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MEETING
STATE OF CALIFORNIA
STATE LANDS COMMISSION

STATE CAPITOL
ROOM 444
SACRAMENTO, CALIFORNIA

THURSDAY, MARCH 22, 1984

10:19 A.M.

ORIGINAL

CATHLEEN SLOCUM, C.S.R.
License No. 2822

PETERS SHORTHAND REPORTING CORPORATION

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MEMBERS PRESENT

Leo T. McCarthy, Acting Chairperson,
Lieutenant Governor
Jesse Huff, Director of Finance
Walter Harvey, representing Kenneth Cory,
State Controller

STAFF PRESENT

Claire Dedrick, Executive Officer
James Trout, Assistant Executive Officer
Jack Rump, Assistant Chief Counsel
Lance Kiley
Mike Valentine
Judy Markell, Secretary

ALSO PRESENT

N. Gregory Taylor, Deputy Attorney General

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P R O C E E D I N G S

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3 ACTING CHAIRPERSON McCARTHY: Ladies and
4 gentlemen, for those who might be here
5 to appear on Items 13, 26, 28 and 32, we wanted to
6 indicate to you that they are off calendar. 13, 26, 28,
7 and 32. Thank you.

8 EXECUTIVE OFFICER DEDRICK: 30 is off? Just
9 a moment, Mr. Chairman. Somebody just mentioned that
10 Item 30 has been taken off. 30 is off. I'm sorry.

11 ACTING CHAIRPERSON McCARTHY: All right. And
12 may we also add Item 30 that is taken off calendar.

13 If we may proceed, we welcome all of you here
14 and express our regret at starting the Commission meeting
15 a few minutes late.

16 I'm pleased to be joined by Mr. Huff and
17 Mr. Harvey sitting in today.

18 The first order of business is approval of the
19 minutes of the last Commission meeting. Is there any
20 question from the other two Commissioners on it?

21 If not, it will stand approved.

22 EXECUTIVE OFFICER DEDRICK: For the last two
23 Commission meetings.

24 ACTING CHAIRPERSON McCARTHY: Oh, that's
25 correct. We had not received the previous copies. So

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1 it's the minutes of the last two Commission meetings.
2 They stand approved. There is no Executive Officer's
3 report --

4 EXECUTIVE OFFICER DEDRICK: That is correct.

5 ACTING CHAIRPERSON McCARTHY: -- at this time.

6 I'm prepared to begin the Consent Calendar
7 unless there's any other item to arise before that.
8 All right, hearing none, the first ten items are on the
9 Consent Calendar, and hearing no objection from either
10 Commissioner or from any member of the audience, those
11 ten items are approved.

12 We'll turn to Item 11, and I have the following
13 indications that people wish to testify: Marilyn Borovoy,
14 Bryan Wilson, Graham Gettemy. Apparently the first and
15 the third are on the same side of the issue. Would
16 Mrs. Borovoy and Mr. Gettemy like to step forward.

17 Now, I had the pleasure of hearing your
18 testimony at the previous meeting on this matter,
19 although I missed some of the subsequent Q and A. But
20 the other two Commissioners sitting today did not, as I
21 recall. If you'd like to succinctly restate your position,
22 you're certainly welcome to do so.

23 MS. BOROVOY: I don't know, can you stand
24 hearing it again, Leo?

25 ACTING CHAIRPERSON McCARTHY: I don't know. Try

1 me out.

2 MS. BOROVOY: I'm Marilyn Borovoy and I'm part
3 owner of the property that has caused this beautiful report
4 to be written. I own it with my husband, two elderly
5 aunts who are getting older by the minute and me, too,
6 and an uncle.

7 Anyway, we purchased this back in the twenties.
8 I won't go into a long detail because it's on the
9 record.

10 In 1972, eleven and a half years ago, we decided
11 that it would be nice to build three little homes similar
12 to the ones already along the waterfront and the
13 property was considered as one piece. So we asked for
14 a subdivision in order to get permission to build.
15 Three years later and thousands of dollars later we
16 received from the Marin County Planning Department in
17 February of '75 a lot split, three waterfront lots with
18 permission to build and in turn we would deed the marsh
19 to scenic easement. For various reasons we decided not
20 to build ourselves and we decided to sell the property.
21 In November of '78, five years ago, six years ago,
22 Mr. Graham Gettemy obtained an option from the family to
23 purchase these three waterfront lots with the proviso that
24 he could get permission to build. We started to pay
25 sewer bonds back in '72. Also in 1972 we wrote to the

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1 State Lands Commission asking about our title to the land
 2 and could we build. The answer we received was such that
 3 we were led to believe we could build and we might get
 4 permission. They said it wouldn't be easy, but that there
 5 were exceptions and that we should, you know, so on, to
 6 go. The door was not closed and nothing was said about
 7 the title. That was back in '72.

8 Then over the years we did all the right things
 9 and then the Marin County Board of Supervisors gave
 10 Mr. Gettemy permission to build two houses and our
 11 family would in turn deed the marsh parcel to Marin open
 12 space.

13 We went to BCDC and they said: We cannot move
 14 until we come to the State Lands Commission and ask you
 15 will you exercise a public trust on the three waterfront
 16 lots, and will you allow housing on pilings, and what about
 17 the ownership of the marsh? Well, lo and behold,
 18 Mr. Valentine, who is a very nice attorney and very smart,
 19 found out with Mr. Sledd of the Title Department that it
 20 doesn't belong to us after all these years. Well, it
 21 didn't make us too happy.

22 Okay. I only wish they'd told us in 1972.
 23 Now we've spent a lot of money. Now here we are today.

24 You have written a beautiful report about
 25 you're going to, recommending from the staff, that to

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1 exercise the public trust over all the property. What
 2 we would like to ask you today is that you exempt our
 3 three waterfront lots. We feel we've gone through quite
 4 a bit of -- I can't use the word I'd like to use -- quite
 5 a bit of stuff to get here and we really feel that for
 6 an equitable, fair treatment we should be exempt. Then
 7 today, if you accept this, all the people will know about
 8 it and they won't go through the shit we've been through.

9 Okay. You talk now.

10 MR. GETTEMY: Well, I think Marilyn has pretty
 11 well told how we got where we are at the present time and
 12 I understand that the staff and I understand that the
 13 Commissioners can't just all of a sudden throw a public
 14 trust away that's been there for years. So we would like
 15 to come to some sort of an amicable conclusion to this
 16 where everybody could walk away feeling relatively happy.
 17 We would, number one, call for today to be made exempt
 18 from the public trust on your voting today, and of
 19 course everybody thereafter will know what they're up
 20 against. Number two, if that wouldn't work, we would
 21 request that the state allow us building permits or
 22 allow us permits to go to BCDC and not relinquish its
 23 legal right to the water over which the homes are built.
 24 In this way, why, of course, down the line if you
 25 decided to build a shipyard off that channel in the future

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1 You could do so and widen the channel.

2 By the way, it's called a navigable channel.
3 The truth of the matter is there are four tides every
4 24 hours and during the low tides there is not any water
5 period in the channel. It is absolutely dry. So it
6 really is not what you would call navigable according
7 to Webster's dictionary.

8 I won't go through the process of how it got
9 to be zoned. I think that we all know that the laws
10 were made in Sacramento and they go down to the counties
11 in California and the board of supervisors of these
12 counties and the city councils of these counties pretty
13 much police these laws that you people make. We can't
14 call up Mr. McCarthy every day and ask him if we can do
15 this, so we go to our Board of Supervisors.

16 Now, the Board of Supervisors and the Planning
17 Commission of Marin County approved this subdivision.
18 They also approved an EIR which we were asked to submit
19 to them. The EIR had a negative declaration. Now,
20 I don't have to tell you that a negative declaration
21 simply means that there was no environmental problem
22 with this property. They didn't see any environmental
23 problem in building a couple of houses out there.
24 However, since then we've been in many, many meetings with
25 BCDC and public hearings with State Lands Commission and

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1 have been subjected to the same open hearings regarding
2 this environmental problem which obviously there is none
3 or the EIR wasn't done properly, and I doubt that very
4 much.

