

STATE LANDS COMMISSION

TRANSCRIPTS

JULY 15, 1991

AUGUST 12, 1991

AUGUST 26, 1991

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MEETING
STATE LANDS COMMISSION
STATE OF CALIFORNIA

ENERGY COMMISSION BUILDING
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

MONDAY, JULY 15, 1991
9:05 A.M.

Nadine J. Parks
Shorthand Reporter

MEMBERS PRESENT

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Leo T. McCarthy, Lieutenant Governor, Chairman
Gray Davis, State Controller, Commissioner
Jim Tucker for Gray Davis, Controller
LaPenus Stancell for Thomas W. Hayes,
Director of Finance, Commissioner

Staff Present

Charles Warren, Executive Officer
Robert Hight, General Counsel
Jan Stevens, Deputy Attorney General
Curtis Fossum, Senior Staff Counsel
Rich Ludlow, Senior Staff Counsel

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P R O C E E D I N G S

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3 CHAIRMAN MC CARTHY: This is the meeting of the
4 State Lands Commission, and you're facing the three
5 intrepid members of this Commission. And we're going to
6 very wisely go through what remains of this file now.

7 Any questions about the minutes of the previous
8 Commission meeting? If none, those minutes are approved.

9 Mr. Warren, why don't you start. Let's first
10 take up what remains of the consent calendar. Any
11 questions on the remaining items on the consent calendar?

12 If not, we will go to Item 27.

13 EXECUTIVE OFFICER WARREN: Mr. Chairman, we
14 received a request this morning from the Environmental
15 Defense of Santa Barbara to pull -- to continue a number
16 of items, including Items 30 and 32. Item 30 deals with
17 the permission of the State Lands Commission to sell off
18 royalty oil, and Item 32 would defer the drilling
19 obligation of Arco. We don't understand how the interests
20 of either of those items would be advanced by continuing
21 them. And we just assume -- we see no reason to do so.
22 But I thought I would communicate to you that we
23 received that request.

24 CHAIRMAN MC CARTHY: You don't have any letters
25 explaining the reasons for a request for postponement?

1 These are phone calls, these contacts?

2 EXECUTIVE OFFICER WARREN: The only
3 explanation given was that they have had insufficient time
4 to conduct an environmental review of the documents
5 relating to those items. There's no substantive objective
6 stated.

7 CHAIRMAN MC CARTHY: Is there any reason to
8 believe that these matters have not been publicly noticed
9 or discussed?

10 EXECUTIVE OFFICER WARREN: No. They do say --
11 merely go to the authorities and the best interest of the
12 State and, frankly, of the organization from which we
13 received the request.

14 Anyway, turning to Item 27 --

15 CHAIRMAN MC CARTHY: Any questions by
16 Commissioners? All right. Let's proceed on the calendar.

17 EXECUTIVE OFFICER WARREN: Item 27 is a
18 request of the Commission to approve the amendment of a
19 master lease for the additions of two parcels of sovereign
20 lands totaling 8.23 acres on the San Joaquin and the
21 Sacramento Rivers for the installation of natural gas
22 pipelines to enable the completion of the system bringing
23 natural gas down from Canada into California. We ask
24 approval of the amendment of the lease.

25 CHAIRMAN MC CARTHY: Questions by the

1 Commissioners? Anybody in the audience on this?

2 All right. Approved. 29.

3 EXECUTIVE OFFICER WARREN: Item 29, the staff
4 recommends the Commission accept the dissolution of an oil
5 and gas lease by Shell Western. The dissolution terms
6 have been complied with, and we recommend acceptance.

7 CHAIRMAN MC CARTHY: Any questions by the
8 Commissioners? The recommendation is accepted.

9 30.

10 EXECUTIVE OFFICER WARREN: Staff recommends
11 that you approve the proposed sale of royalty crude oil,
12 approximately 3100 barrels per day from production from
13 leases off Orange and Santa Barbara Counties.

14 CHAIRMAN MC CARTHY: Questions by members of
15 the Commission? In the audience? 30 is approved.

16 EXECUTIVE OFFICER WARREN: Item 31, Mr. Chairman,
17 we request the approval of the assignment by Texaco of
18 50 percent interest in oil and gas lease in the Belmont
19 Offshore Field. The assignor is Texaco, Incorporated, and
20 the assignee is Texaco Exploration and Production. All
21 terms and conditions concerning this assignment have been
22 met, and the staff recommends approval.

