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MEETING
STATE LANDS COMMISSION

STATE CAPITOL
ROOM 2170
SACRAMENTO, CALIFORNIA

MINUTES

THURSDAY, OCTOBER 26, 1978
10:00 A.M.

Cathleen Slocum
C.S.R. License No. 2822

MEMBERS PRESENT

1
2 Mr. Kenneth Cory, State Controller, Chairperson
3 Mr. Sid McCausland, representing Roy M. Bell,
4 Director of Finance, Commissioner
5 Ms. Betty Jo Smith, representing Mervyn M. Dymally,
6 Lieutenant Governor, Commissioner

MEMBERS ABSENT

7
8 NONE
9

STAFF PRESENT

10
11 Mr. William Northrop, Executive Officer, State Lands
12 Commission
13 Mr. R. S. Golden, Assistant Executive Officer, State
14 Lands Commission
15 Mr. Robert C. Hight, Staff Counsel, State Lands Commission
16 Mr. W. M. Thompson, Manager, Long Beach Operations,
17 State Lands Commission
18 Mr. James Trout
19 Mr. Alan Scott
20 Mr. Steve Mills
21 Mr. Daniel Gorfain
22 Mr. Jack Rump, Staff Counsel
23 Ms. Diane Jones, Secretary, State Lands Commission

ALSO PRESENT

24 Mr. Jan Stevens, Assistant Attorney General
25 Mr. Bruce Flushman, Deputy Attorney General

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Adjournment

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Certificate of Reporter

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P R O C E E D I N G S

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2
3 CHAIRPERSON CORY. All right. Call the meeting
4 to order. I apologize for my tardiness. Absolutely no
5 good excuse for it.

6 The first item is the confirmation of the
7 minutes of September 27th and October 11th. Any
8 corrections or additions?

9 MR. McCAUSLAND: No objections.

10 CHAIRPERSON CORY: Without objection, they will
11 be confirmed as presented.

12 Mr. Northrop, your Executive Officer's Report.

13 EXECUTIVE OFFICER NORTHROP: Mr. Chairman and
14 Members, on September 28, 1978, marked the completion of
15 the Commission's second and final navigational hazard
16 removal contract at Lake Tahoe. The initial contract was
17 completed just prior to winter last year. While most
18 hazards were removed, a sufficient number remained, enough
19 to warrant the letting of a second contract.

20 The removal work under the second contract was
21 started on August the 14th, and was completed on September
22 21st, '78. A sunken barge, one large pier and some 13 rock
23 cribs were removed at a cost of \$51,975. The operation
24 was performed under staff supervision.

25 Excellent contractor and local agency cooperation

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1 enabled staff to complete the project within the estimated
2 time, yet comply with specified water quality requirements.

3 Removal operations during '77 and '78 were
4 accomplished with a minimum of trouble and resulted in
5 numerous positive public responses, including favorable
6 press coverage.

7 In total, approximately \$156,000 was expended
8 at Lake Tahoe and accomplished the removal of several
9 dozen hazardous piers, rock cribs, and other miscellaneous
10 structures, as well as several hundred dilapidated pilings.

11 On the reforestation project, unusually
12 favorable weather has allowed the contractors to complete
13 mechanical brush clearing on five parcels slated for
14 planting in the spring of '79. California Conservation
15 Corps crews are currently working on hand-clearing three
16 other sites. This work will provide for planting of about
17 160,000 seedlings next spring.

18 Meanwhile, within the next few days, we will
19 submit an application for a grant that would provide for
20 continuation of the project for an additional two and a
21 half years beyond next July 1st.

22 Proving once again that bureaucracy is for the
23 birds, staff literally flew into action last week at --

24 CHAIRPERSON CORY: I know now why I didn't see
25 the Executive Officer's Report.

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1 (Laughter.)

2 EXECUTIVE OFFICER NORTHROP: Staff literally flew
3 into action at Mr. Cory's request to save a forlorn Osprey
4 who decided to build her nest in the mast of a yacht in
5 Newport Harbor. The yacht's owner, a little "soar" at the
6 Osprey's choice of a nursery, "bird-dogged" the
7 Department of Fish and Game into action. The only
8 alternative available was to transplant the nest to a
9 pole implanted in the same vicinity and let the Osprey wing
10 it from there. With the invaluable and unfaltering help
11 of the staff, Fish and Game made arrangements to correct
12 this "fowl" situation. A pole was graciously donated by
13 Southern California Edison and transported to the site.

14 Trautwein Brothers Construction Company placed
15 the pole for a "poultry" amount and, again, So-Cal Edison
16 donated its equipment and services to complete the actual
17 transfer of the nest. The future of the nest now lies
18 in the claws of the Osprey herself, but the conscientious
19 work of the State Lands Commission and its Chairman and
20 members for her well-being is appreciated and is really a
21 feather in your caps.

22 (Laughter.)

23 MR. CAUSLAND: Have you polished your resume up?

24 (Laughter.)

25 CHAIRPERSON CORY: I suggest if you wrote that,

1 you find somebody else to write the resume.

2 (Laughter.)

3 EXECUTIVE OFFICER NORTHROP: When Miss Smith was
4 told about this report, she said that was a "fowl" thing
5 for you to do.

6 One other incident --

7 CHAIRPERSON CORY: What factually, I mean, how is
8 the Osprey doing? Are there eggs in that nest?

9 EXECUTIVE OFFICER NORTHROP: No, not yet. We
10 have transplanted the nest and Bill Seaman of So-Cal Edison
11 cooperated wonderfully when I called him and asked him for
12 the pole. The Fish and Game has transplanted the nest and
13 I talked to Jim --

14 CHAIRPERSON CORY: Seaman didn't have any place
15 he wanted to particularly put that pole?

16 EXECUTIVE OFFICER NORTHROP: Bad name.

17 (Laughter.)

18 EXECUTIVE OFFICER NORTHROP: Fish and Game said --
19 I talked to Jim McCormick at Fish and Game day before
20 yesterday and he said there were other Osprey seen in the
21 area.

22 CHAIRPERSON CORY: Sex rears its ugly head.

23 EXECUTIVE OFFICER NORTHROP: And one last
24 information item for the Commission. Last Friday as Don
25 Everitts of our staff was doing a routine inspection check

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1 on a helicopter, and as the helicopter took off from the
2 platform it lost the compressor and put Mr. Everitts and
3 the pilot into the drink. We nearly lost both Everitts
4 and the helicopter, and you know what those helicopters
5 cost.

6 (Laughter.)

7 EXECUTIVE OFFICER NORTHROP: So I just want to
8 bring it to the Commission's attention that we have a small
9 hero on our hands. He did survive the downing of the
10 helicopter and floated around long enough, I think, to
11 get reasonably sick before they got him out of there.

12 MR. McCAUSLAND: How is he?

13 EXECUTIVE OFFICER NORTHROP: Still here.

14 CHAIRPERSON CORY: Do you have counsel for your
15 lawsuit?

16 (Laughter.)

17 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item
18 13 we've been requested by --

19 CHAIRPERSON CORY: Did they lose the helicopter?

20 EXECUTIVE OFFICER NORTHROP: No. They towed it
21 over to another platform. They were working on EMMY
22 and they took a derrick and pulled it up and worked on it
23 on the platform and got it off all right. But Don said
24 there was just a fleet of ships around there watching him
25 bob around in the water before they finally got them out.

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1 CHAIRPERSON CORY: He does look cleaner.

2 (Laughter.)

3 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item
4 13, we've been asked to defer this item -- it's on LNG
5 terminal siting -- by Senator Rains, Senator Hart, and a
6 representative of Supervisor Wallace's office has called me.
7 Supervisor Wallace's office indicated that they had a
8 telegram that they sent yesterday, the day before yesterday,
9 but as yet we have not received. I do have a letter from
10 Senator Rains and I have been in contact this morning with
11 Senator Hart's office.

12 CHAIRPERSON CORY: Okay. Item 13, Western LNG
13 Terminal Associates will be taken off calendar and will be
14 scheduled for the following meeting?

15 EXECUTIVE OFFICER NORTHROP: Yes, sir. We'll
16 reschedule it for the next meeting.

17 Item 20, is off calendar. It's regarding Yuba
18 River. Mr. Jan Stevens would like to address it at this
19 time as to the position because I understand the Commissioners
20 and several other state officials have received letters
21 regarding this item.

22 MR. STEVENS: Mr. Chairman, I won't go into the
23 merits of this controversy now, but since each Commissioner
24 has received a lengthy letter from counsel for Yuba
25 Goldfields, I think that we should indicate several things.

1 First of all, this item is being put over at Yuba's consent.
2 Second, contrary to --

3 CHAIRPERSON CORY: Consent or request?

4 MR. STEVENS: With their request, pardon me,
5 request and consent. They have requested the item be
6 put over so we can discuss the matter some more.

7 Secondly, the preliminary indications are that there are
8 serious questions which have to be resolved with respect
9 to the State's interest in these matters and these
10 questions will not be resolved if we simply walk away from
11 the problem. They'll remain for Yuba in the future.

12 Third, I think some allegations were made as to
13 the conduct of staff counsel and others in this. My own
14 review indicates that they did exactly what they should
15 have done. They kept all the parties completely apprised
16 of what the staff was doing here and the matter was
17 handled very well.

18 Last of all, I guess, contrary to the obligations
19 therein, Prop. 13 really has nothing to do with the
20 question of ownership on the Yuba River by Yuba Goldfields.
21 So we'll be back next month with this issue again and I hope
22 we'll have them pared down a little bit more as far as what
23 we're talking about.

24 CHAIRPERSON CORY: I just want you to know as a
25 bipartisan effort I'd like to comment that I resented that

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1 man's attempt to inject the gubernatorial campaign into that
2 whole issue. Also, in terms of the terrible way you people
3 have been conducting yourselves.

4 (Laughter.)

5 MR. STEVENS: Thank you.

6 CHAIRPERSON CORY: I said that tongue and cheek
7 for those of you who are reading this transcript.

8 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item
9 Number 33 is off calendar -- it's a mineral extraction lease
10 -- at the request of the applicant.

11 This completes my report.

12 CHAIRPERSON CORY: Which one was that, Bill?

13 EXECUTIVE OFFICER NORTHROP: 33.

14 CHAIRPERSON CORY: Okay. Mr. Golden.

15 MR. GOLDEN: Good morning, Mr. Chairman and
16 Members. I would like to take this opportunity to advise
17 you of matters which relate to this Commission and the
18 Coastal Commission.

19 The first item is on the Coastal Energy Impact
20 Program Grant, which was recently awarded to the State Lands
21 Commission in the amount of \$303,200 to develop a Marine
22 Petroleum Terminal Safety Program for marine facilities
23 which transfer petroleum and related products. The grant
24 provides for the funding of personnel services and
25 operating expenses for one senior administrator and two

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1 associate engineers for a period of two years. Half of the
2 allocated amount, \$150,000, has been awarded for the first
3 year of the two-year project. The State Coastal Commission
4 which administers and allocates such funds determined that
5 our proposal "is of a high priority because within
6 California there is a need for safe operations of marine
7 oil terminals and enforcement of terms and conditions on
8 permitted coastal energy activities."

9 The second item is on Tomales Bay Comprehensive
10 Planning. Earlier, staff was directed to prepare a
11 Management Plan for the Tomales Bay Area. Staff has been
12 meeting with representatives from various state, federal,
13 and local agencies to complete this study. Currently, staff
14 has prepared material which will enable plan reviewers to
15 gain a clear perspective of the present situation at Tomales
16 Bay, including the environmental concerns and the conflicts
17 with developmental interests.

18 A meeting has also been held with the Director of
19 the Dillon Beach Marine Laboratory, located near the mouth
20 of the Bay to discuss environmental studies undertaken by
21 the Marine Lab. These studies may form a basis for making
22 policy recommendations to guide the management of the
23 tide and submerged areas in Tomales Bay.

24 And finally, PG&E Moss Landing Power Plant Marine
25 Terminal Expansion. You'll recall this Commission approved

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1 PG&E's marine terminal expansion project on April 27th of
2 this year. A joint public hearing was held by the U.S.
3 Army Corps of Engineers and the Regional Coastal Commission
4 in Monterey on October 19, 1978, and attended by our staff
5 at the request of the Coastal Commission. It is expected
6 that future hearings will be scheduled by the Regional
7 Coastal Commission prior to their action.

8 That completes my report, Mr. Chairman.

9 CHAIRPERSON CORY: Questions?

10 MS. SMITH: No.

11 CHAIRPERSON CORY: The next item on our Agenda
12 today are the Consent Calendar items. Those in the
13 audience, they're numerals 1 through 12 with the prefix
14 C. If there is anybody that has any problems with the
15 proposed authorizations in any of those items, would they
16 please speak up now because these will be approved all in
17 one motion.

18 Hearing no objections, --

19 MR. McCAUSLAND: No.

20 MS. SMITH: No.

21 CHAIRPERSON CORY: -- the Consent Calendar will
22 be approved as presented.

23 Item 13 is off calendar.

24 Item 14.

25 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item

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1 14 is a lease for Walter M. Harvey. We have Mr. Mac Mailes,
2 Assistant City Manager of Sacramento, who has indicated
3 he would like to speak.

4 CHAIRPERSON CORY: Yes, sir.

5 MR. MAILES: I've got a couple of things. I
6 came here this morning to ask you to do one of two things,
7 either, A, defer action on this for a while or, B, insert
8 some conditions in your lease with Mr. Harvey that would be
9 consistent with some conditions that we would put in our
10 lease since he needs access from the city as well as access
11 from the state. The basic question relative to deferring
12 the matter --

13 CHAIRPERSON CORY: Is Mr. Harvey here?

14 MR. MAILES: Yes, he's here.

15 The basic question relative to deferring the
16 matter had to do with the way the property is actually laid
17 out. Get myself oriented here.

18 Interstate 5, freeway, comes almost to the river
19 at this point. Now, between --

20 CHAIRPERSON CORY: Where is that point to help us?

21 MR. MAILES: Right here which is at --

22 CHAIRPERSON CORY: What are those things on the
23 map?

24 MR. MAILES: These are all freeway lanes.

25 CHAIRPERSON CORY: Yes.

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1 MR. MAILES: P, Q, Front Street, or, rather,
2 Second Street here and Front Street is over here. It's
3 right along here. You see, at this point it gets very
4 narrow and that's the point where the pier and the piece of
5 property in question is. The property line dividing the
6 State's ownership from the City's and Redevelopment's
7 ownership along this line has never been established.
8 We know roughly that it's the sea wall. We don't know
9 precisely where it is.

10 Now, in the case of the same situation north of
11 the Tower Bridge, the State and the City stipulated that
12 line. We wish to do the same thing as does your staff
13 relative to this line here. However, it's my understanding
14 -- is it true, Alan -- that that line is now over being
15 reviewed by the Attorney General.

16 MR. SCOTT: Yes.

17 MR. MAILES: And there's no dispute as to where
18 it is or where it should be, but there's no determination
19 either of where that is.

20 We'd like to see the issue deferred until we
21 can precisely define that line which will define your lease
22 with Mr. Harvey and our responsibilities for providing
23 utilities.

24 CHAIRPERSON CORY: That sounds to me like you're
25 not really telling me what your problem is.

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1 MR. MAILES: That's why we would like it deferred
2 now. Beyond that, we would also like some conditions set
3 in the lease because we have some problems with allowing
4 it to go forward without any conditions. That has to do
5 with the configuration of the property we're talking about.
6 The City of Sacramento's Docks Plan for this area covers
7 roughly this blue piece right here. As I said before, this
8 is paved. It's a street with some railroad tracks down the
9 middle of it and so forth. The Docks Plan calls for
10 recreational and public access development type things from
11 this point to this point. The only available area where
12 parking of any size can be developed is this triangle here.

13 There is a capability of producing about two or
14 three hundred parking places there maximum. If development
15 were to occur at any point on here that was sufficiently
16 intensive to use up that parking availability, it would
17 deny the development of the rest of the frontage.

18 So we have agreed with Mr. Harvey that if he
19 towed his boat in and ties it up at the O Street dock, we
20 will put in on a temporary basis parking meters exactly in
21 front of his place which is necessary because I'm sure
22 you're all familiar that that's all being used now for all-
23 day parking. There are no meters there. There's no control
24 really which would make it impossible for Mr. Harvey to have
25 any kind of a lunchtime business there without pushing the

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1 parking meter across the freeway over into the Crocker
2 Art Gallery or parking on this which is now unimproved
3 and would probably wind up being dangerous for whoever
4 parked there.

5 So that our plan is to allow that whole thing
6 to develop as one piece. In effect, we intend to put out
7 a request for proposals probably nationally to develop the
8 whole thing, including that parking. So that the develop-
9 ment would continue from one end of it to the other but not
10 at any one place be sufficiently intensive to use up all
11 that parking. It's a matter of balancing. That's where
12 we get to the conditions that we would like in your lease
13 with Mr. Harvey which would be to the effect that the
14 City can provide parking meter parking in front of his
15 establishment on a temporary basis, but if, as and when we
16 put out a request for proposals of development of that
17 whole docks area, that Mr. Harvey would participate in
18 financing it to his fair share of that parking that he
19 would receive on this triangle part here.