5 Getting back to the subdivision, when it was
6 approved, the County of Marin simply stated that we will
7 not record that subdivision until you put in your
8 utilities. We tried to bypass that because it was a
9 very expensive proposition, but they said: No, put in
10 the utilities. Put in the three water meters. Put in
11 the laterals. Put in the fire hydrant and the sewer, and
12 we'll be very happy that you did and then we will grant
13 you your subdivision. At which point an EIR was made
14 by, another EIR was made by William Desmond, who
15 is Director in Division of Environmental Control of the
16 Marin County Health Services. I have the Environmental
17 Impact Report in front of me and it doesn't say much that
18 would be of interest here except probably on the last
19 page, which I think was quite interesting. "It says:
20 "Present Condition." This is before. "Highly" -- what
21 is it? -- "utrified" -- whatever that is. Probably
22 means putrified, but it says "utrified due to sewage
23 entering water falling from septic tanks. Recreational
24 use of water and beach limited by overflow of sewage.
25 Project will abate overflow and render water and beaches

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1 safe from present septic sewage overflow. Present
2 bacterial count high, "et cetera, et cetera."

3 Now, after this was taken care of, of course,
4 all of those things disappeared and they became an
5 attribute to Bayside Acres at which time we had 75 members
6 of the Homeowners Association sign a petition to stop our
7 building of two homes which makes a lot of sense after the
8 fact, after they got their sewer, after their environment
9 was cleaned up, and they didn't pay a dime to do it.
10 But of course they're bucking us again.

11 After going through the Board of Supervisors
12 and getting everything approved -- and, by the way, on
13 a five to zero vote. There wasn't any dissent and
14 there wasn't any no vote. Our project was approved for
15 title and permits five to zero including Al Aramburu, who
16 is a voting member of BCDC. For that -- everything is a
17 give and take proposition -- for that we gave up one lot
18 with a fair market value of \$175,000. We gave up that
19 lot simply for open space and public easement. We wanted
20 to take care of two things. We knew we had to give
21 public easement and we knew that we had to give open space.
22 The marsh directly across as you well know is probably
23 owned by the State of California and probably will be
24 open space in perpetuity. I hope it is. I don't think
25 the state wants it. I think the state should probably

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1 give it back to the Borovoy family and then let the
 2 Borovoy family give it to the Marin County Open Space
 3 Foundation which is what they would like to do. That
 4 will take it off the state's tax rolls and put it back on
 5 where you don't have the maintenance of the marsh. I
 6 don't think the state wants the marsh, number one. I just
 7 think that when it was originally surveyed in 1852 that
 8 when Mr. Alardt was asked to survey it, he happened to
 9 hit a high tide and it was flooded and he surveyed
 10 totally around the marsh, calling it a salt pond. I
 11 think it was a mistake by Mr. Alardt in 1852 which we're
 12 never going to correct.

13 We have here in your staff report approval of
 14 residential use in San Rafael Bay would set an
 15 unfavorable precedent. Well, I've listened to a lot of
 16 talk from BCDC and a lot of talk from a lot of people that
 17 claim there are 15,000-some odd lots out there that
 18 are single-family dwellings zoned on the shores of
 19 San Francisco Bay. I don't believe that. But what I
 20 do believe is what precedent did the approval of 110
 21 permits to Burt Clawson at Brickyard Cove set? Did that
 22 set a precedent? I don't think so. If it did, we wouldn't
 23 be here arguing the State Lands Commission trying to get
 24 our permits.

25 I don't have to tell this Commission any history

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1 with regard to the Brickyard Cove permits, but the reason
2 for granting those permits was simply the fact that his
3 subdivision was started and improvements completed before
4 the Berkeley decision of 1980. That means that his
5 subdivision was started, his improvements were started,
6 and I guess this Commission felt that he deserved to have
7 some permits. Now, he didn't get them all. Mr. Clawson
8 donated \$250,000 to be used to buy open space for
9 San Francisco Bay area. He also donated 30 acres of a
10 delta island and he donated 56 lots in order to get 110
11 permits. So he gave up quite a bit to get quite a bit.

12 We have donated one-third of our subdivision,
13 one out of three, and all we ask for is two permits
14 and we're only asking for fair and equal treatment.
15 We're trying to figure out a way that we can get this
16 thing taken care of in as much as we are sitting there
17 with a subdivision that is totally no good, absolutely
18 useless, because the zoning happens to be R-1. It's been
19 R-1 for 43 years. It has just been rezoned R-1, first
20 class residential which means to me single-family
21 dwellings.

22 Now, also your staff report is concerned
23 about impacts of shading. Now, there's been a lot of
24 talk about the damage our homes will cause to the
25 environment. We propose to drive 24 cement piles that will

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1 cover a total landfill of 64 square feet. Now, if you want
2 to visualize what 64 square feet is, it happens to be
3 eight by eight. So this table is close to eight feet long.
4 If it were eight feet long and squared, that would be
5 64 square feet. As a comparison, BCDC approved a landfill
6 of 240,000 cubic yards of fill to be poured into
7 Richardson Bay so as to complete a parking lot for the
8 Lincoln Properties office and restaurant, a project
9 built entirely on the tidal wetlands. Now, this was
10 just last year. Our homes will be next to seven like homes.
11 In other words, we're not asking for anything that isn't
12 already there. They're already there, have been built,
13 are on stilts, and certainly have not hurt the environment.

14 Now, if homes are not allowable or if homes
15 are not an allowable structure on the shore of
16 San Francisco Bay but desalination plants, restaurants,
17 office buildings, marinas, fishing piers are acceptable,
18 then I'm a little bit confused. Now, I know that the
19 Commissioners that I'm speaking to are very intelligent
20 people or you wouldn't be here. But can you explain to
21 me the environmental difference between a pile supporting
22 a restaurant or office building and a pile supporting
23 a home? I think you'll find there is no environmental
24 difference.

25 As far as setting a precedent, the so-called

1 15,000-plus waterfront lots in San Francisco Bay are
2 as follows: Most are in the middle of Richardson Bay
3 and underwater in Candlestick Park and salt marshes
4 owned by Leslie Salt. Most of these so-called buildable
5 lots are zoned other than single-family I think you'll
6 find. The other so-called lots in Marin County and
7 North Bay are flag lots. That is a lot that is an
8 underwater three-foot easement to a lot that's further
9 out and totally underwater. There are many, many flag
10 lots in Marin County and many, many flag lots in the
11 Northern Sonoma area.

12 I've asked BCDC for a list of all the buildable
13 lots that they're continually referring to and they
14 can't deliver because their statement I think is untrue
15 and I think completely unfounded.

16 Your vote for two permits will not be in
17 conflict with the McAteer-Petris Act as the Attorney
18 General would like you to believe. If that were true,
19 we would not need the State Lands Commission, number one,
20 and we would not need BCDC, number two. We could totally
21 rely on Van de Kamp's office to make our decisions.

22 I would like to quote from a publication
23 authored by BCDC in the founding year '67 entitled,
24 "Waterfront Housing." On page 5 it says:

25 "Housing is not a necessary use

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1 of the bay and shoreline due to
2 any regional shortage of residential
3 land, but accessibility and physical
4 attractiveness make housing a desired
5 one."

6 Page 6,

7 "So long as it does not displace
8 other more necessary uses of the
9 shoreline, housing can be public
10 as well as private benefit. It
11 improves the appearance of the
12 shores of the bay and provides public
13 access to the water. Well-placed
14 buildings can enhance the appearance
15 of many parts of the bay and
16 shoreline. A residential project,
17 because of the flexibility possible,
18 design can be tailored to enhance a
19 shoreline site much more readily
20 than can most other urban users as
21 was demonstrated in the BCDC report
22 on appearance and design."

