

1 Bay Project?

2 EXECUTIVE OFFICER THAYER: No. They are  
3 undeveloped at this point. They're very analogous to, you  
4 know, the bare naked public trust lands that are conveyed  
5 to local entities, and then it's up to those entities to  
6 plan and construct these improvements. There would  
7 probably have to be restrooms in the long run put into  
8 this strip. There are a variety of things that would need  
9 to be done.

10 COMMISSIONER CONNELL: Have you talked to well, I  
11 guess, the City of Long Beach Mayor can address this, you  
12 know, about their willingness to make a commitment of some  
13 kind of resources so that we can get this developed?

14 EXECUTIVE OFFICER THAYER: We have not talked to  
15 them, because again the ultimate plan for this would have  
16 to be develop, once it's public trust lands. There are  
17 also State resources that the southern California Wetlands  
18 Restoration Project has made grants of, I think, about \$2  
19 million for restoration acquisition, a little bit further  
20 to the north here. The City has already obtained, I think  
21 it's \$300,000 for the wetlands study that is referred to  
22 by one of the other previous witnesses.

23 There are a variety of resources that could be  
24 brought into play, much as they are for Los Cerritos right  
25 now, where, again --

1           COMMISSIONER CONNELL: Well, when we get there,  
2 I'm sure they're going to be talking. I am concerned that  
3 we not have a gift of -- or an exchange of land here that  
4 whoever sits on this Commission five years from now is  
5 confronted with the fact that it hasn't -- we still don't  
6 have access, and it's still not being used.

7           I mean, it's imperative we to use this -- I used  
8 the soccer and little league and football analogies  
9 largely because there's such a limited amount of space in  
10 any community for those. But a wetlands is another use.  
11 I mean I'm not trying to define what the use is. It's not  
12 my role to do that. But I am concerned that we have some  
13 advocacy here from the Board about a timetable for making  
14 this site available for public use.

15           CHAIRPERSON BUSTAMANTE: Why don't we bring the  
16 City up. Mayor, why don't you and then Deputy City  
17 Attorney or whoever you believe will help.

18           LONG BEACH MAYOR O'NEILL: May I make my  
19 presentation and then the City Manager and then we can  
20 answer some of the questions that have been raised.

21           CHAIRPERSON BUSTAMANTE: Sure.

22           LONG BEACH MAYOR O'NEILL: Lieutenant Governor,  
23 Commissioners, thank you very much for the opportunity to  
24 appear before you again on this issue. After the last  
25 State Lands meeting -- I'm Beverly O'Neill, Mayor of the

1 City of Long Beach.

2 After the State Lands meeting on April 24th, some  
3 of the Commissioners expressed concern about some of the  
4 uses proposed for Queensway Bay Project. The City Manager  
5 and I met with Lieutenant Governor Bustamante to get some  
6 guidance on the objectives of the City and how the  
7 concerns of the Commissioners might be reconciled.

8 We received valuable direction and the Lieutenant  
9 Governor was very helpful in arranging a follow-up session  
10 with his staff and that of the Commission staff.

11 There has been a long and complex negotiating  
12 process since that time. However, the fact is that our  
13 two staffs were able to come up with a final agreement on  
14 the terms of this transaction. And I must say we're very  
15 grateful to Paul Thayer and his staff who have worked long  
16 and diligently to get us to this point and I know that the  
17 Long Beach project has been very time consuming.

18 I was also happen to note that the Commission's  
19 own staff report provides a historical background when in  
20 1992 the City started a major citizens planning process to  
21 create the Queensway Bay Development Plan. At that time,  
22 the Mayor and the City Council appointed 23 citizens as  
23 representatives from all areas of the City to work on this  
24 development plan.

25 Your staff report goes on to describe a planning

1 effort that from my experience was the most sustained and  
2 broad based an inclusive of any development proposal that  
3 we have formulated in the City of Long Beach.

4 Today's elements of the Queensway Bay Plan  
5 development are fully consistent with the objectives of  
6 that plan approved in 1994. After a series of delays, we  
7 were advised last week that the developer is scheduling a  
8 groundbreaking on this long overdue project. Your  
9 authorization of this exchange will effectively remove the  
10 last remaining impediment to long awaited groundbreaking  
11 and I request your support of this transaction.

12 And I'd like to just end by saying we work with  
13 the State Lands Commission on many issues. Because we are  
14 a coastal city, we have a very active California port, and  
15 we have Department of Oil properties.

16 And so I value highly the cordial and productive  
17 working relationship that the City has enjoyed with this  
18 Commission and staff during my time of office. And I  
19 believe that the action before you provides testimony to  
20 the strength of that relationship.

21 And I do appreciate your stewardship in being  
22 thorough in making sure that we have followed all of the  
23 requirements required by the State Lands Commission.  
24 There have been many issues brought up and questions about  
25 access, and I think they are included in the City

1 Manager's report, and then we would like to have any  
2 questions that you might have.

3 LONG BEACH CITY MANAGER TABOADA: March Chairman,  
4 Lieutenant Governor, Members of the Commission Henry  
5 Toboada. I'm the City's City Manager. And I'll forego my  
6 presentation, because I think that the issues before us  
7 are of more importance than simply restating what was  
8 already on the record.

9 I thought, though, that the staff report on the  
10 public trust doctrine was very instructive for all of us,  
11 and I commend your leadership in bringing that forward,  
12 because I think that ambiguity needs to be dealt with and  
13 we certainly will value that doctrine as a guideline for  
14 us in the future.

15 With regard to access, it is an important issue  
16 and it's one that we've struggled with as a city with how  
17 we would utilize that particular park land effectively.  
18 And when we were planning Cesar Chavez park that was one  
19 of the issues that we were confronted with.

20 And while it is, in fact, as you will note, the  
21 means to which access to the 710 freeway. The 710 freeway  
22 doesn't start till right there. That's where the State's  
23 freeway system terminates.

24 Everything here along both sides of Cesar Chavez  
25 Park is really city owned streets that can be signalized,

1 if necessary, for providing access. We don't think that's  
2 the superior option, but it's one that we can certainly  
3 take a look at.

4 Also, when we were planning Queensway Bay and the  
5 aquarium project, for instance, we noticed that if you  
6 passed by this that you wouldn't be able to get back on  
7 and turn around until you were up the Pacific Coast  
8 Highway. We built right here a turnaround, right here,  
9 just south of the parcel in question and we can examine  
10 that. And there is access, believe it or not, underneath  
11 here to that particular parcel, if we could, you know,  
12 when we get ready to start to develop that.

13 With regard to the City Engineer and our Public  
14 Works Director's report on what it would cost to provide  
15 access with an overpass or something of that sort, and  
16 that a million dollars was not a feasible number, that was  
17 with regard to the automobile traffic not pedestrian  
18 and/or bike trails.

19 As your staff will advise you, this land here,  
20 because of its new State trust designation, will really be  
21 limited in use as to what type of recreation will be  
22 available there. And things like Little League and soccer  
23 fields and volley ball courts and those kind of things are  
24 not right now considered acceptable uses on that parcel.

25 The uses that are deemed to be acceptable by your

1 staff on that parcel are things like picnic benches, bike  
2 trails and paths Of recreation uses.

3 Commissioner Connell brings up a good point about  
4 where people would park. With a pedestrian overpass from  
5 Cesar Chavez across to there, with a bike trail that would  
6 connect along the bike trail system long the LA River,  
7 certainly that would be one way to access that parcel for  
8 passive recreation.

9 There is also sufficient parking at Chavez's Park  
10 and it's just a short walk across an overhead and an  
11 overpass could be constructed.

12 With regard to the City's commitment to that  
13 structure, we have always contemplated that that parcel of  
14 land that is now basically bound by what we call city  
15 streets, that we would have to deal with that. And so as  
16 I suggested either with the turnaround or the use of a  
17 pedestrian bike trail bridge, which we would fund, not at  
18 the State's obligation, but certainly as the city's  
19 obligation as part of our capital program, we commit to  
20 you that that is, in fact, part of our workplan and that  
21 we would commit to do that in a reasonable time period.

22 I stand ready to answer any other questions that  
23 you may have about this project.

24 COMMISSIONER CONNELL: Yes. I have a number of  
25 questions. First, I'd like to go back to the comment of

1 the uses and the restraint on the uses. Paul, can you  
2 comment on that.

3 EXECUTIVE OFFICER THAYER: Yes. This is the  
4 boundary between different recreational uses that I  
5 discussed earlier with respect to what's allowed on public  
6 trust lands and what's not. And, basically, this revolves  
7 around the principle that public trust lands are supposed  
8 to be used for greater than local import, so they provide  
9 visitor serving facilities or the types of facilities that  
10 would be used by people coming from other parts of the  
11 State or other parts of the region.

12 So there is some problem with having recreational  
13 facilities that serves strictly a municipal use. They're  
14 not considered to be the same as a municipal park. This  
15 has broader implications. And so the exact uses usually  
16 require a lot of discussion and makes changes from place  
17 to place, but that's the issues.

18 COMMISSIONER CONNELL: By why would anyone want  
19 to sit there and have a picnic. What is the view from  
20 that location?

21 MS. CANTRELL: The freeway.

22 COMMISSIONER CONNELL: Pardon me?

23 MS. CANTRELL: The freeway.

24 LONG BEACH CITY MANAGER TOBOADA: Commissioner  
25 again, I state that while it may look like a freeway,



1 there wasn't --

2 (Laughter.)

3 LONG BEACH CITY MANAGER TOBOADA: I'll excuse my  
4 colleagues from Long Beach. There was a real  
5 consideration right here as to how people would access  
6 onto the two sides of the park that are now divided by a  
7 street that becomes an onramp up here to the 710 Freeway.

8 We constructed a signal and we now have a  
9 signalized intersection that connects this part of the  
10 park with this part of the park. So it is something that  
11 is not the most ideal situation, but it's one that works  
12 well, both sides of the park are equally used and people  
13 travel back and forth safely from one end to the other.

14 We envision that this would be the third part of  
15 the park that would be similarly configured, either  
16 through a signalized intersection, through an overpass,  
17 even a tunnel, perhaps, that's another issue -- aspect  
18 that we haven't considered or, as I pointed out, before a  
19 turnaround like we have here, could be constructed up here  
20 as well.

21 COMMISSIONER CONNELL: Well, and I appreciate  
22 that. There are really three issues in any land use  
23 decision, the one is value, the other is access and the  
24 third, of course, is use.

25 Now we've established value. Our appraiser has

1 done that for us.

2 LONG BEACH CITY MANAGER TOBOADA: And it's been  
3 discounted for that condition.

4 COMMISSIONER CONNELL: Right. So we are now on  
5 access and use. And it seems to me that we ought to hear  
6 some sense of timing of the City's willingness to put  
7 forth whatever you're going to do to grant access to the  
8 site, whether it's a tunnel, as you've just expressed,  
9 whether it's a bridge, whether it's signalizing your local  
10 streets. And, I mean, this is not -- you know, I'm really  
11 not in a position to define what you may chose do that.  
12 That's your local option.

13 My question is, are there resources, are they  
14 identified clearly in your budget? If we were to go back  
15 to Long Beach and hold a Commission meeting, would we find  
16 that the residents of Long Beach feel that there has been  
17 adequate consideration of eventually being able to  
18 transform this property, which will now be available to  
19 you for greater public use. That's my question.

20 LONG BEACH CITY MANAGER TOBOADA: It's part of  
21 our planning for the overall development of the entire  
22 area and we don't have specific capital projects to  
23 develop much of it. We don't have specific funding to  
24 acquire some of the property that we're looking to acquire  
25 up in this area and along in here, but certainly that is

1 part of our workplan and something that we're committed to  
2 as a city.

3 If you need that kind of guarantee, I can't give  
4 you that, because I'm not empowered by my City Council to  
5 do that. But certainly they have seriously looked at it  
6 in the development of Cesar Chavez Park, that eventually  
7 it would be a much larger facility than is currently there  
8 now. And it would make no sense to leave this property  
9 isolated and not part of the total complex.

10 CHAIRPERSON BUSTAMANTE: Could you describe for  
11 the Commission what this property is now?

12 LONG BEACH CITY MANAGER TOBOADA: That particular  
13 property?

14 CHAIRPERSON BUSTAMANTE: Queensway Bay Project  
15 area. No, the Queensway Project.

16 LONG BEACH CITY MANAGER TOBOADA: The Queensway  
17 Bay Project area right now is a parking lot, that is used  
18 by the --

19 CHAIRPERSON BUSTAMANTE: Is it a grassy parking  
20 lot, is it a dirt parking lot?

21 LONG BEACH CITY MANAGER TOBOADA: It is asphalt,  
22 sir.

23 CHAIRPERSON BUSTAMANTE: It's an asphalt parking  
24 lot.

25 LONG BEACH CITY MANAGER TOBOADA: That's correct.

1 CHAIRPERSON BUSTAMANTE: How many acres?

2 LONG BEACH CITY MANAGER TOBOADA: Approximately  
3 14 acres at this location, and eight acres at this  
4 location.

5 CHAIRPERSON BUSTAMANTE: So the area that we're  
6 talking about on the other side of that large roadway --

7 LONG BEACH CITY MANAGER TOBOADA: Six lane  
8 freeway.

9 CHAIRPERSON BUSTAMANTE: Well, it's a six-lane  
10 road. And it's on the other side of the water area, is  
11 the area that we're talking about?

12 LONG BEACH CITY MANAGER TOBOADA: That's correct,  
13 sir.

14 CHAIRPERSON BUSTAMANTE: And this is a paved  
15 parking lot.

16 LONG BEACH CITY MANAGER TOBOADA: That's correct.

17 CHAIRPERSON BUSTAMANTE: So if you were sitting  
18 there, you would see that six-lane road?

19 LONG BEACH CITY MANAGER TOBOADA: And other  
20 structures.

21 CHAIRPERSON BUSTAMANTE: Okay. So we're talking  
22 about, you said, 14 acres?

23 LONG BEACH CITY MANAGER TOBOADA: I believe  
24 that's the size of that parcel.

25 CHAIRPERSON BUSTAMANTE: So 14 acres of asphalt

1 parking, is what we're talking about, right?

2 LONG BEACH CITY MANAGER TOBOADA: That's correct.

3 CHAIRPERSON BUSTAMANTE: Any other questions?

4 COMMISSIONER CONNELL: So going back to the  
5 budget. The budget has a capital budget. And your  
6 municipal budget has a capital budget category, right?

7 LONG BEACH CITY MANAGER TOBOADA: That's correct.

8 COMMISSIONER CONNELL: And in that capital budget  
9 category, you have road improvements, et cetera. Do you  
10 have a Parks and Recreation component of the capital  
11 budget that specifically says Cesar Chavez Park and  
12 expansion at some point?

13 LONG BEACH CITY MANAGER TOBOADA: We have capital  
14 projects for Cesar Chavez Park, yes, but not any that deal  
15 with the issue that's being raised here today.

16 COMMISSIONER CONNELL: Thank you.

17 CHAIRPERSON BUSTAMANTE: Any questions?

18 ACTING COMMISSIONER PORINI: No.

19 CHAIRPERSON BUSTAMANTE: Okay, thank you. Please  
20 be available for any other questions.

21 Diana, is this Marin?

22 MS. MANN: Mann.

23 Again, I'll try not be argumentative or cranky,  
24 but there's some things in that I think you need to know.  
25 First of all, I think that since the dinosaurs were

1 babies, human beings are tribal and we work that way in  
2 communities, and we elect and we work with our tribal  
3 leaders.