23 CHAIRMAN MC CARTHY: Questions by members of the
24 Commission? All right. Approved. 32.

25 EXECUTIVE OFFICER WARREN: Item 32 is Arco Oil

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1 and Gas Company requests approval of its deferment of the
2 drilling operations on certain oil and gas leases off
3 Santa Barbara. These are the areas where arco production
4 has been postponed, and this request -- deferral of their
5 obligation to begin production. And staff recommends
6 approval.

7 CHAIRMAN MC CARTHY: Questions by members of
8 the Commission? Approved as recommended. 35.

9 EXECUTIVE OFFICER WARREN: Item 35, this is an
10 assignment of an industrial lease in the Martinez -- from
11 Martinez Terminal to Wickland Oil. The purpose of the
12 lease is for a marine petroleum wharf, together with
13 certain appurtenances. All terms and conditions pending
14 assignment of such leases have been met, and staff
15 recommends approval.

16 CHAIRMAN MC CARTHY: Questions by members of the
17 Commission? That's approved. 37.

18 EXECUTIVE OFFICER WARREN: This item presents a
19 lease between the Port of San Francisco and the
20 San Francisco Redevelopment Agency. Under the Statutes
21 of 1987, the Commission's supposed to review the terms of
22 the lease to ensure that prudent management and leasing
23 practices have been met. The staff has done so, and
24 recommends the lease be approved.

25 CHAIRMAN MC CARTHY: Questions by members of the

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1 Commission? 37 is approved. 38?

2 EXECUTIVE OFFICER WARREN: Item 38 involves a
3 request to amend an assignment of a lease of certain
4 tidelands located in Santa Monica. Staff has reviewed the
5 proposal and recommends approval.

6 CHAIRMAN MC CARTHY: Questions by members of the
7 Commission? All right. That's approved.

8 39?

9 EXECUTIVE OFFICER WARREN: Item 39 involves a
10 boundary line agreement and permit for improvements at
11 Santa Monica State Beach, which the staff has reviewed
12 and recommends approval.

13 CHAIRMAN MC CARTHY: Questions by members of
14 the Commission? That's approved.

15 EXECUTIVE OFFICER WARREN: Item 40 is a boundary
16 line agreement between the Department of Parks, the
17 Commission, the Attorney General, City of Santa Monica,
18 and the Department of General Services establishing a line
19 of ownership and control on filled and unfilled tide and
20 submerged lands in the City of Santa Monica, and confirms
21 the existing relationship. And staff recommends
22 approval.

23 CHAIRMAN MC CARTHY: Questions by members of the
24 Commission? That's approved as recommended.

25 EXECUTIVE OFFICER WARREN: Item 41, Mr. Chairman,

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1 we have a number of folks who have filed a request to
2 appear.

3 I would like to have Mr. Hight, our General
4 Counsel, present this item.

5 MR. HIGHT: Item 41, Mr. Chairman, is the approval
6 of a title settlement involving property in the City of
7 Huntington Beach.

8 Staff proposes that the Commission accept
9 \$60,000 in the Kapiloff Land Bank as the State's interest
10 in this parcel.

11 We have several people who wish to speak on this
12 item.

13 CHAIRMAN MC CARTHY: Why don't those who are
14 proponents give us an indication of in what order they
15 wish to speak; and if there are opponents, the same,
16 please.

17 Would the proponents step forward who wish to
18 testify.

19 EXECUTIVE OFFICER WARREN: We have two speakers.

20 CHAIRMAN MC CARTHY: James Dorsey and Patricia
21 Snyder?

22 MS. SNYDER: Yes. Patricia Snyder on behalf of
23 Destiny II.

24 CHAIRMAN MC CARTHY: James Dorsey?

25 MR. DORSEY: James Dorsey on behalf of Destiny II.

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1 CHAIRMAN MC CARTHY: Why don't you have a seat
2 there, please.

3 MS. SNYDER: Yes. We would like to speak only
4 if the opponents have anything to say, and if we feel
5 it's necessary to respond to them. We are in full
6 agreement with the State on the settlement we have
7 negotiated in good faith over a long period of time.

