

MEETING
STATE OF CALIFORNIA
LANDS COMMISSION

EL SEGUNDO CITY HALL
COUNCIL CHAMBERS
350 MAIN STREET
EL SEGUNDO, CALIFORNIA

ORIGINAL

MONDAY, AUGUST 8, 2005
10: 00 A.M.

Michael Mac Iver
Shorthand Reporter

APPEARANCES

Cruz Bustamante, Chairperson

Director of Finance, represented by Anne Sheehan

Steve Westly, State Controller, represented by Cindy
Aronberg

STAFF

Paul Thayer, Executive Officer

Jack Rump, Chief Counsel

ALSO PRESENT

Alan Hager, Deputy Attorney General

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PROCEEDINGS

CHAIRPERSON BUSTAMANTE: We'll call the meeting of the State Lands Commission to order. All representatives of the Commission are present.

I am Lieutenant Governor Cruz Bustamante. I'm joined today by Cindy Aronberg representing the Controller, Anne Sheehan representing the Department of Finance.

For the benefit of those in the audience, the State Lands Commission administers properties owned by the state as well as its mineral interests. Today we will hear proposals concerning the leasing and management of these public properties.

The first item of business will be adoption of the minutes from the Commission's last meeting.

May I have a motion to approve the minutes?

ACTING COMMISSIONER SHEEHAN: I will move approval of the minutes.

ACTING COMMISSIONER ARONBERG: Second.

CHAIRPERSON BUSTAMANTE: Let the record show that there has been a motion and second and it's unanimous.

The next order of business is the Executive Officer's report.

Mr. Thayer.

EXECUTIVE OFFICER THAYER: Thank you, Mr. Chairman.

1 Good morning, Mr. Chair and Members of the
2 Commission.

3 I just have two things to report on. First, I
4 want to thank on behalf of the Commission the City of El
5 Segundo for making their City Council chambers available to
6 us. It's convenient for the Commission to come here and we
7 very much appreciate their hospitality.

8 CHAIRPERSON BUSTAMANTE: Also one other note on El
9 Segundo is it is the home and the former place where a
10 friend and colleague recently passed away, Mike Gordon. I
11 would normally ask for a moment of silence, but Mike was
12 never silent.

13 (Laughter.)

14 CHAIRPERSON BUSTAMANTE: So although he's probably
15 here somewhere lurking around and looking over our
16 shoulders, we will just go ahead and continue the meeting
17 because that's what Mike would have done.

18 EXECUTIVE OFFICER THAYER: Thank you.

19 The other item that I had was I would like to
20 introduce, we have a new Division Chief, Mike Valentine, has
21 been with the Department of Fish and Game for the last seven
22 years, but prior to that he was with the State Lands
23 Commission for years as the Assistant Chief Counsel here.
24 So we're very glad to have him back with the State Lands
25 Commission family. And Mike, if you would stand. So it's

1 very important to have him here.

2 Bob Lynch had served in that capacity for years
3 and years and he's now enjoying a wonderful retirement, and
4 we miss him of course, but we're glad to have Mike here.

5 And that concludes the Executive Officer's report.

6 CHAIRPERSON BUSTAMANTE: Well, that was to the
7 point.

8 (Laughter.)

9 CHAIRPERSON BUSTAMANTE: What I would like to do
10 at this point is to instead of going forward with the
11 consent calendar, ask to remove and consider Item 52 at this
12 time in order to celebrate what is of great significance to
13 the Commission and the state of California.

14 Mr. Thayer, I understand you have a presentation?

15 EXECUTIVE OFFICER THAYER: Yes, sir. I will speak
16 longer reaching the point on this.

17 CHAIRPERSON BUSTAMANTE: Good.

18 EXECUTIVE OFFICER THAYER: This item is a proposal
19 for the Commission to accept another Offer To Dedicate an
20 easement for public access along the California coast.
21 These OTDs, as they are known, involve strips of land along
22 the ocean that when accepted permit public use of the dry
23 beach along the ocean.

24 The California Coastal Commission, pursuant to the
25 Coastal Act, has obtained over 1,200 of these OTD's as

1 conditions of permit approval. But the public can't use
2 those strips of the beach until they are accepted, either by
3 a nonprofit or a public entity. There has been a lot of
4 acceptance of these OTDs, there have nonprofits, Steve Hoyer
5 is here from one of them today, the Coastal Conservancy, and
6 other state agencies and local governments.

7 The State Lands Commission has long been dedicated
8 to promoting access to public waterways and the coastlands
9 administered by the Commission. Many public trusts or land
10 exchanges are focused on improving public access. The
11 Commission has filed litigation to preserve public access
12 that had been obtained through prescriptive rights. And
13 it's absolutely in the last couple of years we've been
14 involved with ensuring public access at Mad River, at Lake
15 Tahoe, and now on our agenda today is in closed session a
16 proposal that will resolve some litigation the Commission
17 filed on the San Joaquin River for public access along that
18 waterway.

19 Since 1991, as part of the Commission's mission on
20 public access, the Commission has accepted OTDs along the
21 California coast. While most have been in the Malibu area,
22 in fact they are from all over California.

23 Today the Commission is opening up a new access
24 way at Carbon Beach, about 25 miles north of here. This
25 access way, it's one of the ones shown on the map here, you

1 can see Carbon Beach about here, and we just point it out
2 there. It's like a lot of the other accessways we've
3 accepted, but it's dissimilar in that it's the 200th one,
4 it's a milestone really which marks how many we have done
5 and our role in public access in California. In fact, no
6 entity has accepted more public accessways or these OTDs
7 than the State Lands Commission.

8 While we are proud of this accomplishment, we know
9 that public access in California is a team effort, and as I
10 mentioned earlier, we work closely with the Coastal
11 Commission, the Coastal Conservancy, as part of the state's
12 official coastal access program, and the Commission's OTDs
13 are part of a broader pattern of accessways, including those
14 accepted by other public and private entities.

15 Representatives of some of those are here today to
16 speak to the Commission. It's the staff recommendation
17 after hearing from them that the Commission vote yes on
18 accepting this OTD and that we then adjourn to celebrate for
19 a few minutes with cake and coffee in the back of the room.

20 CHAIRPERSON BUSTAMANTE: No ice cream?

21 EXECUTIVE OFFICER THAYER: No ice cream.

22 (Laughter.)

23 EXECUTIVE OFFICER THAYER: So that conclude's the
24 staff recommendation. And there are a number of people who
25 have signed up to speak.

1 CHAIRPERSON BUSTAMANTE: We have five requests.
2 Steve Hoyer, Executive Director of Access for All. And then
3 after that, it will be Sarah Wan.

4 MR. HOYE: Thank you very much, Commissioners.

5 And it is a great joy for me to actually be here
6 today, especially since yesterday I sat in the 200th OTD, I
7 think I was the first member of the public to actually sit
8 in this particular easement. And it was a very, very good
9 feeling because we are on Carbon Beach, you know, having
10 teething troubles, birth pains, what have you, with the
11 homeowners and with, specifically, Mr. David Geffen who has
12 actually granted us the ability to actually vertically
13 access Carbon Beach. And yesterday we had 200 people walk
14 down our accessway. Two weeks ago we had 300 people walk
15 down that accessway, including a horse. It has been a bone
16 of contention with the homeowners, they really don't think
17 there should be horses walking down the accessway. But two
18 weeks ago --

19 CHAIRPERSON BUSTAMANTE: Is a horse defined as the
20 public?

21 (Laughter.)

22 CHAIRPERSON BUSTAMANTE: Is that in the
23 definition? Can we get an opinion from the Attorney
24 General's office?

25 MR. HAGER: Yes.

1 MR. HOYE: We also two weeks ago had former Mayor
2 Richard Riordan walk down our accessway who proceeded to
3 come down and quite frankly gave me a little bit of a
4 lecture about the mean tideline, which he really didn't
5 quite get. And I did actually say on four occasions I don't
6 think you're quite right there Mr. Mayor, perhaps I could
7 explain, or perhaps you would like to speak to Paul Thayer,
8 the Executive Director of the State Lands Commission to
9 explain to you the mean high tide line, which is what the
10 situation is now.

11 We're having a great time down at Carbon Beach and
12 so is the public. And we're really actually having that
13 great time specifically because of the California State
14 Lands Commission and all of the OTDs that they have actually
15 accepted.

16 This is a map of Carbon Beach, it does not
17 actually include the 200th at this moment in time, but there
18 are a lot of easements on this beach that are actually able
19 to be actually spreading out the public. And do you know
20 who made this map, it wasn't me, it wasn't any state agency,
21 it was the homeowners, specifically the attorney of Mr.
22 Geffen, because he would like to see the public spread
23 themselves out along Carbon Beach and not sit directly in
24 front of his house.

25 Anyway, these are actually being given out --

1 CHAIRPERSON BUSTAMANTE: We're going to do all we
2 can to help.

3 (Laughter.)

4 CHAIRPERSON BUSTAMANTE: We're going to help Mr.
5 Geffen as much as we can.

6 MR. HOYE: On a more serious tone, we're trying to
7 work out a relationship with the homeowners on this beach.
8 But we couldn't even come close to that if the State Lands
9 Commission hadn't actually done what it's done on this beach
10 and on Broad Beach up coast. These beaches are actually
11 public beaches now, there is no such thing as a private
12 beach in the state of California.