4 And what's happened throughout the ages is that  
5 our tribal leaders have a tendency to make decisions based  
6 upon what's good for the tribal leaders and not for the  
7 tribe. And I think that this is a good example of what's  
8 happening here, is that, for instance, in the 1980's the  
9 citizens of Long Beach passed an ordinance that the  
10 Queensway Bay be an open space park. That is already park  
11 land that we are giving up for a shopping center.

12 Okay. So now if you look, I don't have that  
13 little thingy, but if you look across the street --

14 COMMISSIONER CONNELL: He'll assist you.

15 MS. MANN: There is a park right there. Right  
16 around in here, those buildings are going to be taken  
17 down. There's going to be a school there. And the school  
18 does not have -- they didn't plan enough park land for the  
19 kids to play. So what we're doing they're doing is  
20 they're talking away Cesar Chavez -- part of the park over  
21 here, and that's going to be sectioned off, and it's going  
22 to be not available to the public during school hours.

23 So if you look at this whole area, you look at  
24 this area, there's not a lot of open space, there's not a  
25 lot of park land, there's not a lot of recreation area for

1 kids, so what's happened is that we're losing our park  
2 land in Queensway Bay. We're losing our park land at  
3 Cesar Chavez Park, because of the situation I just  
4 described. And now we're getting park land over here,  
5 which we're losing the recreational value.

6 So what I'm trying to tell you is that this may  
7 be a good swap for the State Lands, maybe, maybe not, and  
8 it obviously is a good swap for the developer, and the  
9 tribal -- the folks that we've elected as City officials,  
10 but for the public at large this is not what we wanted.  
11 This is not a good deal.

12 I also wanted to tell that you in the 1980s the  
13 citizens passed an initiative. Now, I think when an  
14 initiative is passed doesn't it have to be changed by an  
15 initiative. So we've got something -- we have that to  
16 look for.

17 I wanted --

18 COMMISSIONER CONNELL: What did the initiative  
19 do?

20 MS. MANN: Pardon me?

21 COMMISSIONER CONNELL: When did the initiative  
22 do?

23 MS. MANN: It established that as a park land.

24 COMMISSIONER CONNELL: Which is the park land.

25 MS. MANN: The Queensway Bay.

1           Okay. And the Mayor spoke about the Citizens  
2 Advisory Board in 1982. Lester Denevan was on that  
3 advisory board, and it was not unanimous. It was very  
4 contentious. So I just wanted to let you know that that  
5 was kind of an issue there.

6           And as far as the responsible time period that  
7 you were mentioning about this public access, I would, if  
8 you're going to pass this today, I think it would be  
9 really helpful if you had specific a timeframe, because  
10 we've been led down the roads of path and it continues to  
11 get nowhere.

12           So I just wanted to mention all those things.  
13 And also the fact that, if all this is all going to  
14 happen, then I still think we need an EIR.

15           Okay, thank you very much.

16           CHAIRPERSON BUSTAMANTE: Thank you.

17           Don May and Bry Laurie Myown.

18           COMMISSIONER CONNELL: Paul, may I ask a  
19 question. Would it be easier to create a recreational  
20 area with visitor access in Queensway Bay area or in the  
21 proposed swap area?

22           EXECUTIVE OFFICER THAYER: I guess that's hard to  
23 answer. Certainly, there's better access to the parking  
24 area that the Lieutenant Governor identified as being the  
25 parking area right now. But in terms of having other



1 water-based amenities, as the public trust document  
2 generally favors, the remoteness of the Queensway Bay  
3 parcel is even further way from what's shown as a swimming  
4 lagoon. And that's no longer a swimming lagoon, but in  
5 the old plan that's what it was going to be.

6 Then the new parcels are going to come into the  
7 trust from the LA River.

8 COMMISSIONER CONNELL: What's a swimming lagoon?

9 SENIOR STAFF COUNSEL FOSSUM: That was in the 1960  
10 plan.

11 EXECUTIVE OFFICER THAYER: I'm sorry, this was  
12 the old plan here and that's been now traded in for a more  
13 boat oriented lagoon right here, but I mean the basic  
14 point would be that this property is much closer to the LA  
15 River bike path that kind of thing, and so there's more of  
16 an opportunity to relate this to the water than this  
17 parcel here.

18 So in terms of -- absolutely, in terms of  
19 recreation areas, there may be some advantages in doing  
20 this from a municipal perspective, but from a public trust  
21 perspective, and the necessity of having some connecting  
22 to water, we think this has the better opportunities  
23 there.

24 MR. MAY: Yes, Mr. Chair, again, Commissioners.  
25 Done May with the California Earth Corps. I have to take

1 just a second to comment about the swimming lagoon, which  
2 is part of the park that Long Beach has had. When we put  
3 in the Queen Mary, we had to do mitigation for the taking  
4 of soft bottom habitat there, and that went next door.

5 And then it turned out there was going to be a  
6 boat motel there, so the mitigation moved across to the  
7 other way, where it turns out there was going to be a  
8 Hyatt Hotel, so the mitigation moved over to Sleep Lagoon,  
9 but that had to be modified for the Queensway Bay, so it  
10 went to the swimming lagoon you see there. And then as  
11 long as that changed again now, we have gone from the 40  
12 odd acres we were supposed to get to five acres, which is  
13 over here in the corner.

14 This is what's happened to us as we hit these  
15 parcels that are swapped around, around, around and around  
16 and the public never gets the use.

17 We have that situation here, again. What you  
18 have before you is not only outside the criteria in the  
19 statutes and case law, it's a spectacularly bad deal for  
20 both the state and for the citizens of Long Beach. We  
21 should point out why that is.

22 We did point out back in 1992 and '93 when this  
23 was first considered that there was a problem with the  
24 uses intended, that they were outside public trust  
25 doctrine, particularly it seems they already looked at the

1 Disney Sea who was going to do a similar kind of thing and  
2 ran into the similar kind of problems and Disney Sea did  
3 not go forward, and it was pointed out back then that they  
4 were going down that same road.

5 So this is not knew. This has been discussed by  
6 the City for a long time.

7 COMMISSIONER CONNELL: Where was the Disney  
8 project?

9 MR. MAY: The Disney project was looked as part  
10 of Pikes Project and across the wetlands on the other side  
11 of the river.

12 It's really a travesty to try an excise out the  
13 footprints of the offending uses from sovereign land,  
14 while developing the sounding tidelands in the legitimate  
15 public trust uses. It's insulting to all of us to declare  
16 inland public park, already protected, already funded for  
17 restoration with State funds as tideland uses and insist  
18 that some kind of public benefit has occurred.

19 It's impermissible to exchange tidelands status  
20 to a land dedicated to nonpublic trust use, and here, let  
21 me point out, that the intended use for that as an  
22 adjunct, in fact, it's already been counted as the acreage  
23 in Cesar Chavez Park is for school yard, soccer, active  
24 sports, things not public trust uses.

25 You can't do a swap to land that's already

1 planned for nonpublic trust uses. You're precluding the  
2 very benefit that the State's is supposed to gain. There  
3 is no benefit here. If you did, in fact, the things that  
4 would allow equal access to that median strip, you block  
5 access to the rest of it.

6 Take another look here, if you move from the west  
7 side, move the freeway over to the east side, as was once  
8 considered, the only way you can put the onramp is through  
9 off of Shamika Bridge right down through the 6th Street  
10 parcel. Take your choice. Do you want to put a public --  
11 use the 6th Street parcel or do you want to use the median  
12 strip. You can't use both.

13 I would also like to point out that fundamentally  
14 land swaps require legislative approval. That is the  
15 reason that you have Public Resources Code 6307. It  
16 points out only in rare cases may public trust be  
17 terminated and only where it's consistent with the  
18 purposes and needs of the original 1911 trust.

19 What are those? You just heard them. Best  
20 interests of the State for improvement of navigation? No.  
21 Aid in reclamation? No. Flood control protection? No.  
22 Enhancing the configuration of the shoreline for  
23 improvement of water? No. Navigable river, sloughs,  
24 streams, straits? None of those. Will it substantially  
25 interfere or just straighten out a problem with

1 interfering the right of navigation of fishing? No.

2           You also can only use land swaps when it solves a  
3 title or boundary dispute. There's no title or boundary  
4 dispute here. What you have is a dispute with the  
5 developer that wants to use a nontrust land. The  
6 precedent next door with the old pipe property where the  
7 \$605,000 came from that, in fact, was a small parcel where  
8 you, in fact, had a boundary problem that was resolved by  
9 that swap.

10           That's why \$605,000 for .18 acres set the price  
11 of this land, do the math, 3.3 million back in 1992. That  
12 means you've understated the value of the Queensway Bay  
13 project by a factor of ten. At the same time you  
14 overestimated the value of the other hands.

15           You talk about Los Cerritos, we're heavily  
16 involved in Los Cerritos. And up and down the coast we've  
17 been involved in a lot of land purchases. Never has a  
18 conservancy or trust to the public land or any of the  
19 conservancies coastal conservancy agency or any other  
20 agencies had to pay more than \$34,000, with the exception  
21 of the one parcel down at San Diego, where Edison paid  
22 \$70,000, but that's because they saved seven and a half  
23 million by using the lands as a lay down area.

24           All other parcels we've paid way less than  
25 \$34,000. You're paying too much.

1           Parcels are not Of equal value. They're not of  
2 equal access. It's a parking lot there now, right. It's  
3 also -- it was supposed to be back in '93 when we all  
4 agreed on what this was going to be for. I should have  
5 brought up the beautiful picture that was on the EIR  
6 showing pedestrians strolling along the shoreline, a  
7 pedestrian oriented area, lots of picnic area, no uses  
8 which were not, with the exception of the theatre. There  
9 was a delightful place, a project that has substantially  
10 changed all the way along.

11           Long Beach indeed, more than any other California  
12 city, has lost we've lost 99 percent of our tidelands.  
13 Had originally had over 5,000 acres of trust lands,  
14 submerged lands salt water tidelands in Long Beach. We  
15 have 65 acres left. We're looking to lose more.

16           The acreage we're talking about over at Los  
17 Cerritos, by the way, is funded by \$13 million we got from  
18 you folks from the State. Thank you very much. We  
19 greatly appreciate it and matching funds we obtained  
20 elsewhere, including \$1.8 million that came from  
21 California Earth Corps. \$605,000 is not needed over  
22 there. As matter of fact, the Trust For Public Land, the  
23 Wild Life Conservation Corps is the one that's involved  
24 now in the purchases. We can certainly use it, but  
25 already those funds are earmarked.

1           There is no overriding State benefit here. There  
2 certainly is an overriding State benefit in Queensway Bay  
3 project itself, but the parcels you're talking about  
4 trading for are ones that the Coastal Conservancy, we've  
5 been very involved in 6th Street looking for restoring  
6 land up and down the LA River, as the San Diego River.  
7 Those are commendable, wonderful, but they're already  
8 funded. The representatives of the Coastal Conservancy is  
9 here to talk about the CH2MHill grant.

10           CH2MHill has not yet determined, that's the  
11 purpose of the grant is to figure out what the best use of  
12 that land is. They are looking at wetlands, right, but  
13 preliminary comments indicate that they're a little  
14 pessimistic about that.

15           One of our folks, David Sundstrom did a study of  
16 what was supposed to go on that 6th -- what would best go  
17 on that 6th Street parcel and we got shot down on that.  
18 The same problems still remain. It's a very problematic  
19 area, not only the containment issue, the Union Pacific  
20 property and others. It just doesn't make sense to go  
21 forward on the 6th Street parcel until all these problems  
22 have been resolved.

23           It's very premature.

24           CHAIRPERSON BUSTAMANTE: Mr. May, would you sum  
25 up.

1           MR. MAY: I'll summarize. The Project, as you  
2 point out, is subject to CEQA. It requires an  
3 Environmental Impact Report for the same reason it  
4 requires legislative approval, because you haven't met all  
5 of those criteria.

6           You have the letter from our attorney regarding  
7 that. I won't go into that. Do please look at the letter  
8 from Jane Brown. It goes into all the CEQA violations  
9 that are proposed by this.

10          That's the reason that you do an EIR is to  
11 provide the reliable, factual data that form the basis of  
12 good public decisions. You don't have that data before  
13 you now. I would strongly urge that you require an EIR be  
14 performed now to come into conformance with CEQA. That  
15 will provide the information you need to make a good  
16 decision.

17          Thank you very much for your attention.

18          CHAIRPERSON BUSTAMANTE: Thank you. Mr. May. I  
19 know that I allowed you to speak much longer than three  
20 minutes, but I thought you were making very a thorough  
21 presentation and I didn't want to interrupt it. You did  
22 raise some issues I'd like to have staff respond to. The  
23 legislative approval. Does this require legislative  
24 approval?

25          EXECUTIVE OFFICER THAYER: No, it does not. The



1 Legislature enacted Section 6307 that delegated to the  
2 Lands Commission the authority to do this.

3 CHAIRPERSON BUSTAMANTE: On the 1980 initiative,  
4 what part does that play in this process.

5 EXECUTIVE OFFICER THAYER: I think Mary Cow from  
6 our staff might now. Was that the proposition for  
7 funding?

8 MR. MAY: Yes. If I could --

9 CHAIRPERSON BUSTAMANTE: That's the one by the  
10 city, within the City of Long Beach?

11 MR. MAY: Yes, and it funded fill along with the  
12 Water Conservation Act.

13 COMMISSIONER CONNELL: What did the initiative  
14 say?

15 MR. MAY: I didn't bring a copy of it. It's on  
16 the back of your workplan. And if you look at Exhibit 9  
17 of the workshop, it has a copy of that initiative.

18 EXECUTIVE OFFICER THAYER: It's my impression  
19 that was mostly an initiative to establish funding for the  
20 fill and the project down there, but I believe it also  
21 made reference to all of the uses that were permitted by  
22 the legislative grants, which are broad and include these,  
23 but.

24 Mr. McCabe do you have a copy of that?

25 LONG BEACH DEPUTY CITY ATTORNEY McCABE: No, I

1 don't have one with me. You are correct --

2 CHAIRPERSON BUSTAMANTE: Why don't you come up to  
3 the microphone please.

4 LONG BEACH DEPUTY CITY ATTORNEY McCABE: My name  
5 is Jim McCabe, Deputy City Attorney, for the City of Long  
6 Beach. The initiative that's being spoken of was an  
7 initiative to use, as I recall, oil money for the purpose  
8 of filling land, which you would then become tidelands.

9 They were references made to restrictions to  
10 which it could be put, in the sense that it would be  
11 tidelands. It would be put to tidelands purposes not  
12 necessarily parks.

13 CHAIRPERSON BUSTAMANTE: So the initiative was to  
14 use oil money for the fill.

15 LONG BEACH DEPUTY CITY ATTORNEY McCABE: That's  
16 correct.

17 CHAIRPERSON BUSTAMANTE: There's nothing that  
18 prescribed this to be used for any particular purpose?

19 LONG BEACH DEPUTY CITY ATTORNEY McCABE: Nothing  
20 at all, other than, of course, when it hadn't been filled  
21 over tidelands would thereafter be subject to the  
22 tidelands restrictions and the tidelands uses.