23 Page 9 it says,

24 "Piles permit a structure to be
25 raised above its site without

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1 minimum disturbance of natural
2 conditions. The feasibility of housing
3 on piles or stilts is increased by the
4 fact that the cost of a residential
5 unit built on piles is now about
6 the same and often less than the
7 same unit on fill at the same site.
8 San Francisco Bay is the dominant
9 feature of the Bay Area. Among other
10 things, its shores offer an attractive
11 location for housing."

12 This is right out of BCDC's Waterfront Housing.

13 So in closing I'd like to state that all the facts that
14 I've brought to your attention may paint, may paint a
15 different picture as to the Borovoy family's situation
16 and my situation. We've had a legal subdivision on
17 land that has been one ownership for 43 years. The
18 Borovoy family hasn't purchased this land in hopes to
19 spin it off and make a lot of money. They've had it
20 for 43 years. They've paid taxes well over \$100,000.

21 They've paid the sewers and the water and this and
22 that, well over \$40,000. Land that has been zoned R-1
23 for 43 years, does that kind of tell you something?

24 The zoning hasn't been changed. It's always been R-1.

25 Now then, we've gone through the process since 1974. We

1 have given up a third of our project in order to gain
2 approval. Many thousands of dollars have been spent
3 toward this goal. We have satisfied the County of Marin
4 in its General Plan. Certainly we followed their
5 guidelines right down to the end. Taxes have been paid
6 on the property for 43 years. I think to condemn this
7 property through what we would call in the real estate
8 business inverse condemnation would be an outrage. We're
9 asking for fair and equal treatment. After all, we were
10 only following the guidelines of the County of Marin in
11 order to construct two homes on property zoned for that
12 purpose.

13 I hope that we will get a favorable vote from
14 you people and I appreciate very much you giving me your
15 attention for this long period.

16 MS. BOROVOY: May I add one more request?

17 ACTING CHAIRPERSON MCCARTHY: Go ahead.

18 MS. BOROVOY: We requested that the three
19 waterfront lots be exempt from any action that you take
20 regarding this. We'd also like official notification of
21 our ownership status re the two marshland lots and
22 we'd like that sent to us. We really haven't had
23 official notification from the State Lands Commission.
24 Also, we feel that the official notification should be
25 sent to the owners, the 21 owners who own all around the

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1 marshland and whose titles are in jeopardy or unclear or
2 fuzzy and we think they should be notified; too. Thank you.

3 ACTING CHAIRPERSON MCCARTHY: Questions by
4 members of the Commission?

5 Would someone please tell me whether the
6 State Lands Commission played any role in the Brickyard
7 Cove development or the Lincoln Properties?

8 EXECUTIVE OFFICER DEDRICK: Yes, we did. The
9 situation at Brickyard Cove was a subdivision which had
10 advanced sufficiently far to be exempt from the Bay
11 Conservation Development Commission Act of 1964. The
12 development involved a substantial amount of fill in the
13 form of peninsulas. The program that they intended to
14 follow would have involved a good deal more. In the
15 opinion of the Attorney General's Office and the counsel
16 to the State Lands Commission, the intent of the Berkeley
17 decision was to clear the trust from filled areas that
18 had been filled prior to 1980 but to retain the trust
19 over the water. In the case of Brickyard Cove, it was
20 kind of a borderline case. Some houses had been built
21 in the subdivision, quite a few. It seemed to us that
22 it was close enough, it was a close enough call that
23 with a careful control by the State Lands Commission we
24 could carry out the intent of the Berkeley decision in
25 both its property ownership sense and in its public trust

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1 protection sense. So the agreement which was authorized
2 by this Commission last fall, I guess, involves the
3 Commission agreeing not to exercise the trust for a
4 period of I think it was 49 years on the 100 -- was it
5 100 lots -- I think it was 100 lots immediately adjacent
6 to this filled portion.

7 ACTING CHAIRPERSON MCCARTHY: What date did
8 the Commission act on this?

9 EXECUTIVE OFFICER DEDRICK: About September
10 I think, Commissioner. At any rate, in return for which
11 that is a severe impingement on public access. We decided
12 that retaining some of those lots for public access would
13 be less useful to the public than purchasing another
14 waterfront/area in the area of value of a couple of those
15 lots. That's the source of the \$250,000 figure.

16 The other public considerations that were part
17 of the requirement from the applicant was to deed to the
18 state their underwater ownership outboard of the pier
19 headline and to deed to the state the remaining portion
20 that's not in public ownership of Brooks Island. With
21 these considerations of the public interest, the increase
22 in access, increase in state ownership, and the property
23 ownership of Brooks Island, the Commission felt that
24 there was sufficient compensation for the loss of tidelands
25 use and for the not exercising the trust for a period of

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1 49 years.

2 ACTING CHAIRPERSON McCARTHY: How much of the
3 development went forward after the agreement? What did
4 we authorize? What had been built at the time of the
5 agreement and how much did we authorize to go forward
6 after the agreement?

7 EXECUTIVE OFFICER DEDRICK: Possibly about two-
8 thirds had already been constructed. All of the
9 peninsula had been built, paved, had all the utilities
10 in and street lighting. We did not allow them to go
11 forward with the further fill project that they wanted
12 to construct. We did not lift the trust over that area.

13 MR. TAYLOR: I think the key difference between
14 the Brickyard Cove situation and this one is the fact
15 that Brickyard Cove was found to be exempt from the
16 provisions of the McAteer-Petris Act and because
17 substantial work had been done --

18 ACTING CHAIRPERSON McCARTHY: Expressly
19 excepted?

20 MR. TAYLOR: Well, they filed a claim of
21 exemption which BCDC recognized.

22 ACTING CHAIRPERSON McCARTHY: It wasn't in
23 the terms of the statute itself?

24 MR. TAYLOR: No. There was a grandfather
25 provision in that. They perfected their rights under

1 that. They had done sufficient construction at the time
2 the Act was passed so that the Act was found to have no
3 applicability at all to this project.

4 ACTING CHAIRPERSON MCCARTHY: Are you telling
5 me that if it were the Attorney General's opinion
6 that that not be permitted to go forward with any further
7 development, that we would have lost in court because
8 they had a case that they were grandfathered in under
9 the McAteer-Petris Act?

10 MR. TAYLOR: The problem for the Lands
11 Commission was a different problem than that. The
12 McAteer-Petris matter was settled. BCDC acknowledged
13 it had no jurisdiction. The problem for the Lands
14 Commission was the applicability of the Murphy decision.
15 They argued that they had done sufficient work under,
16 that their entire project could go forward as originally
17 planned because under Murphy they were grandfathered.
18 The argument at that point was whether or not they were
19 sufficiently grandfathered as to the wet areas. That's
20 where we felt that there was reason for doubt and dispute,
21 and so we recommended the compromise that your staff
22 reached.

23 EXECUTIVE OFFICER DEDRICK: We retained the
24 trust over the area. We did not, the Commission did not
25 lift the trust over the water. The Commission agreed --

1 ACTING CHAIRPERSON McCARTHY: Of course, that's
2 one of the options that the applicant before us now is
3 offering as an option as well.

4 EXECUTIVE OFFICER DEDRICK: A primary difference
5 here of course is that the three lots that belong to the
6 Boroyoy's front, they're only landward side is a public
7 road. There is no other fill there. The lots are
8 completely below the mean high tide line.

9 MR. GETTEMY: Not completely. I beg your
10 pardon. Not entirely.

11 ACTING CHAIRPERSON McCARTHY: How much?

12 MR. GETTEMY: Mean high tide, three, four feet.
13 By the way, as I indicated before, at low tide 100 percent.

14 ACTING CHAIRPERSON McCARTHY: Would you comment
15 on the Lincoln Properties now?

16 EXECUTIVE OFFICER DEDRICK: I am not familiar
17 with that.

18 ACTING CHAIRPERSON McCARTHY: Mr. Gettemy, you
19 referred to --

20 MR. GETTEMY: Yes, Lincoln Properties --

21 ACTING CHAIRPERSON McCARTHY: -- the Lincoln
22 Properties.

23 MR. GETTEMY: The Lincoln Properties is a
24 Richardson Bay project. Lincoln Properties is a
25 subsidiary of Title Insurance and Trust Company.

