coast, and we can't afford one litigation after
9 another. I mean come on you guys, you're not helping us
10 out a bit.

11 CHAIRPERSON BUSTAMANTE: I think within the
12 parameters of the responsibilities that we have, I think
13 that to go from the very beginning of your comments, you
14 said that we don't understand the difference between a
15 value that's been placed on a dollar value and that of a
16 child. I'd say you're wrong. If you were to look at what
17 we did within the parameters -- I understand you --

18 MS. MANN: What's this? What's this, do you
19 value your --

20 CHAIRPERSON BUSTAMANTE: We have enhanced that.

21 MS. MANN: Enhanced it by whose standards?

22 CHAIRPERSON BUSTAMANTE: I think by any objective
23 standard if you were to look at it and you were to see how
24 much space we put into open space -- if you were to see --

25 MS. MANN: Okay, don't go there, don't go there,

1 because we're going to talk about that in 89, right?

2 (Laughter.)

3 MS. MANN: So we don't want to go there right
4 now.

5 CHAIRPERSON BUSTAMANTE: So then let's --

6 MS. MANN: Right now we're talking about the big
7 picture and what your job is and what your responsibility
8 is and what this is. This is federal law that says you
9 have to protect this land.

10 CHAIRPERSON BUSTAMANTE: Have you read the
11 policy, our policy?

12 MS. MANN: I couldn't open it up in my --

13 CHAIRPERSON BUSTAMANTE: It's a very short
14 document, and I would recommend that you read it and you
15 listen to the total explanation of what just took place a
16 few moments ago with respect to the entire --

17 MS. MANN: I heard Mr. Stevens.

18 CHAIRPERSON BUSTAMANTE: You heard Mr. Stevens.
19 If you were to look at the policy, and if you could find
20 discrepancies within our policy and that explanation, we
21 are open to changing that, but you're not giving us any.
22 I understand the passion, and I hear what you're saying,
23 but if you have a change in the policy that we have, I'd
24 be open to reviewing that, to discussing it, to changing
25 it, but you're not giving us anything at this point.

1 MS. MANN: I asked you about the protection of
2 wildlife, estuaries and how about air quality, could you
3 protect the air quality?

4 CHAIRPERSON BUSTAMANTE: I believe all these
5 issues are addressed in the policy.

6 MS. MANN: In the policy. Honest to God cross
7 your heart it's in there, so I can count on you to protect
8 it.

9 CHAIRPERSON BUSTAMANTE: Yes, ma'am.

10 MS. MANN: Thank you.

11 Anyone else?

12 Seeing none, any other comments from staff?

13 EXECUTIVE OFFICER THAYER: No, sir.

14 CHAIRPERSON BUSTAMANTE: Mr. Stevens, any other
15 comments?

16 MR. STEVENS: No, thank you, Governor. I think
17 the two documents here are very thoughtful,
18 well-considered and well done, and they really cover the
19 basis that were addressed by the speakers here along with
20 existing law.

21 CHAIRPERSON BUSTAMANTE: Thank you. Any comments
22 from the Commissioners?

23 Any questions, concerns?

24 Is there a motion?

25 ACTING COMMISSIONER PORINI: Move approval of the

1 policy before us.

2 CHAIRPERSON BUSTAMANTE: Is there a second?

3 ACTING COMMISSIONER ARONBERG: Second.

4 CHAIRPERSON BUSTAMANTE: Showing a first and a
5 second, a motion and a second, let's show that the motion
6 passed unanimously.

7 We move on to Item Number 89. Why don't we --
8 the Controller has asked us to hold off on Item number 89
9 until she arrives. She'll be here in a moment. And so if
10 we could go onto the next item, we will come back to 89.

11 EXECUTIVE OFFICER THAYER: Yes. Lieutenant
12 Governor, Item 90 will be heard at a future meeting at the
13 request of the General Services Administration. This has
14 to do with the Downey Facility.

15 CHAIRPERSON BUSTAMANTE: Number 90 is off,
16 postponed.

17 EXECUTIVE OFFICER THAYER: Number 91 is in the
18 same situation. The Port of San Diego has asked us to
19 hear that at a future meeting.

20 CHAIRPERSON BUSTAMANTE: Postponed, so numbers 90
21 and 91 are postponed to a future meeting.

22 EXECUTIVE OFFICER THAYER: Item 92, Consideration
23 of a report entitled the, "Shoreline Protective
24 Structures..." It includes a recommended staff policy --
25 excuse me, Commission policy. And Alan Scott from the

1 Land Management Division will make the presentation on
2 this.

3 MR. SCOTT: Good morning, Mr. Chairman and
4 Members of the Commission. I'm Alan Scott, a regional
5 manager of the Commission's Land Management Division. I'm
6 here to present information on calendar Item number 92,
7 which is the item concerning shoreline protective
8 structures.

9 At the Commission's meeting of November 27th,
10 2000, members of the public and Commissioners expressed
11 concerns regarding the practices of the Commission in
12 issuing leases for protective structures as a means of
13 controlling shoreline erosion.

14 The Commission asked staff to investigate and
15 report back on whether it was appropriate to continue
16 issuing Coastal Protective Structural leases that did not
17 require monetary rent. Also, questions were asked about
18 the impact of continued construction of protective
19 structures on the shore.

20 I'd like to mention two recent events that
21 emphasized the statewide importance and timeliness of the
22 Commission's concern. Earlier this year, the State
23 Department of Boating and Waterways announced awards of
24 \$10 million in grant monies allocated to the nine -- in
25 the 2000/2001 State budget, which was distributed to

1 cities and counties throughout the State to implement sand
2 nourishment projects and shore zone related studies.

3 Also, the State Resources Agency on March the 29th, 2001
4 released its draft policy on coastal erosion planning and
5 response and background material.

6 After receiving input from the public at seven
7 public meetings held throughout the State, the draft
8 policy is being revised to reflect comments received at
9 those meetings. The proposed new policy will guide and
10 coordinate the activities of the various State Resources
11 Agencies with jurisdiction over projects that affect
12 coastal erosion, planning and response.

13 Staff has prepared a background report and it is
14 before you today. The report was prepared in April of
15 this year and copies have been distributed to more than
16 100 interested parties. The report has also been made
17 available on the Commission's web site.

18 In preparing this report, staff utilized existing
19 scientific research and published works dealing with
20 shoreline erosion processes and the physical impact of
21 shoreline erosion of the con -- on shoreline erosion of
22 the construction of protective structures.

23 The report identifies three methods used to
24 control shoreline erosion, protective structures,
25 generally of concrete or rock construction, beach

1 enhancement usually sand replenishment projects and
2 land-use planning, sometimes referred to as plant and
3 treat.

4 The report provides information to the Commission
5 that indicates the most common type of shoreline
6 protective structure is a seawall or rock revetment
7 constructed to protect adjacent private property. The
8 report provides information on the other alternatives to
9 hard protective structures and assesses their impacts to
10 the shoreline.

11 Staff analysis of the beach enhancement and
12 land-use planning alternatives shows that a greater degree
13 of government involvement is required because of the
14 substantial cost of these types of projects, and because
15 these projects will, of necessity, occupy large areas
16 covering multiple ownership.

17 Some dispute exists in the scientific community
18 as to how seawalls and other hard structures impact the
19 erosion process along the coast. However, there appears
20 to be general agreement that soft structure solutions
21 primarily sand replenishment projects, are the preferred
22 method of shoreline protection, having a lesser impact on
23 natural shoreline processes.

24 The calendar item which is presented in this
25 report also discusses the Commission's concern regarding

1 what consideration is appropriate for the use of public
2 property occupied by structures that are for the
3 protection of private property. The past practices of the
4 Commission has generally been to issue loses for coastal
5 protective structures to both private parties and public
6 agencies in consideration of the public benefit including
7 public health and safety.

8 Public benefit is a consideration for a lease --
9 as a consideration for a lease is provided for in the
10 Commission's regulations as an alternative to the payment
11 of monetary rent. Staff processes coastal protective
12 structural leases on a case-by-case basis in order to
13 determine what consideration is appropriate considering
14 the specific circumstances of the proposed project and in
15 accordance with the Commission's existing regulations.

16 In the past, staff has usually recommended that
17 rent not be charged for private shoreline protective
18 structures because of the potential public benefit they
19 provide. The additional protection they provide to
20 existing public structures, such as adjacent roads, public
21 access ways and utilities at no cost to the public is one
22 of those benefits in evaluating it.