23 CHAIRPERSON BUSTAMANTE: I see. There was one  
24 other issue, Paul. And that is that the way that Mr. May  
25 described this, that not meeting the various requirements

1 as he began to enumerate each and every one so that it did  
2 not meet that requirement. Is there a concern that we  
3 could withstand any kind of a lawsuit on our decision  
4 here?

5 EXECUTIVE OFFICER THAYER: We've heard for the  
6 last month that there -- longer than that, I think, that  
7 some of the opponents to the project are threatening  
8 litigation should the Commission approve this exchange.  
9 And so we brought in the Attorney General's Office to  
10 consult them with whether or not this project met the  
11 exchange requirements in 6307, as well as equally  
12 important requirements established in court, in case law,  
13 and also looked at the CEQA issue.

14 And it's our belief that what we're recommending  
15 to the Commission could withstand that action.

16 CHAIRPERSON BUSTAMANTE: Why don't we hear from  
17 the Attorney General's Office.

18 ASSISTANT ATTORNEY GENERAL HAGER: We would agree  
19 that we believe that it is within the statutory provisions  
20 authorizing an exchange. As to the CEQA matter, we  
21 believe it comes within the purview of section 21,080.11  
22 of the Public Resources Code, which is CEQA, which grants  
23 and an exemption for these exchanges in matters. And that  
24 it's been the consistent practice of the Commission for  
25 any type of exchange like this to be -- to use that

1 exemption and that has not been challenged in the past.

2 COMMISSIONER CONNELL: I had a question, if I  
3 may.

4 CHAIRPERSON BUSTAMANTE: Please.

5 COMMISSIONER CONNELL: To follow-up on your  
6 questions which I think are right on point.

7 Paul, which of the basis for swaps mentioned by  
8 Mr. May, you listed a number of them, does staff believe  
9 we should be acting under today? I'd like to clarify  
10 that. I mean, if we are anticipating legal action against  
11 the Commission, I'd like to make sure we understand under  
12 what basis we're taking this action.

13 EXECUTIVE OFFICER THAYER: There are several  
14 different standards. The first and most important one is  
15 whether or not the land that is presently subject to the  
16 public trust should have the trust lifted. It's a very  
17 serious action. And for that, the test is generally  
18 whether it's usable or susceptible for use for public  
19 trust purposes.

20 And we believe that because it's cutoff from the  
21 water, it's separated as well by what's in essence a  
22 continuation of Shoreline Drive and that it's been unused  
23 for 20 years that it meets that requirement.

24 Then there are the broader requirements in terms  
25 of making a swap and lifting the trust, and they include

1 likes that the fill had to have been part of a broader  
2 plan for improving navigation or there are a couple of  
3 other criteria that are mentioned there.

4 We think the original fill here with its intent  
5 to establish the basins here meets that requirement. That  
6 it basically was establishing different kinds of public  
7 trusts use that could only occur if you enclose, what at  
8 one point, was going to be considered the swimming lagoon  
9 and now is used more broadly for boating.

10 It can't interfere with navigation or fishing.  
11 The lands that are going to be brought into the trust have  
12 to be susceptible to trust uses. Those are some of the --  
13 Curtis, did you want to add anything?

14 SENIOR STAFF COUNSEL FOSSUM: Well, I do. I  
15 wanted to clarify one matter. They talked about the 1980  
16 initiative. There was a 1960 initiative by the City,  
17 which talked about the fill that did take place subsequent  
18 to that.

19 This was the City's plan in 1960 which showed the  
20 swimming lagoon, that Paul referred to earlier. The  
21 changes have been significant since that 1960 master plan  
22 that the City adopted. They had a senior center down here  
23 in this area, and the rest of this area back here was  
24 actually proposed for private development, the whole  
25 Queensway area. Apparently, they were not aware of its

1 tidelands; trust status at the time back in 1960.

2 When the Commission approved the fill in 1964 for  
3 the ten plus million dollars, it was this area below a  
4 line in this area that was being approved by the  
5 Commission. And I think Mr. Denevan has referred to this  
6 in many instances both in writing and here today that the  
7 Commission had approved this fill, and therefore any  
8 subsequent action the Commission would have to approve.

9 Well, in fact, the fill did not involve the area  
10 of the Queensway Bay. That had been filled back in the  
11 1950s and earlier as part of the development to the east.

12 So this has really been an area that's been  
13 filled for probably over 40 years. The uses of it have  
14 been almost nonexistent in the last 25 or so years. There  
15 are a lot of uses that it could be proposed for, but it  
16 has sat vacant. And as to the findings the Commission  
17 needs to make under Section 6307 and the provisions that  
18 the Supreme Court has set forth in there, they're all set  
19 forth I think clearly in the staff report. And as Paul  
20 pointed out, these areas were filled a long time ago as  
21 part of flood control, harbor improvement and development,  
22 that the findings that are -- I mean, those findings are  
23 relatively simple.

24 There will be no impact on navigation or fishing  
25 by transfer of these parcels out of the trust. And the

1 harbor is the primary thing that the Supreme Court and the  
2 other courts in California have sought to protect when  
3 there's an attempted conveyance out of the trust, is  
4 waterfront or property that is necessary for those water  
5 dependent uses.

6 What we have is a piece of property that's behind  
7 this six-lane road an cut off about 550 feet at its  
8 nearest point, from the water's in the way there.

9 CHAIRPERSON BUSTAMANTE: The parcels that are  
10 outlined in read, does that mean that those were -- that  
11 fill that took place in the 40s or 50s as you mentioned?

12 SENIOR STAFF COUNSEL FOSSUM: Yes. This area --

13 CHAIRPERSON BUSTAMANTE: Is that still subject to  
14 all the public trust land?

15 SENIOR STAFF COUNSEL FOSSUM: Absolutely. The  
16 Legislature in 1964 set this little blue line you can see  
17 up here as the boundary between the City and the State,  
18 because there was ongoing controversy at the time between  
19 the City and the State as to where the boundary was.

20 However, prior to that, this area had been  
21 litigated between the City and an upland property owner in  
22 this area. And they had actually lost more.

23 So when the City redesigned its seaside road,  
24 they cut off some tidelands and that's what initiated the  
25 1991 swap that we are involved in that -- where the State

1 acquired this piece of property and gave us this property.

2 CHAIRPERSON BUSTAMANTE: So the purpose of the  
3 distinction between where those upland wet areas are and  
4 below that is to show that the initiative did the fill  
5 below?

6 SENIOR STAFF COUNSEL FOSSUM: That's correct.

7 MR. DENEVAN: May I respond?

8 CHAIRPERSON BUSTAMANTE: Mr. Denevan.

9 MR. DENEVAN: Thank you, Mr. Chairman. Yes,  
10 there was an initiative in 1960 concerning the expenditure  
11 of tideland funds. And then in 1964, this went before the  
12 State Lands Commission. Now, what they did in 1960 --  
13 well, first they had the initiative and then the  
14 initiative set forth the uses for this landfill area.

15 And the Lands Commission set conditions. In  
16 other words, it was a conditioned permit by the Lands  
17 Commission and it set forth a number of details. Now,  
18 this was to be basically an original elongated park and a  
19 few another other uses.

20 And so the site was created with public monies  
21 and the entire site should be subject to your review.

22 CHAIRPERSON BUSTAMANTE: They've said it's under  
23 public trust lands.

24 MR. DENEVAN: Yes.

25 CHAIRPERSON BUSTAMANTE: The entire area.



1           MR. DENEVAN: Yes. So we have a number of other  
2 uses. In fact, there are planned the LCP provides for  
3 hotels in the same area, and a number of others that are  
4 not before you today in this current project, but there  
5 are a number of uses.

6           And I think that, for example, the shoreline park  
7 is subject to four acres to be taken for commercial  
8 development. Now, you have the map in my packet that I  
9 sent out to you. Certainly, that and some of the other  
10 landfill is subject to those conditions.

11           And even if you only focus on those four acres,  
12 it would be very worthwhile to look at your conditions as  
13 established in your -- in the minutes that is set forth in  
14 your files. And I think it's completely untrue to say  
15 that this site is not -- the current project is not in  
16 this area of landfill.

17           Thank you.

18           CHAIRPERSON BUSTAMANTE: Thank you, sir.

19           We have two other speakers. Bry Laurie Myown,  
20 Traci Wilson KleeKamp.

21           MS. MYOWN: Thank you Lieutenant Governor and  
22 Madam Controller. Most of the items that I'm actually  
23 going to advocate on behalf of our -- continue my  
24 correspondence to you dated September 14th.

25           I'd like to think of myself, probably, as much of

1 an environmentalist as I'm sure everyone in this room  
2 does, but it's not my area of expertise, and I really  
3 appreciate all the education the public trust law you've  
4 provided.

5 I work more in the area of protecting urban  
6 neighborhoods. And in that realm, I think many of us  
7 familiar with redevelopment in its forerunner urban  
8 renewal. I've noticed a disturbing trend where it seems  
9 like you if you manage something badly enough and blighted  
10 enough, that undervalues the and it become really  
11 profitable the redevelopment according to a new plan.

12 So I'm very disturbed reading the background  
13 section of the staff report which describes, and please  
14 understand, I'm not speaking about any current  
15 administration, but described about 3 quarters of the  
16 century of how the City of Long Beach, under the  
17 supervision of the State Lands Commission, everyone's  
18 predecessors has pretty much squandered tidelands  
19 reserves, destroyed its entertainment resources, destroyed  
20 its historic resources in the tidelands, separated its  
21 downtown from its waterfront, removed the beach portion of  
22 the tidelands that it had, failed to reconnect the  
23 downtown back to the waterfront according to the plan,  
24 spend the land and water conservation on local park monies  
25 on the parks that were asked for, or it implemented

1 significant portions of its LCP. This is the rationale  
2 for why we're doing this deal.

3 And in order to approve this, you are going to  
4 have to make a finding that the lands entrusted to the  
5 people of the State no longer served the purpose for which  
6 they were entrusted.

7 How did this come to be? A finding, speaking as  
8 someone unfamiliar with the law, making that finding in a  
9 civil court would be grounds for damages, making such a  
10 finding in a criminal court would be grounds for  
11 sentencing. Here is grounds for making a deal that could  
12 be the beginning of what some people have told you they  
13 think will set a precedent the state. Frankly, I think it  
14 will set a precedent for the rest of the tidelands in Long  
15 Beach.

16 So I'm very concerned about a condition of escrow  
17 that would undo this escrow if the current developer with  
18 the current plan does not go forward and complete all of  
19 it. Because our City Manager told us last Thursday night  
20 an option would be to sell the land and it would be  
21 infinitely more profitable without restrictions.

22 Now, since, as Mr. May pointed out, it's really  
23 difficult to separate the foot print of one property and  
24 its usefulness from the immediately adjacent land foot  
25 print, this would be a chain of events that would alienate

1 all of the tidelands from public ownership.

2 In that regard, I understand a lot of work has  
3 gone into doing this. And I'm a realist. I suspect it's  
4 going to happen today, so I would like to suggest some  
5 things that would, I think, make it more palatable to the  
6 public.

7 What we learn in Item 88 about the interest which  
8 public lands can be put to, as my letter requests, my City  
9 has plans to offer a \$43 million bond offering to  
10 construct public improvements that would be largely  
11 parking facilities, roads and walkways, of which at least  
12 a third of it on a square footage basis of the lands  
13 you're trading out will be dedicated now not to bringing  
14 the public to enjoy public trust uses, but to bringing the  
15 public to enjoy and use the movie theater, big box retail  
16 and so forth that you are proposing to swap out.

17 Therefore, I mean, this is not a small or a  
18 temporary or an incidental part of the parking spaces and  
19 the public improvement, so I think they're going to have  
20 to be commensurately reduced, because they now would no  
21 longer would be serving public trust uses. So that is a  
22 condition that I think the staff report we heard on Item  
23 88 would make necessary.

24 Otherwise, it's just a financial inducement,  
25 which the exhibit B for that report, I think, would have

1 argued against.

2 In addition, I also contest the appraisal. And I  
3 don't want to go into great length about it here. When  
4 Mr. Ryan was referring to an earlier appraisal the City  
5 had had only in connection with that POS for that bond  
6 offering, please understand that we have received no  
7 written information or even agendized items from our City  
8 of any local discussion of this item, until a meeting last  
9 week, which had three pages of background. And all the  
10 information we've seen has come from your staff in  
11 response to a Public Records Act request and we received  
12 it last Thursday, as our City has not responded timely to  
13 that same request.

14 But looking through the appraisal information, I  
15 have to not, again as a lay person, setting aside  
16 altogether what the City's appraiser did, I mean, I was  
17 very shocked to here Mr. Porter refer today to the process  
18 of finding comparables. The whole reason these are  
19 sovereign lands is that they're incomparably. We see  
20 there are literally no comparables, because public lands  
21 don't get sold.

22 So the value that you find through these lands  
23 right now is not the value that these lands will be when  
24 my city contemplates selling or doing something else with  
25 them. It would then be the only land that would meet such

1 a comparable standard.

2           However, going back to the \$605,000 that you're  
3 using today as your making a donation, that which was done  
4 a decade ago averages out to \$77 a square foot for what  
5 you are, in this parcel, saying is, I believe, 22.

6           Now, looking at similar transactions that have  
7 been made across the state, and it appears to a lay person  
8 that there is no connection to any of these numbers.  
9 They're all over the map.

10           Why? Well, they're all politically motivated and  
11 publicly subsidized, in, I think, every instance you make  
12 such a transaction. There is no correlation to the  
13 private market.

14           As Mr. May pointed out the LA River parcels have  
15 already been funded. The funding has been obtained  
16 because they also under your stewardship have been so  
17 degraded by the Port use that what is of interest to them  
18 to our city has most been the grant applications, for  
19 their remediation and cleanup. And since the neighborhood  
20 lacks any recreation, grants were obtained for park use.

21           There is no assurance that the City will perform  
22 on creating that park for you anymore that it has in it's  
23 On LCPs. So I think we need a performance guarantee or  
24 performance bond, as a condition of escrow, so that the  
25 State knows this land will be a park. What you get so far

1 it is not.

2 Finally, and I mentioned this earlier, I just  
3 really want to be sure that this transfer, if it is made,  
4 will the escrow will dissolve, if the developer is not  
5 going to develop with all of this. This will not just  
6 alienate ownership in a manner that we can keep  
7 replicating all over. All of those things I think would  
8 make the escrow more advantageous for the State as well as  
9 for the people of Long Beach.

10 Thank you very much.

11 COMMISSIONER CONNELL: Mr. Chair, I'd like to  
12 follow up and ask for a staff response to that last  
13 question on the reality that, you know, if we take action  
14 today and there, for some reason, is not movement forward,  
15 financing doesn't occur or whatever, I mean, we certainly  
16 do not want to be in a situation where we have created a  
17 profitable advantage and we are seeing a flipping of land  
18 here. Mr. Thayer, how are you going to protect the  
19 Commission against that potential problem?