13 Thank you.

14 CHAIRPERSON BUSTAMANTE: Thank you.

15 EXECUTIVE OFFICER THAYER: I should note that Mr.
16 Hoye's group, Access for All, I don't know whether it was
17 clear in his presentation, is in fact the entity that picked
18 up the David Geffen vertical accessway and there was a grand
19 opening there which was especially grand because it only
20 occurred after years of litigation against Mr. Hoye and
21 litigation involving the Attorney General's office as well.
22 And that's been successfully concluded, so it's great to
23 hear from him.

24 CHAIRPERSON BUSTAMANTE: And we thank the Attorney
25 General's office, as well as Mr. Hoye.

1 Sarah Wan, a Coastal Commissioner and all around
2 good guy.

3 MS. WAN: Thank you very much, and I too am here
4 to celebrate a very happy day.

5 Public access is a critical component of this
6 state's coastal protection program. And in 1972, the public
7 went to the polls on a grassroots movement and enacted
8 Proposition 20, which was the Coastal Preservation
9 Initiative. And, frankly, one of the main reasons it was
10 passed was because of the public's desire to have public
11 access to the beaches with the belief, and correctly, that
12 those beaches belonged to the state, they belonged to the
13 public, and everyone should have the ability to get to them.

14 For many years, for a variety of reasons, a lot of
15 them having to do with funding, the state sort of lagged in
16 getting these things opened. But I have to say that the
17 State Lands Commission when it did step up to the plate is
18 really in my opinion the agency that took one of the lead
19 roles in seeing the shift that we've seen in the last maybe
20 six or seven years and a real effort to get the public the
21 ability to get to the beach.

22 And I am looking forward to having more of these
23 picked up and to having a day when we don't have a patchwork
24 of easements as Mr. Hoyer showed you but that the entire
25 beach has been accepted. There are legal ways which take

1 time for that to happen. But I have to applaud the State
2 Lands Commission for its role, it's taken a lead role in
3 this, and of course along with private entities, but also
4 along with the Coastal Commission and the Coastal
5 Conservancy. And so in partnership this state has one of
6 the best public access programs in the nation.

7 CHAIRPERSON BUSTAMANTE: Thank you, Sarah.

8 With Mr. Hoyer's personality, your hard work, and a
9 little nudging by the Attorney General's office and State
10 Lands staff, we're hoping to be able to do exactly that.

11 Thank you, Sarah.

12 MS. WAN: Thank you.

13 CHAIRPERSON BUSTAMANTE: Joan Cardelino, with the
14 Coastal Conservancy.

15 MS. CARDELINO: Good morning, Commissioners, and
16 congratulations. It's really a great day and I'm happy to
17 be here on behalf of the Coastal Conservancy Board and our
18 executive officer, and we extend you our deepest gratitude
19 for the work that you've done.

20 I manage the Conservancy's Public Access Program,
21 I work very closely with OTDs, and my hat's off to you. Two
22 hundred OTDs, that's far more than any other entity in the
23 state. I think the Coastal Conservancy might be the second
24 one and we're way behind at about 120. There is a nonprofit
25 in Mendocino County, the American Land Conservancy, that I

1 believe holds about 80. So you guys are way out ahead and
2 have done tremendous things to help secure the coastline for
3 the public. And you are also really smart because you take
4 these OTDs and you don't have to manage them.

5 (Laughter.)

6 MS. CARDELINO: And that's where the rub is for
7 all of us who are trying to manage these things.

8 I would just underscore what Steve and Sarah have
9 said about Carbon Beach is such a great example of the
10 situation we deal with. If you look at a map of Carbon
11 Beach and you see the lines for the individual properties,
12 it's like looking at a piano keyboard and some of them are
13 colored for public access and others aren't. And as a
14 member of the public when you walk along the sand you have
15 no idea when you're on private sand or public sand.

16 So I don't know exactly what the answer is, but
17 the Coastal Conservancy extends whatever we have, funding,
18 technical assistance, staff assistance, to work with State
19 Lands to see if we can figure out a way to get the rest of
20 these intervening parcels into public ownership. So we have
21 to put our heads together on that.

22 Once again, thank you very much.

23 CHAIRPERSON BUSTAMANTE: Thank you.

24 Jack, maybe you can tell her how we do it.

25 CHIEF COUNSEL RUMP: Certainly.

1 CHAIRPERSON BUSTAMANTE: Next is Roy Van de Hoek.

2 MR. VAN de HOEK: Thank you for asking how to
3 pronounce my name. And I'm a Board Member of Access for All
4 with Steve Hoyer. And I'm honored to be able to speak to all
5 three of you on the Lands Commission and indeed the public,
6 and to talk to you as a biologist also for a second.

7 The sand to me when I walked there yesterday, for
8 example, felt extra special because of the symbology about
9 the whole process. I've walked on many beaches of
10 California with my binoculars looking for birds and wildlife
11 and got to do that yesterday and felt special about that and
12 saw eight whimbrels. They are a kind of sand piper with a
13 long beak that curves down, and they raise their families on
14 the arctic tundra in Alaska and Canada, and they have already
15 arrived back to this piece of beach where now the public and
16 also scientists and naturalists can get to see them and
17 school groups can come and teach about the whimbrel and that
18 bird. And also yesterday I saw a bottlenosed dolphin swim
19 by. And on the dedication day for the easement that Access
20 for All just, with the State Lands Commission and the
21 Conservancy, opened, we were able to see a whole pod of
22 bottlenosed dolphins. These are dolphins that hug the
23 shoreline.

24 So when you first arrive on this piece of
25 coastline, you arrive by car, and for miles you can't see

1 the coast because there are houses blocking the view. So
2 you can't see what the ecology is, you can't see the birds
3 or the dolphins in this stretch. Now you can just park and
4 walk out and see them. That great sign, that brown and
5 white sign on the window back there, coastal access, there
6 is one on the highway on either side of where you park. And
7 so it's just really a great day.

8 And being with the Sierra Club and on the
9 executive committee for this chapter of Los Angeles and as a
10 spokesperson for the Sierra Club today, the Sierra Club is
11 also really glad that this access is open and hat's off to
12 the State Lands Commission on having that happen.

13 Thank you.

14 CHAIRPERSON BUSTAMANTE: Thank you.

15 Also with us today, before we have the last
16 speaker, is a person who is not normally recognized for the
17 work that he did while in the state legislature, but carried
18 one of the largest bills of this kind. And with us today in
19 the back and the corner is former Senator Richard Polanco.

20 (Applause.)

21 CHAIRPERSON BUSTAMANTE: The last speaker is
22 Marcia Hanscom, is that correct, Sierra Club Coastal
23 Program.

24 MS. HANSCOM: Honorable Commissioners, Honorable
25 Chair Bustamante, thank you for the opportunity to speak

1 with you today. On behalf of the Sierra Club Coastal
2 Program, we especially want to say thank you for this.

3 About ten years ago, our Coastal Program realized,
4 along with the Coastal Conservancy, that there were some
5 real concerns because there were all these Offers to
6 Dedicate that were to be expired soon, and that's actually
7 part of what inspired Steve Hoyer to start Access for All who
8 was one of our Sierra Club employees at the time and
9 realized that we needed to move fast. And the Sierra Club,
10 like another government bureaucracy, takes a little longer,
11 so he started Access for All thankfully. And so I'm pleased
12 to be a member of his Board of Directors.

13 And we're very, very happy at the Sierra Club that
14 you have taken such leadership in accepting these OTDs. I
15 know that Access for All would not have felt they could have
16 done the work without the State Lands Commission's support
17 and the support of the Coastal Commission and the Coastal
18 Conservancy.

19 And I also would like to help everybody remember
20 one of the reasons why we're involved in this, it goes back
21 to our founder John Muir, who expressed the importance of
22 getting out and experiencing nature, that if you don't do
23 that, it's very difficult to protect it. And so he was the
24 one that got Teddy Roosevelt out to Yosemite and started the
25 National Parks movement, and we think that maybe there is a

1 child or two in East LA who will help us to protect more
2 land if they are able to see the beaches.

3 I remember when our mayor, our new mayor of Los
4 Angeles, Antonio Villaraigosa, first spoke to the Sierra
5 Club as he was running for the legislature, and he explained
6 to some of our folks how many people in his district never
7 even saw the California coast, even though they were only a
8 few miles away. So we're hoping that this whole coastal
9 access program will help the many millions of people here in
10 the region to be able to experience our beautiful California
11 coast.

12 Thank you.

13 CHAIRPERSON BUSTAMANTE: It already has. We
14 already had a kid from East LA already help on the Offers To
15 Dedicate and that was Senator Polanco.

16 (Laughter.)

17 CHAIRPERSON BUSTAMANTE: So we're looking for a
18 few kids to buy Geffen's home so we can always access.

19 (Laughter.)

20 CHAIRPERSON BUSTAMANTE: So at this point we would
21 like to have any comments by any Commissioners, if there are
22 any, otherwise we would --

23 ACTING COMMISSIONER SHEEHAN: No, just that kudos
24 to the staff and to all who have made this possible, because
25 it really is a historic moment I think for the Commission.