23 In this calendar item, staff provides several
24 recommendations for consideration by the Commission.
25 Adoption of these recommendations would require the

1 imposition of rent where public benefit from coastal
2 private shoreline protective structures could not be
3 demonstrated. Adoption of these recommendations would
4 cause staff to look more carefully at whether a shoreline
5 protective structure was actually more intended to benefit
6 private development.

7 The recommended actions also would direct staff
8 to continue to work cooperatively with other agencies,
9 work with applicants to encourage projects that will not
10 occupy public property, promote the use of soft structure
11 solutions where feasible and continue to mitigate adverse
12 impacts to the public trusts.

13 This concludes my presentation and I'll remain
14 available for questions.

15 CHAIRPERSON BUSTAMANTE: Thank you. Any
16 questions by any of the Members?

17 The idea of this or the justice of this came
18 because as a manager of tidelands and of certain public
19 trust lands, we are allowing certain kinds of activity to
20 take place. We are permitting those activities to take
21 place.

22 And in the permitting of those activities, we are
23 incurring costs as a State. And those costs, in many
24 cases, are not being received by those who are benefiting
25 directly from them. As I heard your report, I heard that

1 there was various activities, various kinds of solutions.
2 My guess is that that would depend, in part, not only on
3 the kinds of structures but also the kinds of geology and
4 the other kinds of factors of the actual property itself,
5 and the experiences that we've had in the past in terms of
6 whether we had to, in fact, provide some kind of sand
7 replenishment or other kinds of activities.

8 So our experiences, and although it would be nice
9 to be able to have a policy that just generically said
10 this is what we're going to do each and every time, the
11 geography, the experiences, the kinds of facilities will
12 all require interpretation by staff and will require some
13 sense of what the community benefit is versus private
14 benefit.

15 I've had a chance to look at the policy. It
16 appears that you cover those points, and it seems to me
17 that what we are attempting to do is trying to be more
18 effective managers of that coast land. So I appreciate
19 the presentation.

20 Is there any other comments by your staff or
21 members?

22 I'm looking for a motion. Is there a motion?

23 ACTING COMMISSIONER PORINI: Move approval.

24 EXECUTIVE OFFICER THAYER: Mr. Chairman, we have
25 two requests to speak, I believe, on this.

1 CHAIRPERSON BUSTAMANTE: I'm sorry. On item
2 number 92?

3 EXECUTIVE OFFICER THAYER: Yes, sir.

4 CHAIRPERSON BUSTAMANTE: I missed it. Do you
5 have those names there.

6 EXECUTIVE OFFICER THAYER: Let me bring this up
7 to you.

8 Bob Trettin. Is there a Bob Trettin here?

9 MR. TRETTIN: Yes.

10 CHAIRPERSON BUSTAMANTE: Would you like to speak
11 on this item, sir?

12 MR. TRETTIN: Yes, I would.

13 CHAIRPERSON BUSTAMANTE: And Walt Crampton,
14 you're on deck.

15 MR. TRETTIN: Good morning, Honorable Lieutenant
16 Governor and Members of the Commission. My name is Bob
17 Trettin, and I am a planning consultant representing more
18 than 400 coastal bluff top home owners in San Diego
19 county.

20 Before I start my presentation, I'd also like to
21 compliment the staff on the report they prepared in April.
22 I thought it was one of the most concise reports, because
23 sometimes these things can run hundreds of pages, but it
24 was one of the most concise encapsulations of the history
25 of sand loss on our beaches and the various activities

1 that are ongoing currently to restore sand to the beaches
2 and on coastal bluff protection structures and when
3 they're needed.

4 During the past decade, I've had the opportunity
5 to obtain approximately 50 local and State permits for
6 single-family homeowners who needed to provide coastal
7 bluff protection adjacent to their properties. During the
8 same period of time, I've witnessed more than a dozen
9 properties in a foreclosure, as homeowners without the
10 financial means to protect their property were forced to
11 leave it. And many other instances, particularly among
12 retired seniors, those who have the equity to qualify for
13 loans sufficient to cover the exorbitant cost of coastal
14 bluff protection certainly didn't have the means to pay
15 the loans off.

16 So they fixed it and then they sold their homes,
17 and left an area that many of them have lived in for
18 decades, neighbors, churches, other local involvements,
19 but they didn't have a choice.

20 Your staff has outlined, quite well, I think, the
21 reason behind identifying coastal bluff protection in most
22 cases as a public benefit.

23 The scenarios I've just outlined speak to how
24 difficult it already is for many homeowners to protect the
25 bluffs and the significant consequences that can occur

1 both for public safety and from a financial standpoint if
2 protection isn't provided.

3 Last year, a young woman on the Encinitas Beach
4 died tragically as a segment of the bluff failed in
5 seconds. There was virtually no warning and there was not
6 time for her to jump up and move to safety. Coastal bluff
7 protection dramatically increases the safety of those that
8 are using our public beaches.

9 The private provision of coastal bluff protection
10 also dramatically reduces the financial impact on the
11 general fund of local jurisdictions. The City of
12 Encinitas has already funded such protection of public
13 access points, and at least in one case at a point where a
14 public street terminates at the coastal bluff. This is to
15 protect the street and utility lines and so forth.

16 In a number of instances, where I've represented
17 home owners, had they not be given coastal bluff
18 protection permits, with the resulting failure that would
19 have taken their house, would have extended to Neptune
20 Avenue, which is the coastal street along Encinitas.

21 No city, even with State or federal assistance,
22 could easily assume the financial burden of protecting
23 public infrastructure by constructing a bluff protection
24 along miles of shoreline. While protecting their homes,
25 bluff top property owners provide an enormous public

1 benefit, that shouldn't be discouraged or discounted.

2 On behalf of all those who own homes, I would
3 urge you to retain your present lease policy, reviewing
4 carefully in areas where there might need to be a rent
5 assessed, where there isn't a public benefit, I can
6 certainly understand.

7 But in most cases where you have coastal access
8 roads and utilities immediately adjacent to coastal access
9 homes, the City would be building this and it would be
10 required regardless. As the bluffs are failing in natural
11 as your staff report indicates, some one is going to have
12 to build a seawall, and it's going to be for public safety
13 and it's going to be for private infrastructure.

14 So, in my opinion, I would hope that you would
15 consider Alternative 1 as the best ongoing continuing
16 solution with the instruction that your staff continue to
17 bring those items forward or identify those items where
18 they cannot perceive a public benefit.

19 Thank you very much.

20 CHAIRPERSON BUSTAMANTE: Thank you.

21 My understanding is that in this, Paul, that this
22 is an affirmation not only of what you said, but also it's
23 an effort to try to identify those that we have not
24 focused on and to make sure that we are in the process of
25 dealing with not only protecting our own public resources,

1 but making sure that future developments have, in the case
2 where it's purely a private development, and has benefit
3 only to the private sector, that we, in fact, do have some
4 kind of lease or we have some kind of cost whenever we
5 provide certain services to those developments; isn't that
6 correct?

7 EXECUTIVE OFFICER THAYER: I think the Chair has
8 appropriately summarized what we're getting at here. And
9 particularly in your earlier comments, some of the
10 situations that the past speakers spoke of would have to
11 be reviewed carefully. And as you indicated, each
12 shoreline protective device situation is unique. And much
13 of the public trust requires judgment on the part of the
14 Commission and its staff to decide when to charge rent,
15 when to reduce that rent.

16 And, of course, we want to make clear that
17 nothing in what we're proposing would prohibit the
18 Commission from, in fact, approving a shoreline protective
19 device, so that private development, public development
20 would be protected. We're merely talking about whether or
21 not, as you indicated, private use of public land should
22 involve compensation to the public.

23 So I think all of the factors that the gentleman
24 raised would be considered in developing a staff
25 recommendation to bring to the Commission.

1 CHAIRPERSON BUSTAMANTE: Mr. Crampton.

2 MR. CRAMPTON: Good morning, Lieutenant Governor
3 and Members of the Commission. My name is Walter
4 Crampton. I'm a geotechnical coastal engineer practicing
5 in San Diego and more or less I'm also before you this
6 morning representing 930 bluff top home owners in Solano
7 Beach. I've worked with your staff on numerous occasions
8 over the years. And, although, they have maintained a
9 lower profile than the Coastal Commission staff, I have
10 always been very impressed with their dedication to
11 protecting the interest of State's sovereign tidelands.

12 I've read the staff report on the protective
13 structures and it plans to be a well balanced overview of
14 the complex project. And I commend your staff on that
15 report.