20 EXECUTIVE OFFICER THAYER: There's two public  
21 policy concerns here that are competing. And as we first  
22 contemplated this project, it seemed that we were looking  
23 at taking out these particular sites and not the larger  
24 area, because we're inherently conservative. We're not  
25 lifting the trust lightly. And although I think the

1 findings could be made to lift the trust from some of the  
2 area that's in the immediate vicinity of where these are  
3 on the same vicinity, the same findings could be made, we  
4 chose to just look at the sites at the suspect uses alone.

5 And so as presently contemplated, in fact, if the  
6 development did not go forward, the exchange would not  
7 occur. However, the flip side of this and some of the  
8 other Commissioners may want to comment on this as well,  
9 that other side of this is if you leave this project out  
10 of it entirely, this is -- We believe, at this point  
11 having done all this work, and done the research on the  
12 valuation and utility of the parcels that would be taken  
13 out of the trust -- to the trust, and the utility of the  
14 parcels that would be put into the trust, this is a good  
15 deal for the State.

16 And so there's an argument that could be made and  
17 it would be up to the Commission to decide that this would  
18 be appropriate to go forward, whether or not the  
19 development occurred or not, because at the end of the  
20 day, the LA River parcels are greater value to the trust,  
21 both from trust purposes and non-trust purposes than the  
22 parcels we'd be giving up, whether or not they're  
23 developed in a way at the present time.

24 COMMISSIONER CONNELL: Well, it may be a better  
25 monetary value for the State, but let me just, as one



1 Commissioner, say emphatically I would not consider taking  
2 action today with the expectation this property becomes a  
3 poker chip in a land swap deal. I think that's abhorrent.  
4 It would be abhorrent in Long Beach. It would be  
5 abhorrent in Santa Barbara. It was abhorrent in downtown  
6 Los Angeles. And in a rare moment of unanimity, every  
7 candidate in the mayor's race stood up and came out  
8 against the project in downtown Los Angeles.

9 And I'm happy to say that as of last week that  
10 project has now been stopped and the property has been  
11 bought by the land trust based on that very issue of  
12 whether a swap was contemplated, and whether an excessive  
13 project was entertained by the new owner of the property.  
14 I do not want to be in that situation here, Paul.

15 I don't know how other Commissioners feel. I  
16 mean the only reason I would entertain going forward with  
17 this project is that it would enhance the purposes of  
18 urban renewal in Long Beach.

19 I certainly would not want it to be an ongoing  
20 game play where we have created artificial value that is  
21 then swapped for more artificial value to another  
22 developer downstream. That is not what I want to see  
23 happen.

24 So if this project does not go forward in the  
25 manner in which it is conceived, then I think we ought to

1 immediately be able to eliminate our support for the land  
2 trust transfer. I think that's what the woman was  
3 raising. And I want to know whether those protections are  
4 built into the staff recommendation. If they're not, I'd  
5 like to amend it to allow that to occur.

6 CHAIRPERSON BUSTAMANTE: How would you build that  
7 into the recommendation?

8 EXECUTIVE OFFICER THAYER: As we're presently  
9 contemplating, what we would do is end the escrow even  
10 though the change hasn't taken place if the present  
11 developer does not enter into a lease with the City,  
12 within six months of the closure of their exclusive rights  
13 to do so. By that I mean, I think it's DDR, are the  
14 initials of the developer, has an exclusive right to  
15 develop this parcel through May of next year, and then the  
16 City owns the plans after that period of time and can look  
17 for another developer to implement that project.

18 So, in discussions with the City, we have said if  
19 this project does not go forward, by January 1st, 2003,  
20 then the escrow is dissolved and the exchange doesn't take  
21 place.

22 COMMISSIONER CONNELL: Why January 1st, 2003?  
23 Why are we looking at a year and three months?

24 EXECUTIVE OFFICER THAYER: Because the developer  
25 has the right to go forward with this project until May

1 of next year and then the City has an additional six  
2 months the use the same plans and find another developer  
3 to implement the same plans, so that takes you up, I guess  
4 it would make it a little bit shorter, it would be  
5 whatever six months are after May of next year. It would  
6 take you to November, December, I guess, of 2003.

7 COMMISSIONER CONNELL: What do you mean, "use the  
8 same plans"?

9 EXECUTIVE OFFICER THAYER: The City -- I think if  
10 DDR does not go forward with the project, the City, I  
11 think, owns the plans for this development and can find  
12 another developer to use the same plans.

13 COMMISSIONER CONNELL: Would that come back to us  
14 for review?

15 EXECUTIVE OFFICER THAYER: No, because we  
16 normally wouldn't -- we only have review because of this  
17 exchange that's being proposed.

18 COMMISSIONER CONNELL: I mean, I don't know, I've  
19 had hundreds of millions of dollars of financing  
20 experience on real estate. I have never seen a  
21 developer -- substitute developer step in and be  
22 completely happy with the plans.

23 EXECUTIVE OFFICER THAYER: That's right.

24 COMMISSIONER CONNELL: So I guess, I'm a little  
25 confused here. What is the criteria or measurement by

1 which we are going to allow the City to continue forward  
2 on developing a project that changes in some measure or  
3 another from the initial plan that the approved or has  
4 been presented today?

5 EXECUTIVE OFFICER THAYER: Well, I think --

6 CHAIRPERSON BUSTAMANTE: We have a City  
7 representative.

8 LONG BEACH CITY MANAGER TOBOADA: Commissioners,  
9 Commissioner Connell, the way that we envision this and we  
10 have every expectation that this project will go forward  
11 with this developer, but we do have a termination clause  
12 in our development disposition agreement that gives the  
13 City the right to take over the entitlements to this  
14 project.

15 One way which it could be effected very easily  
16 would be for the City to step into the developer's shoes  
17 and simply hire a contractor/developer to build the  
18 project on our behalf. That is one way in which you can  
19 accomplish the same objective. So it's not -- like I say,  
20 it's a very unlikely scenario, but certainly we have  
21 contemplated that we have rights on this project, based on  
22 all of the investment of both the developer and the City,  
23 and that we would have an opportunity at the end of that  
24 period, should the developer not go forward, to be able to  
25 salvage this project in that way.

1           COMMISSIONER CONNELL: That doesn't answer my  
2 question. Let me again be very pointed in my question,  
3 and my question really, thank you anyway, is to my staff  
4 and to the Attorney General's office. I want to know what  
5 kinds of precautions, what kind of language we are using  
6 that specifically says if this project does not move  
7 forward and the City then ends up with a project, say, in  
8 May of 2002, what kind of assurance do we have as elected  
9 officials, at least two of us as elected officials on this  
10 Board, that we have not opened Pandora's Box, at that  
11 point, and we're not going to see a substantially amended  
12 project moving forward under the guise of an approval that  
13 we may choose to give today?

14           EXECUTIVE OFFICER THAYER: We do not have  
15 language that provides for that in the agreement now,  
16 because of these competing public policy considerations.  
17 However, if the Commission directs that that be so,  
18 there's no reason why we can't say that we're going to  
19 keep it in escrow and that we could enter into some sort  
20 of agreement with the City which would provide that the  
21 uses of these parcels which, after all, are city owned, so  
22 that they can commit to their uses, which are limited to  
23 the ones that caused us to consider the swap to begin  
24 with, that is the movie theatre.

25           COMMISSIONER CONNELL: Why do we even need to go

1 there? Why can't we make our approval to the City  
2 reflective of the time in which this current developer  
3 must use this parcel, and that our agreement expires if  
4 they do not use their agreement in May of 2003? That  
5 then -- or 2002. That then forces the City to come back  
6 with us and entertain a discussion with us about what  
7 other uses may or may not be contemplated. And if they  
8 wish to move forward on another development with someone  
9 else, you know, I'm willing to entertain it at that point,  
10 but I do not want this to be in play. I do not want this  
11 to go on beyond what we have now spent an extended amount  
12 of time understanding.

13 My fear is that it may change in its substance,  
14 and I certainly do not, in any way, cast aspersions on the  
15 current leadership of the City of Long Beach, but we do  
16 not know what we're going to have in the future and I am  
17 very, very concerned about this.

18 LONG BEACH CITY MANAGER TOBOADA: Commissioner,  
19 one guarantee that you have is that the entitlement  
20 process that would change this project would take far  
21 longer than the six months that we contemplated doing the  
22 same project. There's no way we could do it through a  
23 redesigned, refinanced, re-entitled project in a six-month  
24 period. We would simply step into the developer's shoes.  
25 That's all we could do.

1           There's no way this project could change without  
2 going through an entire -- we just need that time frame to  
3 be able to go back to our council and share with them  
4 their options, so that they can express --

5           COMMISSIONER CONNELL: Do you know a single  
6 circumstance, perhaps I'm not as knowledgeable as you, and  
7 we audit all the redevelopment agencies in California, so  
8 I think I've visited most of them. But I don't know of a  
9 single circumstance where a City has walked in and taken  
10 over the primary responsibility for a project of this  
11 magnitude.

12           LONG BEACH CITY MANAGER TOBOADA: We did a design  
13 and build on the aquarium, just that way.

14           COMMISSIONER CONNELL: That was a single use.  
15 That was the aquarium.

16           LONG BEACH CITY MANAGER TOBOADA: It is still an  
17 entitled project.

18           COMMISSIONER CONNELL: This is a multi-use  
19 project.

20           LONG BEACH CITY MANAGER TOBOADA: That is  
21 correct, but it is entitled.

22           COMMISSIONER CONNELL: Can you think of another  
23 circumstance where that has occurred?

24           LONG BEACH CITY MANAGER TOBOADA: Not the one  
25 that we managed.

1 COMMISSIONER CONNELL: And on a single-use  
2 project, the aquarium.

3 LONG BEACH CITY MANAGER TOBOADA: Well, an  
4 aquarium, a harbor, a parking structure.

5 COMMISSIONER CONNELL: Single use.

6 LONG BEACH CITY MANAGER TOBOADA: Well, it's all  
7 used for that bring people down to the waterfront.

8 COMMISSIONER CONNELL: That's different than this  
9 use.

10 LONG BEACH CITY MANAGER TOBOADA: I don't  
11 disagree with thatEXECUTIVE OFFICER THAYER: If the  
12 Commission would like, then the Controller's direction  
13 could be implemented in the agreement, so that it would  
14 require DDR and perhaps some sort of reasonable extension  
15 that would be dependant upon a development that occurs the  
16 same as we're now facing.

17 CHAIRPERSON BUSTAMANTE: I think the majority of  
18 the Board would prefer to have that type of --

19 EXECUTIVE OFFICER THAYER: Well, make sure that's  
20 in the agreement.

21 MS. MYOWN: Madam Controller, one of our concerns  
22 is given the changes and the length that this project has  
23 taken, it's very easy for us -- and changes in the  
24 economy, it's very easy for us to imagine going forward in  
25 the phased or partial way. And so I'm not sure how a



1 protection tied to a time certain would address that.

2 What if we were to learn right before the  
3 contract period expires that they're now breaking it into  
4 phases and building one use of it, but they've lost  
5 another tennant et cetera, then where We be?

6 COMMISSIONER CONNELL: Well, I'm not familiar  
7 with the phases of the project. Although I have visited  
8 the project site, and I've been fortunate to get briefed  
9 by the developer on this project, perhaps the developer  
10 can respond to that. I don't know how the project breaks  
11 down in phases or how he's moving it through the zoning  
12 process.

13 MS. MYOWN: My question would be what if they  
14 broke it down into phases because of changes in the  
15 leasing economy or in other words, it's been supposed to  
16 start for a long time as one phase and it hasn't, so what  
17 would happen if during the contract period they elected  
18 the start a portion of it, and where would we then be?

19 EXECUTIVE OFFICER THAYER: I'm not sure if the  
20 phases matters so much as the ultimate uses that are going  
21 to go on the property that we're swapping out here. And I  
22 think as a result to respect the Controller and the rest  
23 of the Commission's concerns that we may want to take one  
24 or two steps further than just establishing by a date  
25 certain, because if it takes awhile or if they suddenly

1 start construction in May and then they end up switching  
2 the uses, we haven't really met the goals that you're  
3 after.

4 And so I'm thinking we need to sit down and have  
5 some sort of agreement with the City or something that  
6 would provide at least for some foreseeable future, unless  
7 they come back to the Commission that those uses that  
8 we're doing the swap for are the only ones that the sites  
9 can be used for.

10 Now, four years down the road, of course, things  
11 change and we don't want to set up an agreement that would  
12 be impossible. But for the near term, that would seem to  
13 carry out what you're interested in doing.

14 COMMISSIONER CONNELL: Certainly, it is the  
15 intent of my initial concern, and I'm relieved to hear  
16 that other members of the Commission agree with me in that  
17 regard, and I can't sit here and function as a draft's  
18 person today, and come up with that language, but I am  
19 very, very concerned that we look with great attention and  
20 I've heard from the City in all of my conversations with  
21 them that they are resolute about moving this forward  
22 quickly.

23 Now, this is a very uncertain world we live in as  
24 we have seen by these tragic events over the last week and  
25 one can never project what's going to happen, but given

1 the City's leadership commitment to this and the  
2 developers, evidently their commitment and financial  
3 resources, one has to assume this is going to move  
4 forward.

5 If it doesn't, however, and that small percentage  
6 of unlikelihood that it would not, I want us to be  
7 absolutely protected as a Commission that has granted this  
8 opportunity to a city. And I see the developer is  
9 standing there, maybe he can address the phasing issue.

10 CHAIRPERSON BUSTAMANTE: I think the staff  
11 responded to the phasing issues as long as they maintain  
12 within the kind of activities that they were specifically  
13 allowed to participate in, that whether they phase it in  
14 or they went all at one time, as long as they stayed  
15 within those parameters, I think it would be complete.

16 COMMISSIONER CONNELL: I guess the question would  
17 be what would they be using the land for in the interim,  
18 which is what you were referring to, Paul.

19 MR. CHISESSI: Well, I don't anticipate a phasing  
20 program, at this point. That's not the there may not be  
21 one single free-standing building that comes along a  
22 little bit later. We have not completed all of our  
23 leasing, but the way we anticipate today is that we would  
24 build a project that would open up, if we did start,  
25 approximately in December, as I said. We'd open up in

1 April of 2003, approximately.

2 So there really isn't a phasing plan per se  
3 slated for the project at this time.

4 CHAIRPERSON BUSTAMANTE: We have one more  
5 speaker.

6 MS. WILSON-KLEEKAMP: Tracy Wilson-Kleekamp.  
7 Chairman and Commissioners, thank you for addressing the  
8 issue of what would happen if the property or the deal  
9 fell out. We were concerned when the City Manager said  
10 that they could sell the property.

11 One of the things I'd also like the thank you for  
12 is to answer my public records request. I got it last  
13 Thursday. It was my first opportunity to kind of really  
14 look at what's been happening. We haven't had a public  
15 dialogue about the land swap until about a week ago.

16 And, as you can see from our discussion, there  
17 are a lot of things to talk about. I also think the  
18 process has been politically cumbersome. I think that we  
19 have been -- our process is really bent towards the  
20 developer and not the interests of the public, which is  
21 why I brought up the issue before about recreation.

22 We've been promised in terms of Cesar Chavez Park  
23 part of the land for the residents in that area. I'm  
24 going the switch over and where my mom hat about this  
25 situation, Cesar Chavez Park, and I have some pictures for

1 you. I refer to that freeway strip median as asthma park.  
2 And I call it asthma park because on either side of that  
3 freeway median the port traffic, which means that the  
4 children in that area are subjected to rubber particles  
5 and diesel fumes, et cetera from the port traffic.