1 ACTING COMMISSIONER ARONBERG: I am so thrilled
2 that we are here today to celebrate the 200th OTD and the
3 heros really are sitting right there in the front row, it's
4 Roy, Marcia, Steve, and Sarah. You are there every day
5 protecting the coast, looking after it, and our staff has
6 been wonderful to have been so open to accepting these OTDs
7 in the last few years, and it's great. But you are the true
8 heros and I know I speak for the Controller and myself that
9 we are so lucky to have you.

10 Thank you for your hard, hard work. Thank you for
11 being here today to celebrate. Thank you everyone and thank
12 you to Paul for doing this over the years. And hopefully
13 we'll have a celebration for a 300th pretty soon.

14 CHAIRPERSON BUSTAMANTE: That's right. I remember
15 when I was Speaker and I had a little event that then a
16 member of the community, Pedro Nava, who is now a member of
17 the legislature, had me come over and visit with around a
18 hundred environmentalists from Santa Barbara. And one of
19 the activists who were there as I was walking up yells out,
20 I hope that you protect our coast, we love our coast. And
21 as I got up there, I felt compelled to tell her, I said it
22 was my coast too. I may live in Fresno, but it's the only
23 coast that I have. And right before making the appointments
24 to the Coastal Commission, I actually drove my children to
25 the coast and I said, even though they were kind of young at

1 the time and didn't really understand, I said I want this
2 coast to look better than this when you get a chance to show
3 your grandchildren.

4 And so I think that these Offers To Dedicate are
5 going to important not just for folks who live along the
6 coast, but also for those people who rarely have an
7 opportunity to go to the coast, but having access is very,
8 very important. In order for us to escape 108 degree heat
9 in Fresno, we need a way to get to the coast, an easy way.
10 But it's important that all people, even those that live
11 along the coast, recognize a very huge number of people who
12 don't and they also need access to the coast. So you're not
13 just fighting for the neighborhoods that are close by,
14 you're fighting for all the neighborhoods throughout the
15 state of California.

16 So thank you all for all the work that you do.

17 Then why don't we go ahead and move this item. I
18 will accept a motion and a second.

19 ACTING COMMISSIONER ARONBERG: I am thrilled to
20 move approval.

21 ACTING COMMISSIONER SHEEHAN: And I'll second.

22 CHAIRPERSON BUSTAMANTE: Let the record show it's
23 a motion and a second and that the vote was unanimous.

24 Thank you all.

25 And now we have cake.

1 (Applause.)

2 CHAIRPERSON BUSTAMANTE: Let's take 10 minutes.

3 (Thereupon a short recess was taken.)

4 CHAIRPERSON BUSTAMANTE: Enough celebrating.
5 Enough cake eating. We have a relatively short agenda. I
6 again want to thank all the speakers who came today. And
7 for the person who made the wonderful cake, it was great.

8 The next order of business is the adoption of the
9 consent calendar.

10 Is there any items that you wish to remove?

11 EXECUTIVE OFFICER THAYER: Mr. Chair, we'd like to
12 remove C-30, this will be heard at a subsequent Commission
13 meeting. I understand the Chair has an item as well.

14 CHAIRPERSON BUSTAMANTE: Also, C-44, the El Paso
15 Natural Gas, we'd like to hear that item in order.

16 EXECUTIVE OFFICER THAYER: Okay. Then those two
17 items will be removed from the consent calendar.

18 CHAIRPERSON BUSTAMANTE: So the motion would need
19 to approve the consent items without Items 30 and 44?

20 EXECUTIVE OFFICER THAYER: That's correct.

21 CHAIRPERSON BUSTAMANTE: Is there a motion?

22 ACTING COMMISSIONER SHEEHAN: I'll move the
23 consent calendar, minus Items 44 and Item 30.

24 ACTING COMMISSIONER ARONBERG: Second.

25 CHAIRPERSON BUSTAMANTE: There is a motion and a

1 second. Let the record show that the vote was unanimous.

2 I was supposed to ask the public to speak. Let's
3 retract that motion and ask if there is anybody who would
4 like to speak. If not, it will remain.

5 Is there anybody who would like to speak on any of
6 the consent items?

7 Going once, going twice. Seeing none, the motion
8 will remain as made and seconded.

9 So we are now in regular session. The first item
10 is Item 44.

11 EXECUTIVE OFFICER THAYER: That's right, Mr.
12 Chair. This item has to do with the conversion of a
13 pipeline in the California desert from oil to gas use. The
14 applicant is El Paso Products and/or El Paso Natural Gas.
15 The Commission has had this on the agenda for several
16 meetings, and I think the individual Commissioners are very
17 familiar with this. It would join two of El Paso's systems,
18 a northern and southern route into and out of California.
19 And I believe that there is no opposition to this, but that
20 the Chair had some concerns, particularly about the utility
21 of this pipeline to California.

22 CHAIRPERSON BUSTAMANTE: The idea, for the Members
23 of the Commission, as well as for the public, was that we
24 were looking to find a way to expand the benefit to
25 Californians. We were hopeful that in trying to work with

1 El Paso we would find a way of linking other systems to
2 benefit not only Southern California, but Central and
3 Northern California as well. We were able to in fact find
4 such a compromise, such an effort with PG&E and El Paso, in
5 order to be able to establish an interconnection between
6 pipelines that would service -- PG&E would service Central
7 and Northern California.

8 We are hopeful that -- I believe we have some
9 language that should be read into the record in order to be
10 able to -- we've shown this information to both the El Paso
11 and PG&E and hopefully we'll have an opportunity to put this
12 on the record so that both the El Paso project can move
13 forward and also the interconnection with PG&E will also be
14 able to follow at some point in the future.

15 EXECUTIVE OFFICER THAYER: Yes. At the Chair's
16 instigation, we have drafted some conditions and I will read
17 through these now so that everybody will be familiar with
18 them.

19 The El Paso Line 1903 pipeline conversion project
20 is approved subject to the following:

21 Number 1. El Paso agrees to allow PG&E to connect
22 its natural gas system to Line 1903, such connection to be
23 in the vicinity of Cadiz or other mutually agreeable site,
24 and El Paso will cooperate with PG&E in construction of the
25 physical improvements.

1 Number 2. PG&E will be responsible for paying all
2 these costs associated with the interconnection.

3 Number 3. PG&E will be responsible for obtaining
4 all permits and approvals necessary to construct the
5 interconnection.

6 Number 4. El Paso agrees to not oppose PG&E's
7 efforts to secure all necessary approvals and permits to
8 implement the connection.

9 Number 5. Those foregoing terms will be included
10 in the provision of the State Lands Commission's leases to
11 El Paso in a form to be approved by Commission staff
12 counsel.

13 CHAIRPERSON BUSTAMANTE: We have with us to speak
14 on this item Jim Cleary who is the president of El Paso
15 Natural Gas.

16 Come forward, please.

17 If you would like to make any general comments
18 about the item, as well as the addendum or the amendment
19 that is being proposed.

20 MR. CLEARY: First, Chair Bustamante and
21 Commissioners, we appreciate the Commission's consideration
22 of this application and we are looking forward to moving
23 forward. I believe we have completed the full CEQA review
24 with the Commission staff and I think this pipeline will
25 bring benefits to the state of California as well as to the

1 rest of the El Paso Natural system. As to the conditions
2 that you just read into the record regarding an interconnect
3 with PG&E, they are fully acceptable to us and we look
4 forward to working with PG&E to make this happen.

5 CHAIRPERSON BUSTAMANTE: Great.

6 Is there anyone here from PG&E or any other?
7 Please come forward.

8 MR. BEDWELL: Mr. Chair, Committee Members, Ed
9 Bedwell with Pacific Gas and Electric. I am the Director of
10 State Government Relations for PG&E in Sacramento.

11 We've met with the staff, as well as members of
12 the Commission and El Paso, and also that would be Keith
13 Simpson, our attorney, and the conditions as proposed by Mr.
14 Thayer are acceptable to Pacific Gas and Electric.

15 CHAIRPERSON BUSTAMANTE: Great. Thank you.

16 Is there any other comments from staff on this
17 issue at this moment?

18 EXECUTIVE OFFICER THAYER: No, that concludes
19 staff presentation.

20 CHAIRPERSON BUSTAMANTE: Any commissioner
21 comments?

22 ACTING COMMISSIONER ARONBERG: I move approval.

23 ACTING COMMISSIONER SHEEHAN: I'll second.

24 CHAIRPERSON BUSTAMANTE: There is a motion and a
25 second. Is there anyone in the public who would like to

1 comment on the issue?

2 There was only one request to speak and that was
3 Mr. Cleary. Seeing no other public comment, the motion has
4 been made and seconded. Let the record show that the motion
5 was passed unanimously by the Commission.

6 Okay. All right. Going on to Item Number 65. I
7 understand that we are going to be postponing this item and
8 you have had a chance to talk with the folks over at Dos
9 Cuadras and they are in agreement with the postponement?

10 EXECUTIVE OFFICER THAYER: Yes. We've spoken with
11 Dos Cuadras. The staff has had some concerns about this
12 project, but thinks that some of the information that has
13 recently been brought forward by Plains, the Assignor, and
14 the Assignee Decore, and that these may form the basis for
15 staff's coming forward with a favorable recommendation. But
16 we think we need some additional time to fully develop those
17 and have the correct agreements and we would propose to
18 bring this back at the October 20th Commission meeting.