20 CHAIRPERSON CORY: What does Mr. Harvey have to
21 say about that?

22 MR. HARVEY: I didn't really come prepared to
23 discuss much of this before the Lands Commission -- I'm
24 Walt Harvey -- because I didn't realize until just two
25 seconds ago that the City was going to be here to object.

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1 MR. MAILES: We're not objecting. Don't
2 misunderstand.

3 MR. HARVEY: I followed the normal procedures
4 in requesting this information from the City several months
5 ago. Went to the Redevelopment Agency of the City. Have
6 a letter to the effect that they would like us to come to
7 the State Lands Commission. Went to the Planning Department.
8 The Planning Director told me to come to the State Lands
9 Commission and secure the lease and then we'll issue, we'll
10 go then to the Planning Commission for a Special Use Permit
11 for this project.

12 I have a letter also from, as was suggested here,
13 from Mr. Frank indicating when the project was formulated
14 that they would, indeed, provide temporary parking.

15 On the basis of those understandings and on the
16 basis of working with Alan Scott of your Commission and
17 meeting with Mr. Northrop, I proceeded and we made positive
18 commitments, absolute commitments on the purchase of the
19 vessel to come into this thing. I think that a further
20 delay in doing it -- I'm perfectly willing to work with the
21 City and am going to have to work with the City in order
22 to make the necessary hookups and I'm not in disagreement
23 with providing our fair share of the parking expenses on a
24 permanent basis. I have already agreed to do that.
25 But as our commitments do not extend past the end of this

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1 year on the purchase of that vessel, we're committed on
2 a half-million-dollar vessel and I don't know why we would
3 have to extend this.

4 CHAIRPERSON CORY: I'm puzzled about our whole
5 relationship with the City in this matter. I mean, it
6 would seem you've got Mr. Harvey with a substantial amount
7 of control to releasing the thing. He can't do a heck of a
8 lot with it unless he satisfies you. So why do you want
9 these conditions in our lease?

10 MR. MAILES: Just so that the whole thing flows
11 together as a piece because the State Lands Commission, the
12 City and the Redevelopment Agency are really tri-party
13 developers here. We've been talking with your staff for
14 some time now, something over a year in developing a way
15 we can do it together. So we would like all the documents
16 and obligations to be consistent one with the other.

17 MR. McCAUSLAND: Well, if our document requires
18 the use of the land be consistent with the terms of the
19 City Permit, wouldn't they flow together?

20 MR. MAILES: Not necessarily. The City Permit
21 process does not cover the allocation of parking spaces
22 within a single structure among various users.

23 MR. McCAUSLAND: You have some concern as to
24 whether or not you have the legal authority to require him
25 to participate in the construction of the parking facilities

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1 with his capital?

2 MR. MAILES: Yes.

3 CHAIRPERSON CORY: So you want to use us as the
4 leverage?

5 MR. MAILES: No, altogether.

6 CHAIRPERSON CORY: Aren't there some problems
7 with that?

8 MR. HARVEY: But I've agreed to do this.

9 MR. MAILES: This is Richard Hyde, Chief Counsel
10 for the Sacramento Regional Development Agency.

11 MR. HYDE: The basic problem is we are developing
12 ahead of providing permanent parking. This goes on typically
13 when you're developing areas like this. It happened in
14 Old Sacramento. We're trying to anticipate a parking crunch
15 or a need to develop some parking at significant cost.
16 What we would like to do is be in a position that in the
17 event when that point arises and we say to Mr. Harvey on
18 some kind of Assessment District approach, your cost for
19 your pro rata share of the parking is "X" number of dollars.
20 That he either pays that money or somehow divests himself
21 of his interest in this lease. You cannot accomplish that
22 through normal land use controls, nor through an
23 Assessment District.

24 CHAIRPERSON CORY: Now wait a minute. I have no
25 animosity towards Sacramento or no animosity toward

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1 Mr. Harvey, but I feel like I'm getting sucked in something.
2 I want no part of it. I mean, if you don't have the legal
3 authority to enforce your parking beef with Mr. Harvey,
4 I don't want to be a part of it. You just said that's
5 where we were, I think.

6 MR. McCAUSLAND: I said that.

7 CHAIRPERSON CORY: I think that's what you just
8 told us again.

9 MR. HYDE: What happens is we're faced with an
10 all or nothing situation. If you lease to him, he is the
11 only developer for that site. If we're unable to reach an
12 agreement, the site remains vacant. That's basically the
13 problem with the two of us not going together and having
14 our agreements met. It's an all or nothing situation from
15 the City's perspective. If we cannot reach agreement with
16 Mr. Harvey, you're right. We say to him: We deny you use
17 of our property. Then there's no development.

18 CHAIRPERSON CORY: Let's turn it around and put
19 it in perspective in terms of the sovereign of the State of
20 California is in essence not receiving any similar control
21 over -- maybe we'll disagree that to maximizing our state
22 use of the rest of that property, you should build an
23 18,000 foot high parking structure and you don't want to do
24 that. You aren't giving us anything in return. You're
25 saying come enforce what we want to do so we can

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1 unilaterally impose our wishes on your tenants, and that
2 seems to be what --

3 MR. HYDE: No. See, what I'm saying is the
4 City can prevent him from using that property. So what
5 I'm trying to do is work out a mechanism so the two of us,
6 the City and the State Lands Commission, can provide for
7 the use of the property. What the City was giving you or
8 what we're interested in having is Mr. Harvey on that site.
9 I think the City can legally prevent him from going on the
10 site. Not to through the normal land use controls, but
11 through denial of access as the adjacent landowner.

12 Let me put the whole hearing in context. What's
13 before us is a negative declaration. One of the elements
14 of that negative declaration that should be considered is
15 the parking. I think it's our position that the parking
16 is treated in that negative declaration in a manner that
17 doesn't provide any assurance that the parking is going to
18 be there. I think then without an absolute assurance that
19 permanent parking is going to be there, I have problems
20 with a negative declaration.

21 We're here on behalf of the City because the
22 City is an agency that you are to consult with as the
23 lead agency in the preparation of this Environmental
24 Impact Report.

25 MR. McCAUSLAND: I have to admit, I had the
same problem with the negative declaration that you have

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1 from that standpoint because I felt it was a fairly narrow
2 band of land along there and that you were going to have
3 a lot of competing uses in your overall plan there.

4 What kind of relationship were you thinking
5 about working out with the State for the overall development?
6 Do you want to be the master tenant on our lease?

7 MR. MAILES: No. You may remember that the
8 State Lands Commission staff and City staff worked out a
9 process for a set of criterion and a selection process for
10 developers in the waterfront between the two bridges in
11 Old Sacramento. What your staff and we are proposing to
12 do south of the Tower Bridge in this area here is exactly
13 the same thing with, instead of the City being the lead
14 agency in developer selection, the State Lands Commission
15 being the lead agency. But in order for that to go forward
16 past this single lease that you're considering today, this
17 single lease has to be put in context of the whole thing.

18 MR. McCAUSLAND: Let me suggest that, Mr. Harvey
19 has been here several times with different sites and he
20 seems to have a proposal that he's willing to commit as
21 much capital to as he can garner, and apparently he must be
22 working three or four or five years ahead of where the City
23 is because each time he comes, we seem to work out most of
24 our legal difficulties, but for some reason he just never
25 has quite made peace with the City by the time his proposal

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1 comes to us. Would you have objections to us approving
2 the lease today subject to its amendment to include his
3 willingness to participate in the provision of long-term
4 parking?

5 MR. MAILES: That's fine.

6 MR. HYDE: I put together some proposed amendments
7 that we would like to see him be satisfied with.
8 Essentially what they do is tie your agreement and our
9 agreement together and say that a termination of our
10 agreement constitutes a termination of your agreement and
11 enter into an agreement with us as a condition precede
12 to his right to occupy the property under your agreement.
13 In effect, --

14 MR. McCAUSLAND: I think he expects to have to
15 have that in order to get his utility hookup anyway.

16 MR. HARVEY: Excuse me. The only thing that
17 really disturbs me here is the fact that we have to argue
18 this out in front of the Lands Commission. Now, there's
19 no reason that they could not have made a telephone call to
20 me.

21 CHAIRPERSON CORY: We will deal with that issue
22 in the very near future.

23 MR. HARVEY: Okay.

24 CHAIRPERSON CORY: But I understand your concern,
25 but it's not nearly as strong as my concern.

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1 What do you think of that language? It seems to
2 me if you have some specific terms, I would be more
3 comfortable about saying if he doesn't come up with the
4 money he promised on the parking, that's one thing, but
5 I'm not so sure I want to terminate this man's lease for
6 any reason that they unilaterally terminate theirs if they
7 get in a beef. I mean, I don't know.

8 MR. McCAUSLAND: The Redevelopment Agency has a
9 very difficult task and I can understand them being very
10 nervous about having a developer move before their overall
11 project is finalized. But I think that the vessel that
12 Mr. Harvey has been seeking to acquire now for the last
13 couple of years is only going to be on the market for so
14 long conceivably and he feels compelled to move. He's
15 probably not terribly comfortable with the uncomfortable
16 relationship he's had with the City thus far. But if he
17 doesn't keep going, as an entrepreneur he's going to lose
18 his opportunity to use that site.

19 I don't know that the State Lands Commission really
20 wants to get crosswise with the Redevelopment Agency. We
21 should be partners or at least have a joint interest in the
22 successful use of that waterfront property. But for some
23 reason, Mr. Harvey and Mr. Cory are quite right in noting
24 that of all the leases that come before this Commission in
25 California, the one's that seem the most difficult have to

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1 do with the Sacramento waterfront and for some reason it's
2 because new issues, apparently new issues crop up at the
3 last minute every time it comes before us. It makes us
4 uncomfortable about our relationship. Makes us uncomfortable
5 about how you feel about what you want to do with the
6 waterfront.

7 We would like to help. I, for one, would like to
8 help you because I'm involved in other projects that are
9 going to be within the Redevelopment Agency jurisdiction and
10 I can see that whole project tying together and being
11 beneficial to the State for years to come.

12 I'd like us to find a way to work together without
13 having to always be surprising some perspective lessee at
14 the meeting where we're supposed to approve his lease.

15 CHAIRPERSON CORY: What do the legal people have
16 to say here?

17 MR. TROUT: Mr. Chairman, --

18 MR. HIGHT: Mr. Chairman, as I read the proposed
19 amendments that the Redevelopment Agency would have us put
20 in this lease, they seem to be already taken care of by
21 other provisions of the State's lease. One, Mr. Harvey has
22 to have the consent of the upland owner. Two, he would
23 have to have their agreement to hook up with the water and
24 power and everything. So it seems to me like the City has
25 really got him in a, you know --

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1 MR. McCAUSLAND: But they're faced with a
2 situation where they'll hook up the water and the power,
3 but then the only ability they have at some point down-
4 stream when he's unable to meet a financial commitment
5 on parking development, is to go unhook the water and
6 power, I assume, and they're looking for a bigger club
7 than that.

8 MR. STEVENS: Mr. Chairman, as I read the
9 proposed resolution, it does contemplate in rather compact
10 terms that construction will begin and be completed and
11 these developments will occur within specified time limits
12 commencing in 1979. So that there would be grounds, I
13 believe, for cancellation.

14 I think the Commission should take cognizance
15 of the potential parking problem and it can take official
16 notice as a commission of what arrangements may have been
17 made for taking care of problems of this sort in approving
18 the negative declaration. If no such arrangements have been
19 made, maybe you don't have a negative declaration.

20 MR. McCAUSLAND: As a member of the Commission,
21 I raised this matter when I was discussing the calendar
22 item in a briefing with the staff. I would personally
23 be far more comfortable with the adoption of the negative
24 declaration if we had in fact demonstrated our commitment
25 to solving the parking problem, i.e., a written agreement

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1 with the lessee that he will participate in the solution
2 of the parking.

3 CHAIRPERSON CORY: Is that agreeable with you,
4 Mr. Harvey?

5 MR. HARVEY: The thing that I'm very much
6 concerned about, and I find no problem in committing
7 ourselves to the assistance of that parking solution, but
8 on the basis of the tentative agreements and commitments
9 that the City has already made through the Redevelopment
10 Agency, Commission, and through the engineer's office, the
11 Traffic Engineer's Office, we've gone ahead and proceeded
12 with the direction that they asked us to go which was to
13 come to the Commission and then come back to the agencies of
14 the City. So we committed to the boat on that basis.

15 CHAIRPERSON CORY: Okay. But right now, you're
16 up against it. You have a tough choice. Are you willing
17 to accept the thing, and I guess it would be approved
18 unanimously with a motion stipulating up front that the
19 negative declaration is approved with the notice that you
20 have agreed to participate in your share of the parking and,
21 therefore, we'll go ahead and approve it.

22 MR. HARVEY: Absolutely.

23 CHAIRPERSON CORY: And so that means that if you
24 renege on that --

25 MR. HARVEY: We won't renege on that.

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1 CHAIRPERSON CORY: -- the thing comes unglued.
2 I just want to put it up front on the table so everybody
3 knows where it is.

4 MR. HARVEY: I will agree to that stipulation.

5 MR. McCAUSLAND: Let me ask a question because
6 this is an area of environmental law that I've never been
7 into before.

8 Is it appropriate for us to request a contractual
9 relationship between the upland owner and our tenant
10 regarding the provision of parking as a condition of
11 adopting the negative declaration or does that, in fact,
12 go against the grain of why you have negative declarations?

13 MR. STEVENS: I believe --

14 MR. McCAUSLAND: By the way, that is a statement
15 that goes beyond this notification we want to solve. I'm
16 thinking of incorporation with the motion that there be a
17 separate contractual arrangement with the City --

18 CHAIRPERSON CORY: A side letter between the City
19 and Mr. Harvey?

20 MR. McCAUSLAND: -- for the provision of parking.

21 MR. STEVENS: Properly, Mr. McCausland, it would
22 be an additional fact which the Commission should have
23 before it in determining whether or not in fact there is no
24 significant impact on the environment caused by this
25 project. The fact that adequate parking arrangements have

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1 been made would be one of those factors that would support
2 a negative declaration by the Commission. So that fact
3 should be already in existence before the Commission takes
4 action.

5 MR. McCAUSLAND: That's what's concerning me.

6 EXECUTIVE OFFICER NORTHROP: Mr. McCausland,
7 I think it's well to point out here that the negative
8 dec. was circulated according to CEQA and there were no
9 comments from either agency represented here. So until
10 this morning we did not know that this thing was coming.

11 MS. SMITH: Mr. Harvey's alternative then is to
12 just have a full EIR prepared; is that correct?

13 MR. HYDE: Can I comment first on a question of
14 circulation of the Environmental Impact or the negative
15 declaration and the initial study. It was received by the
16 City on the 10th of October. We have been meeting on it
17 and I personally, CEQA does not specify a specific time for
18 consultation and review of those documents. However, this
19 is a very complex issue. It involves a much larger project
20 than simply just one boat going in. It has taken us some
21 time and we have been working on it. One of the reasons
22 we wanted to continue it was to continue working on it some
23 more. That's in response to that.

24 In response to the full EIR, the answer is no.
25 As I understand the law, and I would defer to your counsel,

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1 if Mr. Harvey would agree to what was suggested in the
2 form of the amendment, what your counsel was indicating was
3 that would then justify your determining that there was a
4 negative declaration. If he failed to agree, then you've
5 got some problems as to whether you can make the negative
6 declaration.

7 CHAIRPERSON CORY: What we're suggesting, rather
8 than redrafting our leases, is that right now we have
9 perceived a condition preceding which has been orally
10 agreed to which will be, as I understand it, an exchange
11 of letters or contracts between the two, the Development
12 Agency and Mr. Harvey, with respect to the parking. We
13 will take notice of that agreement. We trust that each side
14 is moving in good faith and will enter into that agreement.
15 With that, we will go ahead and approve the item which I
16 think gets you the same place you want to go without us
17 having to redraft our lease.

18 MR. McCAUSLAND: Let me ask procedurally, we can
19 authorize staff to execute the lease at a point in time
20 in which the conditions required for the final approval of
21 the negative declaration exists and it is the finding of
22 this Commission that we cannot sign off on the negative
23 declaration until a contractual agreement is provided for
24 long-term parking.

25 MR. HYDE: I think if you signed the negative

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1 declaration now, you just wouldn't sign the lease until
2 that time.

3 MR. McCAUSLAND: Well, you're raising the question
4 --

5 CHAIRPERSON CORY: No.

6 MR. McCAUSLAND: -- of whether or not --

7 CHAIRPERSON CORY: Mr. McCausland moves.

8 MS. SMITH: Second.

9 CHAIRPERSON CORY: Miss Smith seconds that staff
10 should be instructed to proceed and not to enter in and
11 sign the negative dec. or the lease until that site
12 agreement has been signed.