6 The other thing is standing from Cesar Chavez  
7 Park, it's all fenced around for safety reasons so the  
8 children won't get run over. And in terms of Cesar Chavez  
9 Park being 23 acres, ten of it is the freeway median and  
10 the freeway. So they have been counted as 23 acres, which  
11 they might have done just to get grant money, I'm not  
12 sure, but only 13 acres of it is active park land.

13 My concern in the way that they're willing to  
14 swap is that eventually that's all going to become a  
15 freeway, and I think that that's a problem. I think if  
16 the City is making the commitment to us about the park  
17 land, they need to keep with it.

18 Now, Mr. Toboado was saying they didn't have  
19 anything in their capital improvement budget about parks.  
20 I wanted to say that they created their Cesar Chavez  
21 master plan in 1996, and they divided it into a number of  
22 phases and they have five development phases. And so far  
23 construction has happened in three of the five areas, but  
24 the master plan has not been completed for any of them.

25 It says the reason why they haven't proceeded

1 with this area five that you are thinking that people can  
2 have a bridge to or a road access to it is because they  
3 didn't have the money to move the roadway, and they didn't  
4 know when they would be moving it.

5 But it's been promised for that particular area  
6 that they would get much needed recreation space, because  
7 there were not football fields, baseball fields, et  
8 cetera, those types of active recreational uses in that  
9 area.

10 COMMISSIONER CONNELL: Well, evidently there  
11 can't be on our land, anyway, if Mr. Thayer is correct.

12 MS. WILSON-KLEEKAMP: This is a totally  
13 unrealistic thinking that you can drive or walk to that  
14 median. You are basically telling children to go play in  
15 the freeway, all right.

16 Now, you know, we have Cesar Chavez Park, which  
17 you're now going to take two and a half acres of, fence it  
18 all off and deny the public access there in an any area  
19 that's very densely populated with children who are poor.  
20 They lack schools, and I think this is an egregious  
21 offense to children in the community and what they've been  
22 promised in terms of park land.

23 That property already belongs to the City and I  
24 don't see why we're going through this process for land  
25 that's already been promised to our public. I don't see

1 any State benefit for taking it away from us.

2 So with that said, I don't think that the swap is  
3 necessary. At the last council meeting, our city attorney  
4 said that this swap was not necessary. It is only  
5 operationally necessary which makes me think it means it  
6 has to happen just for the developer. And I don't think  
7 that these swaps should happen just to benefit the  
8 developer.

9 The type of project that we're building is  
10 duplicated all around us in a five-mile area. We're  
11 chasing the same retail dollars, low-wage earning jobs to  
12 perpetuate this cycle of poverty in downtown. And I don't  
13 think that we should continue with that path of  
14 development.

15 By the way, I have pictures for you, if you're  
16 interested of what the freeway and the park looks like and  
17 the freeway median. You can see lots of cars and traffic.  
18 I think there's a Southern California Edison generator on  
19 one of the parcels entirely fenced in, and I would think  
20 it would be unsafe for someone to accidentally run into  
21 the median from the freeway. There's a tremendous amount  
22 of traffic on the 710 freeway from the port, which we have  
23 not resolved that issue.

24 I haven't figured out how nine million people are  
25 going the get down the 710 freeway to our Queensway Bay,

1 but miracles never do cease to exist.

2 Thank you.

3 CHAIRPERSON BUSTAMANTE: Thank you.

4 LONG BEACH DEPUTY CITY ATTORNEY McCABE: Mr.  
5 Chair, I apologize. I filled out a card, but I haven't  
6 been called. Is it appropriate to speak briefly?

7 CHAIRPERSON BUSTAMANTE: You're right, you did  
8 fill one out, and I have not called you.

9 LONG BEACH DEPUTY CITY ATTORNEY McCABE: Thank  
10 you very much.

11 CHAIRPERSON BUSTAMANTE: This is the last one.

12 LONG BEACH DEPUTY CITY ATTORNEY McCABE: I will  
13 be brief. I very much urge the Commission to be aware, as  
14 a whole, that this has been a very long process, that the  
15 Queensway Bay commercial development, which we're speaking  
16 of today, has had more than 25 city council appearances  
17 over a period of years, that the city council has always  
18 acted in a lopsided fashion to approve this project.

19 That the City Council acted in special session  
20 this last Thursday, called itself into session especially  
21 for this purpose, and voted 8 to 1 to go ahead with this  
22 plan swap.

23 The swap itself has the you know, when you boil  
24 it down to its total effect, has the end result being that  
25 these parcels along the river will be made subject to the



1 trust that we're subject to the trust before.

2 Those uses will be limited to tideland uses for  
3 all the relevant purposes are going to be park in this  
4 area.

5 The City has an absolute commitment in terms of  
6 its energy, subject to future funding and necessary  
7 council action, to go ahead with park development. And  
8 we'd very much like to encourage this and making this --  
9 making these river parcels subject to the tidelands trust  
10 would further that goal.

11 I just wanted to emphasize, again, that the  
12 democratic process in Long Beach has taken its course.  
13 Both councilmen for the districts involved have voted  
14 consistently in favor of this project, and both council  
15 people involved in this -- in the potential exchange favor  
16 that on behalf of their constituents.

17 Thank you.

18 CHAIRPERSON BUSTAMANTE: Thank you.

19 COMMISSIONER CONNELL: Mr. Chair, I have a motion  
20 I want to make, but I will certainly respect, Annette, if  
21 she wishes to speak on an informational basis.

22 CHAIRPERSON BUSTAMANTE: Annette.

23 ACTING COMMISSIONER PORINI: Yes. I just wanted  
24 to ask our last speaker, the two and a half acres within  
25 Chavez Park, is that specifically -- is that a joint use

1 project with the City -- with the school district, rather?

2 LONG BEACH DEPUTY CITY ATTORNEY McCABE: Of the  
3 parcels that we're speaking of, the river parcels none of  
4 them are presently within the boundaries of Cesar Chavez  
5 Park.

6 Now, with that perhaps the City Manager can  
7 answer.

8 LONG BEACH CITY MANAGER TOBOADA: I think I'm  
9 better qualified on this one, because there is no  
10 agreement currently between the school district and the  
11 City of Long Beach for joint use of the park. It's been  
12 proposed. The organizations that give us guidance, such  
13 as the project area committee for the redevelopment agency  
14 project area have voted not to go forward with that joint  
15 development. The council has yet to undertake that  
16 particular proposal.

17 And if it did go forward, it would be on the  
18 basis that the school would only have shared use of it not  
19 exclusive use.

20 ACTING COMMISSIONER PORINI: Thank you.

21 CHAIRPERSON BUSTAMANTE: What's the pleasure of  
22 the Commission?

23 COMMISSIONER CONNELL: I would entertain moving  
24 forward on this project, but only with two very  
25 significant changes to the staff report.

1           And those two changes are that the time factor of  
2 May 2002 becomes a dropdead date for movement forward on  
3 this project, and that if this project does not have  
4 signed leases and is not moving forward as stipulated,  
5 that our approval of the swap expires, and that there is  
6 no option for the City to develop this project on its own  
7 and that occur -- that development occurred without any  
8 phasing.

9           So those would be my three restrictions, that  
10 there would be a time factor of 2002 that is adhered to,  
11 that when that time -- and that second that that project  
12 move forward that the lease understanding is without  
13 phasing, and third that when the 2002 period expires, May  
14 2002, that our swap is basically voided at that point, and  
15 that the property comes back to the State.

16           I could see scenarios developing on the economic  
17 front, having spent two and a half hours in those meetings  
18 this morning, where the State has more resources than the  
19 local government, and that the State might actually have  
20 greater flexibility in going back and doing something with  
21 that property in Queens Bay, where the City could not.  
22 And I would not want to be hampered by our ability to do  
23 that in the future.

24           So I would make my approval, at least,  
25 conditional on those three factors.

1           CHAIRPERSON BUSTAMANTE: What if the City came to  
2 us prior to the end of May and indicated they wanted to  
3 maintain or we wanted to complete the same activity as the  
4 developer, but they came back to the Commission prior to  
5 the end of May?

6           COMMISSIONER CONNELL: I think they should go  
7 through our approval process again. In other words, our  
8 approval today for this arrangement, is we have now  
9 analyzed it, we've appraised it, we've factored in after  
10 extended discussion all of the players as they now exist.  
11 If that group of players, the team taking the field, the  
12 going to differ, then I think we should have a second look  
13 at that. Given the dynamics of the kind of markets that we  
14 are now in, I have every belief that we are going to be in  
15 a stronger economic position than many local governments  
16 in this state, and I do not want to, in any way, restrict  
17 the ability of the State to move forward on a project down  
18 there.

19           EXECUTIVE OFFICER THAYER: Would you want also,  
20 just as a point of clarification, Mr. Chairman, would the  
21 Controller's motion also contemplate then some sort of  
22 provision to ensure that even with this developer that the  
23 uses presently planned for these sites that we're trading  
24 out of the trust, will go forward?

25           COMMISSIONER CONNELL: Well, that's my

1 anticipation. We are certainly not approving this to  
2 become a, you know, 24-hour nightclub district. We've had  
3 extended discussions about the precedent setting. I know  
4 we all have, as Commissioners, heard about the precedent  
5 setting nature of what we're doing here and I certainly do  
6 not want to have a situation facing us in the Port of LA  
7 or Santa Barbara or Ventura County where they're just  
8 eager to use their lease of authority to do something  
9 which is not as, perhaps, pleasant as we would want.

10 And I want to send a very strong message to local  
11 government, that there are very restricted uses when we do  
12 have a swap. And so I would assume that exactly the uses  
13 that have been contemplated that have been presented to  
14 this Commission, the exact potential conceptual drawings  
15 be used and that we not have any amendment of uses as we  
16 move forward, that we do not have retail space,  
17 substituted for entertainment space or, you know, some  
18 other use that we cannot, at this point, contemplate. We  
19 are approving a particular plan.

20 EXECUTIVE OFFICER THAYER: Thank you.

21 ACTING COMMISSIONER PORINI: Just one point of  
22 clarification, that the dropdead date then as proposed  
23 would be May of 2002 or May 2003?

24 COMMISSIONER CONNELL: May 2002.

25 EXECUTIVE OFFICER THAYER: And May 30th, I

1 think -- 31st.

2 COMMISSIONER CONNELL: I'll restate that again  
3 for the record, if you want me to. There are four factors  
4 then. We've had three and we've now added a 4th. I  
5 appreciate your alerting me, Paul, to that one.

6 The time factor is the end of May, May 31st of  
7 2002 for having these necessary local agreements in place.

8 Secondly, the developer must be moving forward  
9 without phasing on the development of this project.

10 Third, that that development activity must  
11 reflect the existing plan as presented before this  
12 Commission and in the attachments that we have.

13 And fourth, that should the deadline not be met,  
14 that our approval of the land swap would expire and we  
15 would be able to have our property back as the State's.

16 CHAIRPERSON BUSTAMANTE: That's four.

17 COMMISSIONER CONNELL: That's the fourth. That's  
18 the fourth. In other words, it reverts back. I don't  
19 want us to be in limbo, using a Catholic phrase, and find  
20 that, you know, it is expired, but we don't know who owns  
21 the property. I want it to be clear that it comes back to  
22 Heaven, the State being Heaven, here.

23 CHAIRPERSON BUSTAMANTE: So there's a motion.

24 Is there a second?

25 ACTING COMMISSIONER PORINI: I'll second.

1           CHAIRPERSON BUSTAMANTE: Let the record show that  
2 the motion passes unanimously.

3           EXECUTIVE OFFICER THAYER: Very good.

4           Moving on to the next item.

5           CHAIRPERSON BUSTAMANTE: And what is that next  
6 item?

7           EXECUTIVE OFFICER THAYER: Item 93.

8           CHAIRPERSON BUSTAMANTE: The next item is a brief  
9 break for the Commissioners who are drinking a lot of  
10 water up here.

11           (Thereupon a brief recess was taken.)

12           CHAIRPERSON BUSTAMANTE: If we can get this  
13 meeting back in order.

14           EXECUTIVE OFFICER THAYER: If people could find a  
15 seat, we're going to go ahead and get started.

16           CHAIRPERSON BUSTAMANTE: Paul, is there a reason  
17 why we can't do 93 and 94 together. They're both  
18 basically the same activities, just --

19           EXECUTIVE OFFICER THAYER: Certainly, we can work  
20 right through those. I think actually 93 might not take  
21 too long.

22           CHAIRPERSON BUSTAMANTE: We basically have until  
23 2:15 to be able to complete this hearing, so we need to  
24 move these other items fairly quickly.

25           EXECUTIVE OFFICER THAYER: Ninety-three then I'll

1 be very brief in the introduction merely say that the  
2 resolution propose by the Lieutenant Governor echos the  
3 approach to offshore oil drilling that's been taken by  
4 many of the State leaders. And the resolution does two  
5 things. It urges Congress to first -- or Congress and the  
6 administration, in general, not to conduct oil development  
7 on the 36 undeveloped leases in federal waters.

8 And the second thing it does is it urges the  
9 federal government not to proceed with any other new  
10 leases. And this is consistent with the approach taken by  
11 a lot of the others in California.

12 CHAIRPERSON BUSTAMANTE: Annette?

13 ACTING COMMISSIONER PORINI: I just wanted to  
14 commend the Lieutenant Governor and the staff for bringing  
15 this resolution forward. I believe it's very consistent  
16 with the position we have had in the past and with  
17 Governor's statement just recently, with regard to the  
18 federal decisions. So I'm very supportive of it.

19 CHAIRPERSON BUSTAMANTE: Thank you. Is there any  
20 comments by the Controller?

21 ACTING COMMISSIONER ARONBERG: Also very  
22 supportive.

23 EXECUTIVE OFFICER THAYER: We have just one  
24 speaker.

25 CHAIRPERSON BUSTAMANTE: I believe we have two.



1 Carla Frisk and Tanya Gulesserian.

2 MS. FRISK: Chairman Bustamante and  
3 Commissioners, it's pleasure to be here in Sacramento with  
4 you today. As you know, the Legislature is out so Senator  
5 O'Connell is in the district, therefore he couldn't be  
6 here.

7 To say that he's very thrilled about that this  
8 Commission entertaining a resolution opposing the  
9 development of the 36 federal leases off the Santa Barbara  
10 County coast would be an understatement. As you know, the  
11 Senator repeatedly opposed the development of those leases  
12 for all the reasons cited in your resolution. And I'm not  
13 going to go over them, because you already know them.

14 As you may recall, this Commission took the lead  
15 a number of years ago in establishing a moratorium on new  
16 leasing in all State waters that had not already been  
17 protected statutorily. That action was very important  
18 because it led the way for the passage O'Connells  
19 O'Connell's legislation when we was in the Assembly, AB  
20 2444, the California Coastal Protection Act.

21 So today Senator O'Connell has asked me to thank  
22 you, Lieutenant Governor, for introducing this resolution  
23 and putting it before this Commission and to express its  
24 strong support for it's passage.