19 CHAIRPERSON BUSTAMANTE: So we're anticipating a
20 favorable recommendation at the next meeting?

21 EXECUTIVE OFFICER BUSTAMANTE: We're hoping to be
22 able to work that out in the next couple months.

23 CHAIRPERSON BUSTAMANTE: Good.

24 All right. The last item I believe is Item 66.

25 EXECUTIVE OFFICER THAYER: Yes, Mr. Chair, this

1 item has to do with a research cable in Monterey Bay that
2 would provide both power to underwater research projects but
3 also data communications. And the Commission is both
4 approving the lease as well as the environmental
5 documentation. And so we'll have two staff presentations,
6 the first by Nancy Quesada, I believe, from our planning
7 department.

8 MS. QUESADA: Good morning, Commissioners. My
9 name is Nancy Quesada, I'm with the Land Management
10 Division.

11 And before I start a brief presentation of the
12 proposed Monterey Bay Aquarium Research Project, I would
13 like to introduce Michelle Brown with the Environmental
14 Planning Division. And she will be making a brief
15 presentation as soon as I'm done with mine.

16 Before I also continue with my presentation, I
17 would like to introduce in the audience today
18 representatives from the Monterey Bay Aquarium Research
19 Institute, from the Monterey Bay Sanctuary, and some active
20 environmental consultants.

21 The Monterey Bay Aquarium Research Institute is a
22 not-for-profit public benefit corporation organized and
23 operated exclusively for charitable, scientific and
24 educational purposes. MBARI and the Monterey Bay Aquarium
25 in cooperation with the National Science Foundation, which

1 is providing funding for the project, MBARI is proposing to
2 install an advanced cable observatory known as the Monterey
3 Accelerated Research Systems Cable Observatory.

4 The MARS Project will serve as an engineering
5 testbed for a proposed 1,864 mile cable observatory off the
6 Washington and Oregon coast. The MARS Project would be
7 located offshore of Moss Landing in Monterey Bay partially
8 on state tidelands and marshlands within the Monterey Bay
9 National Marine Sanctuary. The project consists of
10 installing a submarine cable extending 31.7 miles oceanward
11 from the shore station in Moss Landing to an offshore
12 submarine formation known as Smooth Ridge. A scientific
13 node which is an apparatus located at the end of the cable
14 would contain eight separate science ports to accommodate a
15 variety of oceanographic research instruments. The cable
16 observatory would provide researchers with long-term
17 realtime data access to deep sea conditions and ocean
18 processes accessible over the internet to scientists,
19 students, teachers, and the public.

20 The cable will be buried approximately 76 percent
21 of 25.3 miles of the route to a depth of 3.3 feet when
22 feasible using a remotely operated plow that is towed by a
23 cable laying installation vessel. The cable will be fully
24 buried in state waters, 7.4 miles of the cable route in
25 federal waters would not be fully buried due to hard

1 seafloor substrate and exposed rocks. In the near term the
2 MARS cable would be installed beneath the sea within a steel
3 pipe. Once on shore the cable would be connected to the
4 MARS facility owned by MBARI.

5 Commercial and recreational fishing within
6 Monterey Bay utilize several traps that target a wide
7 variety of fish and invertebrate species. Trolling and
8 lobster fishing are the types of fishing with potential of
9 coming in contact with the proposed cable. The effects of
10 the proposed cable on commercial fishing were analyzed in
11 the CEQA document. The CEQA requires identification of
12 mitigation measures for all impacts found to be significant.
13 Based on the analysis presented in the draft EIR/EIS the
14 proposed project's effect on commercial fishing would be
15 adverse but not significant.

16 The staff of the State Lands Commission and the
17 sanctuary have encouraged MBARI and fishing interests to
18 develop a process to coordinate their respective activities
19 and by compensation as may be necessary for fishing gear
20 lost or damaged as a result of any contact with the cable.
21 Although the parties as of this date have not formalized
22 this process, the proposed lease does contain procedures
23 designed to prevent any losses to commercial fishermen who
24 operate in Monterey Bay. And I believe we have a copy of
25 those conditions which are part of the lease agreement, the

1 proposed lease agreement, to MBARI.

2 The Commission will be considering two actions
3 today. First, to certify the Environmental Impact Report,
4 which has been prepared as part of the joint EIR/EIS. And,
5 second, to consider issuing a general lease right-of-way
6 lease for the MARS Cable Project.

7 I would now like to introduce Michelle Brown with
8 the Environmental Planning Division who will present a brief
9 overview of the environmental process for the proposed
10 project.

11 MS. BROWN: Hello, my name is Michelle Brown and
12 I'm an environmental scientist on the Commission staff. I'm
13 here to describe the public and environmental review process
14 for the MARS Project.

15 First, the document before you is a joint EIR/EIS
16 and the State Lands Commission is the lead agency under the
17 CEQA and the Monterey Bay National Marine Sanctuary is the
18 lead agency under the NEPA.

19 The State Lands Commission began the process by
20 publishing a Notice of Preparation for the draft EIR/EIS and
21 a Notice of Public Scoping Meetings for the project with the
22 state clearinghouse on May 25th, 2004. The Monterey Bay
23 National Marine Sanctuary published companion federal
24 documents, the Notice of Intent to Prepare a Joint EIR/EIS,
25 in the Federal Register on the same day.

1 There were two noticed public scoping meetings on
2 June 9th, 2004, to solicit the public agency comments on the
3 appropriate range of issues and alternatives to be included
4 in the environmental document. These meetings were held at
5 Moss Landing Marine Laboratory in Moss Landing, California
6 and comments were received from US EPA, the California
7 Coastal Commission, the Alliance of Communities for
8 Sustainable Fisheries, Save Our Shores, the Moss Landing
9 Harbor District, California Department of Fish and Game, and
10 Friends of the Sea Otter.

11 The draft EIR/EIS was released on March 11th,
12 2005, for a public review period of 45 days. We had two
13 public hearings on April 7th, 2005, at the Moss Landing
14 Marine Laboratory in Moss Landing to receive comments on the
15 documents.

16 During the review of comment period for the draft
17 document, seven comments were received by fax, e-mail and
18 regular mail, and another comment was received in person
19 during one of the hearings. These comments were received
20 from the following entities: The California Coastal
21 Commission, the Monterey Bay Unified Air Pollution Control
22 District, the US EPA, the Monterey County Planning and
23 Building Inspection Department, the Alliance of Communities
24 for Sustainable Fisheries, NOAA Marine Fisheries Service,
25 Moss Landing Harbor District, and Mr. Tom Hart of the Moss

1 Landing Fishermen's Association.

2 I will briefly summarize the comments we received.

3 The comments from the Coastal Commission were
4 generally requesting clarification of sections of the
5 document and additional information for their review of the
6 project.

7 Comments from Monterey Bay Unified Air Pollution
8 Control District were regarding emission standards
9 guidelines and litigation for the project.

10 The US EPA comment letter stated that they have a
11 lack of objections to the project and no significant
12 environmental concerns.

13 The Monterey County Planning and Building
14 Inspection Department commented on the project alternatives
15 and the building authority.

16 The Alliance of Communities for Sustainable
17 Fisheries expressed concerns regarding impacts of the cable
18 on the sanctuary floor, the need for maps of the path of the
19 proposed cable location, potential cable snags by the
20 fishermen, reimbursement for gear that's lost or damaged due
21 to snags, and a need for a regular dialogue between the
22 fishing industry and MBARI. This doesn't encompass the
23 entire content of the letter but rather highlights the
24 general issues. And these provisions are the same ones that
25 are listed on the handout that you received from Ms.

1 Quesada.

2 The National Marine Fisheries Service within NOAA
3 reviewed the draft and had no comments.

4 The Moss Landing Harbor District commented on
5 potential fishing problems and their permit process and
6 requirements.

7 Mr. Hart with the commercial fisherman expressed
8 opposition to Alternative 2 for the location of the cable
9 due to the bottom conditions in the area. He also spoke on
10 the calendar for crab season and potential interference if
11 the project construction occurred during that time, the
12 season begins on November 15th. And he asked about
13 electrical current leaking from the cable and whether that
14 would attract fish to the cable.

15 The comments received during the hearing and
16 review period and responses to all these comments are
17 contained in the final EIR/EIS which was released to the
18 public on July 25th, 2005. The final document was also sent
19 to the state clearinghouse and to federal, state and local
20 agencies, as well as other interested parties.

21 We believe this document meets the spirit and
22 intent of provisions of the CEQA and NEPA. Upon Commission
23 certification and the final EIR/EIS, the Monterey Bay
24 National Marine Sanctuary will prepare a Record of Decision
25 which is a written public record that explains the

1 sanctuary's decision on a proposed project.

2 Mr. Chairman, the Applicant has a presentation for
3 the Commission. Marcia McNutt from MBARI would like to
4 speak for the Applicant.

5 Thank you.

6 CHAIRPERSON BUSTAMANTE: Please come forward.

7 MS. MCNUTT: Well, thank you, Commissioners, for
8 sharing this project plan and thanks very much to the State
9 Lands Commission for all their help in getting us this far.
10 This has really been a wonderful group to work with, and
11 that's not easy to say when it's all permitting, a long
12 duration process.

13 A lot has been said about what MARS is, but I
14 don't think enough has been said about why we're doing this
15 project. And so what I would like to do this morning is to
16 take a few minutes to tell you why we're undertaking this
17 project.