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1 They did Larkspur Landing in Marin County if you're
2 familiar with that. They have just purchased, pardon me,
3 just built out and completed a project that is entirely
4 over a marshland behind the old Sabellas building in
5 Richardson Bay in Mill Valley. I think it's in Mill
6 Valley city limits. It could be county. I don't know
7 which. I do know that the fill that was put in there
8 was fill that went entirely over wet marsh in order to --
9 the rest of the buildings are all on pilings, but they
10 had to put fill in there for the parking lot.

11 ACTING CHAIRPERSON MCCARTHY: Is the State
12 Lands Commission involved in any way in that development?

13 MR. GETTEMY: I don't know if it was State Lands
14 or BCDC. I wish I had the -- I don't think I have --
15 I can produce it, but I believe that I left it at home,
16 the thing to substantiate my statement.

17 ACTING CHAIRPERSON MCCARTHY: You say the
18 development was over water and presumably a public
19 trust. Public trust would have been an issue.

20 MR. GETTEMY: I believe -- Miss Dadrick, do you
21 recall having anything to do with that project?

22 EXECUTIVE OFFICER DEDRICK: I believe that
23 was a project in the Mill Valley grant. So the grantee
24 and BCDC would have been responsible for that. It also would
25 have been grandfathered because that's an old project.

1 I don't know.

2 MR. GETTEMY: What do you mean it's an old
3 project? I misunderstood you.

4 EXECUTIVE OFFICER DEDRICK: The plan for it
5 has been around for it a long time.

6 MR. GETTEMY: Oh, not more than five to six
7 years.

8 EXECUTIVE OFFICER DEDRICK: I could be wrong.

9 MR. TAYLOR: Was this on the open area of the
10 bay or --

11 MR. GETTEMY: This is one foot away from the
12 water's edge at high tide. It is office buildings. It's
13 all built on top of marsh, totally on marsh.

14 EXECUTIVE OFFICER DEDRICK: That's not the
15 same question.

16 MR. TAYLOR: Governor, I think we'd have to
17 put it over to get the facts for you.

18 EXECUTIVE OFFICER DEDRICK: I think we would,
19 too.

20 MR. TAYLOR: I think that the difference may be
21 in the fact of -- I don't know whether BCDC had jurisdic-
22 tion over that or not. They're limited to the shoreline.

23 EXECUTIVE OFFICER DEDRICK: They have nothing --

24 MR. TAYLOR: And they have nothing behind a
25 certain point of the shoreline. The McAteer-Petris Act,

1 BCDC Act, is from the shoreline out of the bay.

2 EXECUTIVE OFFICER DEDRICK: Excuse me, Greg,
3 for interrupting.

4 Mr. Chairman, there's someone here from BCDC
5 who knows all about Lincoln Properties. Would you care
6 to -- I didn't get the name.

7 MR. VALENTINE: Steven McAdam.

8 ACTING CHAIRPERSON McCARTHY: Mr. McAdam, do you
9 want to take a microphone?

10 MR. GETTEMY: Thank you.

11 MS. BOROVOY: Do you want us anymore?

12 ACTING CHAIRPERSON McCARTHY: You can remain
13 Mrs. Borovoy, if you wish to.

14 MR. McADAM: I'd be happy to answer any
15 questions you have about --

16 ACTING CHAIRPERSON McCARTHY: Why don't you
17 describe the Lincoln Properties development to us, please,
18 and tell us whether it was over water or not and what
19 were the primary considerations involved.

20 MR. McADAM: There were basically two different
21 sections of the Lincoln Property project. The first was
22 an office and commercial development which BCDC approved
23 entirely on land, that is on upland areas.

24 ACTING CHAIRPERSON McCARTHY: Is your microphone
25 working? I want the audience to hear you.

1 MR. McADAM: I don't see a switch. Is this
2 better. I'll speak as loudly as I can.

3 The Lincoln Property project was basically in
4 two parts. The first was a commercial and office structure
5 or series of structures which BCDC approved and they were
6 located entirely on upland areas. They were not part of
7 the bay.

8 The second part was a parking lot that was
9 associated with the commercial and office structures.
10 It was located underneath the Richardson Bay Bridge on
11 lands that apparently are owned by Caltrans and leased for
12 long-term basis to Lincoln Property Company. The land
13 underneath the Richardson Bay Bridge was solid fill and
14 at one time above the line of highest tidal action, not
15 a part of the bay under BCDC's regulation. Subsequently
16 it subsided to some degree so that the highest tide reached
17 over the land area thus bringing it within BCDC's or at
18 least partially within BCDC's bay jurisdiction although
19 it retained all the characteristics of upland. There was
20 no marsh on which the parking lot was placed. As a
21 result of the negotiations for that project, the project
22 developers entered into a mediation type of a situation
23 where they would enhance a nearby marsh. But this
24 particular project did not damage any marsh to any great
25 degree.

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1 ACTING CHAIRPERSON MCCARTHY: Any questions by
2 Commissioners.

3 All right. Thank you very much.

4 I'm satisfied the Lincoln Properties' issue
5 is distinguishable from the matter before us.

6 I'm still somewhat troubled by the Brickyard Cove
7 matter, however. Would someone please state once more
8 to me succinctly the substantive differences between that
9 matter and the question before us.

10 MR. TAYLOR: Governor, the distinction is that
11 they argued that they, that the trust had been terminated
12 by virtue of the Berkeley decision. We disputed that as
13 to the water covered, some of the water-covered portions.
14 But they felt because they had undertaken prior to the
15 Berkeley decision a project which had been found to be
16 exempt by BCDC because it had been so far along, that they
17 had a right to complete that project even though water
18 was included. They were going to press that in litigation
19 against the Lands Commission and we felt that under those
20 circumstances, since they had undertaken the project
21 had substantially filled or done all the filling they
22 were going to do, that there was an area for compromise
23 with them. Had we not compromised it, they would have
24 persisted in their claim that they were totally exempted
25 in that area.

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1 ACTING CHAIRPERSON McCARTHY: There was absolutely
2 no additional filling?

3 EXECUTIVE OFFICER DEDRICK: That's correct.
4 None whatsoever.

5 ACTING CHAIRPERSON McCARTHY: And they built
6 how many additional units on top of the fill that had
7 been there, that they had created?

8 EXECUTIVE OFFICER DEDRICK: They haven't as yet
9 started construction because the final papers are still
10 being signed. My memory is that it was around 100 and
11 that it was not for sure because they were going to
12 consolidate some lots and so forth.

13 So our concern was, the public trust easement
14 concern was a very strong one. We felt that lifting the
15 trust following the Berkeley Act over water at all was
16 a very serious step for this Commission to take.

17 ACTING CHAIRPERSON McCARTHY: I understand,
18 Mr. Taylor, that the fill of the Brickyard Cove development
19 was created before the 1980 decision.

20 MR. TAYLOR: That's correct.

21 EXECUTIVE OFFICER DEDRICK: That's correct.

22 ACTING CHAIRPERSON McCARTHY: Are you stating
23 that had we, that in acting as we did in that case, that
24 that would not be cited as a precedent or it could not
25 be cited as a precedent --

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1 EXECUTIVE OFFICER DEDRICK: That's right.

2 ACTING CHAIRPERSON MCCARTHY: -- despite the
3 fact we settled the matter after the 1980 case?

4 MR. TAYLOR: For this situation the answer
5 to that would be no. I don't know of any other project
6 other than Brickyard Cove that was in that position, but
7 if there might be another Brickyard Cove situation,
8 it might, if we were faced with the same situation,
9 recommend the same thing.

10 EXECUTIVE OFFICER DEDRICK: We did a thoroughly
11 exhaustive search to establish that the Brickyard Cove
12 development was really unique -- excuse me -- Dennis
13 Eagan did that.