13 Any comments from anybody in the audience on
14 that?

15 MR. McCAUSLAND: We do have the power to
16 authorize staff to execute the lease?

17 MR. STEVENS: With the proper delegation.

18 CHAIRPERSON CORY: Okay. Nobody in the audience?
19 All those in favor.

20 (Ayes.)

21 CHAIRPERSON CORY: Unanimously carried.

22 MR. MAILES: Thank you.

23 CHAIRPERSON CORY: Before you leave, I want to
24 talk to the City because I frankly have got better things
25 to do with my time than waste the kind of time we wasted on

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1 a clerical function before this Commission. This
2 Commission has other things and Mr. McCausland's comments
3 that somehow your inability to deal with Mr. Harvey, and if
4 your inability is going to be the same with other lessees,
5 to not get Mr. Harvey aside when you got the negative
6 dec. and had the problem or the thing, go get it done some
7 place else. Don't come in here and try to negotiate things
8 before a Commission. I just think you guys, if you've
9 got that kind of problem, get it sorted out before it gets
10 here. If Mr. Harvey's lying that he didn't know that, lay
11 that on us and we can deal with that. But for the guy to
12 walk in here minutes before a meeting I think is a
13 disservice to this Commission. If you want cooperation
14 from this Commission, that's not the way to get it. I
15 want to put that just right up front cold turkey with you.
16 I'm getting sick and tired of having last-minute hassles
17 with Mr. Harvey or any other local Sacramento lessee and
18 the Redevelopment Agency. You guys ought to be able to
19 run your shop better than that.

20 MR. MAILES: Well, I submit in our own defense
21 that the first we knew that this lease was coming to this
22 Commission was last Thursday which is not a whole lot of
23 time to respond. I immediately called your staff and they
24 said it would continue and it would be on this Commission.
25 I told your staff at that time that in that case, we would

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1 have to appear because we have been working with Mr. Harvey
2 on exactly this problem for some months and were in the
3 process of negotiating a very specific contract relative
4 to the City's obligations to provide parking and
5 Mr. Harvey's obligations to pay for part of it. Those
6 negotiations are not complete at this point. I would
7 much prefer not to have appeared here this morning, but we
8 felt we had to.

9 CHAIRPERSON CORY: I hope you can step back and
10 look in perspective that no place in the state do we have
11 to spend this kind of time. We're able to deal with
12 lessees and other people without this kind of grief.
13 Somehow I've got to say, get your act in order. I don't
14 know what it is.

15 MR. MAILES: We will most assuredly try.

16 CHAIRPERSON CORY: Item 15 is off calendar.

17 EXECUTIVE OFFICER NORTHROP: No. Item 15 is
18 an exchange, Mr. Chairman. If we have a few moments, we'd
19 like to show you some property that we're exchanging it with.

20 CHAIRPERSON CORY: Okay. Go ahead.

21 MR. TROUT: Mr. Chairman, the first set of slides
22 are going to be of two parcels in Joshua Tree National
23 Monument that the Park Service would like to acquire.
24 This first one is the Cottonwood Canyon parcel. This is
25 the State parcel and you can see what it basically consists

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1 of. This is the second parcel in Joshua Tree. The first
2 parcel I showed you on that board on the easel is the green
3 dot at the bottom of the little stem that sticks down.

4 CHAIRPERSON CORY: That's Cottonwood Canyon?

5 MR. TROUT: That's Cottonwood Canyon. The parcel
6 that you're now seeing on the slides is the other dot up in
7 that area. Palm Springs is just to the left of the green
8 dot and Indio is just below the lower green dot to give you
9 a perspective of where the place is.

10 EXECUTIVE OFFICER NORTHROP: Indio-Coachella.

11 MR. TROUT: This is from the top of the upper
12 green dot. Of this parcel -- the room probably isn't as
13 dark as it could be. This parcel is the Bureau of
14 Reclamation piece of property within a mile and a half of
15 Shasta Dam, northwest of Redding.

16 CHAIRPERSON CORY: Pardon me. If this is what
17 we're getting, would somebody turn off the lights in the
18 back so we might see it. If we've gone to this much trouble
19 we might as well.

20 It does look better.

21 (Laughter.)

22 CHAIRPERSON CORY: When I looked at it before, my
23 answer was no. We didn't need a black hole.

24 (Laughter.)

25 MR. TROUT: Very good weather, beautiful blue sky

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1 for taking pictures, but this is the upper end of the
2 parcel which we'll point out in a moment. This is basically
3 what's on it. It's Manzanita with some pines. If Les
4 Grimes were here, we could tell you what kind of pine. But
5 they're some kind of pine tree. It's a fairly well-
6 vegetated parcel for the most part.

7 This is a water filtration plant that's on one
8 corner of the parcel. Right in the center of the larger
9 parcel we'll show you in a minute is a water tank.

10 CHAIRPERSON CORY: Who's water plant is it?

11 MR. TROUT: It belongs to, I think, the Summit
12 City Public Utility District. Across the canyon you can
13 see a couple of more water tanks.

14 MR. McCAUSLAND: Do they have a volumetric --
15 (Laughter.)

16 MR. TROUT: This is a lower parcel which is fairly
17 flat and is south of the highway. We'll kind of point this
18 out in a moment. Kind of spanning across the parcel. It's
19 flat but does have some trees on it. This is the tank and
20 is kind of in the southwesterly direction. That's on one
21 corner of the parcel where there is a trailer park.

22 In this area is a former government construction
23 worker camp. It's not included in the parcel we're going
24 to acquire, but the parcel kind of wraps around it. It's
25 now being operated by the Bureau of Indian Affairs and is

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1 occupied by a band or several bands of Indians.

2 Then one of our neighbors to the south of the
3 parcel, south and east, is a trailer park. The boundary
4 of the parcel would run along kind of a line where the
5 vegetation stops behind the trailer park on the right.
6 This is trailer homes on the northern boundary of the
7 property.

8 Now, Mr. Northrop is standing at the easel there
9 --

10 EXECUTIVE OFFICER NORTHROP: This is the government
11 camp where the Indians have taken over the former
12 government camp that was there. It was originally --

13 MR. TROUT: It was a construction worker camp
14 for the construction of Shasta Dam.

15 CHAIRPERSON CORY: Are you sure that they have
16 title that they can transfer to us or are we going to end up
17 in a hassle with the Indians?

18 EXECUTIVE OFFICER NORTHROP: We're not taking
19 this. We're taking this cross-hatched area.

20 CHAIRPERSON CORY: What do the Indians think they
21 own?

22 MR. TROUT: They apparently don't own anything.
23 The Bureau of Indian Affairs is administering Bureau of
24 Reclamation property in the former government camp and that
25 is not included in the proposed exchange. The areas

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1 colored orange are the areas that are being offered to us.

2 MR. HIGHT: They don't think they own ours.

3 CHAIRPERSON CORY: I mean, there's no one, what
4 is the term, "notorious possession"?

5 MR. HIGHT: Adverse, hostile and notorious.

6 EXECUTIVE OFFICER NORTHROP: Shasta Dam is four
7 miles in that direction and Interstate 5 is there. Nice
8 piece of property.

9 MR. TROUT: The more heavily timbered or
10 vegetated parcels are the upper ones there by where the
11 word "government" is. The flatter parcels are the lower,
12 below the boulevard there. We think that, while we at this
13 point don't have any particular thing in mind for use of
14 this property, we believe we can enter into a management
15 agreement with the Public Utility District to police it
16 in exchange for use of the parcel for park purposes or a
17 portion of it certainly. Certainly it is more accessible
18 and more susceptible to management than the existing parcels
19 that are well isolated into the Joshua Tree National
20 Monument. For that reason we recommend the exchange. We
21 have received a title report on the property from one title
22 insurance company on behalf of the government. We have
23 obtained our own. The parcel is covered with a number of
24 easements, but they are essential to the local utility
25 service in the area.

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1 We recommend your approval.

2 CHAIRPERSON CORY: The land that we're giving up
3 would become a part of Joshua Tree National?

4 MR. TROUT: That's right.

5 CHAIRPERSON CORY: So there would be a continued
6 public use of that?

7 MR. TROUT: That's right.

8 EXECUTIVE OFFICER NORTHROP: Nice piece of
9 property.

10 MR. TROUT: It would have to be administered
11 pursuant to the Congressional establishment of a National
12 Monument which guarantees public use subject to reasonable
13 rules and regulations.

14 CHAIRPERSON CORY: Looks like we gain on that one.
15 Anybody in the audience on Item 15? Questions
16 from Commissioners?

17 MR. McCAUSLAND: Do we have the ability to allow
18 development of the land south of the Shasta Dam?

19 MR. TROUT: Yes. These would be acquired as
20 State school lands and would be subject to the trust that
21 they must be leased or sold for fair market value. I think
22 our preliminary proposal would be to the public utility
23 district that we would turn the lands over to them for
24 management or for use as a park with the consideration being
25 their policing of the area, fencing certain areas, keeping

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1 the public off, keeping it policed up and what not that
2 would allow us later, allow the Commission later to dispose
3 of it or otherwise develop it as they want it.

4 MR. McCAUSLAND: What is keeping the public off
5 part?

6 CHAIRPERSON CORY: I thought that's what we were
7 supposed to do is to get this stuff for the public.

8 MR. TROUT: There are a couple of areas that will
9 require a little work. The sewage disposal pond down in
10 the lower area is not now being used. It is an area in
11 which water does accumulate. We're working with the Bureau
12 of Reclamation to straighten out the existing dumping on
13 that site. It is fenced and it should be locked and policed
14 until we can make arrangements to have the sewer pond filled
15 in. That I think we can do through the Department of
16 Forestry and the CCC. But the existence of that as a future
17 item of work is considered in the appraisal of the values
18 of the parcel.

19 CHAIRPERSON CORY: Jim, the question I think that
20 Sid and I are asking is if that's public lands and somebody
21 wants to go out there driving down Shasta Dam Boulevard
22 and have a picnic, are we going to have a fence out there
23 or can they go out there and have a picnic?

24 MR. TROUT: We don't propose a fence except to
25 just maintain --

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1 CHAIRPERSON CORY: Nuisances?

2 MR. TROUT: Just the fence around the existing
3 sewer disposal area.

4 EXECUTIVE OFFICER NORTHROP: The Federal
5 Government, I believe, has already taken a brush clearance
6 program and, as a matter of fact, some of that is already
7 being used for ball diamonds and that sort of thing when
8 we were out there.

9 MR. TROUT: Casual public use is entirely
10 permitted without any compensation.

11 CHAIRPERSON CORY: Okay. Commissioners ready?

12 Without objection, Item 15, the exchange, will be
13 approved as present.

14 (Thereupon Item 16 submitted under separate cover.)
15 Item 17.

16 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item
17 17 should be postponed till next month.

18 CHAIRPERSON CORY: Item 18.

19 EXECUTIVE OFFICER NORTHROP: It's a compromise
20 settlement within the Alameda Creek Bed, the City of Alameda --

21 CHAIRPERSON CORY: Anybody in the audience on
22 Item 18? Any questions from Commissioners?

23 Without objection, Item 18 will be approved.

24 Item 19, transfer of easements.

25 Where are we on --

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1 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, that
2 is a pipeline easement for --

3 CHAIRPERSON CORY: Is everybody happy with that,
4 now?

5 MR. HIGHT: Mr. Chairman, we'd like to add one
6 authorization. It would be number 5 to the Commission's
7 recommendation to authorize the staff and/or --

8 CHAIRPERSON CORY: Just a minute. The people
9 from Inverness who have an interest, you are welcome to
10 sit here or to be with those people if you like. I'm not
11 trying to do anything in a back room. I'm not sure where
12 we end up. Mr. McCausland's office is not a back room.
13 But some of the staff people could make sure that they
14 understand what is going on. I don't want to give the
15 impression that we've --

16 EXECUTIVE OFFICER NORTHROP: Brian, would you
17 do it. We're going to need Moose before they get back.

18 MR. HIGHT: Mr. Chairman, if we could add a fifth
19 authorization to the recommendation to authorize the
20 staff and the Office of the Attorney General to take all
21 steps necessary, including litigation to implement this
22 action.

23 MR. McCAUSLAND: No objection.

24 CHAIRPERSON CORY: You're going to litigate to
25 accept a transfer?

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1 MR. HIGHT: There may be some litigation involved.

2 CHAIRPERSON CORY: I've got no problem. Anybody
3 in the audience?

4 Without objection, Item 19 will be approved as
5 presented.

6 Item 20, put over at the request of Yuba whoever
7 they are.

8 Item 21.

9 MR. HIGHT: Mr. Chairman, there's a condemnation
10 of some land in the City of San Diego. The Commission
11 would stipulate that, one, the Navy would not condemn the
12 land and that they would dismiss their suit and, three,
13 there would be a 66-year lease.

14 MR. McCAUSLAND: No objection.

15 MS. SMITH: No objection.

16 CHAIRPERSON CORY: Without objection, it will be
17 approved.

18 MR. HIGHT: 22, 23, 24, and 25 can be taken as
19 one. They are condemnations of various federal projects
20 in which the State has no interest.

21 CHAIRPERSON CORY: Any questions from members?

22 MS. SMITH: No.

23 MR. McCAUSLAND: No.

24 MR. HIGHT: 26 and 27 are condemnations where the
25 State is stipulating right to compensation.

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MS. SMITH: No.

(Thereupon a discussion was held off
the record.)

CHAIRPERSON CORY: Sid, one of you two want to
continue?

MR. McCAUSLAND: 28.

EXECUTIVE OFFICER NORTHROP: 28.

MR. McCAUSLAND: 28.

EXECUTIVE OFFICER NORTHROP: A negative
declaration on geothermal in San Bernardino, Mr. Chairman.

MR. McCAUSLAND: Anybody wish to testify?

Without objection, Item 28 is approved.

29.

EXECUTIVE OFFICER NORTHROP: Also a negative --

MR. McCAUSLAND: Certification of negative
declaration.

Anybody wish to testify?

Without objection, Item 29 is approved.

Item 30 is an authorization for acceptance of
quitclaims to Modoc County to terminate permits to prospect
for geothermal resources for Getty Oil.

Does anyone wish to testify?

Without objection, Item 30 is approved.

Item 31 is approval for Compensatory Gas
Agreement in Stockton Deep Water Channel Area with Buttes

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1 Resources Company. Anyone wish to testify?

2 Item 31 is approved without objection.

3 Item 32 is approval of redrilling of "States 145,"
4 State Oil and Gas Lease PRC 145.1 in Ventura County.

5 MS. SMITH: No objection.

6 MR. McCAUSLAND: Without objection, Item 32 is
7 approved.

8 Item 33 is off calendar.

9 Item 34 is a maintenance dredging permit in the
10 City of Richmond. Anyone wish to testify?

11 Without objection, --

12 MS. SMITH: No objection.

13 MR. McCAUSLAND: -- Item 34 is approved.

14 Item 35, approval of amendments to documents
15 concerning partition and assignments of Atlantic Richfield
16 Company's interests in the Long Beach Unit, basically
17 changing the closing date to January 1, 1979 and certain
18 other terms of the agreement.

19 Anyone wish to testify on Item 35?

20 MS. SMITH: No objection.

21 MR. McCAUSLAND: Without objection, it's nice to
22 take up this item in a rather swift and expeditious fashion.
23 Item 35 is approved without objection.

24 Item 36 is a public agency permit for a shoreline
25 park with the East Bay Regional Park District. Anyone wish

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1 to testify?

2 MS. SMITH: No objection.

3 MR. McCAUSLAND: Without objection, Item 36 is
4 approved --

5 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, there
6 is a change in language in that the staff counsel --

7 MR. McCAUSLAND: Item 36 has been amended by a
8 handout delivered to the Commissioners at the beginning
9 of the meeting and will be incorporated in the calendar item.
10 Status of major litigation.

11 (Laughter.)

12 MR. McCAUSLAND: We sent our major litigants out
13 and we'll defer action on that.

14 For those of you who don't want to hang around for
15 the exciting conclusion of today's program, the next meeting
16 will be November 30th in Sacramento.

17 Shall we recess until 1:00 o'clock? How do you
18 want to handle it? Or shall we just --

19 MR. HIGHT: I suspect they'll be back here
20 momentarily.

21 MR. McCAUSLAND: Let's just have a cup of coffee.
22 (Continuation of Item 16.)

23 EXECUTIVE OFFICER NORTHROP: We have one other
24 item, Status of Major Litigation. Status of litigation,
25 Mr. Stevens was out of the room.

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1 MR. STEVENS: That's all right. There'll be no
2 litigation at the current time in Tomales Bay.

3 (Laughter.)

4 MR. STEVENS: The Supreme Court has accepted the
5 Murphy case.

6 MS. SMITH: That's it.

7 CHAIRPERSON CORY: We stand adjourned.

8 (Thereupon the State Lands Commission

9 Meeting was adjourned at 1:20 p.m.)

10 --oOo--

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CERTIFICATE OF SHORTHAND REPORTER

I, CATHLEEN SLOCUM, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing State Lands Commission Meeting was reported in shorthand by me, Cathleen Slocum, 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 16th day of November, 1978.