18 And I probably don't have to say much about this
19 first slide up here simply because it's been sitting up here
20 so long you're probably all sick of it. But what we're
21 really trying to do here at MARS is nothing more than
22 revolutionize the entire way we go about collecting data in
23 the ocean.

24 Now, in the traditional approach to ocean
25 research, a ship would leave a port typically for a 30-day

1 expedition, the scientific staff and equipment chosen would
2 test a narrow hypothesis and samples and data are only
3 collected along the ship track. The disadvantages of this
4 approach are first of all weather. I'm sure I don't have to
5 tell you that if you look at the ship tracks out there, most
6 of them are in temperate latitudes and most of them are when
7 the weather is nice there. And, unfortunately, we don't
8 have a lot of information about what happens in the ocean
9 when the weather is not very nice. It's also very easy to
10 get the wrong answer when you only have data along a ship
11 track taken during a 30-day expedition, we can easily miss
12 important things that happen.

13 This is also a very expensive way to go out to
14 sea. We have a large crew that has to go out. And I think
15 the most important problem is that you have to be very lucky
16 to be around when a significant event happens.

17 Because the bottom line is that important changes
18 in the ocean occur as events, they happen quickly and they
19 are difficult to predict. Bacteria multiply and a beach has
20 to be closed, or a slip in plate tectonics causes volcanic
21 eruptions and earthquakes, or a toxic algae bloom and poison
22 the food chain. All of these things are narrow events that
23 happen and you have to be incredibly lucky we have seen to
24 collect data on one of these events.

25 Well, for that reason, our new approach to going

1 to sea has been to put in observatories. And we've been
2 putting observatories at the surface of the ocean for enough
3 years now that we have a good idea of the advantages of
4 putting observatories out in the ocean. The important thing
5 about observatories is they collect data 24 hours a day, 7
6 days a week, 365 days a year. They collect the information,
7 they are powered by solar cells, they send the information
8 via satellite back to shore. This avoids the problem of
9 having to be lucky to catch an event because observatories
10 are always at work, always on the job, and collect data in a
11 very affordable way.

12 But the problem is these observatories that we've
13 had so far only sample the upper most venire of the ocean.
14 And the importance of the MARS project is it's taking
15 observatory science and bringing it down to the bottom of
16 the ocean.

17 Now, we've been running surface observatories long
18 enough that we can tell you some pretty important things
19 have been captured by these observatories.

20 This is an example of a time series that my
21 students collected starting in 1989 going to the present.
22 The upper diagram here shows changes in ocean temperature
23 and you can see the summer and winter cycle. Any place
24 that's colored in red is because the ocean was anomalously
25 warm. Any time it's colored in blue, the ocean was

1 anomalously cold. You can see the big El Nino in '97 and
2 '98 where the ocean was really, really warm. And you can
3 see in general that the decade of the '90s was a gradual
4 increase in ocean temperature that turned around after the
5 big El Nino and the ocean started cooling in Monterey Bay.

6 What's interesting is to look at the lower diagram
7 that shows chlorophyll as measured by plant production, and
8 this is a measure of how much the food chain in the ocean is
9 being stimulated by plant growth and then going up through
10 the fish to the higher animals. What you can see is that
11 while the ocean warmed, the chlorophyll went down. During
12 the big El Nino was the lowest point in productivity at
13 Monterey Bay. After Monterey Bay turned around and the
14 ocean started getting cold again, suddenly the plants came
15 back and the marine ecosystem started coming back and the
16 whole food chain was reinvigorated during this time.

17 Because of this kind of information, we understand
18 what happened, why there is this correlation between warm
19 temperature and low productivity, cold temperatures and high
20 productivity in Monterey Bay. It's because when the ocean
21 is warm it's like putting a big thermal lid on the ocean and
22 it stops the cold upwelling waters from coming up and
23 bringing the nutrients that feed the plants. It's sort of
24 like this was the point when no one bothered to fertilize
25 the lawn that is the ocean and suddenly that cold water to

1 come up with its nutrients and cause the plants to bloom.

2 Okay. This is only what's happening in the upper
3 part of the ocean, but it doesn't tell us what's happening
4 deeper, and that's what we hope to do with MARS.

5 Now, this should show us that what we're seeing at
6 Monterey Bay is what's happening all over the globe. This
7 is not a unique place, it's not an unusual occurrence. Now,
8 this is the data that we have from MBARI just from 1989 on
9 showing this big regime shift from a warm bay with low
10 chlorophyll to a cold bay with high chlorophyll.

11 Now, during this time, we can go back in time,
12 we've got partial records that take us back to the last time
13 this shift occurred, this regime shift and the Pacific
14 oscillation. The last time it happened was in the mid 1970s
15 and the time it happened before that was in the 1950s.

16 Now, when the Pacific is in the warm phase, we
17 call that the Sardine Regime, when it's in the cold phase,
18 it's in the Anchovy Regime. Back in this time, back in the
19 1930s and '40s, that was the time when we were in another
20 eastern Pacific warm phase and these shifts. The Sardine
21 Regime is when the fisheries are good in Monterey Bay, the
22 Anchovy Regime is when the fisheries are poor in Monterey
23 Bay. This last regime shift corresponded to the collapse of
24 Cannery Row when the fishing communities highly suffered.

25 And we've captured this one now with high

1 resolution records. Hopefully we will be able to understand
2 and predict better the next time this regime shifts so we
3 can warn the fishing communities well in advance.

4 But taking us down deeper in the ocean. One thing
5 is that this will be a major change in the way we do
6 research to be able to have this cable going out to Smooth
7 Ridge and to try to understand how do these changes in the
8 productivity in the upper ocean affect what's going on in
9 the deep sea as well.

10 MARS is what we call transformational research.
11 There are two kinds of research that are funded. There is
12 incremental research and there's transformational research.
13 Incremental research, think evolutionary. Transformational
14 research, think revolutionary. It is the kind of research
15 that fundamentally changes from there on the way that we
16 understand how the earth works. And it's transformational
17 research such as MARS that's needed in order to take those
18 patterns we see in the upper ocean and try to understand how
19 they affect the deep sea. We already have information that
20 it is affecting the deep sea, although it's pretty sparse.

21 I will, in the interest of time, not talk about
22 Monterey, but let me go forward to this. This is some data
23 which was taken from our remotely operated vehicle from
24 Monterey Bay. This shows from 1989 going to the present the
25 prevalence of two species as observed by our remotely

1 operated vehicle. The gray at the bottom is the hake which
2 is a commercial fish. The red is Humboldt squid. Now prior
3 to about 1997, the Humboldt squid were not seen north of the
4 Channel Islands, and suddenly after the big El Nino, we
5 started seeing them in Monterey Bay, but only temporarily.
6 After about 2003, they have come into Monterey Bay and they
7 seem to be there to stay.

8 And what you will notice is that it's in this
9 correlation between the warming and the Humboldt squid. And
10 in fact evidence from our remotely operated vehicle of
11 conditions that the declining numbers of these fish are
12 caused by predation by the Humboldt squid. And when you say
13 Humboldt squid, this is not the squid that you get at your
14 restaurant or at your food market, these are big tough fish.
15 These squid grow to my size, my height and my weight, in one
16 year. Can you imagine how much they have to eat to get to
17 my size in one year. And they are tough animals. I think
18 of them as sort of really mean rats of the ocean. When they
19 run out of other food, they eat their own kind, and they
20 have been known to attack divers. They have a beak the size
21 of a baseball that they use to chomp on their victims.

22 Now the reason why these Humboldt squid are coming
23 in is probably environmental, but it's also because the top
24 level predators have been removed from the ocean ecosystem.
25 Whatever would eat the Humboldt squid are no longer found

1 and also there's -- so there's an ecological niche for them
2 here, they seem to be in Monterey Bay to stay.

3 Now, just to underscore the effect they have on
4 the hake. This just shows prior to 1997 when they moved
5 into Monterey Bay. This shows that every month of the year
6 you could find hake in our remotely operated vehicle
7 observations, basically any month of the year. After 1997,
8 this shows that during months of the year when the Humboldt
9 squid are seen, there are no hake. They completely come in
10 and they wipe them out. So this is a major change that's
11 happening in the depths of Monterey Bay. We think this is
12 the kind of change that is only one example of what we're
13 probably going to find when we're able to make observations
14 in the deep sea 24 hours a day, 7 days a week.

15 And I want to thank you very much again, the
16 staff, for their help with this project. I think this is
17 incredibly important, not just for Monterey Bay, but for
18 this important transformational research which we hope will
19 be duplicated elsewhere and allow other communities to
20 understand how changes in the upper ocean are affecting the
21 deep sea.

22 Thank you very much.

23 CHAIRPERSON BUSTAMANTE: Thank you.

24 Any comments by the Commissioners?

25 ACTING COMMISSIONER ARONBERG: I just really

1 appreciated that. That's great, you're a good teacher.

2 CHAIRPERSON BUSTAMANTE: Any other public comment?
3 I have no requests to speak but wanted to make sure and
4 check though.

5 For the presenters, there was one presenter, I
6 believe it was Ms. Quesada, who said that there was going to
7 be adverse but not significant impact to the fishing
8 industry. I'm assuming that these items that are on this
9 list resolve all of their concerns? Do you have the
10 Commission handout?