14 MR. TAYLOR: The difference there was that
15 the project was substantially complete on the day that
16 the Berkeley decision came down which the Supreme Court
17 said was the magic day to determine whether the public
18 trust existed or not. In this case, under the McAteer-
19 Petris Act, the pilings and the construction of a house
20 on pilings is defined as fill. There is no exemption for
21 this property and the Act, McAteer Petris Act, seeks to
22 allowing no further fill bayward of the shoreline of
23 San Francisco Bay at the time the Act was granted
24 except in certain instances of which this is not one.

25 Perhaps to clarify the record, there is no

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1 permit application before you with regard to these lots
2 today. What is before you is a staff recommendation for
3 purposes of conveying to BCDC your opinions about public
4 trust needs in this area. The area is much larger
5 than the three lots and the marsh that has been talked
6 about.

7 MS. BOROVOY: Governor McCarthy, what we object
8 to is being used as a scapegoat. This policy, it's
9 wonderful that you've taken time to do this, but we're
10 caught right in the middle. I notice that if it would
11 help to clarify the situation so that we could be used
12 as, in other words, Brickyard Cove could be used as a
13 precedent for us, we'd be happy to threaten a suit, too,
14 and therefore you would then want to make a settlement
15 with us because that was one of the things Mr. Taylor
16 said.

17 MR. TAYLOR: I did not say that the situations
18 were at all comparable. They are not.

19 ACTING CHAIRPERSON McCARTHY: Mr. Taylor, do you
20 want to make your presentation at this point?

21 MR. TAYLOR: I think there are several things
22 that should be noted. When the state sold tidelands
23 it reserved an easement which was a property interest
24 for purposes of commerce, navigation, and fisheries.
25 The Supreme Court clarified the fact that that applied

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1 to Board of Tidelands Commissioners' lots in its 1980
 2 decision. The Legislature determined in its enactment of
 3 BCDC that there would be no further fill in San Francisco
 4 Bay and in part that statute was an enactment or an
 5 exercise of the trust.

6 This property has reflected since the 1920's in
 7 its title report that it was subject to an easement of
 8 commerce, navigation and fisheries. So that's been a
 9 matter of actual notice to the owners of the underlying
 10 fee to this property for a long period of time.

11 The second thing, reference was made to a letter
 12 from State Lands Commission to Robert S. Borovoy in
 13 1972. I think that the letter speaks for itself and that
 14 letter says:

15 "This is in reply to your
 16 August 6th letter regarding the
 17 public trust attaching to tidelands.
 18 This trust was imposed upon lands
 19 upon their conveyance from the
 20 federal government to the State
 21 of California. The trust exists
 22 without assertion by the State
 23 Lands Commission. Under some
 24 circumstances the trust can be
 25 abated. However, there is not

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enough information in your letter
to allow comment on that possibility.

"If you have any questions,
please feel free to contact me at
any time."

It's signed by Leslie H. Grimes, Senior Land
Agent. That was in a letter from Robert S. Borovoy to
them, to the State Lands Commission in 1972 asking about
the consequences of the trust.

ACTING CHAIRPERSON MCCARTHY: A response to a
letter from Mr. Borovoy to the State Lands Commission.

MR. TAYLOR: That was a response to Mr. Borovoy
informing him in '72 that the easement did exist.

I think the only other, the only other thing
is with regard to the ownership of the marsh which has
been offered in mitigation. I think that the staff
had unequivocally stated, based upon the search by
title companies and by the staff itself, that they can
find no private record title to the marsh in question.
That it was left out of any of the Board of Tideland
Commissioners' lots and that it is waterward of the
Rancho and, therefore, it would have been sovereign land.
That is about the best answer we can give Mrs. Borovoy.
She has not provided us with any deed or evidence of
private title to that back area. I think that the lands

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1 Commission participated in the Berkeley decision in 1980
2 with BCDC for the purpose of clearly establishing or
3 confirming the existence of public trust interest in these
4 kinds of lots. There are a series of lots across this
5 entire section of San Rafael Bay as well as across
6 Richardson Bay and from Richmond to Alameda. It was
7 the concern of both of these agencies as well as a
8 substantial number of the public in the Bay Area that
9 there be no further filling of San Francisco Bay and
10 that the public rights in ownership -- if you remember the
11 BCDC reports that were made in the creation of the Act
12 in 1968, I believe, the final reports came out urging
13 that the public's title to San Francisco Bay be clarified.
14 That was done in the Berkeley decision. This is the
15 first case that I know of where something which is
16 subject to BCDC jurisdiction shoreward or on the shore
17 and within BCDC's area of jurisdiction which would be
18 an encroachment on the line established by the Legislature
19 where that Act has come before it. The staff has
20 studied the entire area because it felt that it wasn't
21 fair just to look at one situation, but that it should
22 look at the entire problem that's presented by further
23 development in this area of San Rafael Bay and it is felt
24 based upon the public hearings and the evidence reviewed
25 and the expressions of the Legislature previously that

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1 further development in this area would be inconsistent
2 with public trust needs as found by all the various
3 reports, legislative declarations, and that's why it is
4 making that recommendation to the Commission at this time.

5 ACTING CHAIRPERSON MCCARTHY: Any questions
6 by Commissioners at this point?

7 All right. Mr. Harvey.

8 COMMISSIONER HARVEY: Mr. Gettemy, in your
9 presentation you offered what I think, if I don't
10 misunderstand, was an alternative for the Commission to
11 adopt and that would be to essentially have the Commission
12 exercise the public trust and then essentially grant a
13 permit for building on these two lots. The alternative
14 is, I gather from what you've said, Greg, is not before
15 us today.

16 MR. TAYLOR: That is correct.

17 COMMISSIONER HARVEY: I would also at this
18 point probably question the wisdom of the alternative.
19 Were I a title company or a purchaser wanting to live
20 in one of those lots, I wouldn't want my house essentially
21 run over by someone widening the channel day after
22 tomorrow, or if this Commission would grant such a
23 permit which I don't think we could do under any
24 circumstance, have a subsequent Commission perform or
25 take some action that would be detrimental to that position.

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1 My understanding of what I'm saying -- correct
2 me, Greg -- is that where we really are? What I'm saying
3 is there is an alternative submitted by Mr. Gettemy. That
4 matter is not before us today, but an action that we,
5 if we took the action of exercising the public trust,
6 that would not preclude Mr. Gettemy and Miss Borovoy
7 from coming before this Commission at a later date with
8 that sort of a request; is that a good statement?

9 MR. TAYLOR: That is correct. They could come
10 back at a later time and ask for a modification of this
11 finding with regard to a specific proposal. But during
12 the interim, the public trust would have been exercised
13 and from that standpoint the state is saying that its
14 title interest in the property should be paramount and
15 that there should be no change in existing use.

16 MR. GETTEMY: May I clarify something, please?
17 I'd like to make it very well known that when this
18 Commission talks about many, many lots in Northern
19 San Pablo Bay and in and about Bayside Acres where we
20 are, I think that you should clarify and understand
21 that a lot is only as good as its zoning, only as good
22 as its ingress and egress, and you will find that the
23 majority -- and I'm talking maybe 99 percent of these
24 lots or 99.9 percent -- are not zoned R-1. They're
25 zoned many other uses, but they are not zoned R-1.

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1 I think you're going to find this to be the truth if you
2 dig into this thing. But BCDC has been talking for
3 two years now about the 15,000-plus lots that are out
4 there and these 15,000 people are going to rush and say
5 If you give me a building permit, I want mine, too.
6 And this is a statement that I don't think is true and
7 I'd like somebody to explore it. I've asked for names
8 of these people and I don't get them. I don't get anything
9 back from anybody. I just don't think they exist.

10 ACTING CHAIRPERSON McCARTHY: Commissioner Harvey.

11 COMMISSIONER HARVEY: Somewhat of an answer to
12 that, sir, is that I have been at different times an
13 owner of property that has been zoned in a particular
14 manner for an extensive period of time. I just lost
15 one in the Los Angeles Harbor area that has been zoned
16 multiple-residential as far back as I could find and
17 the Zoning Commission in its infinite wisdom and the
18 City of Los Angeles, City Council in its infinite wisdom,
19 changed it on me in the middle of the stream. What I think
20 that I'm really trying to say is the fact that a
21 particular piece of zoning existing for an extended period
22 of time I don't think is a valid consideration of what
23 we should do because of what some future zoning commission
24 might do.