Cathleen Slocum
CATHLEEN SLOCUM
Certified Shorthand Reporter
License No. 2822

PART II

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MEETING
STATE LANDS COMMISSION

STATE CAPITOL
ROOM 2170
SACRAMENTO, CALIFORNIA

EXCERPT

THURSDAY, OCTOBER 26, 1978
10:05 A.M.

Cathleen Slocum
C.S.R. License No. 2822

MEMBERS PRESENT

- 1
2 Mr. Kenneth Corty, State Controller, Chairperson
3 Mr. Sid McCausland, representing Roy M. Bell,
4 Director of Finance, Commissioner
5 Ms. Betty Jo Smith, representing Mervyn M. Dymally,
6 Lieutenant Governor, Commissioner

MEMBERS ABSENT

7
8 NONE
9

STAFF PRESENT

- 10
11 Mr. William Northrop, Executive Officer, State Lands
Commission
12 Mr. R. S. Golden, Assistant Executive Officer, State
13 Lands Commission
14 Mr. Robert C. Hight, Staff Counsel, State Lands Commission
15 Mr. W. M. Thompson, Manager, Long Beach Operations,
State Lands Commission
16 Ms. Diane Jones, Secretary, State Lands Commission
17 Mr. James Trout, Chief, Division of Land Management & Conservation
18 Mr. Alan Scott
19 Mr. Steve Mills
20 Mr. Daniel Gorfain
21 Mr. Jack Rump, Staff Counsel
22

ALSO PRESENT

- 23
24 Mr. Jan Stevens, Assistant Attorney General
25 Mr. Bruce Flushman, Deputy Attorney General

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Mr. Peter Kagel, representing Kagel and Kagel Corporation,
Applicant for Permit to Construct Residence on
Patented Tidelands

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Agenda Item 16 - Kagel and Kagel Corporation; Disapproval
of application for permit to construct residence on
patented tidelands, Tomales Bay; Marin County.
(Mills; W 21493)

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P R O C E E D I N G S

--oOo--

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3 CHAIRPERSON CORY: Item 16, Kagel and Kagel
4 Corporation.

5 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item
6 16 on the staff presentation will be Mr. Flushman from the
7 AG's Office and Mr. Mills.

8 MR. FLUSHMAN: I don't know whether there is any
9 presentation to be made on behalf of the Applicant today,
10 Mr. Chairman.

11 EXECUTIVE OFFICER NORTHROP: We understand he
12 has asked to speak.

13 MR. FLUSHMAN: Is he here?

14 CHAIRPERSON CORY: Mr. Peter Kagel?

15 MR. KAGEL: I'm here.

16 MR. FLUSHMAN: Members of the Commission,
17 Executive Officer, counsel, this application is being
18 brought to your attention in the manner that it is because
19 of the direction that the staff was given in June of 1977
20 to prepare a comprehensive plan for the development or non-
21 development of tidelands in Tomales Bay subject to the
22 trust. Those lands have generally been identified for
23 planning purposes as all lands that were subject of
24 tidelands patents around the perimeter of the Bay. The
25 application that was filed here, it was filed in June of

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1 1977 and was recently updated by the submission of certain
2 environmental data. As a result of the direction to the
3 staff, a series of meetings have been conducted on
4 approximately a six-week or bimonthly basis with the
5 County of Marin, the Coastal Commission, the North Central,
6 North Coast, North Central Coastal Regional Commission,
7 whichever one it is, to prepare in conjunction with the
8 local coastal planning process a recommendation to the
9 Commission as to what the appropriate use of the tidelands
10 is in the Tomales Bay area and how should be exercised.

11 The data compilation process has been going on.
12 In Mr. Golden's report today he indicated that contact
13 has been made with Pacific Marine Station. There have
14 been ongoing studies by Fish and Game to have inventory
15 of the flora and fauna in the tidelands area, including an
16 inventory of all clams, oysters and et cetera that exist
17 along the shore.

18 They have prepared certain maps which show
19 preliminarily their determinations which have been
20 considered in conjunction with this application. It is
21 expected that after this compilation process is completed,
22 that there will be a draft plan for consideration of the
23 various bodies in the county, the Coastal Commission and
24 the Lands Commission by the end of this year or the
25 beginning of next year.

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1 As a part of this process, the Commission entered
2 into a Letter of Understanding with Marin County and the
3 Coastal Commission to prevent the uncoordinated and premature
4 land-use characterization in this area. The Letter of
5 Understanding was entered into and it generally provides
6 that permits will not be issued unless there is consultation
7 between the parties and comments are made on them and that
8 the land-use proposal is for uses or activities that are
9 continuations of an existing use or activity which are
10 consistent with the public trust and the objectives of the
11 California Coastal Act and consistent with uses of adjacent
12 or affected tidelands or submerged lands or et cetera.

13 There are certain exemptions to that not
14 pertinent here.

15 The Lands Commission, as you are aware, is charged
16 with the exclusive jurisdiction and authority of all
17 interests of the state in these granted tidelands pursuant
18 to Public Resources Code Section 6301.

19 In May of 1977, Kagel and Kagel Corporation applied
20 for a Claim of Exemption and a Permit from the Coastal
21 Commission. That Claim of Exemption and Permit were denied.
22 In June of 1977, the State Commission denied it. It was a
23 reapplication for a permit to the Regional Coastal
24 Commission in August, I guess it was August of this year.
25 That was denied and the State Coastal Commission has denied

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1 the appeal of this.

2 The Applicant now wants the State Lands
3 Commission to approve his project as proposed in his
4 application. The project is located -- I'm going to put
5 this up for demonstrative purposes. We seem to be short.
6 This is a photogrammetric map which fits the tidelands
7 surveys in the area which are identified by --

8 MR. McCAUSLAND: Because of the glare, we can't
9 see your map.

10 CHAIRPERSON CORY: The nonglare overlay material,
11 Prop. 13 doesn't allow us to afford that.

12 MR. FLUSHMAN: The tidelands patents are
13 identified on there and they have been fixed photo-
14 grammetrically and topographically. That is for
15 demonstrative purposes only and does not represent a
16 boundary determination by the Commission. We have placed
17 the parcel and the proposed development on the map itself.

18 Mr. Gorfain was at the site last week and is
19 prepared to show slides which will depict the site in its
20 various aspects and show the surrounding area to the
21 Commission.

22 CHAIRPERSON CORY: How much minutiae do we need
23 to have to deal with this issue?

24 MR. FLUSHMAN: I believe it's important that we
25 do so to establish a record in case there is later action to

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1 mandate the Commission to exercise its authority.

2 MS. SMITH: You have the proposed building
3 located on your map?

4 MR. FLUSHMAN: Yes.

5 MS. SMITH: Are there other residences nearby?

6 MR. FLUSHMAN: I think that will be shown by these
7 slides. You can see it on the map.

8 CHAIRPERSON CORY: Okay. Another dog-and-pony
9 show.

10 MR. McCAUSLAND: Mr. Kagel would like to see
11 the maps.

12 EXECUTIVE OFFICER NORTHROP: Would you leave the
13 set on in the rear, please? The back set on.

14 MR. GORFAIN: This is the Kagel site looking
15 toward the street on the Bay. The house will be located
16 approximately over there. There are two septic systems
17 on either side.

18 Next slide.

19 CHAIRPERSON CORY: Pardon me. There are septic
20 systems for what?

21 MR. GORFAIN: For a single-family residence.

22 CHAIRPERSON CORY: In other words, they're not
23 there yet.

24 MR. KAGEL: No, they're there.

25 MR. GORFAIN: The septic systems are in, the

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1 house is not.

2 CHAIRPERSON CORY: Okay.

3 MR. GORFAIN: This is looking across the site
4 towards the southeast from Sir Francis Drake Boulevard.

5 Next slide.

6 The property immediately to the south from
7 Mr. Kagel's property. You can see that the type of
8 terrain, the type of vegetation that possibly could have
9 been on the Kagel site, probably was on the Kagel site
10 before it was filled. The house on the property to the
11 south sits all the way back towards the street.

12 Next slide, please.

13 Just another closeup.

14 Next slide.

15 CHAIRPERSON CORY: That's the same house?

16 MR. GORFAIN: The same house with the same house
17 on the site.

18 This house is, I presume, pre-Prop. 20 and it is
19 on the property immediately adjacent to the north of
20 Mr. Kagel's property. The sign you see on the property
21 here is the notice for the filing of Coastal Permit.

22 Next slide.

23 This shows you the Tomales Bay immediately north
24 of the house you just saw and, again, it's possible that this
25 was the type of vegetation that characterized the Kagel site

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1 or at least part of it before it was filled.

2 Next slide.

3 A shot along the shoreline and where the person
4 is standing is approximately, as best as we can determine,
5 the seaward extent of the house if it is built, Mr. Kagel's
6 house, if it is built.

7 MR. KAGEL: That's not true.

8 MR. GORFAIN: We can discuss that, but from the
9 plot plans we had, that was the best we could determine.

10 MR. McCAUSLAND: Could we have that slide so
11 Mr. Kagel can show us?

12 EXECUTIVE OFFICER NORTHROP: For the record,
13 would you identify yourself, sir?

14 MR. KAGEL: My name is Peter Kagel.

15 It's kind of an interesting way to present this.
16 We could probably do it a lot faster if I could bring you
17 up to date on what we went through. As we go through
18 these slides, I can explain to you where we are, if I may
19 do that.

20 CHAIRPERSON CORY: I'm not convinced I want to
21 listen to all the staff is giving me.

22 MR. KAGEL: I can tell you this, Mr. Cory, that
23 we're entitled to have this heard on its merits and I really
24 do want to come here and have it heard on its merits
25 because you are a party to a three-party understanding.

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1 Marin County on Saturday is taking our tidelands permit
2 away from us and we have no choice but to go to court. I've
3 drafted everything last night. It's going to be typed
4 today and I'm going to present it to a court today or
5 tomorrow. It's vital, I think, that you hear this on its
6 merits.

7 CHAIRPERSON CORY: I'm prepared to do that, but
8 I'm still puzzling this point, the question of clarifying
9 at this point in the record, if you would like to, where
10 that point should be if --

11 MR. KAGEL: Yes, Mr. Cory.

12 It is back towards the road. It has to have a
13 25-foot setback by Marin County ordinance. We are in
14 compliance.

15 CHAIRPERSON CORY: Twenty-five foot from --

16 MR. KAGEL: From I think the top of that bank.

17 We are up to ordinance. We have the right to
18 have a building permit right now. We have a conceptual
19 building permit. I have a letter in my file that says we
20 are up to code on everything, including septic systems.

21 MR. GORFAIN: We have one more quick slide.

22 This is the house you saw sitting over the water
23 and it is approximately the same height as the house that
24 Mr. Kagel is proposing.

25 MR. KAGEL: Incidentally, that house is on the

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1 same fill.

2 MR. FLUSHMAN: Yes, Chairman Cory, there has
3 been no permits issued by the Commission for the septic
4 systems or the fill that took place on this property.
5 The staff has recommended a denial in accordance with the
6 calendar item. We don't believe it's consistent with the
7 Letter of Understanding and it involves some premature
8 characterization of the tidelands and there is some
9 question as to the consistency of a single-family residence
10 with the public trust for commerce, navigation and
11 fisheries.

12 CHAIRPERSON CORY: Is the question over the
13 ownership of the property, whether it's patent or --

14 MR. FLUSHMAN: No. There's no question over the
15 title, over the ownership. The question is whether or not
16 the use that he wishes to put his fee is consistent with
17 the easement that we have for commerce, navigation and
18 fishery.

19 I might note that this is a sensitive environ-
20 mental area and has been so designated by the Commission
21 in its inventory.

22 CHAIRPERSON CORY: We have an easement over what,
23 the entire parcel?

24 MR. FLUSHMAN: The tidelands patent as it is
25 described.

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1 CHAIRPERSON CORY: Is there a fee parcel and a
2 patent parcel, or what?

3 MR. FLUSHMAN: Well, the demonstrative map
4 reflects that there is a certain portion of the parcel that
5 lies within the Rancho line and within the Tidelands Act
6 as well as outside of the tidelands patent. But the
7 development itself, as it is depicted, falls within the
8 tidelands patent.

9 This map is not a survey, as I've indicated.

10 MS. SMITH: You indicated in your presentation
11 that there is certain conditions that had to be met in
12 accordance with the Memorandum of Understanding. Are you
13 suggesting that the use which Mr. Kagel is proposing would
14 be inconsistent with the uses that are being made of the
15 property now?

16 MR. FLUSHMAN: That are inconsistent with the
17 uses made of the property now?

18 MS. SMITH: Yes.

19 MR. FLUSHMAN: Well, the use that's being made
20 of the property now is that it's open space.

21 MS. SMITH: But there are other residences in the
22 area.

23 MR. FLUSHMAN: I think you can see from the
24 indication on this map and the slide presentation that the
25 residences are spread apart. Whether or not there are other

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1 residences there does not necessarily mean that the
2 Commission in its monitoring or in its approval for
3 tidelands should be issuing permits to build residences
4 on tidelands. I'd be happy to provide the Commission with
5 my opinion on this in Executive Session, if you wish.
6 I'm not sure this is the appropriate time to do it.

7 CHAIRPERSON CORY: Okay. Does that conclude
8 what you have to say?

9 MR. FLUSHMAN: I might add that this land has
10 been designated in the Inverness Ridge Community Plan as
11 a park and open space and that we were advised by the
12 Applicant yesterday or, excuse me, the 24th, that he would
13 not appear and he wished certain matters to be presented
14 to the Commission. We have done so through a letter from
15 Mr. Mills confirming that conversation to the Commission.
16 We will be introducing matters as part of the record of the
17 Commission which I have not taken the time to do now.
18 Copies will be provided to Mr. Kagel if he desires them.

19 I have nothing further.

20 CHAIRPERSON CORY: Okay. Mr. Kagel.

21 MR. KAGEL: May I sit down?

22 CHAIRPERSON CORY: Sure.

23 MR. KAGEL: The property you saw, plus the house
24 that was built just adjacent to it, are build on the same
25 filled land. That land was filled in 1970. At that time

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1 no one was required to get a filling permit, et cetera,
2 except probably from Marin County. At least State Lands
3 wasn't involved. As a matter of fact, we've been trying to
4 get State Lands involved in this thing for some years,
5 and I guess it's a question of being overburdened.

6 At the time that the lots were built we put in
7 two septic tank systems because we wanted to build two
8 single-family residences and we had building permits
9 granted from Marin County prior to Proposition 20. Then
10 the next thing that happened was the price of money went
11 up and we let them expire because we just didn't have the
12 funds.

13 Then we reapplied when we did have the funds
14 and, lo and behold, Marks versus Whitney came down. Now,
15 I don't know if you're familiar with Marks versus Whitney,
16 but you must be.

17 Marin County was the only county in the state
18 that said building above the water, or building any solid
19 structure above the ground violated Marks versus Whitney.
20 Then Marin County passed what they called a tidelands
21 permit which is Ordinance Number 22.77 of their Code.

22 So, to get to court to argue with this, you have
23 to exhaust your administrative remedies. So we proceeded
24 to go through that tidelands permit procedure which took
25 some years. In doing so, we had to develop an Environmental

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1 Impact Report which you have here. It's over a hundred
2 pages.

3 Now, pursuant to that and on all of the hearings
4 we had, we finally got a tidelands permit on the Board of
5 Supervisors' level from Marin County. The Board of
6 Supervisors of Marin County -- and this is the last word
7 in how they planned and how they planned for that particular
8 parcel -- they ruled, they made 12 findings and the
9 findings are:

10 Number one, it would not inhibit navigation.

11 Number two, it would not inhibit access to
12 publicly-owned tidelands.

13 I want to say at this point, all the way along
14 this process we said we'd dedicate 100 percent of this
15 property to the public trust except for where the house
16 sits and the two parking spaces. In other words, people
17 can walk all over that place. We don't care. Matter of
18 fact, we want them to. Let them do it. So bear in mind,
19 we said, sure, go ahead. Okay.

20 Number three, this will not cause or increase
21 the likelihood of water pollution.

22 Number four, it will not cause or increase the
23 likelihood of flooding of adjacent lands, likelihood of
24 flooding adjacent lands.

25 Five, it will not destroy or accelerate the

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1 destruction of habitats essential to species of fish,
2 shall fish or other wildlife of a substantial public
3 benefit.

4 Number six, it will not interfere with or
5 detract from the line of sight of the public toward the
6 water, particularly natural features of visual prominence.

7 What those pictures didn't show you is that
8 property's on a curve and it's got willows growing up and
9 you can't see from the road. You can't see out there from
10 the road at all.

11 Number seven, it will not conflict with the
12 scenic beauty of the shoreline due to height, bulk,
13 form, color, materials, illumination and the standard
14 design of parking facilities.