16 I come to speak before you this morning really
17 because I'm genuinely troubled over the recent fairly
18 aggressive posture that the Surf Riders Foundation has
19 taken with regard to seawalls. They would have you
20 believe that by not allowing seawalls, the sandy beaches
21 that once existed along the southern California shoreline
22 would return. They want it to return to the natural
23 conditions and they want you to make it so.

24 As a coastal engineer I unequivocally guarantee
25 to you that along the California shoreline where you have

1 millions of people today living within the now urban
2 coastal watershed extending up the coastal ranges at times
3 50 miles landward out to the coast, that they have
4 eliminated that possibility.

5 That is unless you renourish beaches and replace
6 what the many dams, flood control facilities and other
7 actions that manifest has affected within this urban
8 watershed. In the ocean side today there's a 30 million
9 cubic yard deficit. And yet in San Diego alone sand
10 mining in the last 60 years has removed over 100 million
11 cubic yards of sand that was originally destined for this
12 State's beaches.

13 The bluff top property owners did not contribute
14 to the problem that exists in northern San Diego county
15 today. Yes, in retrospect, their homes could have been
16 set further back from the bluff tops to forestall the
17 problems that exist, but even if they have, you would
18 still have no sandy beaches today, you would still have
19 these major coastal bluff failures, the beach going public
20 would still be at risk, and other bluff top group
21 improvements would eventually become imperiled, requiring
22 you still to do something in the future.

23 As your staff report stated, approximately 80
24 percent of the California coast lives within 30 miles of
25 the coastline. And of those 80 percent, myself included,

1 we have contributed to what is today a totally urbanized
2 coastal watershed. We, as a society, have done much to
3 the California coast, presumably for the benefit of the
4 many, but to the detriment of the coastline itself.

5 We cannot go back to the natural conditions that
6 existed a century ago, even though a few have you believe
7 we could. There are three general responses to coastal
8 erosion; retreat from the shore, armor the coast, or
9 nourish the beaches. The choice of a response strategy
10 will, or at least should, depend upon a number of factors
11 including socioeconomic and environmental conditions.

12 The retreat option is the preferred option for
13 undeveloped or sparsely developed areas. For highly
14 developed areas, such as virtually all of southern
15 California, the abandonment option is not politically
16 realistic or economically viable.

17 The value of this beachfront property often
18 approaches several hundred million dollars per mile of
19 coastline. And beach nourishment provides protective
20 beaches and is an economic boon for tourism. However,
21 seawalls are still often needed to back the beach when
22 insufficient beach is available to provide that service.

23 The Surf Riders Foundation for some reason today
24 wants to eliminate all seawalls. More surprisingly is
25 their lack of interest in supporting beach restoration

1 efforts. Their mantra is more one of let's get back to
2 nature. But the conflicting societal interest, presumably
3 for the benefit of this State, has really neglected our
4 shoreline.

5 Private citizens and municipalities alike are
6 increasingly finding it necessary to protect their
7 properties than protect both private and public
8 improvements, many of which are critical to well-being of
9 this coastal State. The State Lands Commission has
10 jurisdiction over the State's sovereign tidelands, and the
11 Commission has an interest in protecting those -- this
12 resource and for that I commend you.

13 Having practiced coastal engineering in San Diego
14 and in southern California for over 30 years, I'd like to
15 make a few observations. That to begin with when I
16 studied at Scripps Institute 30 years ago, my professor,
17 Dr. Inman was concerned and wrote about at the time
18 societal impacts in the urbanizing coastal watershed that
19 they remove sand from what was now the literal cell, and
20 they were removing sand from the beaches and saying that
21 it was really the lost of sand due to upland development
22 that created the need for seawalls. Seawalls did not
23 cause a loss of sand. It's real the form.

24 When you hear people like Orrin Pilton on the
25 east coast a geology professor from Duke University, when

1 he speaks about the serious problems of seawalls on the
2 eastern seaboard. And the Surf Riders like to quote Dr.
3 Pilton because they like what he has to say. But please
4 remember that the east coast is very different from the
5 west coast. They have a trailing edge coastline. We have
6 a leading edge coastline. They have literally miles of
7 shallow lands that can, in fact, experience considerable
8 erosion. We do not. We have coastal bluffs. They do
9 not. Our bluffs are fairly resistant to erosion. Their
10 coastline erodes quite a bit.

11 In California, since the 1940's, our total
12 urbanization has completely eliminated a source of sand
13 that we, in the past, have benefited from. When you deal
14 with these seawalls that are now being constructed, the
15 Coastal Commission and the Corps of Engineers is currently
16 charging a sand mitigation fee. As a coastal engineer, I
17 support that sand mitigation fee. And for a 50-foot wide
18 bluff top property, it amounts to about \$20,000. There
19 are already significant fees paid for the rights for
20 private homeowners and public entities to protect their
21 properties. There are significant fees already being
22 paid.

23 And lastly, I'd like to point out that when you
24 speak to the State Lands jurisdiction, if additional fees
25 were paid and additional impediments were made, there

1 would be significant disputes over that ambulatory line
2 that finds the State's jurisdiction. It happens to be the
3 mean high tideland or 2.01 foot. But the reality is that
4 today with the current policy, many consultants, myself
5 included, we're very happy to work with the State and not
6 dispute the jurisdiction, but to merely agree to the
7 leases because they are not adjudicating the boundary,
8 they're merely agreeing to work together.

9 It is in this spirit of cooperation that the
10 private interests and public interests are best worded. I
11 would propose to you that coastal property owners who are
12 spending literally millions of dollars to protect their
13 property are providing a much bigger benefit to the State
14 of California than The Surf Riders Foundation who is
15 actively today opposed to something that I believe is
16 inherently very good for California.

17 I would strongly encourage you not to provide
18 additional impediments to coastal protection.

19 Thank you, very much.

20 CHAIRPERSON BUSTAMANTE: Staff, Alternatives 2
21 and 3, would any of that which is in the recommended
22 policies prohibit in our determination of a sand
23 replenishment case, for example, that it is not the
24 construction or the private development on that spot above
25 the cliffs, but rather a different locale that is, say, up

1 on either north or south of that facility that is causing
2 the problems of sand replenishment?

3 Would there be anything to prohibit from all the
4 different complexities that were just expressed by the
5 speaker to be taken into account when staff is making an
6 assessment?

7 EXECUTIVE OFFICER THAYER: Not at all. And, in
8 fact, I think we would agree with much of what the witness
9 stated, except that there is at least some evidence that
10 seawalls themselves cause a further diminution of the sand
11 at the beach, but our studies indicate that, in fact, the
12 loss of sand from sand mining or dams, the other causes he
13 mentioned, in fact, would probably be the primary cause of
14 loss of sand.

15 But nonetheless, we're not -- the staff policy
16 more deals with impacts where we can show them and
17 charging rent where it can be shown that the private
18 property owners, using public land to protect private
19 property.

20 So to some extent the causes of erosion are
21 important with respect to deciding whether or not any
22 mitigation needs to be done, but aren't significant with
23 respect to deciding whether or not to charge rent.

24 CHAIRPERSON BUSTAMANTE: Is the onus on staff or
25 is the onus on the property owners to show that there has

1 been some kind of a problem that must be dealt with by the
2 State, and therefore we must then charge additional fees?

3 EXECUTIVE OFFICER THAYER: The Coastal Commission
4 charges its fee to anybody who is putting in shoreline
5 protective devices. I think in northern San Diego county,
6 I may have the boundaries of that not entirely correct,
7 but they use that money to purchase additional sand or
8 take other measures to improve the beaches that kind of a
9 thing.

10 With our own mitigation measures, I think it's up
11 to staff to determine, in fact, what the impacts to the
12 public trust uses are, and we're experts in that. With
13 respect to rent, the hard decision will be the one that
14 the applicant -- or the speaker referred to which is
15 determining where the boundary line is.

16 But where we can show that public land is being
17 occupied by this project of primarily private benefit,
18 then the new policy would have us look more closely at
19 that issue in determining whether or not rent should be
20 charged.

21 Often the nexus for this becomes when they seek a
22 Coastal Commission permit. And the Coastal Commission has
23 a policy you have to demonstrate that you own the property
24 or you have a right to use the property where your project
25 is going to be located. And they frequently turn to us

1 for advice as to where the boundary line is.

2 CHAIRPERSON BUSTAMANTE: Madam Controller.

3 COMMISSIONER CONNELL: Yes, I apologize for
4 coming in late. Let me just share with the audience, I
5 sit on a number of boards, and we had a very important
6 retirement board, which, in fact, is still going on right
7 now. You can imagine with the market activity this
8 morning, we are deeply concerned about the -- in fact, the
9 pension funds of many of you as well as local governments.
10 And so I apologize for my extended delay.