25 MR. TAYLOR: Commissioner Harvey, I think in

1 addition to your remarks is the fact that there is a
2 property interest in this property which has been retained
3 by the public and that's irrespective of any exercise
4 of zoning authority as to the underlying fee title of
5 the private properties. What we're battling with here
6 is an ownership interest of the state which is completely
7 separate from the question of zoning.

8 MR. BOROVOY: Governor McCarthy, might I ask
9 about process?

10 ACTING CHAIRPERSON MCCARTHY: Mrs. Borovoy, we
11 have two more witnesses to hear from. I'd like to give
12 them an opportunity and then close on this matter.

13 Mr. Norman Gilroy and Mr. Brian Wilson, if
14 either of them have something new and not duplicative
15 to add at this point, we'd be delighted to hear from them.

16 You can both come up to the table if you want.
17 You want to identify yourself, please?

18 MR. WILSON: My name is Bryan Wilson. I'm
19 speaking for Save San Francisco Bay Association and
20 we're a non-profit public interest group in the Bay Area
21 with about 20,000 members.

22 The Association believes that private uses of
23 the bay including residential uses are inconsistent with
24 the public trust, the McAteer-Petris Act, and the
25 San Francisco Bay Plan. All three of these say that they

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1 should be used only for public purposes serving statewide
2 or regional needs. Your staff's recommendation reinforces
3 and clarifies what these needs are.

4 Further, we encourage you to rely heavily on
5 the McAteer-Petris Act in the Bay Plan since BCDC is
6 a co-trustee of the public trust in this instance and
7 they definitely do have jurisdiction as opposed to
8 Brickyard Cove.

9 The McAteer-Petris Act says that the fill should
10 be authorized only for "water oriented uses or minor
11 fill for improving shoreline appearance or public access,"
12 and it also states firmly that "the public has an interest
13 in the bay as the most valuable, single natural resource
14 of an entire region."

15 The Bay Plan emphasizes that "the most
16 important uses of the bay are those providing substantial
17 public benefits in treating the bay as a body of water,
18 not as real estate."

19 The Association believes that your staff's
20 recommendation is correct. The public trust should be
21 reserved for purely public uses and we would urge you
22 to support it.

23 ACTING CHAIRPERSON MCCARTHY: Thank you.
24 Mr. Gilroy.

25 MR. GILROY: My name is Norman Gilroy. I'm a

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1 consultant for Basalt Rock Company, which is one of the
2 owners in the area.

3 My purpose here is not so much to raise anything
4 new as it relates to the testimony that's gone before, but
5 maybe to speak a little bit to some of the wording that
6 has been used by staff in the recommendations.

7 As background, Basalt is a very active user
8 of a portion of the area as access to their deep-water
9 loading activities at the McNeer's Quarry which is a very
10 large quarry which supplies a great deal of rock to the
11 delta area and uses that deep-loading facility very
12 regularly. It depends on access over these lands and
13 the continuing right of navigation which is discussed in
14 here. Commercial navigation is appropriate, of course.
15 One of the things that I see as a problem, however, is
16 that right next to it you talk about wildlife preservation
17 and a whole variety of other issues. Those can sometimes
18 come headlong into conflict with maintenance dredging,
19 the rebuilding of structures or the building of structures
20 necessary for mooring of large barges, things of that kind
21 which are in fact out in the water. If it were
22 possible to recognize those kind of structures and
23 activities, maintenance dredging being one of them,
24 structures being another in the wording I think it would
25 be more appropriate. Then I think at least the public

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1 would be on notice that they had been recognized as
2 activities.

3 Additionally, there is an intention which has
4 been approved by the County of Marin in principle and
5 by the City of San Rafael in principle. Their general
6 planning process to create quite a large marina in
7 that location, which again is consistent with the wording
8 of commercial and navigation in your recommendation.
9 However, again, there is a need for dredging and building
10 of some jetties to make the channel mouth safe from
11 sedimentation and that kind of thing. Again, if there's
12 recognition of appurtenant structures or something of
13 that kind in your wording, it would help later when
14 someone clearly might say: Well, this is for wildlife
15 purposes primarily and no one ever said anything about
16 changes for structures and that kind of thing. Otherwise
17 I think as it relates, frankly, we're not clear of a
18 couple of things and I don't know that we're going to
19 get clear in this meeting on those things to do with the
20 large area of marshland. Basalt owns 400 acres of
21 tideland there which is directly affected by this
22 decision. We don't see any conflict between their
23 intention to maintain those as open space in their plan
24 and essentially not use them and your recommendations,
25 but there is an area of marshland which I think is one of the

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1 areas sometimes of conflict as to who has jurisdiction
2 over what. In that area the marshland is in the plan
3 as an area to be preserved and even enhanced as a wildlife
4 area, maintained as a marsh, and that is being worked
5 out again with the city and to a degree with BCDC so
6 it's not gone through a formal process with BCDC yet.

7 There are some areas on the edge of the marsh
8 that long ago were filled and -- used to I think be marsh
9 -- were long ago filled for industrial uses and have
10 in fact industrial uses going on right now. We're
11 assuming that none of what you are doing here would
12 infer that those areas should be in any way ripped out
13 and turned back to wildlife uses or that kind of thing.

14 ACTING CHAIRPERSON MCCARTHY: Mr. Taylor.

15 MR. TAYLOR: I think a couple of things that
16 should be clarified at the outset. Any existing use
17 that is presently going on is not to be affected by this
18 exercise. This only speaks to the future and says that
19 there won't be any change in those uses. So to the
20 extent that you're using the property at the present
21 time and if we need to clarify it, we can talk to you
22 about that kind of language. But it is the purpose only
23 to freeze the existing situation, whatever that may be,
24 and of course if that would mean maintenance dredging
25 and things of that sort, that would be --

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With regard to a new use, such as a marina, I think that would be something that would have to be separately considered at the time it was proposed.

EXECUTIVE OFFICER DEDRICK: But it would not be precluded.

MR. TAYLOR: But it would not be precluded under the recommendations.

There was one other thing, though, and I think that the study area included a portion, a large portion of the study area included lands granted to the City of San Rafael in trust. While the study area included that, the direct jurisdiction of the Lands Commission only applies to the upper portion and the only recommendation before the Commission at this time is to exercise the trust as to the upper portion. So that your interest may not be involved at all.

Are you in San Rafael? If you can see that map, there's a line drawn across it. Where are you in relation --

MR. GILROY: We lie within the county jurisdiction as privately owned land.

MR. TAYLOR: You're in the exercise area then. The city will be informed of the Lands Commission action and they may wish to consider the matter themselves based upon that later on, but at least the bottom part of

1 this is not in the normal part of the thing since that's
2 in the city's jurisdiction. If you're in the upper
3 part, then I think we've given you the assurances that
4 you --

5 MR. GILROY: We're in the very top end of the
6 upward part.

7 EXECUTIVE OFFICER DEDRICK: Mr. Chairman, I think
8 that Recommendation Number 2, perhaps too generally for
9 your taste, but in fact guarantees the right of navigation.
10 Obviously fishing, navigation and commerce as well as
11 ecological considerations are the primary purposes of the
12 trust. I do not believe that a trust exercise phrased
13 as those three recommendations are phrased would in any
14 way preclude further marina development, maintenance
15 dredging, mooring buoys and all the things that are
16 appurtenant to navigation. We have a long history of
17 dealing with such things directly as part of the public
18 trust.

19 ACTING CHAIRPERSON MCCARTHY: Mr. Gilroy,
20 you've made your statement. You heard Mr. Taylor's
21 response. You've heard Miss Dedrick's response. If you
22 want to add something in writing that you wish us to
23 place in the record, the Commission would extend that
24 privilege to you.