15 Eight, it will not create a safety hazard in
16 connection with settlement, fill or earthquakes.

17 Nine, it will not diminish natural waterways
18 by siltation, sedimentation or bank erosion.

19 Ten, that the project is in substantial harmony
20 with the adopted General Plan.

21 Number eleven, public benefits would be created to
22 offset some of the detriments which may be caused by the
23 nature of the proposal.

24 Finally, proposed fill excavation and
25 construction will not adversely affect any existing public

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1 rights on the property.

2 So we have that tidelands permit.

3 MR. FLUSHMAN: Excuse me. Let me interject at
4 this point. This is a Marin County Tidelands Permit for
5 what it's worth since no grant has been made of the
6 public trust to the County of Marin in the area of
7 Tomales Bay. So with that characterization, --

8 MR. KAGEL: If you look at your report compiled
9 by Mr. Mills, you will see that they beg the question of
10 what public trust is. What they do is they say the public
11 trust is whatever Marin County's planning groups are going
12 to say it is. It's your job. I submit it's your job.
13 You can't delegate that duty. You have to decide on an
14 individual case-by-case basis about what the public
15 trust is on each and every single parcel there. Then we
16 have to run the gamut and run their local plan. But the
17 public trust situation is the only thing that you should
18 be addressing yourselves to.

19 Now, the Coastal Commission in their infinite
20 wisdom turned us down in our vested rights application
21 by saying, well, we didn't construct those septic tank
22 systems with reliance on building permits. Which, you
23 know, is somewhat absurd. That's number one.

24 Getting back to the regular thing, let's just
25 say that the Code, that the Coastal Commission, that the

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1 Coastal Act does have authority over us. They said that
2 they turned us down on the basis of the public trust wasn't
3 delineated by you. What you've got here is a situation
4 where agency after agency is playing ping-pong back and
5 forth in an effort to stall the people who have land there,
6 not giving them an answer. We played ball for seven years
7 but we can't because Marin County is pulling our permits,
8 as I said, on Saturday. I'm getting a Writ of Mandate and
9 we're also bringing a declaratory relief action for
10 inverse condemnation and somebody's going to end up paying
11 for that property because we have a failure here in our
12 State Government for everybody to take care of their jobs.
13 You know, the Coastal Commission did not tell me that they
14 had this Letter of Understanding between Marin County and
15 you. I say that's a lot of nerve. I say that's damn sub
16 rosa, sickening, totalitarian. They knew all along they
17 were going to turn it down and they didn't tell us.

18 I went through all this hassle compiling reports,
19 hoping, right? I'm a lawyer. I'm supposed to say, well,
20 you're not supposed to hope. Just be objective. Just keep
21 your head back. I was hoping. All the time it was on --
22 okay. Let me show you something else the Coastal Commission
23 said.

24 Because your staff has incorporated their findings
25 in its findings, I think you have to address yourself.

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1 The Coastal Commission said we're not up to Code
2 in our septic system. We are up to Code. What they're
3 doing is they're creating a super agency for the state to
4 decide what is up to Code and what is not up to Code.
5 That's a county situation. They knew all the way along
6 the line that that house that you saw next door was on the
7 same fill and has one septic system and they never had any
8 problem. They're saying we're going to have a problem and
9 we've got two septic systems. One's a fail-safe, a backup
10 system.

11 So here we are since 1970 playing the game and
12 it's running out. We want you people on an individual
13 basis, not on some Letter of Understanding, to cope with
14 your authority, to take it on a case-by-case basis and tell
15 us whether or not we are consistent with the public trust
16 or not, bearing in mind that we've given a hundred percent
17 of the property to the public trust for access.

18 Now, if you say that we are not, that we are
19 not consistent with the public trust, then you're virtually
20 going to say that nobody is consistent with the public
21 trust in terms of a single-family residence. That's all.
22 Plain and simple, that's it.

23 The other thing that this staff report says is,
24 well, we've got the proposed local coastal program and we
25 know about them. That's in the Letter of Understanding.

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1 If you know about it, you're supposed to go by those
2 guidelines even though they haven't been certified or
3 anything else. The only testimony that's ever been put
4 before any public hearing on that property, despite this
5 convenient representation that I just heard from your
6 counsel, that they want to make it a park, is they want
7 to have a linear trail across the property. Now, that
8 piece of property is 43,000 square feet. The house is
9 going to take up like 1265 square feet plus the two parking
10 spaces. You're telling me that they can't put a lousy
11 eight-foot trail across 42,000 square feet? It's absurd,
12 unbelievable, and it's unfair.

13 Now they're trying to hold us out and say, okay,
14 we've got some group, the Inverness Ridge Committee saying
15 we want a park there. Let's have a park. I'm telling you
16 they considered that at the EIR and they ruled it out.
17 They wanted a boat launching site. They ruled it out.
18 There's no parking space. If you show the pictures again,
19 you'll see it doesn't go right on Tomales Bay. It has sort
20 of a little finger, sort of a dike that was put in there.
21 It is not appropriate for that. There are houses not only
22 next door in sight, but there's houses all the way up and
23 there's even a motel.

24 So what we've got here is a situation where the
25 green panthers are running amuck. They may destroy it for

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1 everybody because I voted for that Coastal Act, but we've
2 got a situation where we've got to be the bad guys. I
3 almost feel like let's cut everybody off at the knees
4 because nobody is taking their authority, nobody is
5 addressing themselves to the issue. The issue is, on this
6 particular piece of property, is it consistent with the
7 public trust. Letter or no letter.

8 MR. McCAUSLAND: Just to start things off, we
9 rejected an application last year on the basis that if we
10 had to go house by house, we would deny each application
11 on the basis that there was no way for us to understand
12 at what point equity was reached in terms of the balance
13 of the need for bayside housing and the need for public
14 access. We, as an alternative, suggested if we could have
15 before us a Master Plan for the area that demonstrates to
16 us that in aggregate the public trust is adequately
17 protected, then we as a Commission can have a legal basis
18 for on a case-by-case basis saying this particular structure
19 is consistent with the Master Plan for the area.

20 Since the Master Plan for the area makes
21 adequate provision for the public trust, we can go along
22 with specific structures. That's the position that the
23 Commission finds itself in.

24 MR. KAGEL: I can understand that. Now, under
25 Section 30600 of the Coastal Act, the local government, which

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1 is Marin County, and I assume you'd be paying attention
2 to them, has the option to put in procedures during the
3 course of the formulation of the local coastal program.
4 If they don't take that option, which they didn't, then
5 they leave it up to the state. Now, the state has a staff
6 to do it and they're going on a case-by-case basis and
7 maybe you don't have the staff to do it. But I suggest
8 to you that maybe you should be exercising, you should be
9 looser on your exercising of your jurisdiction because
10 we're going to be in a situation where we're going to have
11 judicial -- the courts are going to decide it for you.
12 It isn't going to be a question of planning. It's going
13 to be plain and simple Writ of Mandate time and it is.
14 I'm sorry, but it is. I can't go any further. We played
15 ball all the way along. We think we have a meritorious
16 situation. The public trust stopped on that land when
17 those septic tanks were put in and the land was filled.
18 We are saying we can all live together.

19 CHAIRPERSON CORY: Let me clarify just in my own
20 mind. I believe I heard you say that there is a some 1200
21 square foot house that you wish to build.

22 MR. KAGEL: Yes, sir.

23 CHAIRPERSON CORY: Some 25 feet back from the
24 bank.

25 MR. KAGEL: It's the only place it could be

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1 built because of all the leachlines running all over the
2 property.

3 CHAIRPERSON CORY: But you are prepared to grant
4 public access to everything save that 1200 feet plus the
5 parking?

6 MR. KAGEL: Yes, sir, we've always done that.

7 CHAIRPERSON CORY: That's somewhat of a unique
8 offer; is it not, staff?

9 EXECUTIVE OFFICER NORTHROP: Yes. I don't know
10 anyone who has offered that.

11 MR. FLUSHMAN: I wasn't present at the earlier
12 application hearing that Mr. Kassel made an offer of
13 dedication. It may have been for the same amount of a
14 comparable amount of his parcel. This is another parcel
15 in Inverness along the tidelands between two houses.

16 CHAIRPERSON CORY: I just wanted to make sure
17 I wasn't misunderstanding.

18 MR. KAGEL: Yes, I have the authority and I
19 hereby stipulate that 100 percent of that property belongs
20 to the public trust except for the house and the two parking
21 spaces.

22 CHAIRPERSON CORY: Okay. Betty, you had some
23 questions?

24 MR. MILLS: I don't quite understand what belongs
25 to the public trust. Do you mean you would dedicate fee

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1 title to a hundred percent of the property?

2 MR. KAGEL: I'm saying that people can enjoy it,
3 can come on it, do whatever they want on it, short of
4 creating a nuisance.

5 MR. FLUSHMAN: The easement is there regardless
6 of whether he dedicates it or not. That's an offer that he
7 is making that has no legal effect. The easement is not
8 terminated by the filling of that property.

9 CHAIRPERSON CORY: No. Wait. Let's clarify that.
10 As I understand from that map, there is a small
11 portion of it to which there is tideland easement.

12 MR. FLUSHMAN: We are assuming now, perhaps I've
13 stated, that for purposes of our discussion that the entire
14 parcel is encumbered by the trust. Even if it isn't, well,
15 then his offer of dedication does have some effect. As to
16 the parcel that lies outside the perimeter description of
17 the tideland pat.

18 CHAIRPERSON CORY: Take me very slowly through
19 the derivation of that easement, what you're talking about.
20 I'm trying to find out whether that's an offer or a non-
21 offer.

22 MR. KAGEL: Well, I think I might be able to help
23 you. It's your job to decide what the easement means.

24 CHAIRPERSON CORY: But I'd like to understand
25 because that seems to have been glossed over in the

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1 presentation. There were a lot of details, and I don't
2 understand that. It seems to me an integral part of what
3 our position is or isn't.

4 MR. FLUSHMAN: The tideland patent is placed on
5 this photograph which is not a rectified photograph. It
6 was not taken with any controls by control set. So this
7 has been photogrammetrically fit, all of these parcels,
8 these maps have been photogrammetrically fit.

9 This is a 1974 photograph, excuse me, 1977
10 photograph of Inverness at one to two hundred feet is
11 the scale. Superimposed over that is the property as it
12 was depicted by the United States in 1862. On that 1862
13 topographic, on that is depicted the parcel in tape which
14 indicates that as far as the topographic map, a portion of
15 the parcel was on a map upland part and part of it was on
16 either submerged lands or tidelands. The tideland patents
17 are depicted on the next overlay which indicates that
18 substantially all of the parcels fall within, within
19 tidelands survey 185. Also imposed on this map is the
20 Rancho line in the area. The Rancho line is the base title
21 for the upland parcels which show that there is a conflict
22 between the tideland survey and the Rancho line which is not
23 an infrequent occurrence in Western Marin County where the
24 monumentation is slack and lax to put it mildly.

25 Does that answer your question?

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1 MR. MILLS: In other words, what he's saying is
2 that substantially all the parcel, and I think it's
3 accepted by Mr. Kagel, was included within a tideland
4 patent which was sold by the state, fee title was sold by
5 the state to the private owner. However, the state
6 retained an easement over that parcel for commerce,
7 navigation and fisheries. It's that easement which has been
8 referred to as the public trust easement.

9 CHAIRPERSON CORY: And Mr. Kagel's position is
10 that that was terminated when the fill was made in 1977?

11 MR. KAGEL: No. I'm trying to persuade you to
12 say that the use is what we're talking about here.

13 CHAIRPERSON CORY: Is consistent with?

14 MR. KAGEL: Yes. It ceases to be a bird preserve.
15 You can't use it as a bird preserve because it's filled.
16 It's got septic tanks underneath it. The law's going to
17 look and say, what's the most proper and best use for it.
18 It's got septic tanks on it. You have access to a highway.
19 You have water to it. You have power to it. There are
20 houses on each side. So, you know, we're not arguing over
21 whether or not it falls within the jurisdiction of state
22 lands. We are saying, what I was trying to say to you is
23 that the use is, you know -- Let me say something else.

24 You say that you don't have enough staff and you
25 can't take it on a case-by-case basis.

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1 MR. McCAUSLAND: I made no representation about
2 staff. I said the policy statement that if we went case
3 by case, we would determine that we would never know in
4 aggregate at what point we had built so many houses that
5 we had damaged the public trust. But if we had a Master
6 Plan to compare the project-by-project proposal, we could
7 determine that in aggregate we were still protecting --

8 MR. KAGEL: As a practical matter, this is the
9 only single house that you're going to have to worry about
10 between now and the time you get your Master Plan, and I'll
11 tell you why.

12 Mr. Mills told me Mr. Cassel did not have all of
13 his permits in order with Marin County. That's why you
14 didn't consider it. There's no way anybody else is going
15 to get their permits in order with Marin County because
16 they have to go through this bloody tidelands ordinance
17 which I just read you all the findings you have to satisfy.
18 To my knowledge, there is absolutely no Environmental
19 Impact Report in the process of being made on any other
20 parcel. This parcel is the only parcel that I know of that's
21 large enough to accommodate up to Code septic systems.
22 As a matter of fact, what they did to us, we're grandfathered
23 in on that septic system. We're probably grandfathered in
24 for two houses. Well, I just as soon wait.

25 MS. SMITH: I have a question for staff.

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1 Would the approval of Mr. Kagel's application be
2 in breach of the Memorandum of Understanding that you've
3 reached with the County of Marin and the Coastal
4 Commission? If so, in what respects and what are the
5 consequences?

6 MR. FLUSHMAN: All that the Memorandum of
7 Understanding requires us to do is to consider the
8 criteria that are set forth in that understanding. As far
9 as being in breach of it, I'm not sure it's possible to
10 breach it by an approval because the agreement, the Letter
11 of Understanding does not say that you cannot approve.
12 It says you have to give consideration to these factors
13 when you do approve. The reason that we entered into the
14 Letter of Understanding, of course, is so that we didn't
15 have approvals being adopted by one agency and not by
16 others and to prematurely characterize what the ultimate
17 plan is going to be. So it wouldn't be a breach in short.
18 It would not be something that I would recommend the
19 Commission doing, however.

20 MS. SMITH: For what reason?

21 MR. FLUSHMAN: For the reasons that are stated
22 in the calendar item.

23 MS. SMITH: What is the date certain for the
24 completion of the Master Plan?

25 MR. FLUSHMAN: A date certain? The date certain

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1 is that it will be sometime after the first of the year.

2 CHAIRPERSON CORY: Mr. Kagel's problem is that
3 he bites the bullet the 28th.

4 MR. KAGEL: That's right.

5 MR. FLUSHMAN: Well, of course, this has been a
6 year since he made his first application and now he wants
7 the Commission to decide today.

8 MR. KAGEL: Let me say, I want to address myself
9 to that and then I want to come back and talk to what I was
10 talking to you about.

11 When I went before the Coastal Commission down
12 south, Mr. Golden was there. They told me, they said you
13 don't have to wait your six months pursuant to the
14 Administrative Code to come back. The Master Plan, you
15 know, is moments away. I've waited and I waited. So we've
16 been good faith on this thing all the time. The minutes
17 don't reflect that, but the tape does.

18 CHAIRPERSON CORY: Of the Coastal Commission?

19 MR. KAGEL: Yes, sir.

20 So what's the point of doing that, what's the
21 point of incurring all of this expense unless you know
22 that you're really up against the wall. We've tried to
23 play ball with everybody.

24 Now, let me finish why you're not going to have
25 any other houses. No one -- We have one acre there, one

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1 acre. And I don't think there's another acre parcel there.
2 There's no way that anybody can conform with Marin County's
3 septic ordinance on even one acre any more. What they did,
4 when we came back and reapplied for our building permits
5 again, they knocked us down from two houses to one. They
6 said you had to have a 100 percent fail-safe system. Now
7 they've even changed it more. So you're not going to have
8 to face this thing.

9 We have a lot of hardship in this thing, seven
10 years. Seven years and it's not going to be any skin off
11 anybody's nose because they're going to be able to use the
12 property.

13 MR. FLUSHMAN: That seven-year period is not
14 taken up by consistent pressing of the application on a
15 daily basis. This is a sporadic process that has been
16 going on as is evidenced by the matters which we'll be
17 submitting to the Commission.

18 CHAIRPERSON CORY: Questions from Commissioners?

19 MR. MILLS: I think there may be some other
20 people in the audience.

21 MR. McCAUSLAND: As long as people in the audience
22 want to testify, I would like Mr. Golden, if he could relate
23 for us, how this application might relate to an application
24 within the Bay Conservation and Development Commission
25 jurisdiction because it appears to me, although this is

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1 really a superficial forum in which to try to get to this,
2 that public use of all nondeveloped portions of the parcel
3 is a fairly significant commitment and one that many
4 property owners are most reluctant to agree to in fact, if
5 not in semantics. But can you describe for me how we can
6 make a public trust finding in a San Francisco Bay
7 project which perhaps is virtually identical to this one?