11 MS. QUESADA: Yes, I do, I have the Commission
12 handout.

13 CHAIRPERSON BUSTAMANTE: Do they resolve all of
14 the concerns?

15 MS. QUESADA: Yes, they do. There's two main
16 concerns still outstanding and those two main concerns are
17 the -- the creation of a committee was a concern for the
18 fishing industry and in an effort to reach some kind of
19 agreement, MBARI has most recently agreed to a creation of a
20 three-member committee.

21 CHAIRPERSON BUSTAMANTE: Okay. Is there any
22 outstanding issues?

23 MS. QUESADA: No.

24 CHAIRPERSON BUSTAMANTE: Okay. So all the items
25 have been addressed?

1 MS. QUESADA: Yes.

2 CHAIRPERSON BUSTAMANTE: They are in support of
3 the project?

4 EXECUTIVE OFFICER THAYER: I don't think we can
5 say that at this time.

6 CHAIRPERSON BUSTAMANTE: What can you say?

7 EXECUTIVE OFFICER THAYER: I think that what we
8 can say is just what you said which is that we've undertaken
9 efforts to try and address their concerns. They're not
10 listed as coming down here to speak today and we thought
11 they were going to be here today, and there is some evidence
12 in that, but we can't indicate that they have supported this
13 project to date.

14 I also need to point out that in terms of the
15 adverse but not substantial impact, that those are entirely
16 within the federal waters and not in the state waters
17 because the cable is buried the entire length and there is
18 no impact to fishermen from the buried cable.

19 CHAIRPERSON BUSTAMANTE: So what is the position
20 of the fishing industry?

21 EXECUTIVE OFFICER THAYER: The last time we
22 received a letter from them was a week or so ago. They
23 indicated a number of different concerns, but the primary
24 one seemed to be that they wanted the Applicant MBARI to pay
25 for fishermen to consult with the project on an annual

1 basis.

2 CHAIRPERSON BUSTAMANTE: And?

3 EXECUTIVE OFFICER THAYER: It was about 200,000 a
4 year. The Applicant has indicated two things. The
5 Applicant has indicated that that would kill the project,
6 they don't have the wherewithal, they are operating
7 underneath a National Science Foundation grant, to pay that
8 amount of money. And, number two, given that our
9 jurisdiction is limited to the state waters and that the
10 federal water impacts were also fairly minor, large
11 stretches of the area where the cable is going to go are
12 already prohibited to trolling, so there wouldn't be any
13 impact to trollers in those areas.

14 Staff believes that the mitigation that MBARI was
15 agreeable to, which was again to consult with the fishermen
16 four times a year the first year the project was in
17 operation, I think twice the following year, and going down
18 to once a year consultations, coupled with a commitment
19 which is included in the lease to pay for all lost gear and
20 all lost catch that resulted from the cable that the
21 fishermen's concerns were communicated.

22 CHAIRPERSON BUSTAMANTE: Okay. Two hundred
23 thousand was requested, that was denied, are you saying?

24 EXECUTIVE OFFICER THAYER: That's correct.

25 CHAIRPERSON BUSTAMANTE: Was there an amount then

1 that was offered?

2 EXECUTIVE OFFICER THAYER: There is still ongoing
3 discussions. As I say, they primarily focus with the
4 federal agency, the Monterey Bay Sanctuary. They have a
5 representative I think here today who can speak to that if
6 necessary, in terms of whether or not MBARI would be able to
7 pay for some of the expenses that fishermen might have to
8 participate in the consultation process. But other than
9 that, there's been no amount offered to the fishermen other
10 than, as I said, total compensation for any actual damages
11 they incur.

12 It's interesting, the fishermen are asking for
13 some of the same sort of payments or consultation fees that
14 the fiber optic cable companies voluntarily offered when
15 they were coming before the Commission. At that time staff
16 included those requirements in the leases, but only because
17 they had been entered into voluntarily. We didn't believe
18 that the Commission had the authority to exact those, and I
19 think the fishermen are looking for some of the same. It's
20 also true that over the four or five years since those
21 cables have gone in, there hasn't yet been a claim for any
22 lost gear or catch under the previous system.

23 So I guess in conclusion, staff thinks that the
24 conditions that have been posed are the result of voluntary
25 mitigation programs proposed by the Institute primarily

1 address federal water impacts but that there are no impacts
2 in state waters to fishermen from this project.

3 CHAIRPERSON BUSTAMANTE: So there was no amount
4 offered?

5 EXECUTIVE OFFICER THAYER: No.

6 CHAIRPERSON BUSTAMANTE: Could it be that the
7 amount of the \$200,000 was important so that there were no
8 issues among the parties or is it staff's view that because
9 there have been no claims for gear or catch reimbursement
10 that in this particular case it's a nonprofit entity that
11 \$200,000 would be less sufficient in the communications
12 between this entity and the fishing industry?

13 EXECUTIVE OFFICER THAYER: Staff's view is that
14 even if this is a nonprofit, it's obligated to address its
15 environmental impacts. And so although it's interesting and
16 true that the entity that indicated it couldn't go forward
17 with the project by paying that amount, if staff believed
18 that these impacts were significant and these payments were
19 necessary to mitigate it, we would be recommending that the
20 Commission impose that requirement. But I think it was
21 staff's view that again that kind of mitigation was being
22 done voluntarily by the applicants before, that the
23 Commission didn't have the authority to require it, and in
24 this case the Applicant is not able to voluntarily make that
25 commitment, and that the Commission doesn't have the

1 authority to require it, number one. And, number two, the
2 impacts to the fishermen are better understood now and that
3 these types of mitigation programs aren't required to make
4 the impact less than significant, but it's not a significant
5 impact.

6 CHAIRPERSON BUSTAMANTE: So they couldn't
7 voluntarily offer one-tenth of the amount?

8 EXECUTIVE OFFICER THAYER: They could voluntarily,
9 if they chose to do so.

10 CHAIRPERSON BUSTAMANTE: Does staff believe that
11 one-tenth the amount would be of value?

12 EXECUTIVE OFFICER THAYER: I think that the
13 earlier discussions there have been some discussion about,
14 and, you know, I'm not all up to date, it may be appropriate
15 to invite the sanctuary rep up, but there have been some
16 discussions about trying to pay for some of the costs that
17 the fishermen might have in this voluntary consultation
18 process. But so far I don't think the fishermen have signed
19 off on that approach and I don't think the Institute has.
20 But afterwards, I know this is going to go to the sanctuary
21 for decision and, of course, that's where the impacts are
22 occurring and that there will be further discussions.

23 CHAIRPERSON BUSTAMANTE: I don't want to beat this
24 dead horse any more, but has there been any discussions
25 between the folks with the project and the fishing industry

1 to try to resolve this particular issue? Is it a major
2 issue between the industry and this project?

3 EXECUTIVE OFFICER THAYER: I believe that there
4 have been direct discussions between those two sides but
5 that they haven't reached agreement.

6 CHAIRPERSON BUSTAMANTE: Okay. Just one last --
7 Ms. Brown, in your presentation you indicated that there was
8 an impact on the sanctuary, that there would be an adverse
9 impact on the sanctuary?

10 MR. VALENTINE: I think -- excuse me, Michael
11 Valentine. I think her point was that the impacts would
12 occur in the sanctuary, but not to the sanctuary. If there
13 are adverse impacts on commercial fishing, they would occur
14 within the boundaries of the sanctuary.

15 CHAIRPERSON BUSTAMANTE: But not to the sanctuary
16 itself?

17 MR. VALENTINE: Exactly.

18 CHAIRPERSON BUSTAMANTE: Okay.

19 Any other comments or questions?

20 ACTING COMMISSIONER SHEEHAN: I guess just a
21 couple of comments in terms of the discussions between the
22 fishermen and the project sponsors. I think it's
23 significant that they are not here, because I think we had
24 thought that maybe they would be here. And I think in terms
25 of what MBARI has proposed seems to address what I see are

1 the real legitimate concerns in terms of was there any
2 damage to equipment, the consultation that they've done, the
3 24-hour hotline. It sounds like they have briefed the
4 committee. It seems to go a long way towards addressing
5 some of the concerns. So I would be in support of the staff
6 recommendation at this point.

7 ACTING COMMISSIONER ARONBERG: I would just like
8 to say I echo Ms. Sheehan's comments and I support the staff
9 recommendation as well. So if that was a motion, this is a
10 second.

11 ACTING COMMISSIONER SHEEHAN: Sure. Do we want to
12 hear from the public first?

13 CHAIRPERSON BUSTAMANTE: Requested public input,
14 so far no one has come forward, and since no one has
15 requested.

16 ACTING COMMISSIONER SHEEHAN: That would be a
17 formal motion then.

18 CHAIRPERSON BUSTAMANTE: So there is a motion and
19 a second to support the staff recommendation. Let the
20 record show that the vote has been unanimous.

21 Okay. I believe that concludes our regular
22 calendar?

23 EXECUTIVE OFFICER THAYER: Yes, sir.

24 CHAIRPERSON BUSTAMANTE: There are a couple of
25 people who would like to make a public comment. It doesn't

1 say exactly about what. One is the Long Beach tidelands,
2 and that is Lester Denevan.