25 MR. GILROY: All right.

1 ACTING CHAIRPERSON McCARTHY: I think that
2 probably is responsive to the concern you raised.

3 MR. GILROY: I would assume also that the
4 comments just made which I think are exactly what I was
5 hoping we might have might be in the record so that we
6 have, that's clear in the future.

7 ACTING CHAIRPERSON McCARTHY: It is in the
8 record.

9 MR. GILROY: Because five or six years down the
10 way these words have floated away, and you know. Thank
11 you.

12 ACTING CHAIRPERSON McCARTHY: All right. Thank
13 you. Any questions of Mr. Wilson?

14 All right. Thank you both very much.

15 I think we're prepared to act on the matter.

16 Mrs. Borovoy, I didn't mean to cut you off a
17 minute ago. Was there a final point you wished to make?
18 Is Mrs. Borovoy still with us?

19 MS. BOROVOY: I'm tired of walking up and down.
20 I do thank you for all this attention. It's
21 very nice.

22 I'm interested in the process. If this
23 policy is adopted today, you mentioned that we could
24 apply for a modification. If this is adopted today,
25 doesn't it go into effect today?

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1 MR. TAYLOR: Yes, it does.

2 ACTING CHAIRPERSON MCCARTHY: Yes, it does.

3 MS. BOROVOY: It goes into effect today. So
4 then --

5 ACTING CHAIRPERSON MCCARTHY: I'm not sure
6 what you're referring to with reference to the modification.
7 But if the majority of the Commission approves the staff
8 recommendation, then that is effective. That is the
9 Commission's statement of policy.

10 MS. BOROVOY: In other words, the process is
11 such that we would like the modification before you
12 adopt the policy.

13 ACTING CHAIRPERSON MCCARTHY: No, we appreciate
14 your original presentation of the options.

15 MS. BOROVOY: I was just trying.

16 ACTING CHAIRPERSON MCCARTHY: Thank you.

17 I think we've concluded the testimony. I've
18 consulted with the members of the Commission. It's been
19 moved and seconded that the staff recommendation be
20 approved and the majority of the Commission does so approve.

21 Thank you very much.

22 Item Number 12.

23 EXECUTIVE OFFICER DEDRICK: Yes. This is an
24 authorization on the removal of a pier at Pebble Beach
25 and acceptance of the Quitclaim Deed for that underwater

1 area. The pier is in bad condition. The Pebble Beach
2 Company sees no further use for it. So they'd like to
3 remove the pier and quitclaim the land back to the state.

4 ACTING CHAIRPERSON MCCARTHY: Any questions by
5 members of the Commission or in the audience?

6 If not the staff recommendation is approved.

7 Number 13.

8 EXECUTIVE OFFICER DEDRICK: 13 is off calendar.

9 ACTING CHAIRPERSON MCCARTHY: Off calendar.

10 Number 14.

11 EXECUTIVE OFFICER DEDRICK: Number 14 is the
12 approval of the issuance of a patent that was issued
13 in 1903.

14 ACTING CHAIRPERSON MCCARTHY: Any questions by
15 members of the commission or the audience?

16 If not, staff recommendation is approved.

17 Number 15.

18 EXECUTIVE OFFICER DEDRICK: 15, Flying M Cattle
19 Company is a denial without prejudice of an application
20 for use of state lands for a grazing lease. The reason
21 for the denial without prejudice is 884 is running
22 and we have not been able to come to an agreement
23 with the applicant.

24 ACTING CHAIRPERSON MCCARTHY: Is there any
25 question?

1 Staff recommendation is approved.

2 Number 16.

3 EXECUTIVE OFFICER DEDRICK: Item 16 is the
4 approval of a steam sales contract between our lessee,
5 Geothermal Resources International, and the Central
6 California Power Agency. The staff believes that if the
7 Commission adopts the resolution that is before you
8 which makes it very clear that in any apparent conflict
9 between the lease, GRI with the State Lands Commission,
10 and their contract with CCPA, that the lease will govern
11 all of their relationships with the state.

12 ACTING CHAIRPERSON MCCARTHY: Any questions by
13 Commissioners? Commissioner Harvey.

14 COMMISSIONER HARVEY: Have you examined the
15 sales contract to see if there is any conflict based
16 on examination at this point?

17 EXECUTIVE OFFICER DEDRICK: Staff is trying to
18 bring that contract into conformance with what we would
19 prefer to be there. GRI has negotiated the contract
20 with the power agency itself. There are areas of
21 potential conflict. In coming to bringing this item to
22 the Commission I've had substantial discussions with the
23 Executive Vice President of GRI and the conclusion that
24 we came to and that I think is correct is that GRI's
25 relationship with CCPA is a business relationship.

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Their relationship with the State Lands Commission is a separate business relationship. They are bound by the terms of the lease to pay the steam sales price to the state which the lease requires and anything they do with CCPA is essentially their business but the terms of the lease shall prevail in their relationship with the state.

COMMISSIONER HARVEY: I think that that statement essentially then should be a part of our action today and that we make clear that we are approving the steam sales contract with the total proviso that the provisions of the lease in the event of any conflict would totally override the power contract.

EXECUTIVE OFFICER DEDRICK: On the recommendation, Commissioner, our recommendation, particularly the conditions attached under Recommendation 2(b):

"In the event of any conflict between the terms and conditions of the steam sales agreement and those of the lease or rules and regulations of the State Lands Commission, the terms and conditions of lease PRC 1217 and the rules and regulations shall prevail as between the state and its lessee."

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ACTING CHAIRPERSON McCARTHY: Is that satisfactory?

COMMISSIONER HARVEY: Yes.

EXECUTIVE OFFICER DEDRICK: I think we have the state protected.

ACTING CHAIRPERSON McCARTHY: Staff recommendation is approved.

Number 17.

EXECUTIVE OFFICER DEDRICK: Number 17 is approval of a settlement agreement and royalty accounting procedures between the State Lands Commission and three of its lessees in the Geysers geothermal area.

ACTING CHAIRPERSON McCARTHY: Any questions? Staff recommendation is approved.

Number 18.

EXECUTIVE OFFICER DEDRICK: Number 18 relates to the replacement of Island Esther off Seal Beach which was destroyed in the storms of a winter ago. The staff recommends that the replacement of the island as a platform instead of an island is exempt from CEQA and we would like to give them permission to go ahead with the project. The exemptions I think Greg may want to speak to, or is it you, Jack?

ACTING CHAIRPERSON McCARTHY: Any questions?

MR. TAYLOR: We have no problem with the staff

1 recommendation. It's an appropriate area for exemption.

2 ACTING CHAIRPERSON MCCARTHY: All right. Any
3 questions by Commissioners?

4 Staff recommendation is approved.

5 Next.

6 EXECUTIVE OFFICER DEDRICK: The next is an
7 application to install a power cable from Platform Emmy
8 in Orange County by Aminoil, our lessee.

9 ACTING CHAIRPERSON MCCARTHY: Any questions?
10 Staff recommendation is approved.

11 Number 20.

12 EXECUTIVE OFFICER DEDRICK: The next one is a
13 continuation of exploratory drilling operations on a
14 lease off the Santa Barbara County Coast by Shell
15 California Production, Inc., and the certification
16 of the EIR which was carried out by staff on the
17 proposed project.

18 ACTING CHAIRPERSON MCCARTHY: Any questions?
19 Staff recommendation is approved.

20 Twenty-one.

21 EXECUTIVE OFFICER DEDRICK: Twenty-one is a
22 deferment of drilling obligation by Texaco, Inc., on
23 another lease in Santa Barbara County. They want to do
24 some more geophysical work before they decide that they
25 want to apply for a permit.

1 ACTING CHAIRPERSON McCARTHY: There is no seismic
2 activity here?

3 EXECUTIVE OFFICER DEDRICK: No. This is just
4 a deferment of drilling.

5 ACTING CHAIRPERSON McCARTHY: All right. Any
6 questions?

7 Staff recommendation is approved.

8 Twenty-two.

9 MR. TROUT: Mr. Chairman, on Item 22 and 23
10 which really can be considered together in one action,
11 the proposal is to have a crude oil sell-off in Long
12 Beach Harbor Department of a tidelands parcel and Parcel A
13 of -- and what you're doing is adopting the procedures
14 or the conditions of the sale, and directing the City of
15 Long Beach to in turn direct the contractor to sell the
16 oil and we recommend approval. It should provide some
17 additional money for the state.