8 MR. GOLDEN: I think, Mr. McCausland, in
9 response to that, the McAteer-Petris Act which set up the
10 Bay Development Commission was an exercise of the public
11 trust in itself and it's significantly different in any
12 respect than the Coastal Act which is also an exercise of
13 the public trust.

14 So you have a number of different items in the
15 Coastal Act which have to be considered as exercised. For
16 instance, the effect on the environmental factors, whether
17 or not these leach fields have an impact on the environment
18 and what not would be a matter for the Coastal Commission
19 to consider but perhaps not in the same context as the
20 BCDC.

21 MR. McCAUSLAND: Plus perhaps the fact that BCDC
22 has already adopted plans and elaborate rules and
23 regulations to allow you to view each application on its
24 merits.

25 MR. GOLDEN: Yes.

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1 MR. FLUSHMAN: If I might add, Commissioner
2 McCausland, that maybe a result of this planning process
3 that goes on here is that that's what will be recommended
4 for the Lands Commission to do in the Tomales Bay area.

5 CHAIRPERSON CORY: Just what I always wanted,
6 get elected Controller and be a Planning Commissioner.
7 I'm sorry.

8 Are there any other people in the audience who
9 wish to comment on this permit?

10 Would you come forward and identify yourself for
11 the record, please.

12 (Thereupon a discussion was held off
13 the record.)

14 CHAIRPERSON CORY: Yes, sir.

15 MR. HOWE: My name is William Howe and I'm the
16 President of the Tomales Bay Association.

17 You have, I hope you've received it, letters from
18 the Inverness Association signed by Daniel Morse and a
19 Mailgram from the Marin Conservation League. There is one
20 other organization in West Marin called the Environmental
21 Action --

22 CHAIRPERSON CORY: Do you have copies of those
23 documents because we do not have them?

24 MR. HOWE: Oh, you do not have them. I have these
25 here. Maybe they didn't reach you.

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1 There is one other organization called the
2 Environmental Action Committee of West Marin whose
3 chairman is in Europe. However, the history of that
4 organization is in accordance with those of the rest of it.

5 We all support the staff report. We were up here
6 for the Cassel hearing, as you may recall, when the
7 situation was a little bit different. Our organization
8 specifically, a long time ago, sent a letter to you shortly
9 after the Marks-Whitney decision stating our general
10 position. Many of our members actually own tidelands, but
11 most of them are not the people who own undeveloped property
12 They own some of these small houses that are around the Bay.
13 So we've been rather conservative in this issue.

14 However, we very early came to the decision that
15 in cases of undeveloped property, we strongly urge you in
16 undeveloped property, such as Mr. Kagel's, I believe, to
17 give maximum weight to the public trust. Tomales Bay is not
18 San Francisco Bay. Tomales Bay is a rural area surrounded
19 by the seashore. It's an area in which it's become a very
20 great recreation area and it's the general feeling that
21 for houses to be built along the Bay which are conflicting
22 with the views and conflicting with the recreational use,
23 that there is a strong case to be made to not encourage them.
24 That's basically the point that I wish to convey to you.
25 It's a matter of community sentiment.

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1 MR. KAGEL: May I --

2 CHAIRPERSON CORY: There are a couple of things
3 that go through my mind that's puzzling to me. One, because
4 I feel as a representative of the government and put in a
5 position of being asked to decide upon something to try to
6 absolve somebody from the sins of another governmental
7 agency. I mean, I'm uncomfortable about that. I feel that
8 there may have been something less than a meritorious
9 treatment by some of my other people in government of an
10 applicant here.

11 The thing that I'm going through in my own mind,
12 and I don't know where this comes out in terms of a final
13 decision, but the down side of what you told me, I'm
14 receiving this way and I'd like to tell you how I'm
15 receiving it so you'd have a chance to correct me if I'm
16 misperceiving it.

17 The concept that you're representing a group
18 of people who have their houses and, therefore, don't want
19 anybody else to have houses. I mean, "I've got mine." I'm
20 sitting here trying to weigh using the public power as a
21 trustee to preclude this person's use of his property right
22 for your convenience. I think there may be something more
23 to your argument than that, but I want you to know what the
24 kind of things that I'm going through. I don't know how
25 I'm going to vote on this, but rather than you walk away

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1 with just that statement, I'd like for you, if you could,
2 to respond to that in some way.

6
3 MR. HOWE: Well, there's obviously an ambiguous
4 situation now. People who have had their houses for a long
5 time, you know, have a homeowner's interest in their own
6 property. They live there. You know, they've lived there,
7 many of them for a long, long time. Of course, such
8 property does change hands.

9 It seems to me that that's one situation, but it's
10 a completely different situation where you can look out and
11 see the birds and so on and for someone else to come in and
12 then put a structure up.

13 CHAIRPERSON CORY: If I could just pursue that
14 and then Sid has a question for you.

15 In this particular case, as I understand it and
16 nobody's disputing the fact that either rightfully or
17 wrongfully the property was filled in 1970 and septic
18 tanks were put in. Is there any way in your hearts that
19 you can conceive that he's one of you rather than one of
20 them? He has already done his development. I mean, I don't
21 know.

22 MR. HOWE: At the Regional Coastal Commission,
23 I got up at that time because I was somewhat concerned about
24 the fact that Mr. Kagel had an investment in his property
25 through the work that he had done. I suggested at that

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1 time that possibly that this was an instance where,
2 although I really thought that he should not be allowed to
3 build, that possibly this was a case where he should receive
4 some compensation.

5 MR. FLUSHMAN: Compensation for --

6 MR. HOWE: For the things that he did before the
7 decision, you know, before the Marks-Whitney decision.

8 MR. KAGEL: Including reasonably attorney's fees
9 from then on?

10 MR. HOWE: I'm not an attorney so I will pass on
11 that one, what is a reasonable attorney's fee.

12 At which point the attorney for the Regional
13 Commission asked Mr. Kagel a question and I'm not going to
14 pretend that I can give a completely accurate answer to this.
15 Mr. Kagel, I'm sure, will correct me. But the general gist
16 of the thing was there was a point after the decision that
17 Mr. Kagel for personal reasons allowed his permits to
18 expire at which point Mr. Kagel then began all over again.

19 Now, I don't know how you feel about it, but I
20 feel that this was the point at which -- I've changed my
21 mind, obviously -- that this was the point at which the
22 local and state agencies involved were off the hook on this
23 one.

24 MR. KAGEL: This is prior to Proposition 20
25 ever coming down. This was conforming with their laws all

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1 the way down the line. If we didn't stand a chance in the
2 beginning, why would we even go forward.

3 CHAIRPERSON CORY: Sid, did you have a question?

4 MR. McCAUSLAND: Do you reside in the vicinity
5 of this?

6 MR. HOWE: I have a so-called weekend residence
7 in Inverness. It's up on the hill. It's on the other side
8 of the highway. I'm a legal resident of San Francisco.

9 MR. McCAUSLAND: Are you familiar with many
10 undeveloped pieces of property that already have fill and
11 septic systems in place around the perimeter of the Bay?

12 MR. HOWE: Well, I was talking about places with
13 houses.

14 MR. McCAUSLAND: I'm curious to know, Mr. Kagel
15 has a piece of property that's been filled and it has a
16 septic system in place. Are you familiar with other pieces
17 of property in that vicinity that have undergone that degree
18 of development?

19 MR. HOWE: Off the top of my head, no.

20 MR. McCAUSLAND: Is our staff aware of any?

21 MR. FLUSHMAN: I don't believe there are any.

22 MR. McCAUSLAND: Did Mr. Cassel or whoever the
23 other party was have a similar circumstance?

24 MR. FLUSHMAN: I think there's partial fill on his
25 property, but that's it. There is no septic system.

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1 MR. McCAUSLAND: There is no septic system.

2 MR. FLUSHMAN: Whatever the origin of that fill is,
3 it's undetermined whether he did it himself or it's a --

4 MR. McCAUSLAND: Was the State Lands Commission
5 actively administering any permit laws related to fill in
6 1970?

7 MR. FLUSHMAN: Were they actively administering
8 or did they have the authority? They were not actively
9 administering it, I believe. I wasn't counsel to the
10 Commission.

11 MR. McCAUSLAND: Did they have the authority?

12 MR. FLUSHMAN: I believe they did.

13 MR. McCAUSLAND: Do we have any evidence that
14 suggests to us at all that the fill or the septic tank was
15 not in full conformity with the laws in place at the time
16 those actions transpired?

17 MR. FLUSHMAN: Which laws?

18 MR. McCAUSLAND: Whichever laws were applicable to
19 fill and septic.

20 MR. FLUSHMAN: As far as the County of Marin,
21 according to the Coastal Commission findings, they were in
22 accordance with the standards as they existed for septic
23 systems in 1970. Whether or not they meet present standards
24 is subject to question, but you also have to consider that
25 there has been studies of the ground water and septic

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1 sewage disposal systems in the Inverness area along the
2 tideland which will be presented at the time that the
3 planning determinations hopefully will be made by the
4 Commission as to what should go on the tidelands. So
5 regardless of the fact that they meet Marin County
6 standards, if, for example, the septic system studies show
7 that two septic systems, whatever the fail-safe procedures,
8 would cause a discharge of effluent into the Bay at this
9 area, the Commission may have to make an independent
10 determination as to whether or not the use of the property
11 so as to cause effluent to flow into the Bay --

12 CHAIRPERSON CORY: I think that's irrelevant to
13 what Sid is driving at.

14 MR. FLUSHMAN: I'm not sure that it is.

15 MR. McCAUSLAND: Let me go on to my next question
16 then.

17 Is there any contention on the part of this
18 Commission staff that any actions have been taken since
19 Marks versus Whitney that are not in compliance with
20 applicable law at this time?

21 MR. FLUSHMAN: I'm not sure that I understand your
22 question.

23 MR. McCAUSLAND: It occurs to me or it seems to me
24 that everything that he's done up to this point in time has
25 been in conformance with the laws under which he undertook

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1 those actions to the best of our ability to discern that.
2 That any impairment made to the public trust was made prior
3 to Marks versus Whitney. As far as the state's sovereign
4 interest in the public trust relevant to this particular
5 parcel, it's been substantially altered already. While
6 there are potential trust uses available to us, I don't
7 quite understand what premise we should use at this point
8 in time, in the absence of planning by Marin County for
9 this area earlier in its General Plan, and in view of the
10 fact that the Coastal Commission has yet to act on this
11 property at the regional level --

12 MR. MILLS: The Coastal Commission has already
13 acted on it.

14 MR. FLUSHMAN: It's acted by a denial as
15 affirmed by the State Commission.

16 MR. McCAUSLAND: On the basis of a plan?

17 MR. MILLS: On the basis that it was not --

18 MR. FLUSHMAN: I'll be happy to read to you what
19 the findings are. The findings are that the proposed
20 development represents private residential use of historic
21 state tidelands that are subject to the public trust
22 doctrine. The applicant's offer to dedicate a pedestrian
23 easement does not satisfactorily resolve the conflict
24 between private development and the public right to use
25 of these tidelands.

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1 There are also other findings that are available.

2 MR. McCAUSLAND: Is it their place to make that
3 specific finding?

4 MR. FLUSHMAN: There is a conflict between the
5 Coastal Act of 1970 and the Public Resources Code,
6 Section 6301 as to exactly who has the exclusive jurisdiction
7 over the tidelands.

8 MR. McCAUSLAND: Is there exclusive jurisdiction
9 or is it shared?

10 MR. FLUSHMAN: Well, the 6301 says exclusive.
11 The Coastal Act says that the State Commission retains
12 jurisdiction over the tidelands regardless of whether
13 there's a local coastal program instituted in the area,
14 the State Commission.

15 MR. McCAUSLAND: Let my attorneys correct me if
16 I'm wrong. So, in fact, the more current and more specific
17 language of the Coastal Act is very likely to prevail in
18 this instance?

19 MR. MILLS: Yes.

20 CHAIRPERSON CORY: Let me stop here at this
21 point. Mr. Kagel, you've indicated, I believe on the
22 record, that you feel, in fact you've gone to the point of
23 drafting documents that you're going to have to do whatever
24 you have to do in terms of mandamus actions and the like
25 to protect your property; is that correct?

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1 MR. KAGEL: That's right.

2 CHAIRPERSON CORY: Okay. In view of that --

3 MR. KAGEL: But I hope you're not going to say:
4 Well, take us along with you.

5 CHAIRPERSON CORY: No. I'm going to say, and it's
6 a substantial inconvenience, but I think it's important
7 at this point that because of the potential litigation
8 question, we confer with our lawyers just to make sure
9 because at one point there was a statement by one of the
10 staff people that there was something that he didn't want
11 to get into at this point. It might be appropriate for
12 us to confer with our counsel and then --

13 MR. KAGEL: In an Executive Session.

14 CHAIRPERSON CORY: -- in Executive Session right
15 now. We will come right back. No decision is going to
16 be made there, but I need a clarification of what --

17 MR. KAGEL: May I just say, I want to read you
18 three sections out of the Coastal Act. I think I can clear
19 this up, your question about who has exclusive jurisdiction
20 over the public trust.

21 The public trust is what you have. Now, they
22 have jurisdiction over the same territory for other reasons,
23 but when it comes to public trust, they can't hang their
24 hat on the public trust.

25 Now, Section 30400 reads:

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1 "It is the intent of the Legislature to
2 minimize duplication and conflicts among
3 existing state agencies carrying out the
4 regulatory duties and responsibilities."

5 30401 reads:

6 "Except as otherwise specifically provided
7 in this division, enactment of this division does
8 not increase, decrease, duplicate, or supersede
9 the authority of any existing state agency."

10 And then it goes on in another section talking
11 State Lands specifically saying what State Lands has.
12 That's 30416. Then it reiterates the fact that you have
13 what you had before this Act was passed; and what you had
14 before this Act was passed was exclusive jurisdiction.
15 Exclusive means exclusive.

16 MR. McCAUSLAND: That's what I thought it meant.

17 MR. KAGEL: That's right. That's exactly it.

18 CHAIRPERSON CORY: I would like the room cleared.
19 This should not take more than five or ten minutes, but I
20 would like to get that additional information before we
21 make a decision.

22 (Thereupon a recess was taken.)

23 CHAIRPERSON CORY: Okay. Now, where were we
24 before I so rudely interrupted?

25 MR. FLUSHMAN: We were considering this

1 application.

2 CHAIRPERSON CORY: Oh, yes, Item 16.

3 (Laughter.)

4 MR. McCAUSLAND: We had just determined with the
5 help of the Applicant that we had exclusive jurisdiction
6 over the finding of public trust, but also with a
7 reminder from counsel that our actions should not be
8 inconsistent with Coastal Commission actions.

9 MR. KAGEL: Why not? We're entitled to our --

10 MR. McCAUSLAND: Let me finish. That area over
11 which we have exclusive jurisdiction is public trust.
12 As a Commissioner I would be unwilling to make findings
13 other than those specifically consistent with that
14 exclusive jurisdiction. Then anybody else who wants to
15 say that our findings are inconsistent with theirs, can
16 argue as to whether or not they had jurisdiction.

17 CHAIRPERSON CORY: Okay. Mr. Kagel, do you have
18 any --

19 MR. KAGEL: Have I apologized for that last
20 outburst?

21 CHAIRPERSON CORY: You've been down the road.

22 MR. McCAUSLAND: Seven years even if only
23 sporadic is a big investment.

24 (Laughter.)

25 MR. McCAUSLAND: Most things in my life are

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1 sporadic too.

2 MR. KAGEL: Well, I thank you for your
3 consideration and I feel that you've heard me. I can't
4 say that about the Coastal Commission, but I felt you've
5 heard me today. I don't think we present any threat
6 whatsoever to anybody's future plans on Tomales Bay and I
7 think it's only just, considering the investment we have
8 there and the fact that we've been law-abiding all the
9 way down the line.

10 CHAIRPERSON CORY: I want to get back to this
11 confusing area of public trust easement and the like.

12 How far are you willing to go for the non-house,
13 non-parking and driveway into that?

14 MR. KAGEL: The public may use it as it wishes.
15 I don't want an RV next door to the house, I mean, you
16 know --

17 MS. SMITH: What's that?

18 CHAIRPERSON CORY: A recreational vehicle. He
19 doesn't want a motor home coming in with its generators
20 going all night.

21 MR. KAGEL: The people can use it to pass over
22 to Peppermill Creek. They can walk over the property.
23 If there's ever a bicycle path, which is highly unlikely
24 because they're going to hate to condemn all the property
25 on each side, then, by God, they could have a bicycle path

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1 with our blessing.

2 In other words, we'll give you 100 percent, 100
3 percent dedication to the public trust for pedestrian
4 right-of-way.

5 MR. FLUSHMAN: Is that in fee or is that in
6 easement?

7 MR. KAGEL: In easement.

8 MR. FLUSHMAN: Only an easement.

9 MR. KAGEL: Yes, sir, it's an easement, but it
10 lasts forever. That's the difference. If you want to
11 pay the taxes, we'll give it to you in fee.