11 This issue is of great importance, I think, to
12 the Commission. And I appreciate your delaying it till I
13 got here. I thought that all of your staff
14 recommendations were worthy of serious consideration, and
15 I would be prepared to adopt a number of them this morning
16 quite honestly.

17 I guess, I'm somewhere in between the surf rider
18 groups and the groups that represent the private
19 homeowners here. I do think that we need to do additional
20 work to determine the impact that deals with loss of sand
21 on the beach.

22 On the other hand, I don't think that's our
23 primary role here as the Lands Commission. But I did like
24 your idea -- I'd like you to speak to your staff
25 recommendation, I believe it was number 6, Paul, about

1 establishing a special fund to deposit the impact fees and
2 allocate those funds to make improvements. I thought that
3 was important.

4 I also think number 5 is important pertaining to
5 consultants who identify the impacts that are occurring,
6 the loss of beach use, et cetera. I think that would be
7 very helpful, and I'd like you to speak specifically to
8 both of those.

9 EXECUTIVE OFFICER THAYER: Early on when we were
10 working on this project, we looked very closely at how we
11 could best mitigate impacts that might come from shoreline
12 protective devices. In many cases, some of those impacts
13 are already addressed by other agencies, Fish And Game,
14 for example, usually requires through CEQA that habitat
15 impacts be addressed. The Coastal Commission already has
16 a mitigation fee for sand supply in at least one part of
17 the State.

18 But we also talked to several different
19 researchers, one in San Diego, I'm trying to think,
20 perhaps, UC Irvine for the other one, to determine what
21 kind of study could be done to attach a monetary value to
22 public trust impacts, because that would be the simplest
23 thing to do. A lot of these projects are small enough.
24 It's sort of difficult to require a new stairway or
25 something like that.

1 And, basically, we were informed that the kind of
2 study that would stand up in court in terms of
3 establishing a nexus between impacts and an amount of
4 money paid would probably cost in excess of a million
5 dollars. And that's --

6 COMMISSIONER CONNELL: The study would?

7 EXECUTIVE OFFICER THAYER: The study would.

8 COMMISSIONER CONNELL: Well, I can see the
9 Department of Finance would frown on that. I can't even
10 get the Bologna Study out.

11 EXECUTIVE OFFICER THAYER: And the problem is
12 that it's very hard to give an evaluation to what is it
13 worth when some member of the public can't use the beach
14 at sunset because there's a shoreline protective device
15 there or, you know, during high tides the beach is
16 narrower this kind of thing. It's just very difficult to
17 value that.

18 The other situation is the one that the Chair
19 described, which is that physically the coastline looks so
20 different in so many different parts of the State, so you
21 couldn't do just one study and say oh, along this beach
22 we'll do this. Well, that might be valid for that beach,
23 but it wouldn't be valid for any others. So although we
24 went down that road pretty far in terms of trying to find
25 out someday that we could establish a mitigation fee like

1 the Coastal Commission has for sand, a much more
2 identifiable cost, I should say. It's very much easier to
3 define how much sand is going to be lost and what the cost
4 is to replace it, we ended up deciding we could not
5 legally, defensively come up with a mitigation fee that
6 the Commission could impose and be able to --

7 COMMISSIONER CONNELL: You know, I would move the
8 staff recommendation, but I would like to have a timetable
9 on it, Mr. Chair, because I think we need to move fast on
10 this issue. We're sitting here without a policy. I think
11 it would be helpful to do that and complete the EIR on a
12 timetable, and then get the shell mounds out. So I would
13 like to -- aren't we on 93?

14 I'm sorry, we're on 92. I'm confused again. I
15 still want the staff recommendation on 92, my apology.

16 CHAIRPERSON BUSTAMANTE: That would be
17 Alternatives number 2 and 3, I believe?

18 EXECUTIVE OFFICER THAYER: Yes. And to
19 summarize, that would require us to look much more
20 carefully at whether or not rent should be charged where a
21 shoreline protective device is on public property and it's
22 primarily benefiting private development.

23 And the second part of that recommendation is
24 that we look to see if there are unmitigated impacts to
25 public trust uses.

1 And the third part of it was to continue our work
2 with the Coastal Commission and a more cooperative work to
3 look to actually locate these seawalls inland of our
4 public trust lands.

5 CHAIRPERSON BUSTAMANTE: I received a request to
6 speak by one other member of the audience Don May, and
7 then we'll go to a motion.

8 MR. MAY: My name is Don May for California Earth
9 Corps. I'll be extremely brief, Mr. Chairman, but our
10 corporate attorney, Charles Post, who is also one of the
11 co-founders of the Surf Riders Foundation, has been in
12 substantial discussion with your staff about the
13 implications of the public trust doctrine to protecting
14 sand.

15 And in view of the former discussion about the
16 public trust doctrine, it's extremely important. And I'm
17 also one of Dr. Pilton's students. And I shouldn't -- I
18 respect him enormously. He's the leading proponent of
19 processes along the coast.

20 But you will find his arguments every bit as
21 supportive of -- critical of structures and whatnot along
22 the coast, as your witness presented.

23 So I certainly concur with all the statements of
24 Mr. Thayer and -- except that I do believe that you need
25 to find there is a nexus between sand borings and do

1 divert sand offshore. And if you can, in fact, make a
2 financial connection, and I think it's incumbent under the
3 public trust doctrine that this Commission pursue that
4 vigorously.

5 Thank you very much.

6 CHAIRPERSON BUSTAMANTE: Thank you, Mr. May.

7 A motion has been made, alternatives two and
8 three.

9 Is there a second?

10 ACTING COMMISSIONER PORINI: I'll second.

11 CHAIRPERSON BUSTAMANTE: Seeing as there is a
12 motion and a second, let the record show that the motion
13 has passed unanimously.

14 Go back to Item 89, which we passed over earlier,
15 Controller, so that you might be able to come back.

16 COMMISSIONER CONNELL: Thank you, and I
17 appreciate that.

18 CHAIRPERSON BUSTAMANTE: There has been a request
19 for a brief break. Let's have a break for five minutes
20 and then we'll take up Item number 89.

21 (Thereupon a recess was taken.)

22 EXECUTIVE OFFICER THAYER: If people could find
23 their seats, we're about ready to get going again.

24 CHAIRPERSON BUSTAMANTE: This is Item number 89,
25 which has had tremendous discussion at a previous meeting.

1 And we have 12 requests to speak, and so I am going to
2 limit each person. I would hope that they would do it
3 voluntarily, but in most cases people get to a point where
4 they cannot always say everything that we want to say, and
5 you know, there are certain limits. So I'm going to ask
6 if there is a group of people who either are for or
7 against and that would like to either aggregate their
8 comments into one individual or a couple of people, we
9 might be able to work out something where they could make
10 a longer statement, but if not -- do I see any volunteers
11 to aggregate?

12 If not, then what we're going to do is we're
13 going to limit everybody to three minutes in order to be
14 able to speak. Even at three minutes, it's going to be
15 past noon before just the speakers end up completing. And
16 I'm going to ask staff to go ahead and start and we will
17 begin with, when the speaking comes up so that you're
18 in -- you understand where you're going to be at Ann,
19 Cantrell, Rod Chisessi, and Lester Denevan. Those will be
20 the first three members who will speak and then we will
21 announce the others following that.

22 Staff, your report, please.

23 EXECUTIVE OFFICER THAYER: Thank you, Mr.
24 Chairman. I'll be making the staff presentation on this
25 item.

1 The Commission is already fairly aware of the
2 proposed project here Queensway Bay. We've heard comments
3 from the public as well as some presentations that were
4 made at the last meeting.

5 At that last meeting, as requested by Long Beach
6 citizens, the Commission reviewed this project. The
7 Commission has expressed doubts about the consistency of
8 some elements of the project with the public trust
9 doctrine in terms of the legislative grant. These uses
10 included the movie theaters, a health spa, a Cost Plus
11 Imports and a bookstore.

12 The Commission directed staff to work with the
13 City to try to develop alternatives that would address
14 this issue. I'd like to review what we have done since
15 that last meeting and then the proposal that's before you
16 today. Since that meeting, Commission and City staff
17 reviewed several alternatives to resolve the issue of
18 Queensway Bay. Two principle options emerged, the City
19 could eliminate from the project the uses that could be
20 inconsistent with the public trust or the Commission could
21 approve the land exchange they would lift the public trust
22 from the sites of the questionable uses and impose it on
23 other lands suitable for trust use.