25 I also have, which I have handed copies out, and

1 I guess they will be passed out to later, from two of our  
2 county supervisors, since we weren't able to get this on  
3 the agenda, Susan Rosh from the Second Supervisorial  
4 District and Naomi Schwartz from the First Supervisorial  
5 District mentioning the potential cause of dangers of  
6 offshore oil development, the local opposition to new  
7 development, the importance of tourism and healthy oceans  
8 to continued.

9 The long established ocean based industries in  
10 our area urge you to adopt this resolution to ban further  
11 oil development off our shores.

12 CHAIRPERSON BUSTAMANTE: Thank you. There's also  
13 a letter from the Citizens Planning Association of Santa  
14 Barbara County. I believe that's on record.

15 MS. GULESSERIAN: Lieutenant Governor and  
16 Commissioners, I have those other copies of those letters  
17 from the Environmental Defense Center and Citizens  
18 Planning Association.

19 My name is Tanya Gulesserian and I'm a staff  
20 attorney with the Environmental Defense Center. We  
21 strongly urge the State Lands Commission to adopt the  
22 resolution propose by Lieutenant Governor Bustamante  
23 supporting termination of the 36 undeveloped leases in  
24 federal waters off the central coast of California.

25 The Environmental Defense Center is a public

1 interest environmental law firm working in Ventura, San  
2 Luis Obispo and Santa Barbara counties. And we brought  
3 the original request for termination of the leases and  
4 review by the State of California.

5 EDC also represents environmental intervenors in  
6 the State of California versus Norton Case.

7 EDC believes the federal leases should be  
8 terminated because the oil companies failed to demonstrate  
9 due diligence in developing these leases, and because the  
10 environmental harm associated with such a development far  
11 outweighs any potential benefits. In addition, EDC  
12 supports a permanent ban on any new leasing off the  
13 California coast.

14 According to a State report, the California ocean  
15 resources, which is mentioned in our letter, the State  
16 receives much more revenue from nonpolluting industry such  
17 as tourism than offshore oil development.

18 Thank you for your consideration of this  
19 important resolution and we urge you to adopt it today.

20 CHAIRPERSON BUSTAMANTE: Thank you.

21 Any other concerns?

22 What's the Commission's pleasure?

23 ACTING COMMISSIONER PORINI: Move approval.

24 ACTING COMMISSIONER ARONBERG: Second.

25 CHAIRPERSON BUSTAMANTE: Let the record show that

1 the motion was made, seconded and is moved unanimously.

2 EXECUTIVE OFFICER THAYER: The next item is 94  
3 and Kris Walker from the Commission staff will give a  
4 brief presentation on this.

5 MR. WALKER: Lieutenant Governor and  
6 Commissioners, as you know, Chevron removed four oil  
7 platforms off the coast of Santa Barbara in '96 leaving  
8 large shell mounds on the bottom. The staff of the State  
9 Lands Commission and the Coastal Commission directed a  
10 study to be made of those mounds two years ago.

11 That study showed several things. First, that  
12 the mounds are not biologically productive. And second,  
13 that they all have a similar structure of hard mound  
14 followed drill nodes and cuttings in the sea floor. There  
15 are samples taken -- core samples taken that show there is  
16 chemical contamination within the mounds, but it is a very  
17 low level.

18 And finally, it is physically possible to remove  
19 those mounds using one of several methods. Although, all  
20 of those would be operating at the depth within the  
21 current technology.

22 The study did not address several important  
23 questions, and the item before you is a request to do an  
24 Environmental Impact Report to answer those questions and  
25 then come back to you with a recommendation of the project

1 as to whether the mounds should be removed, left in place  
2 or some other treatment take place.

3 CHAIRPERSON BUSTAMANTE: Now, we did a core  
4 sample. I remember we did this some time back. What were  
5 the results of the core samplings.

6 MR. WALKER: On three of the mounds --

7 CHAIRPERSON BUSTAMANTE: This idea was to take  
8 the core to see if there was anything we could discern  
9 from that coring, so that we're not just having to go  
10 through more expensive EIR process if it were not  
11 necessary or that we can make some kind of determination  
12 if, in fact, we could remove the shell mounds.

13 MR. WALKER: That is correct. And on three of  
14 the mounds we found essentially below levels of detection  
15 for almost all chemicals. On one of the mounds we were  
16 above allowable amounts in PCBs and in nickel.

17 What it did not determine was and why we now need  
18 the EIR is whether or not if you took those mounds out,  
19 what would you have to do to dispose of them, whether it  
20 can be disposed in the sea, on land in a regular landfill,  
21 or whether it would be special treatment. And so now  
22 that's what we are asking to go back and do.

23 ACTING COMMISSIONER PORINI: I'm just wondering  
24 about timing. What do we think our timeframe is going to  
25 be if we go back for this EIR, it seems like there's been

1 a significant amount of time that's elapsed.

2 MR. WALKER: There has been a large amount of  
3 time. We have gone forward with interviewing contractors.  
4 We have not done the cost negotiations pending your  
5 action. If this is approved and you select them in the  
6 next week, we would have a draft EIR available for public  
7 distribution in April, and we would probably have a final  
8 document by August.

9 CHAIRPERSON BUSTAMANTE: Any questions?

10 In this process, this is going to be the first  
11 time that we're contemplating removing shell mounds. And  
12 so I would hope that any kind of removal would contemplate  
13 staging or phasing of activities to ensure that as things  
14 are taking place there are assessments that are being made  
15 in each of the phases, so as not to bid out something in  
16 which -- or to have an EIR that would talk about only the  
17 removal in one large effort.

18 I would hope that we would be very diligent. And  
19 we are going to go through this process, so let's figure  
20 out how we would go through it in a way that the first  
21 time was done the right way, and if we get involved with  
22 something that we didn't anticipate, that there are  
23 different checks and balances.

24 MR. WALKER: I just hope that the EIR would also  
25 sort of identify the order in which we should approach the

1 formats, from least harmful to most dangerous.

2 EXECUTIVE OFFICER THAYER: And we could also  
3 direct the consultant preparing the EIR to look at that  
4 alternative of the phase removal or at least concurrent  
5 monitoring, so that when one is completed, one is removed  
6 and the results of that would be immediately available to  
7 see whether or not we should be altering the method of  
8 removal for the others.

9 But we, at this stage of the game, we can provide  
10 that input to ensure that the document looks at that  
11 question.

12 CHAIRPERSON BUSTAMANTE: Any comments on that?  
13 Any other comments?

14 We have two people Tanya, again and Carla.

15 MS. FRISK: Again, Carla Frisk with Senator Jack  
16 O'Connell's office. As all of you know, this has been a  
17 very long arduous process that we've been working on. As  
18 was stated earlier, these mounds were removed -- or the  
19 permits were issued in '95 and in '96, the platforms were  
20 removed. It took a long time to get the study, but your  
21 staff and the Coastal Commission staff finally got  
22 together and got it complete. And as your staff  
23 succinctly stated, it showed the three things that we had  
24 been maintaining all along.

25 And, in fact these shell mounds do have toxics in

1 them. And, in fact, they are not providing the habitat  
2 that's some had indicated they were and that they can  
3 actually be removed.

4 Again, as your staff stated, Chevron has  
5 submitted a permit application for three potential  
6 projects, removal, modification and mitigation. And  
7 attached testimony from Senator O'Connell has those  
8 descriptions attached, so it's in the staff report.

9 I think it's important to note that the  
10 California Coastal Commission did require on June 13th  
11 that the application to the Commission be for removal.  
12 And in discussing this issue, I think it's important that  
13 the project description be consistent for a CEQA review  
14 process.

15 And one of the concerns that we would have is  
16 that if the project is not for removal, that all of the  
17 options have to get full project review. So you then have  
18 one project that gets full project review and alternatives  
19 that are looked at or you have three projects that are  
20 getting full project review.

21 And when you look at the issue of the two other  
22 projects shell mound mitigation or modification, those  
23 projects don't, in fact, take into account this issue of  
24 the toxicity in the mounds. This report says they do not  
25 represent this. The assumption in Chevron's project



1 description is that they do not represent a chemical or  
2 biological hazard to the environment. The information in  
3 the study, meaning the shell mounds study, does not  
4 suggest that this is the case.

5 Further more, the project description for removal  
6 includes the removal of the caissons that the platform has  
7 on it. It's critical that we have -- that you that the  
8 Coastal Commission and the State Lands Commission have the  
9 option if it comes down to that, which is what you're  
10 addressing of partial removal, complete removal so that  
11 you're not put in a box. It's either all or nothing.

12 Again, the same concerns are that were just  
13 reiterated about the longevity of this process. In 1995  
14 and 1996, the Senator indicates, "It is nothing short of  
15 ridiculous that it took Chevron five years to apply for a  
16 permit to address this issue." And we hope that you and  
17 your staff will stay on this project, now that we do have  
18 many of the studies that we were hoping to get to make  
19 sure that this goes forward and that we get this issue  
20 resolved as soon as possible.

21 There are at least 20 platforms off the central  
22 cost, which will ultimately be going through the  
23 abandonment process. And it is likely that many of those  
24 will have these mounds under them, if not all of them and  
25 that there will be toxics there as well.

1           So it's really an arduous process, but this is so  
2 critical in terms of what will occur in the future with  
3 regards to additional abandonments and additional mounds.

4           Also, I have a letter from a Supervisor named  
5 Schwartz in whose district these shell mounds rest in  
6 Santa Barbara County, mentioning that the county of Santa  
7 Barbara owns the property on which the platforms were  
8 once erected, and therefore the county has a vested  
9 interest in ensuring that post-abandonment activities  
10 environmentally sound. Naomi Schwartz endorses the  
11 Commission and State Lands Commission's permits to  
12 remove -- original conditions to remove the toxic debris  
13 beneath the platforms upon abandonment, including the  
14 shell mounds, and are, again, concerned about the time  
15 line. Finally, urging you to proceed with the preparation  
16 of the environmental document to evaluate the issue of the  
17 removal.

18           Thank you.

19           EXECUTIVE OFFICER THAYER: On two points, we'll  
20 fully investigate all 3 different options and the EIR will  
21 do that, particularly the full removal option, which is  
22 the one that I think she and some of the others are mostly  
23 in favor of.

24           And her second point is we don't necessarily  
25 accept at face value -- we don't accept at face value

1 Chevron's assertion that there is no contamination.  
2 That's the job of the EIR to determine, you know, how much  
3 contamination there is.

4 CHAIRPERSON BUSTAMANTE: And we also don't accept  
5 at face value that just full removal is the only  
6 alternative.

7 EXECUTIVE OFFICER THAYER: That's correct.

8 CHAIRPERSON BUSTAMANTE: If it's the best  
9 alternative here. It's going to be very important, the  
10 idea of coring and then the reason for the EIR was to --  
11 because we are setting a precedent. We've never done this  
12 before. We have to make sure that the first one is done  
13 right. And so, however, we do this, we have to make sure  
14 that it is done in a way that you're not going to stir up  
15 a tremendous amount of toxins that end up in the water and  
16 that it ends up having greater environmental damage.

17 If we could all take it out without any problems,  
18 my guess is that that would be the option that most people  
19 would want. But if it's going to create huge damage and  
20 pollution in the waters, I think we have to be very, very  
21 careful exactly how we're going to do this.

22 MS. GULESSERIAN: Lieutenant Governor and  
23 Commissioners, I have a copy of Environmental Defense  
24 Center's letter, and another letter from the Citizens  
25 Planning Association.

1           My name is Tanya Gulesserian. I'm an attorney  
2 with the Environmental Defense Center.

3           Just to comment regarding the late submittal of  
4 letters. Several agencies are able to put their staff  
5 reports on the web site. This would ease the public's  
6 ability to review the information in a timely manner at  
7 least a week prior to the hearing, so that we are able to  
8 review it and then submit a letter commenting on this  
9 information on a timely basis, so that you're able to  
10 review those letters before you come here today.

11           So we would request that staff reports be  
12 available on the Internet if that is possible.

13           The Environmental Defense Center is a public  
14 interest environmental law firm. We're representing the  
15 Citizens Planning Association, the Sierra Club, and the  
16 Pacific Coast and Federation of Fisherman's Association,  
17 with respect to Chevron's failure to remove its debris in  
18 compliance with State Lands Commission, Coastal Commission  
19 and Army Corps permits.

20           Since 1996 some Four-H platforms were removed.  
21 The Environmental Defense Center has been advocating for  
22 compliance with these permits.

23           Finally, in June 2001, five years later, the  
24 California Coastal Commission directed Chevron to apply  
25 for a permit to remove the toxic mounds. Because the

1 State Lands Commission is the lead agency under CEQA  
2 Chevron was also required to submit a permit request to  
3 the State Lands Commission.

4 However, rather than apply for a permit to remove  
5 the mounds, Chevron has submitted a proposal involving a  
6 range of alternatives. This proposal violates the clear  
7 direction of the California Coastal Commission to submit a  
8 permit amendment to remove the mounds.

9 The State Lands Commission should consider the  
10 removal alternative to be a project description and  
11 evaluate other proposals as project alternatives. The  
12 alternatives now listed should also include an alternative  
13 involving removal of all debris except the caissons. And  
14 then as the Lieutenant Governor was mentioning, perhaps  
15 another alternative that dealt with phasing to address a  
16 phased project so that we have all the information in one  
17 environmental review document, and we're not hear next  
18 year with an inadequate EIR that doesn't cover some action  
19 to comply with these permits.

20 This recommendation is consistent with the  
21 existing State Lands Commission permit, which already  
22 requires full site clearance.

23 Removals is especially important, given the fact  
24 that interim safety measures required by the State Lands  
25 Commission, in particular the requirement for buoys to

1 mark the locations of the mounds have been woefully  
2 inadequate. We have submitted some charts to you attached  
3 to our letter that show that buoys have been found missing  
4 or damaged 34 percent of the time.

5 In addition, the shell mounds environmental  
6 review confirmed that the mounds do contain toxic levels  
7 of contaminants and that such contaminants are leaching  
8 into the sedimentation beneath the mounds.

9 Contrary to the staff report, and I believe Ms.  
10 Frisk addressed this question, the review did not find a  
11 lack of water column contamination. In fact, the review  
12 did not test the water column.

13 Although EDC has requested that water quality  
14 testing be conducted, to no avail.

15 Finally, EDC urges the State Lands Commission to  
16 demand a timely permit review process and to ensure that  
17 this process that is set forth is being met. The issue  
18 has been unresolved for over five years. And, as you know  
19 and you stated, this action will set a precedent for over  
20 20 platforms that are offshore of the central coast.

21 Thank for this consideration of this issue.

22 EXECUTIVE OFFICER THAYER: On two points on the  
23 Internet question, we've started to post some of our more  
24 popular items. And so, for example, the Queensway Bay  
25 item and the public trust items have been on the Internet

1 for several weeks. We are investigating moving the next  
2 step and to make even more of them available. It does  
3 require both staff and equipment resources in order to do  
4 this. We know that the Coastal Commission does, in fact,  
5 make some of theirs available, although not all of them in  
6 recognition of those resources, but I wanted to let you  
7 know that we're headed in that direction.

8 And then in terms of the project, I'm not sure --  
9 the Coastal Commission has directed that Chevron return  
10 with a full shell mound removal application for a permit  
11 amendment. However, the Commission's original approval,  
12 in essence, gave them the authority to demand that kind of  
13 an amendment. We don't have that. And instead as the  
14 previous speaker mentioned, Chevron's proposed a range of  
15 removal options including the one that the Coastal  
16 Commission required. So all of that will be studied in  
17 the EIR.