12 CHAIRPERSON CORY: If we took it in fee and gave
13 you an easement for your septic leases which I guess are
14 in that area, --

15 MR. KAGEL: They're underneath the entire
16 property.

17 CHAIRPERSON CORY: -- that might alleviate you
18 of some portion of the tax burden.

19 MR. KAGEL: We have a problem. Because we were
20 in court, we have to represent that we were the fee owners
21 of the property. I think we might lose our standing to stop
22 Marin County and to pursue our remedy with the Coastal
23 Commission.

24 CHAIRPERSON CORY: What would happen -- I'm just
25 thinking hypothetically here -- that if we found some

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1 mechanism that a portion of that was not adverse to the
2 public trust, the house site, and at this time you still
3 have a lot of problems down the road.

4 MR. KAGEL: But they're going to be solved in
5 short order.

6 CHAIRPERSON CORY: But --

7 MR. KAGEL: If you say the house and the two
8 parking spaces are consistent with the public trust, I
9 guess that's all you have to say.

10 CHAIRPERSON CORY: I'll put a caveat on there,
11 at this time.

12 MR. KAGEL: Fine. I don't see anybody coming in
13 and razing the house if they change the use.

14 MR. FLUSHMAN: If I can suggest that if you were
15 going to do that, hypothetically, it might be more
16 appropriate to do it and find that this area is no longer
17 subject to the public trust in that it has been filled,
18 reclaimed and is no longer useful or acceptable to that
19 purpose.

20 CHAIRPERSON CORY: Well, I was thinking of the
21 other way, that if down the road, since we don't know what's
22 going to happen with the other agencies and all, if at some
23 point -- I'm trying to avoid digging the state in a hole
24 that's, say, two years from now you're still in the saga
25 of fighting the bureaucracy's battle and a plan came out

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1 that they needed that for a purpose --

2 MR. KAGEL: Now, wait a second. We do own that
3 property.

4 CHAIRPERSON CORY: Yes.

5 MR. KAGEL: And we do have a right. If somebody
6 wants to come in with eminent domain, I suppose they could
7 do it at any time.

8 CHAIRPERSON CORY: As I understand where we are
9 legally at this point in time, if we wanted to exercise the
10 public trust and we needed it for some legitimate public
11 purpose, the improvements that have been placed there we
12 would under law have an obligation to compensate you for
13 taking.

14 MR. KAGEL: Absolutely.

15 CHAIRPERSON CORY: I've got no problem with that.
16 What I'm concerned about is if for other people or other
17 reasons, not our control, you have not actually built the
18 structure and at a future point in time you wish to do that
19 because circumstances change or more information is
20 available, --

21 MR. KAGEL: Then you're not going to have to pay
22 for structures that we couldn't build.

23 CHAIRPERSON CORY: That's the point I'm trying to
24 clarify and put on the record. If they haven't been built,
25 this grant here does not convey a right to increase the

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1 value of whatever is there. Whatever is there is there and
2 what its value is is not enhanced by our approval today.

3 MR. KAGEL: It's my understanding you can't
4 sell a building permit. You've got to build a building
5 permit. What you're saying is, you're essentially
6 licensing us to build a house. You're saying that it's
7 an easement in growth, only belongs personally to you.
8 I guess that's right, or a profit or whatever. You're
9 saying it's a personal right is what you're telling me.

10 MR. McCAUSLAND: I want it understood that no
11 action taken by this Commission today should ever be
12 construed as a license to build a house. We're simply
13 discussing the matter of the finding regarding the public
14 trust.

15 MR. KAGEL: That's exactly right. That's why
16 we're here. We're here because you have to decide what is
17 the proper use under the public easement, and the proper
18 use under the public easement is a single-family residence.
19 It's okay. But we are going to --

20 CHAIRPERSON CORY: I think that getting you as
21 close to where you might like to be is going to not quite
22 be that as I read the Commissioners. I'm not so sure that
23 there are three votes to find a single-family residence is
24 consistent with trust purposes.

25 MR. KAGEL: Well, we're not going to put up a

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1 tent.

2 CHAIRPERSON CORY: That you might well find that
3 in this unique property that acts that occurred prior to
4 Marks versus Whitney may make this particular homesite an
5 act that the public trust is no longer applicable.

6 MR. KAGEL: I'm here because I have to go through
7 the laws of the Public Resources Code and your laws.
8 Now, I'm here and I presented to you a single-family
9 residence because that's what we're talking about. Either
10 you give it to me or you don't. I can't understand this
11 gray area in between. Now, yes, we may not make it with
12 the Coastal Commission and then the whole issue is forever
13 dead if that's what you're saying. There's no way that you,
14 how can you --

15 MR. McCAUSLAND: Perhaps I can frame a motion
16 for the Chairman that we can discuss and you can respond
17 to.

18 MR. KAGEL: Fine.

19 MR. McCAUSLAND: Let's move that the State Lands
20 Commission find that due to the placement of fill and a
21 septic system prior to the finding in Marks versus Whitney
22 and the subsequent alteration of the character of the
23 land on this specific parcel, State Lands Commission finds
24 that the public trust would not be irreversibly damaged by
25 the construction of a structure on that land, granted that

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1 all other portions of the parcel be dedicated in fee for
2 public access in perpetuity.

3 CHAIRPERSON CORY: With an easement for his
4 septic system. If you're going to take it in fee, you've
5 got to give him an easement back to use his portion of
6 it.

7 MR. McCAUSLAND: Incorporate any relevant
8 easements into the motion.

9 MR. KAGEL: I think we're getting there, but I
10 have a difficult problem with what you mean by "in fee."
11 Why do you want to end up owning the land? You see, what
12 you're doing then, of course, if we have an easement and
13 something happens to that land, we can make you fix it.
14 If the land starts caving in and the septic systems don't
15 work, we could say, hey, come fix your land, you've wrecked
16 our easement. Or if you do something there or something
17 happens with people coming over the property and you own
18 the property and their activities are interfering with the
19 septic system, then you have a real problem. I would
20 suggest that you just reshape it and let us give you the
21 easement. We'll keep the fee. I'm trying to keep you out
22 of trouble, out of managing, out of all that hassle.

23 MR. McCAUSLAND: Let me suggest that the Coastal
24 Conservancy reluctantly has been accepting public access
25 easements on behalf of the State Coastal Commission lately

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1 because no other agency was willing to accept them. We
2 could either take this as the State Lands Commission or
3 we could request that the Coastal Conservancy take such a
4 public access in perpetuity.

5 MR. KAGEL: Sure, we'll give it to the State
6 Conservatory or whatever it is.

7 CHAIRPERSON CORY: If we did this, what form do
8 you think it should be in?

9 MR. FLUSHMAN: If I might suggest that the
10 Commission rephrase its motion to indicate that the
11 parcel, because of its configuration being filled and
12 the septic systems being installed with appropriate permits
13 from the local governmental agencies, is no longer needed
14 for the trust. In return for that, and that further it is
15 no longer needed because there has been a dedication of
16 whatever form it takes that the application be granted.

17 MR. McCAUSLAND: What is the application?

18 MR. FLUSHMAN: The application is to build the
19 residence.

20 MR. McCAUSLAND: Why should we make a finding
21 about granting the application? All we have to do is make
22 a finding that the public trust is --

23 MR. FLUSHMAN: That's what you're doing. You're
24 saying that the land is no longer needed for the public
25 trust.

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1 MR. McCAUSLAND: I don't want to go so far as to
2 saying an application should be granted. I merely want
3 to say that, as the State Lands Commission, we don't find
4 adequate grounds for suggesting that the public trust has
5 been irreversibly impaired.

6 MR. KAGEL: See, the problem is the vehicle we
7 get here which is an application.

8 CHAIRPERSON CORY: An application will be
9 approved delineating whether something is or is not within
10 the public trust. We are trying to avoid the problem of
11 ever saying that a single-family residence is consistent
12 with the public trust.

13 MR. KAGEL: Why don't you just say for this
14 particular parcel, and you keep your options open everywhere
15 else. So, as far as this particular parcel goes, the
16 application is approved that it is no longer needed as a
17 public trust because of what occurred prior to then, and
18 as a condition of approval you have from the applicant an
19 easement in perpetuity for the public, for pedestrian
20 right-of-way.

21 MR. McCAUSLAND: What do we have before us,
22 Mr. Hight?

23 MR. HIGHT: Mr. Chairman, if I could comment on
24 something first. The Commission still owns an easement.
25 So technically they are gaining little, if anything, from

1 the conveyance of the easement back. It's a nullity.

2 The suggestion of the conveyance of a fee for
3 all that area except the area of the house and the parking
4 lot, to me seems like it would be the best position for the
5 state to be in.

6 MR. KAGEL: Excuse me. I don't think we can
7 do it either, because then you're creating a new parcel
8 of interest and you have to go through Marin County to do
9 that and then I got to go to court. You're creating another
10 parcel if you do that.

11 MR. FLUSHMAN: The interest is there.

12 MR. KAGEL: You're creating two parcels.

13 MR. FLUSHMAN: Well, there are ways that parcels
14 can be created without the necessity of going to the local
15 agencies through boundary line agreements with the State
16 Lands Commission. And if there is, as there appears to
17 be, a boundary question in this area, it may be possible to
18 work out a boundary line agreement with them as to where
19 the state's interest is and where his interest is, which
20 may include the homesite and may not.

21 MR. KAGEL: Your interest is over the entire
22 property right now.

23 CHAIRPERSON CORY: Well, we could enter into a
24 boundary line agreement redefining that for mutual interest.

25 MR. KAGEL: Well, what does the boundary line

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1 mean? Is it going to show up on the official records
2 of Marin County or not?

3 MR. FLUSHMAN: It will show up on the official
4 records of Marin County. It is not subject to the
5 Subdivision Map Act.

6 MR. KAGEL: Regardless of whether it's, you know,
7 up to the Subdivision Map Act or not, you're still going
8 to have to get a tentative map approved.

9 MR. FLUSHMAN: If it's not subject to it, you
10 don't have to have it approved. It's exempt from it.

11 MR. TROUT: We might make an exchange. We could
12 agree on the location of the inner boundary of the tideland
13 survey. We can make an exchange of interest whereby from
14 that line to the Rancho line or to the balance of the
15 upland the property would be exchanged and become tidelands
16 and some other piece of the property would then become
17 upland through a boundary exchange.

18 MR. KAGEL: Maybe we could --

19 MR. TROUT: We have a problem if you have a date --

20 MR. KAGEL: Could we all have lunch together and
21 maybe we can work it out?

22 (Laughter.)

23 EXECUTIVE OFFICER NORTHROP: No. It's a public
24 meeting.

25 MR. KAGEL: Well, maybe the lawyers could have

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1 lunch together with me on the State.

2 (Laughter.)

3 CHAIRPERSON CORY: Okay. If we could get a couple
4 of other points from some Commissioners. If that could be
5 put in the record, I think at the conclusion of that what
6 we might ask is some of the staff people sit down with
7 Mr. Kagel and see what they come back with and bring that
8 back before the Commission. The Commissioners will not be
9 here. I want to say, I have a problem that I have to catch
10 a 1:15 airplane, but I will try to go ahead and conclude
11 this calendar, the entire calendar here this morning
12 before that time.

13 Betty, you had some comments you wanted to make.

14 MS. SMITH: We're instructing staff to go out
15 and try to work out a suggested finding, right, --

16 CHAIRPERSON CORY: Yes.

17 MS. SMITH: -- to reach some sort of agreement.

18 MR. KAGEL: Can we do it before you leave?

19 CHAIRPERSON CORY: I'm hopeful.

20 MS. SMITH: Included in that finding I would like
21 to have that the State Lands Commission makes no finding
22 at this time with respect to the consistency of the proposed
23 development with the provisions of the California Coastal
24 Act of 1976.

25 MR. KAGEL: Fine. Great. Wonderful.

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1 MS. SMITH: We, in making this, whatever finding
2 we make, should we decide that we are going to approve
3 the application contingent on some conditions, that nothing
4 contained in that declaration indicates in any form that we
5 are setting a policy that private residential use of
6 tidelands is consistent with the public trust.

7 MR. KAGEL: That's fine with us, too. If someone
8 can remember that, that's fine with us. I don't see why
9 we can't just say we accept that, we accept both of those,
10 we will give you an easement for the public in perpetuity
11 for pedestrians.

12 CHAIRPERSON CORY: If we could have some of the
13 people in the hall, somewhere, sit down and see what you can
14 come back with.

15 MR. McCAUSLAND: You can go down and use my
16 office.

17 MR. KAGEL: When we come back, can we come
18 immediately here?

19 CHAIRPERSON CORY: Yes.

20 Item 16 will be held in abeyance.

21 (Thereupon a recess was taken.)

22 MR. McCAUSLAND: Let's keep this thing at a low
23 emotional level if we can.

24 Go ahead, Mr. Kagel.

25 MR. KAGEL: It's not a problem we have here. We

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1 can exchange a swap of -- we'll give you the land that gives
2 the public access from the highway to the rest of the
3 property and you're going to give us the building site and
4 the parking spaces. That's fine. The only problem we've
5 got is we have to have a finding. The finding is they have
6 to be of equal value which means these guys are telling me
7 you have to have an appraiser. We can't settle this thing
8 today. That's really upsetting me. We've got to settle
9 it today. If you are in agreement that our thing is just,
10 we'll be glad, we'll be glad to make the finding, you know,
11 along the lines that they outlined --

12 MR. McCAUSLAND: We can make the determination
13 today that our decision is contingent upon the ability to
14 develop an equal value determination here, can't we?

15 MR. KAGEL: Now, Bruce is --

16 MR. McCAUSLAND: Let me find out if I'm doing
17 something that you can't handle.

18 Our normal procedure would be in all likelihood
19 to put the calendar item over and ask that an appraisal
20 be completed and brought back to us. We don't want to do
21 that today because of permits lapsing. So what we're
22 proposing is to include in our decision a hook that says
23 our decision only holds if we can make this equal value
24 determination.

25 Is that something that staff can work with?

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1 MR. KAGEL: And if, in fact, there's, you know,
2 the land is raw land --

3 MR. McCAUSLAND: Before we change the issue --

4 MR. KAGEL: I'm not changing it.

5 MR. McCAUSLAND: I know. But let me finish.

6 EXECUTIVE OFFICER NORTHROP: That's a question of
7 staff. Jim, what do you think?

8 MR. McCAUSLAND: Before you even answer that,
9 let me ask you another question. It's not clear to me that
10 the Commission really is intent upon any fee interest.

11 MR. KAGEL: We've given that up.

12 MR. McCAUSLAND: That's not a question.

13 MR. KAGEL: We just want to be able to supplement
14 in money. We're talking about raw land. It's going to come
15 down to square footage. Now, let's just say the building
16 site and the two parking spaces are more land than what is
17 not out, what we're giving you for public easement, and
18 nobody knows what the line is anyway because there's never
19 really been an accurate survey. Let's say it's more. And
20 I think we should allow us to make up the difference in
21 dough.

22 MR. McCAUSLAND: We can allow others to make up
23 the difference in dough.

24 MR. TROUT: We could put it in the land bank fund.

25 MR. FLUSHMAN: But the finding still has to be

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1 made regardless of whether he agrees now to do it.

2 MR. McCAUSLAND: The finding needs to be made
3 that we can find a basis for the equal shares arrangement,
4 whatever the appropriate terminology is.

5 MR. FLUSHMAN: And the other findings that are
6 required by Section 6207.

7 MR. MILLS: Could I make one other suggestion?

8 It seems to me that there is at least a possibility
9 that Mr. Kagel will not get a permit from the Coastal
10 Commission.

11 MR. McCAUSLAND: That is a possibility.

12 MR. MILLS: And it also seems to me that the
13 land we're giving up since it's located within 21 feet
14 of the edge of the fill, --

15 MR. KAGEL: Twenty-five feet.

16 MR. MILLS: Well, your plot there shows 21 feet.

17 MR. KAGEL: Well, it's 25.

18 MR. MILLS: Well, you submitted the plot.
19 That's what it says.

20 MR. KAGEL: What's your point?

21 MR. MILLS: The point is that this whole
22 settlement be contingent upon Mr. Kagel obtaining a
23 Coastal permit through a court action or whatever.

24 MR. KAGEL: You can't do that. It's illegal.
25 You can't do that. We're only talking here about where we

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1 stand now. You can't say what another agency is going to
2 do. I don't think that's fair.

3 MR. FLUSHMAN: We're not saying what they're going
4 to do.

5 MR. McCAUSLAND: The question is, see, one of the
6 things that we're doing is because you have a very unique
7 set of circumstances and a fact pattern that is unlike
8 any we've dealt with before. We're trying to develop a
9 solution --

10 CHAIRPERSON CORY: It was so interesting, I
11 couldn't --

12 (Laughter.)

13 MR. McCAUSLAND: I knew I wasn't doing it right.

14 (Laughter.)