3 Welcome again, Lester.

4 MR. DENEVAN: Thank you.

5 CHAIRPERSON BUSTAMANTE: And the next person is --
6 I'm sorry?

7 EXECUTIVE OFFICER THAYER: I think it's California
8 Earth Corps.

9 CHAIRPERSON BUSTAMANTE: Who's the representative?

10 EXECUTIVE OFFICER THAYER: It's Don May, I
11 believe.

12 CHAIRPERSON BUSTAMANTE: He'll be up next.

13 MR. DENEVAN: Lester Denevan, resident of Long
14 Beach.

15 I am calling and concerning misappropriations for
16 the Tideland Operating Fund in Long Beach. And I'm going to
17 be referring to the City Auditor's report. The name of the
18 auditor is Gary Burrows, and he wrote an audit dated
19 November 30, 2000. He found several irregularities done
20 with funds.

21 CHAIRPERSON BUSTAMANTE: Does this have to do with
22 the City of --

23 MR. DENEVAN: The City of Long Beach,
24 Administrator of the State Tidelands.

25 CHAIRPERSON BUSTAMANTE: Okay.

1 MR. DENEVAN: And the downtown area.

2 CHAIRPERSON BUSTAMANTE: If we could limit our
3 remarks to about three minutes.

4 MR. DENEVAN: Thank you.

5 CHAIRPERSON BUSTAMANTE: We'll accept any
6 written --

7 MR. DENEVAN: Yes. The City has diverted dollars
8 from the Tidelands Operating Fund to the City's Civic Life
9 Opera and to the City's Special Advertising and Promotion
10 Fund, a practice that, to quote the auditor, appears
11 contrary to the statutory trust, general trust law, the
12 state charter, and generally accepted accounting principles,
13 unquote.

14 He goes on to say that, as according to the City
15 Auditor, quote, the appropriateness of diverting convention
16 center parking revenue to other city funds and purchases is
17 questionable. And to go on with the auditor's report,
18 cumulative cash operating losses for the convention center
19 are in excess of \$60 million. Quote, convention center
20 operations continue to cost the city \$2.5 million a year.
21 That's of course in the year 2000 when the report was
22 written.

23 According to the city auditor, there is a
24 regulation that, quote, requires the city general fund to
25 reimburse the Tidelands Fund for all losses from nontrust

1 events. The events are conclusively deemed nontrust events
2 unless the city attorney makes a written determination that
3 it is a trust event. In an 1982 audit report from the city
4 auditor's office found that the administrative regulation
5 was not being followed, which continues to be the case
6 today.

7 So I have brought this to the attention of your
8 staff on several occasions and nothing has been addressed in
9 any concrete manner. And I have had communications with
10 your staff to see what -- this is four years gone by and
11 what I would like to do is ask that this be addressed and
12 there be a written response from your staff to address the
13 city auditor's report, say in three months or something like
14 that where they could address something that's been
15 festering for four years. So that's the conclusion of my
16 statement.

17 CHAIRPERSON BUSTAMANTE: Thank you.

18 MR. DENEVAN: And I have a copy of my statement.

19 CHAIRPERSON BUSTAMANTE: We will accept that for
20 the record. Thank you, sir.

21 Paul, any comment?

22 EXECUTIVE OFFICER THAYER: I think staff has been
23 in communication with Long Beach about the matters that Mr.
24 Denevan raises, and we're not totally satisfied what we've
25 heard back from Long Beach. But --

1 CHAIRPERSON BUSTAMANTE: The auditor and the
2 report that has been submitted by him has been reviewed?

3 EXECUTIVE OFFICER THAYER: That's right. That's
4 correct. And there's a long series of letters that have
5 come back and forth between the city attorney's office and
6 our attorneys regarding this. There recently has been some
7 changes at the city attorney's office and we have some hope
8 that we're going to be getting some more answers as a
9 result.

10 CHAIRPERSON BUSTAMANTE: Well, why don't we just
11 put it over for your executive officer's report for the next
12 meeting then so you can give it to the Commission. Whether
13 it's one in open session or one in closed session, I would
14 like to have that.

15 EXECUTIVE OFFICER THAYER: We'll do that.

16 CHAIRPERSON BUSTAMANTE: Any other comments by the
17 Commissioners?

18 ACTING COMMISSIONER ARONBERG: It sounds like it's
19 a municipal use and not a tidelands use, so is that true?

20 EXECUTIVE OFFICER THAYER: And there's different
21 aspects of what's being alleged here. It is appropriate
22 often for the city general fund to pay for costs associated
23 with running the tidelands and so that's not a problem per
24 se, but the diversion of tidelands revenue to city general
25 fund sorts of uses is a problem, and we'll review that.

1 CHAIRPERSON BUSTAMANTE: Okay. Why don't we draft
2 some sort of a written response after the next meeting or
3 whenever the staff has something that they can put it on.

4 EXECUTIVE OFFICER THAYER: Certainly. We'll bring
5 it back in the executive officer's report at the next
6 meeting and then perhaps discuss further on what steps might
7 be taken.

8 CHAIRPERSON BUSTAMANTE: All right.

9 Thank you, sir.

10 Don, you're up.

11 MR. MAY: Mr. Chairman and Commissioners, thank
12 you very much. My name is Don May, California Earth Corps,
13 and I just want to take three minutes of your time and chat
14 about the settlement agreement that -- or not settlement
15 agreement, pardon me, the Appellate Court decision on
16 Queensway Bay.

17 There are two things. First of all, it brings up
18 to I think everyone's surprise that there was not
19 legislative authority for doing land swaps and so there is
20 now a need for some emergency legislation to cover the land.
21 And we're fully supportive, in fact we look at this as a
22 great opportunity to extend the land swaps to something
23 that's been before this Commission before you today with
24 public access to not only a beach, but rivers, lakes, and
25 streams. And we think that giving you the basis of showing

1 or we can show an increase in public access from a land swap
2 would be an extremely good thing. We very much look forward
3 to working with your staff as this is introduced and moves
4 through the legislature.

5 The other concern we have is the other half of
6 that, not just for Queensway Bay, but up and down the coast
7 and your proclivity to go to the legislature to resolve
8 these questions and particularly to the Speaker's Office.
9 We think that perhaps there should be -- I don't know how it
10 is that you make that process more difficult, but it seems
11 like these end runs spot zone the beach and rivers, lakes,
12 and streams, it undermines the efforts of the State Lands
13 Commission and gives us all a lot of heartburn and I don't
14 know how you address that. But that is currently with us as
15 the city works to introduce spot zoning to lift the public
16 trust from the offending creators down there. So we would
17 look forward to both things.

18 Another thing that has given us trouble is when
19 this Commission reaches an agreement with a developer that
20 it's no longer regarded as a -- for instance, at Queensway
21 Bay, despite the fact they have abrogated the agreement with
22 State Lands for this particular development, not just on the
23 land swap, but a requirement that there would be an IMAX
24 theater. There is no IMAX theater. The requirement that
25 there would be no phasing, as Ms. Aronberg remembers that

1 was the Controller's big point that this all be one project
2 and not broken into phases, and of course immediately it
3 immediately was broken in phases, Phase 4 not being
4 completed yet.

5 I think for it to be quite visible statewide that
6 an agreement reached with the Commission has no force really
7 undermines a lot of the efforts of this Commission. And so
8 with Long Beach, in particular, but with others as well,
9 where there is such clear violations of agreements that
10 something be done. I understand you can't go to court with
11 every minor thing, but some of these are major problems, and
12 I would like to hear perhaps from staff of how they think
13 that enforcement of these agreements could take place.

14 Should that happen, we think that not only at Long
15 Beach, but with a number of these other, particularly in the
16 Bay Area and down in Mission Bay, that the Commission, this
17 Commission, is the appropriate place that these difficult
18 trust issues should be resolved. And it would be my hope
19 that there would be a way found that the agreements reached
20 between the Commission and the developers and cities could
21 be enforced.

22 Thank you.

23 CHAIRPERSON BUSTAMANTE: Thank you.

24 Now, the first item we talked about was the issue
25 of a land swap. Has that been decided by judicial edict

1 that that is no longer something that we can do?

2 EXECUTIVE OFFICER THAYER: The litigation
3 involving Queensway Bay, it's a development in Long Beach,
4 that Mr. May refers to a lot, he was one of the plaintiffs
5 on that. And, yes, the provisions of the appeals court
6 decision appeared to prevent the Commission not just in that
7 case, but in a more general sense, from using the existing
8 statutes to approve swaps that the staff and the Commission
9 has found to be beneficial to the public in the past.

10 CHAIRPERSON BUSTAMANTE: Would that mean then that
11 all prior swaps would be null and void or does that mean
12 from here on out or does that mean everything in a gray
13 area? Alan?

14 MR. HAGER: It would mean that that particular
15 exchange would not be good. It wouldn't nullify other swaps
16 we've done. And the problem is it would impede the future
17 land swaps and that's the reason for the proposed Amendment
18 6307.

19 CHAIRPERSON BUSTAMANTE: Now, is there something
20 particular to the way this particular land swap was done, as
21 opposed to others that made it different, or is it just that
22 the court ruled on this particular case and therefore all
23 swaps?

24 MR. HAGER: The latter.

25 CHAIRPERSON BUSTAMANTE: Okay.

1 MR. HAGER: One little thing about where this case
2 is, the city and the developer sought in the California
3 Supreme Court a hearing, the petition is still pending. The
4 court extended the time for ruling on it, and I just read
5 that as they are very busy, and I don't anticipate that the
6 court will take action, so that it will be final probably
7 later this year.