18 CHAIRPERSON BUSTAMANTE: Along with the issues of  
19 water quality testing?

20 EXECUTIVE OFFICER THAYER: Absolutely.

21 CHAIRPERSON BUSTAMANTE: Any questions?

22 ACTING COMMISSIONER ARONBERG: So, Paul, I guess  
23 what you're saying that the project description is going  
24 to be removal with the other alternatives as suggested by  
25 the speaker?

1 EXECUTIVE OFFICER THAYER: No. All of them will  
2 be evaluated equally. The project description for the EIR  
3 is somewhat dependent upon what the applicant applies for.  
4 In other words, we can't write that separately from what  
5 The applicant is proposing. And in our case, the  
6 applicant proposed that an EIR -- in essence a range of  
7 options that they wanted the EIR to review to determine  
8 which would be best. But this full removal option, which  
9 is one that the Coastal Commission asked for, is one of  
10 the co-equal options that has to be fully examined.

11 ACTING COMMISSIONER ARONBERG: Is there any  
12 reason for this Commission to express its desire that the  
13 mounds be removed, if it is safe and feasible and  
14 nonpolluting?

15 EXECUTIVE OFFICER THAYER: The Commission can do  
16 that, but, of course, the EIR will develop that  
17 information. And so I think, you know, the approach right  
18 now, the best approach, would be to come up with a  
19 solution, the direction might be the solution that's best  
20 for the environment. And we don't know what those answers  
21 are yet. One suggestion on method of dealing with them  
22 that was discussed in the earlier study was whether or not  
23 some of them should be buried in sand. And I'm not  
24 necessarily subscribing to that as the best solution at  
25 all, but if there's some contaminated mound where the



1 removal of the mound itself might be sustained, some of  
2 the contaminants, that might be a good one for one of the  
3 mounds. So, at this point, it would be difficult to say  
4 what's best for the environment.

5 ACTING COMMISSIONER ARONBERG: Can we have this  
6 be expedited as another question.

7 EXECUTIVE OFFICER THAYER: I believe Kirk Walker,  
8 the staff person indicated, that the draft would be out in  
9 April if everything worked out and the final coming in  
10 August.

11 CHAIRPERSON BUSTAMANTE: What's the pleasure of  
12 the Commission?

13 ACTING COMMISSIONER PORINI: I'll move approval.

14 ACTING COMMISSIONER ARONBERG: Second.

15 CHAIRPERSON BUSTAMANTE: Motion has been made and  
16 seconded. Let the record show that the motion passed  
17 unanimously.

18 Are we going -- do we have anything on 95?

19 EXECUTIVE OFFICER THAYER: It's an oral staff  
20 presentation. I'd recommend that perhaps we take up the  
21 two items that have been trailed, 82 and 84 from consent,  
22 and if we're running out of time we can do the audit  
23 report at a future meeting.

24 CHAIRPERSON BUSTAMANTE: Let's go to those 2  
25 items.

1 EXECUTIVE OFFICER THAYER: Item 82 I think is a  
2 presentation. This is the proposal by Venoco to extend  
3 the due diligence requirement for submitting a development  
4 plan by two years.

5 MR. MOUND: Venoco, a least was transferred to  
6 Venoco in March of 2000. They acquired Chevron's 50  
7 percent interest in this Lease 3150. At that time, they  
8 had asked for a two-year drilling deferment to study the  
9 drilling options and to come in with a development plan  
10 and a proposed drilling plan. However, the Commission  
11 only granted them one year.

12 They had requested, like I said, an initial two  
13 years. However, they didn't meet that requirement and we  
14 still, as of yet, don't have a plan or a development plan  
15 or a drilling deferment approved.

16 We've reviewed their request to extend this  
17 another two years. We believe that they've had plenty of  
18 time. They blame the fact that they haven't submitted a  
19 plan to the Commission on the fact that they were having  
20 difficulty getting information from Chevron during the  
21 transfer. We looked at their reasons for the delays. I  
22 believe it was partly Chevron in their reorganization and  
23 moving the facilities, files were relocated and could not  
24 be located. We also believe that Venoco could have within  
25 diligent in getting the information they needed to develop

1 a plan for this lease.

2 Therefore, because of that, we're suggesting that  
3 you do not give them a deferment -- well, that you give  
4 them a deferment, but not beyond the year -- not beyond  
5 January 1st, 2002, which is about four months from now,  
6 which is giving them another four months to complete a --  
7 or to come into you with a development plan for this  
8 lease.

9 CHAIRPERSON BUSTAMANTE: Is a representative of  
10 Venoco here? Yes, I believe so.

11 CHAIRPERSON BUSTAMANTE: I didn't see a request  
12 to speak form, so I'm assuming you don't want to speak?

13 They don't want to speak they're just here to  
14 answer questions.

15 Do the Commissioners have any questions?

16 ACTING COMMISSIONER PORINI: I'd just like to  
17 make a statement.

18 CHAIRPERSON BUSTAMANTE: Sure.

19 ACTING COMMISSIONER PORINI: I kind of feel like  
20 I'm being put in a position of being a mom, but I'll  
21 approve this deferment for four months, but I don't  
22 believe I'll approve any further deferments, period.

23 ACTING COMMISSIONER ARONBERG: Move approval of  
24 staff's recommendation.

25 ACTING COMMISSIONER PORINI: Second.

1 CHAIRPERSON BUSTAMANTE: There is a motion and a  
2 second.

3 EXECUTIVE OFFICER THAYER: There is one person  
4 who has signed up to speak.

5 CHAIRPERSON BUSTAMANTE: I'm sorry. I must  
6 have missed that.

7 MS. FRISK: When you have to go through two  
8 airports to get here and two airports to get home, you try  
9 to make it worthwhile. Thank you.

10 Carla Frisk with Senator Jack O'Connell's office.  
11 I'm here today to express the Senator's concern about  
12 deferments in general. A concern that oil companies do  
13 not take their due diligence requirement seriously. And  
14 as you heard from staff, there is some concern at that  
15 level as well.

16 Again, as you know, Senator O'Connell has  
17 significant concerns about additional drilling in the  
18 Santa Barbara channel. And this concern is just basically  
19 augmented by this situation. For example, I was present  
20 at the hearing before the State Lands Commission when the  
21 Benton Oil Company promised this Commission it would  
22 absolutely be drilling in one year, and I believe all the  
23 members were there. I think this Commission was very  
24 clear that they wanted that to move forward or not.

25 And in the end what happened was Benton did

1 virtually nothing for about ten months and then  
2 immediately started activities, applied to the Commission  
3 for an additional deferment. The county acted before this  
4 Commission could act. The county had an entirely  
5 different permit condition.

6 CHAIRPERSON BUSTAMANTE: We're talking about  
7 Venoco right now.

8 MS. FRISK: Right, but in the end the point is  
9 Benton was sedate, which they should be doing in it one  
10 year and now it's three years. And our concern is that we  
11 have are seeing these deferments come before the  
12 Commission and we don't really feel that the oil companies  
13 are taking the deferment seriously.

14 We don't feel that we are sure that, in fact,  
15 when the one-year is the one year is going to be up. And  
16 until the Commission begins denying some of those  
17 deferments that may not be the case, that may continued to  
18 be the situation.

19 CHAIRPERSON BUSTAMANTE: Please sum up.

20 MS. FRISK: Many of those deferments for  
21 submitting a development plan actually expired last March,  
22 so it has already received de facto a six-month extension  
23 and it is still unable to meet it's obligation. Again,  
24 it's critical that this Commission take an action that  
25 will get the attention of oil companies and send a message

1 that if their operating in State waters or they have due  
2 diligence requirements they better take them seriously.

3 CHAIRPERSON BUSTAMANTE: Thank you.

4 MS. GULESSERIAN: Tanya Gulesserian. Lieutenant  
5 Governor and Commissioners, thank you for the opportunity  
6 to quickly comment. That EDC is very concerned and  
7 opposed to all deferrals until the oil companies  
8 aggressively prove that they are due diligently meeting  
9 all deadlines. You have two requests for deferments being  
10 heard today months after their actual expiration. That  
11 means they are due de facto extensions already.

12 In opposing these deferrals and de facto  
13 extensions, EDC urges the Commission to, one, require  
14 requests four a deferral before the expiration to get  
15 information in a timely manner, and, two, only allow  
16 deferments if the industry has made significant and  
17 aggressive efforts toward meeting the deadline and cannot  
18 meet that deadline only through no fault of their own.

19 With respect to Venoco, the Commission put Venoco  
20 on notice when the Commission approved the assignment of  
21 the lease from Chevron in February of 2000 that Venoco  
22 must submit an exploration and development plan by March  
23 2001. It is already been one and a half years and Venoco  
24 has not submitted a plan.

25 A staff report states and the staff has spoken to

1 you here today that inaction by Venoco appears to have  
2 contributed to the delay.

3 CHAIRPERSON BUSTAMANTE: Please sum up.

4 MS. GULESSERIAN: EDC urges the State Lands  
5 Commission to deny the request for deferment and require  
6 the leasee to final quit claim as soon as possible.

7 Thank you.

8 CHAIRPERSON BUSTAMANTE: Thank you.

9 Any other questions, any other comments?

10 Motion?

11 ACTING COMMISSIONER ARONBERG: Move approval of  
12 staff's recommendation, noting that the Controller shares  
13 Senator O'Connell's concerns about deferment as well as  
14 EDC's and would echo Annette's comments about this being  
15 the last deferment.

16 ACTING COMMISSIONER PORINI: Second.

17 CHAIRPERSON BUSTAMANTE: Motion was made and  
18 seconded. Let the record show that it was passed  
19 unanimously.

20 Item 84, Berry Petroleum.

21 MR. PLANCK: Lieutenant Governor and  
22 Commissioners, Jeff Planck, staff at the Commission.

23 PRC 3314 was a acquired by Berry from Shell Oil  
24 Company. And an on-shore facility which has one well and  
25 a small oil and gas processing plant that's on shore in

1 the neighborhood of a third to a half mile from the  
2 shoreline.

3 In 1985 there was one drill -- one well drilled  
4 there by Chevron and it's been producing ever since 1985  
5 at about 100 barrels and continues to produce. This lease  
6 actually encompasses another lease, PRC 735, that are all  
7 off-shore in Montalvo and Ventura County. It's actually a  
8 rather large oil field on-shore that does go out into the  
9 State waters.

10 Berry Petroleum received a deferment from the  
11 Commission in 2000, and they were in the process of trying  
12 to find a buyer for the lease and assign the lease. They  
13 have since decided not to assign the lease and do want to  
14 continue to develop the lease, but they believe that they  
15 need more seismic information before they can fully  
16 understand the faulting and the geologic structures.

17 They're in here asking for another deferment to  
18 review -- to actually do the seismic study, to get all the  
19 permits they need necessary, and to begin drilling by the  
20 end of next year.

21 CHAIRPERSON BUSTAMANTE: What is their due  
22 diligence up to this point?

23 MR. PLANCK: You mean like how man deferments  
24 have they had?

25 CHAIRPERSON BUSTAMANTE: No, they've had



1    deferments.    What have they been doing while they've had  
2    deferments?

3            MR. PLANCK:    Well, in the last year they were  
4    actually in the process of trying to sell and sign the  
5    lease.    And that's all I know.    They have come in twice  
6    now --

7            CHAIRPERSON BUSTAMANTE:    Is there somebody here.  
8            Please come up.

9            MR. BERG:    Steve Burg and Richard Pulley with  
10    Berry Petroleum.    Lieutenant Governor and Commissioners,  
11    thanks for considering our --

12           CHAIRPERSON BUSTAMANTE:    We need a very quick  
13    response sir,

14           MR. PULLEY:    We spent \$10,000 --

15           CHAIRPERSON BUSTAMANTE:    Your name please.

16           MR. PULLEY:    My name is Richard Pulley.    I'm the  
17    staff geologist on this project.    We spent \$10,000 on  
18    getting cost estimates to do the seismic program.    The  
19    seismic program will cost about two and a half million.  
20    That will give us targets for development both on shore,  
21    and in this off-shore portion of the lease.

22           We cannot do this effectively without doing the  
23    seismic.    This is something that's never been done before,  
24    that's why we want to do it.

25           CHAIRPERSON BUSTAMANTE:    Well, yeah wasn't this

1 done earlier? I mean, you've been trying to sell the --  
2 if you're going to use the time for deferment, why haven't  
3 we proceeded quickly to deal with this?

4 MR. BERG: Lieutenant Governor, the cost to drill  
5 a well from on-shore to off-shore at these targets, which  
6 are about 11 thousand feet subsea, is in the neighborhood  
7 of \$3 million. And it's only been within the last year  
8 that the oil prices have stabilized to allow us to have  
9 the economics to move forward with a project of this  
10 magnitude.

11 ACTING COMMISSIONER ARONBERG: I guess I'll just  
12 add my caution to you that I will be willing to agree to  
13 this postponement this time, but I won't agree to it next  
14 time.

15 CHAIRPERSON BUSTAMANTE: So is there a motion?  
16 Is there any other questions by staff or any  
17 other comments to be made?

18 Carla and Tanya.

19 MS. FRISK: Again Carla Frisk with Senator Jack  
20 O'Connell's office. Just for the record, let me reiterate  
21 Senator O'Connell's concern that oil companies are not  
22 taking their due diligence requirement seriously. I agree  
23 with your comment that this should have been moving  
24 forward for the past year.

25 And in this case, in fact, Berry Petroleum is

1 asking for twice the amount of time that they were given  
2 originally to move forward with this project. Again, the  
3 message must be sent that oil companies that do not  
4 seriously pursue their projects will not be granted  
5 deferments.

6 CHAIRPERSON BUSTAMANTE: Thank you. Staff, the  
7 time of deferment staff is recommending is?

8 EXECUTIVE OFFICER THAYER: It would expire  
9 January 1st, 2003 and there are also interim milestones  
10 established in this.

11 CHAIRPERSON BUSTAMANTE: Run out a year and a  
12 half.

13 EXECUTIVE OFFICER THAYER: Correct.

14 MS. GULESSERIAN: Tanya Gulesserian with the  
15 Environmental Defense Center. I just wanted to put our  
16 comments on record today that the State Lands Commission  
17 approved a year ago a deferment until June 2001. Here we  
18 have another example of a de facto extension, and an  
19 after-the-fact-request for another deferral.

20 I'd also like to put on the record that economic  
21 considerations are not a justification for failing to meet  
22 due diligence standards, and now you're considering a  
23 request to defer until 2003. We will be returning then to  
24 oppose any further deferment.

25 Our experience with these companies is they make

1 every promise to the regulatory agencies, yet most of  
2 these promises remain unfulfilled. We would urge the  
3 State Lands Commission to make sure that these deferments  
4 do not continue and that do diligence is met.

5 Thank you very much.

6 CHAIRPERSON BUSTAMANTE: We have a staff.

7 MR. MOUND: I just wanted to add one thing.  
8 We're taking deferments very seriously. These deferments  
9 include the previous two that you issued at the last  
10 meeting, all asterisk milestones which these companies  
11 have to meet. So from now on we should not hit in this  
12 position with any deferments that you're issuing.