15 MR. McCAUSLAND: We're trying to find a fact
16 pattern that will allow you to exercise whatever residual
17 rights you might have.

18 MR. KAGEL: Yes, sir.

19 MR. McCAUSLAND: But we also wouldn't mind having
20 the ability to say, if the time ever arrived at which it
21 was here that you weren't going to be able to exercise any
22 more substantive rights than you've already exercised, that
23 we could withdraw this special finding that we're essentially
24 making on your behalf.

25 MR. KAGEL: You know, it's almost like we don't

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1 know if the Coastal Act is going to be dissolved or the
2 local program is going to change. Once we get this
3 eligibility, I think we should at least have this
4 eligibility. We're giving you something forever. We're
5 giving you access from the road all the way out.

6 MR. McCAUSLAND: It would clearly be the
7 contention of the State Lands Commission that we already
8 have access from the road all the way out.

9 MR. KAGEL: No, you don't. That's what you don't
10 have right now. The line from the Rancho line does not
11 extend to the road. So you don't have it, and that's what
12 we're talking about. Here's a plot map. May I approach
13 the Bench?

14 EXECUTIVE OFFICER NORTHROP: Jim is doing a
15 drawing.

16 MR. TROUT: I hope we can kind of explain this.
17 I can't show both the Commission and the audience, but if
18 we have a piece of total parcel here in which we have an
19 approximate location of the boundary, the inner boundary of
20 Tidelands Survey 185 which would be the high tide line.
21 The area landward of this high tide line we first would
22 agree that the line shown on the plat, and we can locate
23 it by distances, is in fact as between Mr. Kagel and the
24 state. The boundary between the trust lands and the Rancho
25 lands. Then in an exchange of interest within the boundary

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1 settlement, Mr. Kagel would quitclaim to the state in
2 effect the Rancho lands in this location and this location.
3 These lands would be accepted as trust lands by the state.

4 MR. KAGEL: As an easement, not in fee.

5 MR. TROUT: Tidelands trust easement. We would
6 agree that these lands then would have the same character
7 as all of the remaining patented tidelands under 185.

8 Then in turn the state would patent to
9 Mr. Kagel with the necessary finding of equal value this
10 portion of the tideland, free and clear of the trust, in
11 exchange for getting the trust implied on this and access
12 to the water across these parcels. Then Mr. Kagel would
13 have to go ahead and make his already agreed to finding
14 that the whole property would be available to the public
15 other than his building site and the parking area.

16 MR. McCAUSLAND: We don't get that good a deal
17 in the San Francisco Bay.

18 MR. KAGEL: Furthermore, in the event that these
19 two pieces of property don't match up in terms of size,
20 then we have the option to put in money to your land bank
21 to make it up. Okay'

22 MR. McCAUSLAND: And you will donate the state
23 any excess if it turns out that yours is worth more than
24 ours? Do you get tax advantages for doing this?

25 MR. KAGEL: If we're getting more than you are

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1 giving us, is that your question?

2 CHAIRPERSON CORY: No. If you're giving us more
3 than we're giving you --

4 MR. KAGEL: We'll just donate that as in kind.
5 But let us be understood that this thing is going to be
6 appraised at the current use which is about zero. Okay?

7 MR. FLUSHMAN: Well, the Commission has an
8 understanding of how it's going to be appraised, but it
9 will be conveyed to the staff whether that's the way it is
10 or not. It's the present use is it's filled lands.

11 MR. KAGEL: Without a house.

12 MR. McCAUSLAND: So we have agreed that part of
13 the Commission finding will be that there will be this --

14 CHAIRPERSON CORY: And how many weekends' use?
15 (Laughter.)

16 CHAIRPERSON CORY: That's a joke.

17 Have we got an agreement?

18 MR. McCAUSLAND: That one element of the
19 agreement. Our staff said we had to have an appraisal
20 before we could go much further and I suggested that we
21 should just make the equal exchange provision part of our
22 finding.

23 MR. TROUT: The covenant would be that, the deal
24 would be that it was equal and that if the property received
25 by the state is less than that that the state gives up, the

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1 agreement would bind Mr. Kagel. In other words, the
2 Commission would make the finding today that Mr. Kagel
3 would be bound to deliver the difference in money to be
4 used in the land bank to purchase the small additional
5 portion of Brown's Island or something like that.

6 MR. KAGEL: At today's property value.

7 MR. MILLS: My suggestion was that should
8 Mr. Kagel be denied a Coastal permit through his court
9 action, that it seems to me that this parcel may, in fact,
10 be more valuable for the trust than having this here. I
11 would suggest that the Commission consider at least making
12 this finding contingent upon Mr. Kagel being able to secure
13 all necessary permits to actually build on his homesite.

14 MR. KAGEL: Is he a Commissioner or a lawyer?
15 We're sitting here, we're making policy here.

16 MR. McCAUSLAND: He's making a proposal for
17 policy that is a legitimate proposal from our standpoint
18 because if, in fact, there is a bike path down the side of
19 the Bay, it would be advantageous to us to have the bayward
20 portion of the land under those circumstances for picnic
21 areas or stopover spot. We even have the ability to put
22 two public restrooms in there.

23 (Laughter.)

24 MR. KAGEL: We're losing sight of what the
25 situation is in reality. There's houses going up. That way

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1 a motel and there's houses going up like that. There's no
2 sidewalk along the road. It isn't going to happen. We
3 don't know what the Coastal Commission is going to do, if
4 the local coastal program is going to change or anything
5 else. I don't think it's fair. We're giving you access.

6 MR. MILLS: If you can't build on the property,
7 why do you want the site?

8 MR. McCAUSLAND: Isn't it possible for us to
9 defer signature of the land exchange agreement until such
10 time as all permits, whatever, are decided to your
11 satisfaction?

12 MR. KAGEL: No, sir, that's not fair. That's not
13 what we're here for. We're here to get this thing resolved
14 today. That's our duty.

15 MR. McCAUSLAND: We are willing to offer you, I
16 believe we are willing to offer you, an opportunity for a
17 land exchange that we believe we can find will be in our
18 responsibility for the management of the public trust. I
19 don't see if we've already entered into that agreement why
20 the execution of the document cannot be deferred until such
21 time as you as developer --

22 MR. KAGEL: If you're entering into an agreement,
23 it's specifically enforceable. I mean, after all, we have
24 to have some kind of status. What is our status? If you're
25 going to tie it into every single state agency, you're just

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1 talking about a can of worms again. You're just hanging us
2 up again. What is our status? We'll give it to you if the
3 Coastal Commission does, I mean.

4 MR. McCAUSLAND: Your status is that at some point
5 in time you're either going to get to build a structure
6 on that land or you're going to get compensated for the
7 improvements you made to it to date.

8 MR. KAGEL: We still have to get past the coastal
9 plan. If the coastal plan doesn't work, if we don't get
10 past them, we're probably not going to build for the time
11 being or at least for the next 200 years. But you guys
12 still have a right to go over the land and we'll give it
13 to you anyway. I came in here and said you can use the
14 land anyway, regardless of this thing, regardless of this
15 public trust, but I'm not going to give away that building
16 site. I mean, that's not fair.

17 MR. McCAUSLAND: We're not asking you to give
18 away that building site.

19 MR. KAGEL: That's what he's talking about.

20 MR. McCAUSLAND: What he's talking about is --

21 MR. KAGEL: If we don't get the permits, give it
22 back.

23 MR. McCAUSLAND: Our staff is being instructed by
24 the Commissioners to develop a suitable land exchange.

25 MR. KAGEL: Yes, sir.

1 MR. McCAUSLAND: Our staff is also advising us as
2 Commissioners that that exchange is really only of interest
3 to this Commission if you in fact get to build on your site.
4 If you don't, it's awfully difficult for our staff to believe
5 that we should have agreed to that exchange because the
6 integrity of the other parcel looks better to them in terms
7 of potential public uses.

8 MR. KAGEL: That's fine if you think that you can,
9 under the law, under the law, make the value of the property
10 that we're exchanging on the day that you agree or is some-
11 body going to hold it's at the time you get the permits?
12 If it's at the time you get the permits, then we'll be paying
13 off a lot of money to the state trust fund.

14 MR. McCAUSLAND: We're willing to gear the value
15 from the date of today's Commission.

16 MR. KAGEL: All right. Fine. We'll take it.

17 MS. SMITH: I have one other question. Are we
18 saying that if or in the event that he doesn't get the
19 permits from the Coastal Commission to build --

20 MR. MILLS: Or from Marin County. If he can't
21 secure all necessary permits to build, that we will return
22 to the status quo as it sits now.

23 MS. SMITH: Just continue exercising the public
24 trust over the entire lot.

25 CHAIRPERSON CORY: If that should happen, I would

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1 like for the staff to start looking around as to where we
2 find the money to acquire the improvements that were put
3 there. I don't have any strong feelings vis-a-vis the
4 legal time. I understand that's a real expense, but there's
5 a problem in terms of state precedent. But it would seem
6 to me that we have an obligation to an individual who has
7 invested some effort in trying to comply with the law, to
8 go ahead and clean up a mess rather than letting it sit
9 there in perpetuity.

10 MR. KAGEL: Miss Smith, I want to speak to some-
11 thing you said. The State Coastal Commission said that
12 they turned us down because we interfered with the public
13 trust. Okay? Now, I'm going to go into a court of law
14 and I'm going to say we have an arrangement with the State
15 Coastal Commission that we're not interfering with the
16 public trust, State Lands Commission that we're not
17 interfering in the public trust and they have acknowledged
18 that they have exclusive jurisdiction over that property.

19 MR. TROUT: That's not what we're purporting to
20 do.

21 MR. KAGEL: In terms of public trust.

22 MR. FLUSHMAN: That's not what's been acknowledged
23 here as I understand what the Commission is saying. In
24 fact, --

25 CHAIRPERSON CORY: We're silent on that issue.

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1 MS. SMITH: We made absolutely no finding at all
2 in terms of the consistency of this proposal with the
3 Coastal Act.

4 MR. FLUSHMAN: As I understand what you indicated,
5 Commissioner Smith, that you weren't approving a residential
6 use of tidelands either as consistent with the trust.

7 MS. SMITH: Yes, I did make that stipulation to
8 the findings before you left the room.

9 MR. McCAUSLAND: You haven't said any of those
10 things.

11 MR. KAGEL: What I'm trying to say is this:
12 They said, what they did is they went into your bailiwick
13 and they said that because State Lands, they said there's
14 been no determination public trust-wise. That's what they
15 said. So they turned us down in that regard. Now, I don't
16 think they can. I think it's up to you guys. So I'm going
17 to make the presentation to court that I have reached an
18 agreement with State Lands whereby we have avoided the
19 entire issue because the land is no longer in the public
20 trust as far as State Lands goes; is that correct?

21 CHAIRPERSON CORY: That's correct.

22 MR. FLUSHMAN: As far as the homesite is
23 concerned.

24 MS. SMITH: Just the homesite.

25 MR. KAGEL: But you can't landlock us. We can get

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1 a right --

2 MR. FLUSHMAN: We're not talking about landlock.

3 MR. KAGEL: Good. We have an agreement then.

4 Okay?

5 MR. TROUT: It has been common in these boundary
6 settlements that they were effective immediately and for a
7 period of time until some specific event occurred. I just
8 wanted to see if we're understanding where we're going.
9 That we enter into this agreement. We all make the
10 agreement. However, if at the end of three years there is
11 no house, then both sides agree to undo the agreement.
12 Now, that I think is what Mr. Mills was saying and I'm
13 not clear in my mind whether that's in or out of the
14 deal.

15 MR. McCAUSLAND: It is the desire of the
16 Commission to find the ability.

17 MR. KAGEL: Fine.

18 MR. McCAUSLAND: If this land exchange has not
19 been completed within five years --

20 MR. KAGEL: Then we go back to status quo.

21 MR. McCAUSLAND: -- then we go back to the
22 boundaries as they existed this morning.

23 MR. TROUT: A little longer than normal, but
24 with the unusual circumstances, that's understood.

25 MR. KAGEL: Do you have to take a vote on that?

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1 MR. McCAUSLAND: Since this is a transcript that
2 you're undoubtedly going to ask for, I would like somebody
3 to restate for the record the agreement that we have just
4 made.

5 MR. TROUT: I think staff, under Commission
6 direction, the staff would propose this as a settlement
7 to the problem.

8 We would propose that Mr. Kagel or the upland
9 owner, the owner of the property and the state agree, first,
10 as to the location of the inner or high tideland boundary
11 of Tideland Survey 185. Have I got the right number?

12 MR. RUMP: Yes.

13 MR. TROUT: Once having done that, Mr. Kagel would
14 deed to the state or grant to the state an easement and the
15 state would accept as tidelands trust lands two parcels of
16 property now lying between the agreed boundary and the
17 inner or highway limits of the Applicant's property. In
18 exchange, the state would grant to Mr. Kagel a parcel of
19 land inside the tidelands survey that would be without
20 trust characteristics.

21 In other words, we're exchanging trust lands for
22 trust lands. We would give up some lands now subject to the
23 trust and apply the trust on other lands. So that, in effect,
24 the building site would no longer be trust lands. It would
25 have the character of the uplands portion of Mr. Kagel's

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1 lot. That the Commission finds that in this transaction
2 that the state is receiving equal or greater value and that
3 in the event that the value of the lands themselves that
4 are exchanged are not equal or greater in favor of the
5 state, Mr. Kagel agrees to give to the state sufficient
6 monies to meet the equal value requirements and that those
7 funds would be applied by the Commission to purchase other
8 tidelands under one of the land bank agreements.

9 MR. KAGEL: And it's today's prices that we're
10 talking about.

11 CHAIRPERSON CORY: Today's prices.

12 MR. TROUT: And the last point would be that both
13 parties covenant that if after five years from the date
14 of the agreement Mr. Kagel does not have his house
15 constructed on the property, that both sides agree to
16 return the deed.

17 MR. KAGEL: But if we are currently in litigation
18 at that time, we will extend it until we get out of court.

19 CHAIRPERSON CORY: Fine.

20 EXECUTIVE OFFICER NORTHROP: One other point,
21 if I may, Mr. Kagel.

22 You talked about a bike trail or path. Supposing
23 a bike trail came across the area.

24 MR. KAGEL: And we will give you a bike trail.

25 EXECUTIVE OFFICER NORTHROP: Even though it would

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1 cross your driveway?

2 MR. KAGEL: Bicycle, not putt-putt. A bicycle.

3 MR. MILLS: Could I suggest that we can resolve
4 the problem of public access and guarantee public access
5 by at the same time asking the Commission here to exercise
6 a public trust over the balance of the tidelands parcel,
7 the present tidelands parcel for public use and access.

8 MS. SMITH: I thought you were doing --

9 MR. KAGEL: You already have that.

10 EXECUTIVE OFFICER NORTHROP: No, exercise the
11 trust.

12 MR. KAGEL: What does that mean?

13 MR. FLUSHMAN: It means that it is now in formal
14 existence.

15 MR. KAGEL: Good God, fine.

16 Do we have to take a vote?

17 MR. McCAUSLAND: Well, the motion is, I believe,
18 and let's go back to the beginning, on the basis of unique
19 set of facts related to the fact that, number one, this
20 parcel has been filled apparently pursuant to all laws in
21 existence at the time, that this parcel possesses two
22 septic systems installed apparently in conformance with the
23 laws in existence at the time of such installation, and
24 the just-described land exchange agreement presented to us,
25 and on the basis of the findings Miss Smith reiterated

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1 sooner -- maybe you should read those into the record
2 again -- we make the finding that this specific parcel,
3 the Applicant's portion of the parcel after the land
4 exchange agreement, can be suitably freed from the public
5 trust.

6 MR. KAGEL: Wonderful. And Miss Smith said your
7 action today does not condone private residential uses on
8 any other public trust lands. That's essentially what she
9 said.

10 MR. FLUSHMAN: I think it's in the record. It
11 was more eloquently stated.

12 MR. KAGEL: I'm sure it was. She's an eloquent
13 lady.

14 MR. MILLS: And also that we make no finding with
15 respect to the Coastal Act.

16 MS. SMITH: Does that take care of all the
17 findings for 6307?

18 MR. TROUT: There's one more technical finding;
19 and that is that the Commission needs to find that the
20 transaction is in settlement of title and boundary
21 disputes and that the provisions of CEQA are inapplicable
22 under 6307.

23 CHAIRPERSON CORY: There we have it. Ready for
24 the question?

25 All those in favor, signify by saying aye.

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1 (Ayes.)

2 MS. SMITH: I have a question. The gentleman
3 indicated that we had to make findings under 6307 of the
4 Public Resources Code. We've taken care of all of those,
5 right?

6 MR. FLUSHMAN: Yes.

7 CHAIRPERSON CORY: Are we ready for the question?
8 All those in favor, signify by saying aye.

9 CHAIRPERSON CORY: Opposed.

10 Motion is carried.

11 MR. KAGEL: Thanks so much.

12 (Thereupon the foregoing concludes
13 Agenda Item 16.)

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