8 CHAIRMAN MC CARTHY: All right.

9 MR. DORSEY: Mr. Chairman, I would echo her
10 comments. I'm James Dorsey on behalf of Destiny II also.

11 CHAIRMAN MC CARTHY: Thank you. Barbara Devlin,
12 Jonathan Lehrer-Grawer?

13 MR. LEHRER-GRAWER: Good morning, Mr. Chairman
14 and members of the Commission. My name is Jon Lehrer-
15 Grawer. I'm an attorney and represent property owners
16 in the Huntington Harbor area. And I believe that the
17 Commission members have received my written communications
18 itemizing the reasons why I believe that this is a bad
19 deal for the State, a bad deal for the residents of the
20 community, and a rushed and hasty proposal to the State.

21 I believe it's premature under current and
22 ongoing litigation that we have currently. And I'll be
23 glad to go into more details. I would like to focus the
24 Commission's attention on a very important fact, and that
25 is that this developer has had notice that this property

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1 had a public trust easement from the early days of the
2 development. The city ordinances, both the specific plan
3 and the coastal element required this developer to
4 obtain from the State Lands Commission a letter of
5 determination specifying whether this property was subject
6 to a public trust easement.

7 This developer failed, consciously failed to
8 do that, relying on an 1985 letter that related to an
9 earlier conditional use permit.

10 The city ordinances required him to obtain a
11 letter on the new conditional use permit, which he sought
12 in 1989 and 1990.

13 The residents of the area, because that earlier
14 letter and this fact, were kept from the public hearing,
15 did not know that this property was subject to the public
16 trust until after filing the lawsuit on April 9th.

17 As soon as that issue was discovered, I sent a
18 letter to the city and to the attorney for the developer
19 on May 11th, outlining that there -- it is in public trust.
20 We were told that orally by Leslie Grimes.

21 I then followed up when we received a letter
22 from Mr. Grimes on May 31st, and sent that to the
23 developer. And the developer had only received a grading
24 permit on May 10th. He continued to develop despite
25 knowledge that this was public trust property. And this is

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1 only one example of the irresponsible attitude of this
2 developer in connection with the public interest and the
3 interest of the community.

4 This developer also submitted false, totally
5 false geological reports on the property that sits astride
6 the Newport/Inglewood fault. Reports that the consulting
7 geologist mis-cited the age of the supposedly underlying
8 fossil bed as 12,450 years, which would make it inactive,
9 when that consulting geologist himself had obtained the
10 age dating from the University of California, stating
11 that it was only 1245 years.

12 This developer has also lied to the Coastal
13 Commission in specifically misrepresenting to
14 Commissioner Glickfeld under direct questioning on the
15 distance that the development was going to be from the
16 existing earthquake fault. The agent for the developer
17 told Commissioner Glickfeld that it would be 71 feet from
18 either side of the earthquake fault. In reality, it was
19 planned for only twelve and a half feet, which violates
20 the Alquist-Pricic Act. And in reality, the project turns
21 out to be built encroaching on the Newport/Inglewood Fault.

22 This developer has now also committed perjury
23 to the Department of Real Estate by answering in the
24 questionnaire for the public subdivision report that this
25 property was not even in a special study zone under the

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1 Alquist-Priolo Act.

2 And when this developer had itself produced
3 a geological report, because it is in a special study
4 zone, when the city's own documents showed this to be
5 directly over an active earthquake fault, and when the
6 major geological report for the whole region concluded
7 that the Newport/Inglewood Fault in this area is active
8 and has seen significant vertical displacement in the
9 recent past.

10 So, you are dealing with a -- an unscrupulous
11 and deceitful developer to say the least, who is now
12 attempting to have this Commission bail it out for its own
13 wrongdoing. And I would like to now turn the microphone
14 over to Miss Barbara Devlin, who is a resident of the
15 community, and who has some comments and some input from
16 the residents.

17 CHAIRMAN MC CARTHY: Do you understand the
18 grounds on which this issue is before the State Lands
19 Commission?

20 MR. LEHRER-GRAWER: Yes, I do. But I think that
21 the Commission should be aware of the background involved.
22 I also address specifically the issues of whether this is
23 in the public interest.

24 I question, first of all, whether the Commission
25 has the legal authority. I've not been cited to legal

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1 authority that allows the Commission to sell the property.

2 I've been given references by the Attorney
3 General's Office and by staff of the Commission to two
4 sections in the Public Resources Code, which allow for
5 exchanges of property and the Kapiloff Land Bank Act.