13 CHAIRPERSON BUSTAMANTE: What's the pleasure of  
14 the Commission?

15 ACTING COMMISSIONER PORINI: I'll move approval  
16 of the staff's recommendation with the specific  
17 milestones.

18 ACTING COMMISSIONER ARONBERG: Second.

19 CHAIRPERSON BUSTAMANTE: Motion and a second.  
20 Let the record show that it was passed unanimously.

21 Is that the end of the regular calendar.

22 EXECUTIVE OFFICER THAYER: Yes, it is. We could  
23 put over that public -- excuse me the audit report.

24 CHAIRPERSON BUSTAMANTE: Put it over.

25 EXECUTIVE OFFICER THAYER: We do have two

1 requests to speak during the public comment period.

2 CHAIRPERSON BUSTAMANTE: Yes, we do. You're  
3 right. Candice Harper.

4 MS. HARPER: I'm here to respond on the comments  
5 that I expect to be made on behalf of the Riverbank  
6 Holding company so I would like to be able to speak  
7 following that, if I may.

8 CHAIRPERSON BUSTAMANTE: River Bank Holding  
9 Company.

10 EXECUTIVE OFFICER THAYER: I believe Rod Blonien  
11 is signed up.

12 MR. BLONIEN: Thank you, Governor Bustamante, Ms.  
13 Porini and Ms. Aronberg. Ron Blonien on behalf of the  
14 River Bank Holding Company.

15 The chart we have on the wall is for purposes of  
16 explanation. And if you take a look at the chart, you  
17 will note that the blue part is the area indicating where  
18 River Bank owns the La Toro portion of the property. The  
19 pink indicates where the Virgin Sturgeon owns the La Toro  
20 portion of that property.

21 And, generally, the regulation that the State  
22 Lands Commission has indicates that generally the person  
23 who has La Toro property rights is assumed to also be  
24 entitled to the trust property rights to the sovereign  
25 property rights, the submerged water rights.

1           In this situation, we have here in 1976 Virgin  
2 Sturgeon gets a lease from the State Lands Commission for  
3 the portion that's in the pink. Subsequently, River Bank  
4 Marina comes along gets the lease for the property that's  
5 in the blue. And then in 1986 River Bank enters into a  
6 sublease with the Virgin Sturgeon for that portion of the  
7 property which is the La Toro, the back part is the pink  
8 and the blue part is leased by River Bank from the Virgin  
9 Sturgeon.

10           And the piece we're talking about is this piece  
11 right here, and that was in 1986. Staff, at that time,  
12 sends a memo to file indicating that they are concerned  
13 with the quote, "Windfall profits that enure to the  
14 benefit of the Virgin Sturgeon," by virtue of the fact  
15 that they pay the State approximately \$250 a month for the  
16 lease of that property and they're getting over \$2,500 a  
17 month from River Bank for the lease of that property.

18           Then we progressed to 1992, at which time the  
19 Virgin Sturgeon comes forward and asks to exercise their  
20 option under the lease. The recommendation from the staff  
21 is that they go ahead and they grant the option, even  
22 though River Bank has indicated that they would like to  
23 directly negotiate with the State and have the right to  
24 lease the property and not to be subleasee.

25           Obviously, it would be to the advantage of the

1 State to do that, because they would be able to get the  
2 profit that is now inuring to the benefit of Virgin  
3 Sturgeon. Staff indicated at that time, since this was an  
4 option, what they would like to do is continue for the  
5 option period.

6 But in a letter to Mr. Skidmore, the President of  
7 River Bank Holding, Mr. Valentine indicates, the staff  
8 counsel indicates, that at the time this lease expires,  
9 which would be the year 2001, that then River Bank would  
10 have the ability to lease directly from the State and that  
11 they would provide notice to River Bank.

12 Something odd happened then, Governor Bustamante.  
13 In 1996, the lease is again extended for a 25-year period  
14 of time, in spite of the fact that that lease still had  
15 ten years to run. So the lease has got ten years to run  
16 and the staff goes and extends that lease for another 25  
17 years, gives no notice to River Bank, doesn't give River  
18 Bank the opportunity to compete for that property. And  
19 despite the fact, again, that the La Toro property rights  
20 should go to River Bank marina.

21 Subsequently it's determined -- incidentally,  
22 this takes place on a consent calendar, which is supposed  
23 to be for noncontroversial items, but in the meantime  
24 there are at least two pieces of litigation filed back and  
25 forth between the parties relating to this business

1 transaction. So it clearly was controversial.

2 No notice given to River Bank. The lease has got  
3 ten years to run and they extend it for another 25 years.  
4 Subsequently, it's brought to the attention of the Lands  
5 Commission staff that they had extended this lease so long  
6 it now violates statutory law.

7 Statutory law provides you cannot have a lease in  
8 excess of 49 years. They now have a lease in excess of 49  
9 years. It's our contention that the lease, at that point,  
10 is void and cannot -- you cannot be remediated in any way  
11 or fashion. But what the staff then seeks to do is to cut  
12 off the final year and a half approximately to that least  
13 to bring it under 49 years and to allow the situation to  
14 continue.

15 And, again, our concern is that promises were  
16 made, commitments were made to River Bank that were not  
17 followed. We got to a point in '96 where no notice was  
18 provided, staff went against what they previously had  
19 committed to River Bank and just recently, just within the  
20 last couple of months, staff went in and amended that  
21 lease to shave off the last couple of years and try and  
22 make it a legal lease.

23 We contend it is not legal. We would ask that  
24 this matter be put on the agenda for your next meeting so  
25 that may be reviewed and so that we may have this thing



1 discussed in public and not have it slip through the  
2 consent calendar as it has been done in the past.

3 CHAIRPERSON BUSTAMANTE: Thank you. If you could  
4 just hold for a moment.

5 I heard three issues. And so from staff, are we  
6 required to give notice to River Bank on this particular  
7 issue?

8 EXECUTIVE OFFICER THAYER: Staff does not give  
9 notice for extension of existing leases. It does give  
10 notice to any who requested it for new leases, and that's  
11 been our standard practice.

12 CHAIRPERSON BUSTAMANTE: And was there a  
13 commitment made to provide a notice?

14 EXECUTIVE OFFICER THAYER: Most of this happened  
15 before -- all of this happened, except for the last  
16 incident, before I came to the Lands Commission. My  
17 understanding is that Mike Valentine did, in fact,  
18 indicate that notice would be given, but it was within the  
19 context of the 1992 meeting. And I believe notice was  
20 given at that time.

21 And I believe that at that particular juncture  
22 there was contemplation of an agreement between River Bank  
23 and Virgin Sturgeon. And so at that particular moment in  
24 time, and it was a brief one, there was not a disagreement  
25 going on, and so there was no objection from River Bank to

1 the 1992 action.

2 But I don't believe, and, again, I'm going --  
3 we're digging stuff out of the piles to deal with these  
4 issues, I don't believe that that assurance was for longer  
5 than that 1992 meeting.

6 CHAIRPERSON BUSTAMANTE: Was that notice in  
7 writing?

8 EXECUTIVE OFFICER THAYER: I don't know.

9 MR. BLONIEN: Yes, Governor, it is in writing and  
10 it's one of THE attachments in the binder and that's a  
11 1991 letter from Mr. Valentine.

12 EXECUTIVE OFFICER THAYER: I think the Lieutenant  
13 Governor was asking about the notice that we gave River  
14 Bank for the 1992 meeting. I don't know whether we sent a  
15 special notice or whether we sent a copy, as we generally  
16 do, the agenda, which shows the items that will be coming  
17 up.

18 CHAIRPERSON BUSTAMANTE: Would we have that on  
19 file?

20 EXECUTIVE OFFICER THAYER: Yes. And as a matter  
21 fact Jack did the research on this.

22 CHIEF COUNSEL RUMP: Yes. I took a look at the  
23 file for that date and mailing was made to, I believe, two  
24 individuals within the River Bank organization.

25 CHAIRPERSON BUSTAMANTE: And those two people.

1 CHIEF COUNSEL RUMP: I believe it is Kip Skidmore  
2 and I think there was generally to River Bank.

3 CHAIRPERSON BUSTAMANTE: Also, on the the lease  
4 in excess of 49 years, are we required to now reissue an  
5 entirely new contract in order not to exceed the 49 years  
6 or how does that process work?

7 EXECUTIVE OFFICER THAYER: When Kip Skidmore met  
8 with me and with Jack and several every others, within, I  
9 guess, about six months, eight months ago to bring up this  
10 issue. And we consulted with the Attorney General's  
11 office who reviewed the relevant court cases. And in  
12 situations where there's a discrete -- I'm going to say  
13 this and ask for Alan to really say what it means. But my  
14 understanding of it was that where there are discrete  
15 mistakes made under contract, which are easily  
16 correctable, that the rest of the contracted is not void.

17 And in this particular circumstance, the advice  
18 was to stay that this contract was only valid for the  
19 49-year period in which was lawfully allowed under the  
20 law. There was a mistake made and it was granted to 50  
21 years instead of 49. I then sent a letter not a amending  
22 the lease at all, but merely advising Virgin Sturgeon that  
23 their lease would expire after 49 years by operation of  
24 law. So I did not amend it.

25 CHAIRPERSON BUSTAMANTE: And that's all as far

1 Attorney General.

2 ASSISTANT ATTORNEY GENERAL HAGER: That's pretty  
3 close. We looked at the law. There has been some  
4 conflicts among the different Appellate districts, but we  
5 think the weight of the authority and the better authority  
6 is that when you have a lease where part of the period  
7 where it goes beyond the statutory prescribed period, only  
8 the extended -- only that longer portion is void. The  
9 whole lease is not void.

10 CHAIRPERSON BUSTAMANTE: And so there's no. -- at  
11 this point, is there, as we've entered into a contract,  
12 based on what you've said, can we enter into new  
13 negotiations on a lease since we've already let a lease?

14 ASSISTANT ATTORNEY GENERAL HAGER: You've issued  
15 a lease that is valid for 49 years. You do not need to  
16 amend that lease to make it 49 years. It, by operation of  
17 law, remains a valid lease, but only for the 49 years.

18 CHAIRPERSON BUSTAMANTE: Do we have an option to  
19 be able to get in to that lease or do we have cause to  
20 reopen that lease as a result of this either notification  
21 or the excess of 49 years.

22 ASSISTANT ATTORNEY GENERAL HAGER: I don't  
23 believe so.

24 CHAIRPERSON BUSTAMANTE: Did you want to say  
25 something?

1           MR. BLONIEN: Yes, Governor. Not to prolong this  
2 and get into an attorney's argument, but we believe the  
3 authority indicates that the lease is void once it goes  
4 beyond 49 years, and that the Commission could just as  
5 easily follow that line of cases and open this thing up,  
6 and get the best benefit for the people of the State of  
7 California, keeping in mind that what Jan Stevens said  
8 this morning about these being trust properties and trying  
9 to maximize State revenues.

10           CHAIRPERSON BUSTAMANTE: Thank you. The issue  
11 does raise another concern. And that is the \$250 per  
12 month versus the \$2,500 per month. How come we're not  
13 getting more?

14           EXECUTIVE OFFICER THAYER: I don't know the exact  
15 financial arrangements. I need to look into that. I  
16 don't for example whether we received in a percentage of  
17 the revenue that the Virgin Sturgeon receives from its  
18 sublease or what and I need to look into that. I don't  
19 know the answer to that.

20           I think originally though, my understanding from  
21 Kip Skidmore, who represents River Bank, that they made a  
22 mistake, and that they started building their marina and  
23 didn't realize their lease didn't encompass of what they  
24 wanted to build. And literally while the equipment was  
25 waiting, went in to negotiate with the Virgin Sturgeon.

1           So the original problem was created when River  
2 Bank designed a project for which they didn't get the  
3 right to build. And that's created a problem.

4           CHAIRPERSON BUSTAMANTE: Okay. That's good. I  
5 understand that. And I'm still wondering about the money.

6           EXECUTIVE OFFICER THAYER: I'll need to get back  
7 to you on that, because I'm not sure exactly what's  
8 happened.

9           CHAIRPERSON BUSTAMANTE: We don't have a quorum  
10 here to be able to add anything to the agenda for next  
11 time. We are going to be going into -- are you still  
12 going to go --

13          EXECUTIVE OFFICER THAYER: Closed session.

14          There is, of course, that one other comment.

15          CHAIRPERSON BUSTAMANTE: And we'll need to talk  
16 about that particular issue. Let me see if there's  
17 something in that that we should do with respect to any  
18 kind of an increase that would take place.

19          In the meantime, if there is -- if you could  
20 prepare the information that's been requested of you and  
21 make sure that the two Commissioners receive it, that way  
22 they can have an opportunity to review it, and we can get  
23 together, at some point, perhaps by phone or we can put  
24 together in the appropriate way to figure out if this is  
25 something that the Commission would like to do.

1           We have Candice Harper.

2           MS. HARPER: Thank you.

3           CHAIRPERSON BUSTAMANTE: You have the distinction  
4 of being the last speaker today.

5           MS. HARPER: I'm very happy of that, I'm sure for  
6 all of you here. I represent the Virgin Sturgeon. My law  
7 firm Trainor Robertson does, and I would just like to  
8 clarify a few of the points made by Mr. Blonien.

9           CHAIRPERSON BUSTAMANTE: Rebuttal.

10          MS. HARPER: Well, number one that the 200 feet  
11 that we are talking about, as to that portion, at least,  
12 River Bank marina is not the La Toro owner. That  
13 property -- they have a grant of easements for parking  
14 easement only. They sold that property many, many years  
15 ago, so I think you should number one be aware of that.

16          Number two, I believe the State Lands Commission  
17 whose started leasing this property to my client in 1976,  
18 I believe was determined that they were the best qualified  
19 user, which understand the statute that is a basis for  
20 leasing the State Lands property.

21          Secondly, and Mr. Thayer already brought up this  
22 point, the problem that we have today was caused by River  
23 Bank. When they built their marina and docks, they  
24 extended, they encroached onto the property that was  
25 leased by my client from the State Lands Commission as

1 well as onto other property that was other sovereign  
2 property of the State Lands Commission not leased by any  
3 party. And so the position they find themselves in is a  
4 position they created.

5 And so they were caused to come to my client and  
6 obtain permission from Virgin Sturgeon Inc. to sublease  
7 that property. Had they not encroached, the issue would  
8 have never arose.

9 Also, I note that this extension occurred in  
10 February of 1996, five and a half years later, when that  
11 wasn't an issue. It seems rather untimely.

12 So with those comments, I just wanted to make  
13 those comments for the record.

14 CHAIRPERSON BUSTAMANTE: Thank you.

15 Is there any other thoughts or questions?

16 Are you sure there isn't anybody in the audience  
17 that would like to say one more thing?

18 (Laughter.)

19 CHAIRPERSON BUSTAMANTE: Thank you.

20 This will adjourn the regular session and we'll  
21 go into closed session.

22 (Thereupon the State Lands Commission  
23 meeting was adjourned at 2:30 p.m.)  
24  
25



CERTIFICATE OF REPORTER

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

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of October, 2001.

A handwritten signature in dark ink, appearing to read "James F. Peters", is written over a horizontal line.

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