24 The City reviewed its marketing and financial
25 feasibility study for the project, and determined that it

1 could not support the first option. In the City's view,
2 the questionable uses were a vital part of the project and
3 helped make other trust uses, like the aquarium viable.

4 Commission staff reviewed the legal requirements
5 for lifting the trust from the sites of questionable uses
6 which would be required for an exchange. Because of the
7 distance of the sites from the waterfront, the fact that
8 they were caught off from the water by Shoreline Drive and
9 the fact that the sites have been unused for over 20 years
10 led staff to believe that these parcels were not
11 acceptable for public trust uses, the primary test for
12 lifting the trust.

13 After that initial go round, the staffs of the
14 two agencies then agreed to pursue the land exchange
15 option and look for sites to exchange for the Queensway
16 Bay parcels designated in these public trust lands.

17 The City owned lands along the Los Angeles River
18 seemed the most appropriate for the exchange. For past
19 few years all levels of government have focused on
20 developing habitat and recreational areas along the river.
21 Two years ago, the Legislature recognized the statewide
22 values of the restored river by establishing the San
23 Gabriel and Lower Los Angeles Rivers and Mountains
24 Conservancy.

25 The State Coastal Conservancy and the Southern

1 California Wetlands Recovery Project have made grants to
2 purchase and restore lands along the river. This July
3 Congresswoman Hilda Solis proposed legislation to study
4 making this area into a national park.

5 The river itself is not public trust land,
6 because it was sold during the California Spanish era.
7 However, it obtains trust values and these multi-level
8 efforts are highly consistent with and promote the public
9 trust.

10 After considering several different combinations
11 of parcels and rejecting one because of evaluation
12 problems, the Commission and City staff settled on parcels
13 that are in the proposal before you. They are shown in
14 Exhibit A in the staff report and in a larger scale map
15 over to the Commission's left.

16 This map is poorly put up on the screen here for
17 the audience, but what we're looking at are exchanging
18 parcels at Queensway Bay here outlined in red. And I
19 think it shows up more clearly in your binder. For
20 parcels along the river up here one between or actually
21 two between northbound and southbound lanes of Shoreline
22 Drive and then on either side of Shoemaker Bridge up here.

23 These parcels along the LA River seemed
24 particularly appropriate for public trust designation.
25 The Coastal Conservancy has already sponsored a study to

1 evaluate whether these parcels could be restored as
2 wetlands. There's a regional bike path that runs along
3 The LA River, right along the levee here. The adjacent
4 Shoemaker parcels have a potential to be recreationally
5 developed to complement that bike path.

6 The Shoreline Drive parcel, the one between the
7 north and southbound lanes up there is already landscaped,
8 but is presently cut off from public access. Again,
9 actually either the Shoemaker parcels or the adjacent
10 Cesar Chavez Park, which is just to the right, just to the
11 east right in there, would complement either are for
12 recreation, open space or habitat purposes.

13 In spite of the public trust value of the Los
14 Angeles River parcels, they could not be exchanged for the
15 Queensway Bay parcels, unless the Commission can make all
16 of the findings required by law. The trust value of the
17 Los Angeles River parcels, we believe, that test has been
18 met, but however the river parcels also must be at least
19 equal to our exceed in value the Queensway Bay parcels in
20 which the trust would be lifted.

21 To make that necessary determination or to gather
22 the evidence for it, our boundary determination officers
23 and appraisers had to evaluate the condition of dozens of
24 lots that comprise each of the river parcels. Again,
25 we're looking at specific parcels. However, there are

1 many, many lots within those. And we had to view the
2 title and the deeds for each of those to ensure that there
3 weren't any liens or encumbrances that diminished the
4 value of those lots.

5 On a square footage basis, there's no doubt that
6 the Queensway Bay parcels down here are worth more money
7 than each square foot up there.

8 The appraisers also deducted \$1.3 million because
9 this parcel right in here is cutoff from public access and
10 that's the amount of money that was determined was going
11 to be necessary to put up pedestrian access or other
12 public access into that area. So we wanted to diminish
13 the valuation of that parcel to reflect its street value
14 for public trust purposes.

15 Given all these factors provide the necessary
16 value to balance the Queensway Bay parcels about ten acres
17 of land were included in the river parcels, so more than
18 three times the amount of land that's being given up at
19 Queensway Bay.

20 We've determined after appraising these two
21 different sets of parcels that the parcels that will come
22 into the public trust exceed the value of the Queensway
23 Bay parcels by over a half a million dollars. The
24 Commission staff was also concerned, of course, about
25 potential toxic contamination of the river parcels. This

1 whole area has been urban for some period of time in, and
2 a variety uses have gone on. It's not in the best
3 interests of the State to accept these parcels in the
4 State ownership and just in terms of the liability.

5 A level one toxic review was conducted and did
6 not generally uncover potential contamination. One area
7 was mentioned as a former site of a gas station and that's
8 kind of down in the southern portion here of the shoreline
9 drive parcel.

10 This area was excluded from the exchange, so that
11 we wouldn't have to worry about that. In addition, the
12 terms of the exchange agreement require that the City will
13 indemnify the State for any contamination that is later
14 uncovered.

15 In conclusion, we believe this exchange is a good
16 deal for the State and a good deal for the State's public.
17 It lifts the trusts from long, vacant unused lands that
18 have been isolated from the water. It attaches the trust
19 to parcels along and near the Los Angeles River. These
20 parcels have public trust value and a potential for
21 contributing to the regional State and national effort to
22 restore the LA River.

23 They exceed the monetary value of the Queensway
24 Bay sites, where the trust will be lifted. However, I
25 should know note that as presently constituted, this

1 agreement would not go forward if the developer backed
2 out. However, this in any event this would be a good
3 exchange for the State.

4 As an ancillary matter, I need to also point out
5 that we're aware that the Commissioners at the last
6 meeting expressed an interest in promoting the Los
7 Cerritos wetlands acquisition and restoration. The City
8 has submitted by letter to assisting that effort in
9 whatever way possible.

10 A picture of that wetlands, by the way, is shown
11 right here. Some of that area is pretty good wetlands
12 right now, but a big area is still in oil production and
13 will take significant restoration to perform as good
14 wetlands, again.

15 We've also discussed with the Wildlife
16 Conservation Board the State agency that's taking the lead
17 on this project, the Los Cerritos project, of contributing
18 the \$605,000 that's presently in the Cap Wealth Fund which
19 was placed there as a result of a land exchange in Long
20 Beach, previously approved by the Commission.

21 We've received a memo from the Conservancy's
22 Board Executive Director welcoming our participation and
23 we will bring this allocation of funds to the Commission
24 for approval at a later meeting.

25 This concludes our staff presentation. We

1 recommend the Commission approve the motion discussed in
2 the back of the staff report. I'd be happy to answer any
3 questions we also have with us today the appraiser that
4 worked on this project particular questions about that.
5 And Curtis Fossum, the attorney, worked on the legal side
6 of it here as well.

7 CHAIRPERSON BUSTAMANTE: Thank you, Paul. I know
8 that in the initial presentation of this, I was very
9 concerned about whether or not we could meet the public
10 trust in moving something forward. And I know that in
11 trying to configure this, this deal that there had to be
12 some methods so that the public trust would be benefited
13 in a major way.

14 If I'm hearing you right, based on the previous
15 information on the public trust, that the City of Long
16 Beach moves forward on a project that because it is
17 operating within the parameters of the public trust,
18 that's the first thing.

19 The second thing is that it was voted upon on a 6
20 to 1 vote by the council there. And it is bringing to us
21 a project in which we were looking to enhance the public
22 trust in a swap of a very small piece of property that we
23 believe would diminish from the kind of project that was
24 being suggested.

25 And therefore, we had properties that were

1 diminished, although they were in the public trust, they
2 were diminished and we were looking to enhance the public
3 trust in some type of a swap of some type. Meeting all
4 the requirements, you said that we have increased the
5 public trust, not only in terms of land size by three
6 times, also by a \$500,000 net asset value, as well as the
7 earmarking of \$605,000 specifically for the Los Cerritos
8 wetlands.

9 And my understanding is that that last piece the
10 audubon society has expressed support for that portion of
11 this activity; is that correct?

12 EXECUTIVE OFFICER THAYER: I understand that
13 they're very interested in the Los Cerritos project going
14 forward.

15 CHAIRPERSON BUSTAMANTE: I believe we have a
16 letter on file.

17 And what we are trying to ensure is that we are
18 not setting a precedent with regard to a public trust
19 doctrine by just swapping out land whenever it is
20 convenient, but that in this particular case, it made some
21 real sense in trying to ensure that the public trust along
22 with the appraisal that you completed, that diminished the
23 property value by just over a million dollars in order to
24 be able to get public access. All of those factors, along
25 with the potential pollution of those areas were all taken

1 into account on this particular property.