8 CHAIRPERSON BUSTAMANTE: And the piece of
9 legislation that is talking about the land swap there are a
10 number of authors?

11 EXECUTIVE OFFICER THAYER: It will probably be SB-
12 365 by Senator Ducheny. And Mr. May has been very kind to
13 review the draft language, and I think he's talked about
14 making suggestions and additional changes and we're happy to
15 entertain those. We shared that language probably a month
16 ago or something like that, understanding that the
17 plaintiffs in Queensway Bay probably would be amongst those
18 most interested in this legislation. So we're eager to work
19 with them on anything. The draft itself I think was sent to
20 the Commission's officers and we worked with Alan and other
21 members of the Attorney General's office and some retirees
22 actually who were expert in public trust to make sure we
23 wouldn't give away the store.

24 On some of these other points, there has been some
25 special legislation, we see it happen a little more often in

1 the Bay Area. The Commission staff has generally taken the
2 approach that we wouldn't object as long as the bill
3 specifically provided that the Commission would have the
4 ultimate decision on any exchange. So the exchange would
5 not just be approved by the legislature where they would set
6 up a process to talk about what language is involved, it
7 generally sets out criteria that we believe are appropriate
8 fair market value being obtained, that kind of thing, but
9 then ultimately it has to come back to the Commission at a
10 public hearing before a final decision can be made.

11 CHAIRPERSON BUSTAMANTE: Isn't that the way the
12 prior legislation was drafted?

13 EXECUTIVE OFFICER THAYER: There is two kinds of
14 legislation and I think the bill that we talked about, SB-
15 365 would amend the statute. It gives the Commission
16 general authority to approve exchanges, but that
17 occasionally there are special bills that are introduced to
18 deal with particular projects, and there the Commission's
19 staff gets involved and generally tries to ensure that the
20 Commission, even in that instance as well, gets the final
21 decision just as is the case with the general authority.

22 CHAIRPERSON BUSTAMANTE: Okay. Well, what about
23 the greater issue of enforcement, I guess?

24 EXECUTIVE OFFICER THAYER: At Queensway Bay, I
25 don't think we know yet whether some of these would be in

1 violation. Now, some of the parcels that were taken out of
2 the public trust, there are specific uses planned for them.
3 And our agreement with the city provided that they either
4 put those uses on the land from which the trust was lifted,
5 or that land came back into the trust. And so we think that
6 that's probably happening with respect to the IMAX location,
7 because I think they're proposing a hotel there. If that
8 happens, the first thing that happens is it comes back into
9 the public trust. The second thing which is also true is
10 the hotel is consistent with the public trust document so it
11 works out. There are several other uses there that haven't
12 been broken yet, or one or two, and if those are not built
13 in accordance with the approval from the Commission, then
14 that land comes back in the public trust and we're
15 continuing to monitor that.

16 CHAIRPERSON BUSTAMANTE: In this particular
17 situation, because of the court case, does it also mean that
18 we give up the land that was offered in exchange for the
19 area in Queensway Bay?

20 EXECUTIVE OFFICER THAYER: We've been holding off
21 reaching a final or negotiating that sort of thing with the
22 city or with Mr. May and everybody else involved as to what
23 will happen if the court decision is sustained after the
24 Supreme Court review is complete. When it is then
25 presumably that exchange becomes unwound and we're

1 potentially left with some or a couple of parcels which have
2 in fact been developed with the nontrust uses. These are
3 the parcels for which the trust was lifted, several nontrust
4 uses have gone in, and we're going to have to figure out
5 what to do at that point, whether there is a new exchange
6 with perhaps more valuable land coming into the trust than
7 the ones that were part of the last exchange that would be
8 more acceptable to some of the plaintiffs. There are
9 different options that might come in, I shouldn't really
10 speculate about that at this point. At this point, the
11 legal status is uncertain until the Supreme Court decides
12 what it's going to do.

13 CHAIRPERSON BUSTAMANTE: Okay. Any comments?

14 ACTING COMMISSIONER SHEEHAN: Yes. I have a
15 couple of questions. On the legislation that you were
16 talking about on this specific exchange, not the general
17 legislation we've talked about with Senator Ducheny, and
18 that it was the role of the staff to try and work with the
19 legislature to say even if you want to do this, we'd still
20 like to make sure the Commission has the ultimate approval.
21 Have we always been successful on that effort?

22 EXECUTIVE OFFICER THAYER: Yes. And if we are
23 ever not, we would be coming back to the Commission and ask
24 to bring it to a vote.

25 ACTING COMMISSIONER SHEEHAN: Okay. And I guess

1 the other thing I would tell you in terms of the legislature
2 going after these special ones, it's just in my opinion it's
3 more a matter of education as to the process and how the
4 process works, and with some of the new members of the staff
5 in the legislature to try to improve how these things
6 operate would be my response in terms of working with them.
7 And I think you answered the question on the specific, the
8 lawsuit that potentially the entire agreement we have
9 unravels depending on what happens. Did we appear at the
10 Supreme Court or did the --

11 EXECUTIVE OFFICER THAYER: We did not and we
12 brought that back to the Commission and said, look, you
13 know, we think that the Appeals Court had a point there and
14 we think it's more fruitful for the Commission to seek
15 statutes that would authorize us to do what we thought we
16 had the authority --

17 ACTING COMMISSIONER SHEEHAN: Okay. But your
18 feeling is they will not wiggle on this?

19 MR. HAGER: They will not grant a hearing I'm
20 convinced.

21 ACTING COMMISSIONER SHEEHAN: Thank you.

22 CHAIRPERSON BUSTAMANTE: There were a couple of
23 areas that Mr. May indicated that you felt where
24 nonenforcement was taking place. Those two areas that were
25 mentioned were Mission Bay and --

1 MR. MAY: A number of projects up in the Bay Area.

2 CHAIRPERSON BUSTAMANTE: A number of projects?

3 MR. MAY: Yes.

4 CHAIRPERSON BUSTAMANTE: Are we familiar with,
5 have these been offered to staff for review to check on
6 these enforcement issues?

7 EXECUTIVE OFFICER THAYER: We have worked on the
8 Queensway Bay one and I think we're familiar with those.
9 The Mission Bay I'm not familiar with what issues he's
10 referring to.

11 CHAIRPERSON BUSTAMANTE: Mr. May, if you could
12 please provide, and not at this time, but if you could
13 please provide a list of those areas where you believe
14 nonenforcement is taking place and what kind of
15 nonenforcement or what kind of enforcement activities
16 perhaps you see as necessary so that staff can review and
17 analyze those issues.

18 MR. MAY: I would be delighted.

19 CHAIRPERSON BUSTAMANTE: In my -- I don't know
20 about the rest of the Members of the Commission, but in my
21 viewing of staff activities, I've found them to be pretty
22 aggressive in trying to find those areas where enforcement
23 is necessary. I know that I have been engaged with
24 activities with staff on certain projects in which sometimes
25 they wonder if they're not being a little bit too aggressive

1 in certain areas. I don't think they can be too aggressive
2 with this particular Commission, so we've encouraged them
3 and I've seen them actually move in that direction. So my
4 guess is that if anything you believe is a valid
5 nonenforcement issue would be gracefully accepted by staff
6 and would be looked into very, very strenuously.

7 MR. MAY: Thank you, I appreciate that. But one
8 other area in 6307 that has given us some heartburn is that
9 definition of what is in the public interest, and in that
10 case we're -- it was determined that land of equal financial
11 value. To us a freeway median strip has zero value to the
12 public, and we are hopeful that in 6307 that is somehow
13 clarified that value means value to the public and not
14 necessarily an exchange of land of equal financial value.

15 CHAIRPERSON BUSTAMANTE: Okay. Any other public
16 comments?

17 Seeing none, the meeting is adjourned and we will
18 go into closed session.

19 (Thereupon the meeting of the State
20 Lands Commission was concluded at 11:36
21 a.m. on August 8, 2005.)
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**STATE OF CALIFORNIA
CALIFORNIA STATE LANDS COMMISSION
CONFIRMATION OF OPEN SESSION MINUTES**

August 8, 2005

The items listed on page(s) _____ were approved, disapproved, deferred and/or modified as indicated.

There being no further business to come before the Commission, the meeting was adjourned.

PAUL D. THAYER
Executive Officer

Minutes confirmed at the

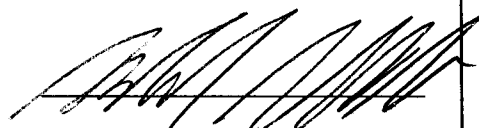
_____, 2005 Commission Meeting

1 CERTIFICATE OF SHORTHAND REPORTER

2 I, MICHAEL J. MAC IVER, a Shorthand Reporter, do
3 hereby certify that I am a disinterested person herein; that
4 I reported the foregoing State Lands Commission proceedings
5 in shorthand writing; that I thereafter caused my shorthand
6 writing to be transcribed into typewriting.

7 I further certify that I am not of counsel or
8 attorney for any of the parties to said State Lands
9 Commission proceedings, or in any way interested in the
10 outcome of said State Lands Commission proceedings.

11 IN WITNESS WHEREOF, I have hereunto set my hand
12 this 31st day of August 2005.

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18 Michael J. Mac Iver

19 Shorthand Reporter
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