18 ACTING CHAIRPERSON McCARTHY: Any questions?

19 Staff recommendation is approved.

20 Number 23 (sic).

21 EXECUTIVE OFFICER DEDRICK: Number 24 is the
22 award of a royalty oil sales contract to Edgington Oil
23 for oil from the Belmont Offshore Field, and in a
24 sec I'll give you the bonuses. The high bonus bid was
25 \$1.861 per barrel above the posted price.

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1 ACTING CHAIRPERSON MCCARTHY: Any questions?

2 Approved.

3 Twenty-five.

4 MR. TROUT: Mr. Chairman, Item 25, the
5 legislation affecting the grant to Long Beach provides
6 that there will be surveys to determine if there's been
7 any subsidence in the area. These surveys are run twice
8 a year and this is the report of the latest survey and
9 it indicates there is no subsidence.

10 ACTING CHAIRPERSON MCCARTHY: All right. Any
11 questions?

12 The report is accepted.

13 Twenty-six is off calendar.

14 Twenty-seven.

15 EXECUTIVE OFFICER DEDRICK: Number 27 is a report
16 on revising the economic projections from the Long Beach
17 unit. The average oil production rate during the
18 first half of the fiscal year was higher than we had
19 originally estimated. The revenue to the state will
20 therefore be about \$20 million higher than we estimated
21 for this fiscal year.

22 ACTING CHAIRPERSON MCCARTHY: Any objection
23 to that?

24 (Laughter.)

25 ACTING CHAIRPERSON MCCARTHY: We'll accept that.

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1 MR. TROUT: That's not in addition, that was
2 included in the revenue statement we reported to the
3 Commission at the last meeting.

4 ACTING CHAIRPERSON MCCARTHY: Very good.

5 EXECUTIVE OFFICER DEDRICK: Sorry about that.
6 Can't do it twice.

7 ACTING CHAIRPERSON MCCARTHY: All right. Twenty-
8 eight is off calendar.

9 Twenty-nine.

10 EXECUTIVE OFFICER DEDRICK: Twenty-nine is
11 approval of a compromise title settlement for 25 acres
12 of land in Novato, Marin County.

13 MR. TROUT: Mr. Chairman, before you act,
14 let me point out that on Item 29, 30 and 31, the
15 Commission is acting both as the Lands Commission and
16 as the trustee for the Land Bank Trust.

17 COMMISSIONER HARVEY: We're not acting on 30.

18 ACTING CHAIRPERSON MCCARTHY: Any questions on
19 29?

20 Hearing none, that is approved.

21 Thirty is off calendar.

22 Thirty-one.

23 EXECUTIVE OFFICER DEDRICK: Thirty-one is another
24 approval of a compromise title settlement. As Jim rightly
25 points out you'll be acting both as Lands Commissioners and

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1 as trustees for the Land Bank Trust for a small piece of
2 land in Milpitas and Santa Clara County.

3 ACTING CHAIRPERSON McCARTHY: All right. Any
4 questions?

5 Thirty-one is approved.

6 Thirty-two is off.

7 Thirty-three.

8 EXECUTIVE OFFICER DEDRICK: Thirty-three is
9 approval of a retrocession of jurisdiction, of partial
10 jurisdiction of the Naval Radio Station in Imperial Beach
11 in Coronado in San Diego County.

12 ACTING CHAIRPERSON McCARTHY: Any questions
13 about this?

14 All right, approved.

15 Thirty-four.

16 EXECUTIVE OFFICER DEDRICK: Thirty-four is
17 to approve the proposed annexation boundaries of Batizuitos
18 Lagoon to the City of Carlsbad.

19 ACTING CHAIRPERSON McCARTHY: Any questions about
20 this?

21 Approved.

22 Thirty-five.

23 EXECUTIVE OFFICER DEDRICK: Thirty-five is an
24 authorization to hold a public hearing on a retrocession
25 of jurisdiction in San Diego County in Carroll Canyon.

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1 ACTING CHAIRPERSON MCCARTHY: Any questions?

2 Approved.

3 EXECUTIVE OFFICER DEDRICK: Item 36 is an
4 authorization for the City of San Mateo to take interim
5 steps to increase water flow. We've had a request from
6 the City of San Mateo that wants to speak to some
7 potential changes in the staff recommendation. Mr. Tom
8 Adams is here.

9 ACTING CHAIRPERSON MCCARTHY: Mr. Tom Adams.

10 MR. ADAMS: Thank you. I'm an attorney. I
11 represent Runam... Corporation which is a private land
12 owner in the area. Our land has previously been the
13 subject of a settlement with the Lands Commission, and
14 the adjoining land in the City of Belmont was recently
15 the subject of a settlement from the Lands Commission.

16 At the moment the only access to our property
17 is across a road and beneath this road lies a culvert
18 which San Mateo wants to remove and replace.

19 Ultimately we will build a bridge across the
20 slough for access to our property in accordance with
21 plans that are being prepared locally. We have no
22 objection to the removal of the culvert to improve the
23 water flow, but would ask that the Commission condition
24 the permit so that when the new culvert is installed,
25 it's backfilled to provide a road surface across it.

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1 equivalent to what we have now. We're not asking that
2 they construct a fancy road, but one that is suitable
3 to transportation of heavy equipment which the current
4 road surface is suitable for.

5 Additionally, in the event that there are
6 unforeseen circumstances which prevent for some reason the
7 culvert being reinstalled, we would ask that a
8 condition be imposed that the City of San Mateo provide a
9 temporary bridge across the slough. In the event these
10 things are not required, we would totally lose access
11 to our property.

12 EXECUTIVE OFFICER DEDRICK: I did mislead you.
13 I couldn't read who Mr. Adams represented, but I knew
14 San Mateo wanted to talk. I believe this is San Mateo.

15 MR. BEZANT: I represent San Mateo. My name
16 is Bob Bezant, Public Works Director, City of San Mateo.
17 We're agreeable with the conditions. Our interest is
18 merely in taking out that collapsed culvert and placing
19 some culverts in there so we can get an adequate water
20 supply and restoring the access as it originally is
21 constituted. So we have no objection.

22 ACTING CHAIRPERSON MCCARTHY: Have you agreed
23 to a rope bridge or some other form's been discussed?
24 You'll have to get into all the details here. After
25 such a stimulating meeting, I just wanted to add something

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1 whimsical.

2 MR. TROUT: Mr. Chairman, the staff tells me
3 they've looked at the conditions and it's fine with staff.

4 EXECUTIVE OFFICER DEDRICK: Do the conditions
5 need to be read into the record?

6 We'll put them in the record.

7 MR. ADAMS: Please.

8 ACTING CHAIRPERSON MCCARTHY: Any questions?

9 All right. That's approved.

10 Last.

11 EXECUTIVE OFFICER DEDRICK: Item 37 is the
12 authorization to file a disclaimer on behalf of State
13 Lands in a lawsuit in which we have no interest.

14 ACTING CHAIRPERSON MCCARTHY: Any questions?

15 Approved.

16 Thank you all very much.

17 (Thereupon the meeting of the State
18 Lands Commission was adjourned at
19 11:34 a.m.)

20 ---o0o---

CERTIFICATE OF SHORTHAND REPORTER

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2
3 I, CATHLEEN SLOCUM, a Certified Shorthand
4 Reporter of the State of California, do hereby certify:

5 That I am a disinterested person herein; that
6 the foregoing meeting of the State Lands Commission
7 was reported in shorthand by me, Cathleen Slocum, a
8 Certified Shorthand Reporter of the State of California,
9 and thereafter transcribed into typewriting.

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

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 16 day of April, 1984.

15
16
17 *Cathleen Slocum*
18 CATHLEEN SLOCUM
19 Certified Shorthand Reporter
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