2 EXECUTIVE OFFICER THAYER: That's correct. We
3 have done -- this is not a precedent. We've done these
4 exchanges in other circumstances. The Commission may
5 recall that we did one in San Diego involving a BF
6 Goodrich property. And doing it created an opportunity
7 for the Port with a larger parcel, a more concise parcel
8 to enhance public trust uses there.

9 We're likely to do it in the future. It's
10 something that the Commission does, I'd say, once or twice
11 a year on average. We, of course, have to look for
12 opportunities like this where they present themselves,
13 because this land is controlled by the local government.
14 Even though, we feel that a swap like this is in the best
15 public interest, we can't do it unilaterally unless the
16 City has something like a development proposal as this
17 one, where we have the opportunity to lift the trust in
18 exchange for better public trust value.

19 CHAIRPERSON BUSTAMANTE: Now, in the event that
20 the City and the developer does not move forward on their
21 project, does that then mean the \$605,000 would not go
22 toward the mitigation?

23 EXECUTIVE OFFICER THAYER: That's within the
24 discretion of the Chair -- or, excuse me, within the
25 discretion of the Commission to decide how to spend that

1 money. And, of course, we could spend it in Los Cerritos
2 should it choose to do so.

3 CHAIRPERSON BUSTAMANTE: Okay. What about the
4 exchange of the property?

5 EXECUTIVE OFFICER THAYER: The exchange of
6 property, again, it's up to the Commission as to how we
7 want to structure this. The discussions with the City so
8 far have been along the lines that if this development
9 does not go forward, then the exchange will not occur.

10 However, it's within the discretion of the
11 Commission to require a more absolute agreement, such that
12 if the Commission believes that this is a good deal for
13 the public trust and for the State of California, it could
14 approve this with a requirement that there be a binding
15 agreement on both the City and the Commission.

16 CHAIRPERSON BUSTAMANTE: What would be the reason
17 not to do that, I mean, from our perspective?

18 EXECUTIVE OFFICER THAYER: The only reason might
19 be that once -- if a different developer comes in with
20 different plans, we may need to do an additional exchange.
21 However, if we're able to obtain terms similar to this
22 one, that wouldn't be bad for the State either, in that
23 this particular agreement has been set up in a way that it
24 does not rely on this development to make --

25 CHAIRPERSON BUSTAMANTE: Well, \$605,000, I think,

1 you know, has to come under the jurisdiction of the
2 Commission. It is under the jurisdiction of the
3 Commission.

4 EXECUTIVE OFFICER THAYER: Yes.

5 CHAIRPERSON BUSTAMANTE: Why don't we hear
6 from -- unless there's questions by members?

7 ACTING COMMISSIONER PORINI: At some point, I
8 would like to hear the appraiser walk through that
9 process.

10 CHAIRPERSON BUSTAMANTE: Do you want to do that
11 now?

12 ACTING COMMISSIONER PORINI: Sure.

13 MR. PORTER: Good afternoon. Jim Porter. I'm a
14 staff appraiser with the Lands Commission.

15 CHAIRPERSON BUSTAMANTE: We're requesting a quick
16 run through.

17 MR. PORTER: Sure. I was asked to provide an
18 appraisal of the fee simple value of the market value of
19 the property in question.

20 I did that by applying traditional appraisal
21 methods on the sales comparison approach. I went out and
22 searched for market data of recent sales transactions of
23 similar properties in the market area. I made a
24 determination of the highest and best use. And after
25 assembling all my market data, looked at the range of

1 values, I selected the best available comparable property
2 for each property in question, and concluded an estimate
3 of value.

4 And that's kind of the quick and easy answer for
5 you. If you'd like something more specific.

6 CHAIRPERSON BUSTAMANTE: Do you want more detail?

7 ACTING COMMISSIONER PORINI: No, I think that's
8 fine. Thank you.

9 CHAIRPERSON BUSTAMANTE: We'll start with the
10 speakers. Again, we need to limit ourselves in order to
11 be able to allow everybody to be able to speak on this
12 issue. Ann Cantrell, Rod Chisessi and Lester Denevan.
13 Please, all three come up. You can speak one after the
14 other.

15 MS. CANTRELL: Good morning. Ann Cantrell. And
16 I'd like to address your attention to Exhibit A, which is
17 also up here. Parcel 1 and 2, which has been referred to
18 as Los Angeles River property is what I refer to as the
19 freeway median property, because the freeway off ramps and
20 on-ramps run on each side of this.

21 There is no public access to this land. That was
22 why in the appraiser's evaluation they subtracted
23 \$1,305,000 from the value of it.

24 In talking to Mr. Thayer, I was told, well, the
25 City could put in a bridge across or the freeway could be

1 moved. I'll pause for laughter here.

2 A letter from our city engineer, Mr. Shikata,
3 indicates that neither one of those options could be done
4 for a million dollars, and he suggested putting in a
5 signal here so that people could cross across the freeway
6 and get to this land, which is being referred to as part
7 of Cesar Chavez Park.

8 It has been included as part of Cesar Chavez Park
9 in the City recreation rage, but there has not been any
10 access to it. There is still not going to be any access
11 to it. To have any value for recreation and access for
12 the public of California to get there, I think you should
13 wait until there is some access before considering this as
14 a swap.

15 The portion immediately to the north of that,
16 which is wetlands, possibly, this is not going to be
17 wetlands, because there's no access to water, but the one
18 north of that can be perhaps restored wetlands. We're
19 getting a study done to see if it can be wetlands. Both
20 of these areas are already city owned property. We can
21 already make them public park or wetlands, assuming, of
22 course, that the little strip along that wetlands, which
23 belongs to the railroad, which keeps access to the water,
24 from happening, if we get the land from the railroad, then
25 perhaps we can restore this wetlands.

1 I'd also like to address the Queensway Bay parcel
2 north of Shoreline. You'll notice that there in red on
3 your map, Exhibit A, are the only portions of this 14
4 acres that are going to be swapped. The reason for that
5 swap was because those are where they want to put
6 nonpublic trust uses, the movie theatre, the day spa, et
7 cetera.

8 If this is indeed worthless land, no longer
9 tidelands, no longer tidelands use, then the whole 14
10 acres is not tidelands or usable tidelands, and you should
11 be swapping the whole 14 acres not spot zoning this.

12 Today Mr. Stevens said that the buck stops here
13 at the State Lands Commission. You shouldn't wait till
14 the Legislature decides whether this should go through or
15 not. This is your determination. And you were concerned
16 in April about this being a precedent setting issue. This
17 is going to make it even more precedent setting. If you
18 allow a swap like this in Long Beach, every city up and
19 down the coast that wants to put some nonpublic trust --
20 some nonpublic trust use to their tidelands will look for
21 a land swap.

22 Thank you.

23 CHAIRPERSON BUSTAMANTE: Thank you.

24 COMMISSIONER CONNELL: Can I ask a question as
25 he's moving forward. Let's review again how we're going

1 to get access to this site.

2 EXECUTIVE OFFICER THAYER: This site may very
3 well require -- we expect it to require some kind of
4 improvement for access to the are, a pedestrian bridge,
5 another off lane along north or southbound Shoreline
6 Drive, but that's why we diminished the value of it.

7 COMMISSIONER CONNELL: Yeah. Well, where are we
8 going to get the money to grant the access. I'd hate to
9 own property that no one can get access to.

10 EXECUTIVE OFFICER THAYER: It would be up to the
11 City at that point to decide whether or not they wanted to
12 improve it. Just as it is right now, they have this piece
13 of land, which they're not using for public use. It's
14 landscape only. But again in terms of it's value to the
15 public trust, we diminished it to reflect the cost of
16 those improvements, so that we're not giving the total
17 market value in recognition of this property.

18 COMMISSIONER CONNELL: So this then has shifted
19 from our responsibility to theirs, is what you're saying?

20 EXECUTIVE OFFICER THAYER: Well, it's like any
21 other piece of tidelands where it's up to the local
22 government to decide the best way to improve it. And it
23 would be up to the City to decide how they wanted to make
24 the improvements to use this. In the same way that the
25 other tidelands --

1 COMMISSIONER CONNELL: What would it most
2 naturally be used for?

3 EXECUTIVE OFFICER THAYER: It could be used for a
4 park with that Shoreline connection. Actually, the
5 existing Cesar Chavez Park runs along one of those
6 northbound lanes. And what they've done is they've put a
7 small berm in there, and a bridge -- not a bridge, and a
8 fence to prevent safety problems with users of Cesar
9 Chavez. They probably have to do the same thing with this
10 strip here.

11 COMMISSIONER CONNELL: Thank you.

12 MR. CHISESSI: Lieutenant Governor and Members of
13 the Commissioner my name is Rod Chisessi. I represent the
14 developer who is working on the commercial portion of
15 Queensway Bay.

16 I want to speak just to one point there. A
17 discussion came up a moment ago about whether or not this
18 item would be escrowed, if you will, pending the
19 developer's completion of the project. So I wanted you to
20 be able to hear from the developer and tell you where we
21 are in terms of moving forward with this project. We've
22 been working with the City here now for about three years
23 on this project, and we've master planned the commercial
24 project that's in keeping with the City's master plan for
25 this particular portion of the overall Queensway Bay

1 project.

2 We are, in terms of planning, we have selected
3 our contractor. We have drawn working drawings with our
4 architect, which are now probably 80 percent of those
5 plans have been in the City for quite some time being plan
6 checked. I'm coming up on needing only five percent,
7 20,000 square feet to meet my preleasing requirements to
8 secure my financing both my equity and my debt.

9 And I assure you that with your assistance today,
10 that we will be probably moving forward with this project
11 sometime in December. In fact, I think we'll take a
12 precursor step here later on this month to move a major
13 sewer line that's currently on the site over where it
14 needs to be in the street right of way, that will allow us
15 to even further accelerate the project.

16 So we're poised and ready to go. I just wanted
17 to give you that assurance, if you had any question about
18 the developer's efforts.

19 CHAIRPERSON BUSTAMANTE: Okay, thank you.

20 MR. CHISESSI: Thank you very much.

21 CHAIRPERSON BUSTAMANTE: Mr. Denevan.

22 MR. DENEVAN: Lester Denevan, resident of Long
23 Beach. You might recall at your meeting of April 24th
24 this year that the Coastal -- or the Lands Commission
25 staff stated that there was no public investment in this

1 project. However, in 1964 the Lands Commission approved
2 \$10 million to create this site, that's 113 acres. The
3 \$10 million perhaps would be worth \$50 million today.

4 So the plan was approved and there were
5 conditions attached by the Lands Commission, quote, "To be
6 subject to the conditions, however, that the work
7 conformed to essential details to the plans and background
8 material heretofore submitted."

9 I refer you to Minute Item number 27 of October
10 22, 1964. I've passed this around. I believe you have
11 copies of my letter. There's a map. There's a photograph
12 and there is also a copy of the minutes of the Lands
13 Commission meeting of 1964.

14 Now, the Lands Commission has jurisdiction over
15 this project, but not only that, the Lands Commission has
16 conditions which are attached, and it is your
17 responsibility to see that those conditions are carried
18 out.

19 So I want the staff to reply to this question of,
20 and the Commission itself, do you have authority to
21 enforce your own conditions.

22 Going on, very gratefully, to the matter of the
23 change in the plans, since 1995, at which time there was
24 an Environmental Impact Report, that the plan has changed
25 in substantial ways.

1 For example, the lot coverage has been increased,
2 the events park was to have had 12 acres; if you go out
3 there, you'll find four acres; Shoreline Park, the EIR
4 called for 36 acres they've provided 23 acres. So the
5 Lands Commission should be looking at this entire project
6 Today requested of maybe three parcels, you should be
7 looking at the entire project in total context.

8 So what I'm recommended is that you defer this
9 project until the City can prepare a new EIR, until the
10 City can present a plan to you of the total project and
11 the total plan, so you can see everything in context.

12 And then I think that we deserve to abide by the
13 CEQA, the California Environmental Quality Act. I have a
14 list of 18 major changes in the project and I can
15 authenticate all my statements. I'll leave this for your
16 staff and members of the Commission, please.

17 Thank you.

18 CHAIRPERSON BUSTAMANTE: Thank you.

19 Richard Dungell, Christopher Johnson.

20 MR. JOHNSON: I'm Christopher Johnson I'm
21 waiving my time.

22 MR. DUNGELL: Mr. Chairman, this is Rick Dungell.
23 We represent the legal counsel to the developer. And in
24 the interests of moving things along we will pass along
25 our time to the City of Long Beach. However, we'd reserve

1 a small portion of our time if needed at the end.

2 Thank you.

3 CHAIRPERSON BUSTAMANTE: Thank you.

4 Norm Ryan.

5 MR. RYAN: Lieutenant Governor, Commission
6 Members, staff and audience, my name is Norm Ryan. I'm a
7 resident of Long Beach. I also make my living in the
8 public finance sector. I got a really nifty degree from
9 UCLA.

10 COMMISSIONER CONNELL: We all appreciate that as
11 alumni.

12 (Laughter.)

13 MR. RYAN: I just want to sort of warn you that
14 if you affect any promises and those promises have been
15 made, part and parcel to any assessment of the land that
16 you're about to get or the land that you're about to give
17 away, the City, as a resident, has made tons of promises
18 to us and has no problem with breaking them.

19 To you, they'll take a different form. They will
20 most likely say gosh, you know, funds are scarce and we
21 really had planned on doing this, but you know how it is.
22 This is what you can expect.

23 If you go forward and accept this swap, I would
24 think that you, you know, maybe aiding and abetting fraud
25 is a strong word, so maybe aiding and abetting pretend, is

1 pretend that the aquarium and this project, as you said,
2 they were complementary, will create the synergy that will
3 attract 90 million people to that facility.

4 It is pretend to stand in the middle of a median
5 and say well, this is worth the oceanview property that
6 we're about to swap out. From a resident of Long Beach,
7 it's almost pretend to say that that some of the property
8 won't be expanded for freeway usage or port usage, won't,
9 in fact, happen and you have traded out a recreational
10 plan for basically industrial purposes.

11 The appraisal seems to me the ultimate pretend.
12 We have had to scratch and beg for every piece of
13 information that we've gotten. I've had to rely on the
14 appraisals done RP Lauren and Associates for the City.
15 And if there are other appraisals that were going on, it
16 would have been nice if the public could have had that so
17 that could be part of our argument and our testimony to
18 you.

19 But if the staff is concurring with RP Lauren and
20 Associates appraisal, then I love the way that they arrive
21 at the \$16 million figure.

22 CHAIRPERSON BUSTAMANTE: Of course, since you
23 asked that question is staff agreeing with the appraisal?

24 EXECUTIVE OFFICER THAYER: Absolutely not. And
25 our staff appraisal came up with different figures,

1 particularly for the Queensway Bay parcel, and valued it
2 more highly than the City did. As a result of the surplus
3 that we've identified, over half a million dollars, it's
4 less than a surplus that the City came up with. So we, in
5 essence, sharpened our pencils and decided that the values
6 were not what the City had represented.

7 MR. RYAN: It is unfortunate that the we were not
8 allowed to scrutinize that as we were the City's report.
9 And I'd love to, to be able to find out how, for instance,
10 if they have done -- if they used the same residual value
11 formulas that this appraiser used in figuring \$175 per
12 square foot. And then said well, this is what it costs,
13 that should build it, plus the profit margin. What's left
14 must be, you know, the \$16 million value for whatever 15,
15 or 20 or whatever you came up with.

16 I would suggest and make a recommendation to you
17 that the best way of doing the comp on this property is to
18 look at the adjacent piece of property that the City is
19 already trying to bond. There's currently a \$43 million
20 bond of authorization for the 75,000 square feet. Now, if
21 you use the same formulation that these people did, on
22 residual value, you come up with \$586 per square, so --
23 yeah, about \$570 a square foot.

24 But now the documents say a substantial portion
25 of that money will be used for that. Okay, let's say it's

1 half. That still comes up to \$286 a square foot as
2 opposed to the \$175 that they started out with.

3 You know, clearly a substantial increase over 16
4 million. In this case, put it somewhere in the
5 neighborhood of 24 or 25. I don't know if your appraisal
6 concurs with that number, but I'm just simply giving an
7 alternate method, using the City's same logic.

8 I am strongly opposed to this project. The
9 biggest promise to us that would not use one dime of
10 taxpayer dollars, and now we are committed to a million
11 and a half a year, for what I consider to be a fiasco. I
12 live in Long Beach. I'm almost getting used to the
13 fiascoes. And if this going to be your first one,
14 welcome.

15 CHAIRPERSON BUSTAMANTE: Any comments?

16 COMMISSIONER CONNELL: I have a couple questions
17 here. This land raises the issue again of the appraisal.
18 And the appraisal techniques. Is there a reason why we
19 didn't do residual value and why we did the alternative
20 approach that we did on the appraisal?

21 EXECUTIVE OFFICER THAYER: Let me ask Jim Porter
22 to respond to that.

23 MR. PORTER: First of all, the property in
24 question is a vacant parcel. And under it's highest and
25 best use, it could be used for a number of different

1 possible developments. I felt that the sales comparison
2 approach using other sales of vacant land was preferable
3 in this case. And actually most of my valuation was based
4 on the sale of a parcel a block away that sold for under
5 \$20 a foot just in 1999.

6 COMMISSIONER CONNELL: But that had access.

7 MR. PORTER: No, I thought we were talking about
8 the Queensway Bay Project.

9 COMMISSIONER CONNELL: No, I'm talking about
10 ours.

11 MR. PORTER: Then, in that case I have no idea.

12 EXECUTIVE OFFICER THAYER: Well, just explain the
13 process you used for evaluating the --

14 COMMISSIONER CONNELL: Didn't you just tell us
15 you valued the Los Angeles River parcel?

16 MR. PORTER: Yes, using a sales comparison
17 approach, looking at other sales of vacant land similar
18 zoning and similar past use.

19 COMMISSIONER CONNELL: Yes. But the point is
20 they had access.

21 MR. PORTER: In this case, actually, it turned
22 out we, I think, Mr. Thayer mentioned we were getting a
23 lot of information as this process was going along and a
24 lot of things came in during the end of the project. And
25 it turns out that we do actually have access to along the

1 southern part of the median property for quite a distance
2 there on the part --

3 COMMISSIONER CONNELL: Can you show us exactly
4 where this access is existing because we're getting
5 contradictory statements here.

6 MR. PORTER: This parcel right here from
7 approximately 3rd Street down has the ability to have
8 access, public access now. This is a city owned property,
9 and there are no restrictions along there to the best of
10 my knowledge.

11 COMMISSIONER CONNELL: You mean, it has the
12 ability, does that mean that there's a barrier there?

13 MR. PORTER: Well, there's a curb but there's no
14 deeded restrictions, so there's no reason why there
15 couldn't be a legal access there. That's my
16 understanding.

17 EXECUTIVE OFFICER THAYER: Whereas there are
18 CalTrans restrictions for access from the other portions
19 of the north and south Shoreline Drive right?

20 MR. PORTER: Well, I think CalTrans' authority
21 stop here at the bridge, but I believe that there are
22 deeded restrictions along this way.

23 COMMISSIONER CONNELL: Does the freeway -- can
24 you use your pointer to show us where the freeway travel
25 is, where does the free way go?

1 MR. PORTER: It comes down here down the bridge
2 and the southbound runs right along there. This is the
3 northbound lane here.

4 SENIOR STAFF COUNSEL FOSSUM: This is southbound.

5 COMMISSIONER CONNELL: So is this the property
6 completely surrounded by freeways?

7 MR. PORTER: Well, both of those are limited
8 access multi-lane thoroughfares.

9 COMMISSIONER CONNELL: Well, I guess my question
10 here is, if I may approach the map here, this property
11 here has a freeway going down here. Does it have a
12 freeway also that goes all the way down here or does it
13 end?

14 MR. PORTER: It's a ramp that goes over it.

15 SENIOR STAFF COUNSEL FOSSUM: These ramps are the
16 onramps these are the offramps of the freeway.

17 COMMISSIONER CONNELL: Right. And this onramp
18 here how high up is that onramp.

19 MR. PORTER: It's at street grade there. It does
20 start to change as moves down.

21 SENIOR STAFF COUNSEL FOSSUM: It elevates up in
22 this area and this one comes down here.

23 COMMISSIONER CONNELL: So how are we getting
24 access to our property?

25 SENIOR STAFF COUNSEL FOSSUM: There is legal

1 access.

2 MR. PORTER: There is legal access right along
3 that street.

4 COMMISSIONER CONNELL: Well, I understand
5 legally. I'm trying to figure out structurally how does
6 somebody walk from wherever in the community to our
7 property.

8 EXECUTIVE OFFICER THAYER: There would be two
9 ways to do it, one what be to build an offramp is the
10 wrong word, but really a turning lane, because you can
11 stands at Cesar Chavez park, which you can see --

12 SENIOR STAFF COUNSEL FOSSUM: This is from here
13 to here.

14 EXECUTIVE OFFICER THAYER: -- right there, and
15 you can right across the lanes there, the two lanes, and
16 see into this divider, so there's no geographic separation
17 in elevation.

18 COMMISSIONER CONNELL: No, I'm asking the
19 question. I'm a pedestrian --

20 SENIOR STAFF COUNSEL FOSSUM: Right now you
21 can't.

22 COMMISSIONER CONNELL: -- and I am standing here
23 or here, how do I get across to this land?

24 EXECUTIVE OFFICER THAYER: You cannot get across
25 it now. The only way to get across is to either build the

1 pedestrian bridge, which we're talking about, which is why
2 the \$1.3 million reduction was made or to construct -- to
3 drive there and construct an offramp -- not an offramp but
4 a turning lane on the northbound -- no, the other one on
5 the other side.

6 SENIOR STAFF COUNSEL FOSSUM: Well, vehicles can
7 turn in there right now. There is probably a non legal
8 city -- probably city vehicles go out and maintain this
9 area come in and drive in this way right here.

10 EXECUTIVE OFFICER THAYER: But all of these would
11 have to be improved before the public could use that
12 property.

13 COMMISSIONER CONNELL: But if we to use say a
14 soccer field or little league field or Pop Warner fields
15 or whatever we would tend to use this for, which obviously
16 we have needs for all of these things in a growing urban
17 area or whatever else might be used, my question is how do
18 people safely access the site and where do they park, you
19 know -- I mean there's no point in our getting land that
20 we cannot use ever. I'm trying to answer this question in
21 my own mind today.

22 EXECUTIVE OFFICER THAYER: Yes.

23 CHAIRPERSON BUSTAMANTE: Well, there is access
24 but there is no improvements?

25 EXECUTIVE OFFICER THAYER: That's correct.

1 There's legal access, but there aren't any improvements,
2 that the Controller has identified, would be necessary for
3 intensive public use here, absolutely. And that's why we
4 made the deduction on the valuation.

5 COMMISSIONER CONNELL: So we have legal access,
6 but that doesn't help me as a citizen of Long Beach or as
7 a potential user of the site. I mean, I'm not looking at
8 a piece of paper. I'm trying to get over to that piece of
9 land, I need to know how I do that.

10 Now, we've had this situation in southern
11 California, and explaining the Bologna Wetlands, so I'm
12 particularly attuned to this issue. And if there is a
13 barrier that exists there now, then we need to surmount
14 that barrier or we have to channel underneath it or we
15 have to do something to get people to use that site
16 eventually.

17 EXECUTIVE OFFICER THAYER: Absolutely.

18 COMMISSIONER CONNELL: You know, I know am
19 supportive of what Long Beach, as a city wants to do, but
20 on the other hand, I do not wish to accept, as a trade
21 property that we cannot get to. So I need to have an
22 understanding today that we are going to be accepting a
23 piece of property that accessed, not legally, but
24 physically. And I need to have a sense of what it costs
25 to access that side and who's going to pay for that.

1 I mean, we're in the middle of a phenomenal
2 retrenchment of our financial resources here at the State.
3 And I am very concerned that we not think that we are
4 going to step forward and do this, because as I'm sure
5 Annette will tell you, we are watching every one of our
6 financial resources for very carefully at this point.

7 So I would like to have this site used soon. I
8 mean if we're going to take is an exchange for the other
9 property, then we should have someway of either giving it
10 to a nonprofit group or a public trust or someone and they
11 need to be able to know what the cost will be of accessing
12 it.

13 So that's the question that I'm asking, where is
14 it likely to gain access -- well, if you're talking about
15 a pedestrian bridge then where do those people park? I
16 mean, they have to park somewhere if they're leaving their
17 cars on the other side to get over the pedestrian bridge
18 and then that limits the use.

19 I mean, a pedestrian0 bridge as we found out in
20 the Bologna wetlands, which we found out recently in Santa
21 Monica, limits the use of the land on the other side,
22 because, you know, you can't bring certain things over
23 with you.

24 CHAIRPERSON BUSTAMANTE: Is there soccer fields
25 or baseball fields or anything on the property Queensway