6 I did not see any section that allows for the
7 sale of the property.

8 If there is an implied right to sell the
9 property, then it must be based on a sale for full value.
10 I have not seen any evidence, except for the one-line
11 statement in the staff report, which was made available
12 to us only this morning, that there is a staff appraisal
13 of this property. I have not seen that appraisal. I don't
14 know whether that appraisal is accurate. But certainly
15 the sale price of this property indicates that \$60,000
16 is far below the value of this property and the value of
17 the State easement on this property.

18 CHAIRMAN MC CARTHY: Okay. Is it your purpose
19 to stop the development, period, or to gain better public
20 access? What is it you're aiming at so we can understand?

21 MR. LEHRER-GRAWER: I'd like to let Miss Devlin --

22 CHAIRMAN MC CARTHY: Before we get to Ms. Devlin.
23 We'll give her ample time.

24 MR. LEHRER-GRAWER: Sure. I believe that the
25 purpose is to maintain this property for a marine-related

1 use, which involves maintaining the view, which was an
2 important consideration in the city's own ordinances.

3 This whole community was built sort of in a
4 semicircle around a bay, Weatherly Bay, with this property
5 at the southern end of that bay next to Warner Avenue.

6 This property now, with the development that is
7 on it, presents a walled-off area, which the Coastal
8 Commission staff concluded that it walls off one of the
9 last remaining views and access to the bay area.

10 Now, I understand that they're leaving an
11 easement. But that doesn't deal with the issue of the
12 destruction of the view amenity, both for the public and
13 for the residents of the community. Also, with this
14 development there, it is highly unlikely that anyone would
15 know that there was an easement or access to that bay.

16 CHAIRMAN MC CARTHY: Okay. I will hear from
17 Ms. Devlin. Do you have a question?

18 Commissioner Tucker.

19 COMMISSIONER TUCKER: Is it your position, then,
20 that if the Commission staff was recommending that
21 \$200,000 appraisal of the property or \$600,000, or a
22 million and a half, would be a settlement of the issue?

23 MR. LEHRER-GRAWER: No. I think there are a
24 variety of problems. One problem is that I think the
25 value that's being proposed is far too low. Another issue

1 is that this settlement undercuts an ongoing litigation,
2 which may be of benefit to the State. Because if that
3 litigation is successful, if the residents are successful
4 in invalidating the permits, then the State's easement
5 on that property is much, much more valuable. And also,
6 it could result in a restoring of that easement.

7 COMMISSIONER TUCKER: But what would they do
8 with it? If you won in court --

9 MR. LEHRER-GRAWER: If we won in court, either
10 the court would order the demolition of the property --
11 which may or may not be the end result -- or we may --
12 we would -- if the court doesn't feel that that is
13 appropriate, we would seek the full damages for the
14 development of this property in violation of local and
15 State laws.

16 COMMISSIONER TUCKER: I don't understand the
17 connection between the pending lawsuit and this. And
18 incidentally, this isn't a -- I wouldn't characterize this
19 as a sale. As I understand, it's a settlement of a title
20 dispute, which is very common. We go through these all
21 the time where there's a dispute between the State and
22 somebody over where a boundary line should be drawn.

23 So, this is not at all unusual. This is a pretty
24 normal kind of procedure. But whether this dispute is
25 settled or not, I don't understand how it impacts on the

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1 case that's, I guess, now before the court of appeal.

2 MR. LEHRER-GRAWER: Well, one of the claims
3 in that case is that the developer failed to obtain the
4 necessary determination from the State Lands Commission
5 if, in fact, the issue of whether this property of
6 State Lands is settled. And that issue is, in effect,
7 mooted out.

8 COMMISSIONER TUCKER: I mean that's sort of an
9 odd position, it seems to me, for you to take, to go to
10 court and assert that he's failed or she's failed to
11 settle their dispute with the State. And then you turn
12 around in some other forum and try to prevent them from
13 doing the very thing that you're arguing that they're
14 failing to do in your appeal.

15 MR. LEHRER-GRAWER: It's not a claim that they
16 failed to settle. The ordinance required them to obtain
17 from the State Lands Commission its position.

18 COMMISSIONER TUCKER: They're in the process of
19 doing that.

20 MR. LEHRER-GRAWER: Well, the position by the
21 State Lands Commission was very clearly stated by
22 Mr. Grimes in the May 31st letter. There was no
23 ambiguity to it. And that is that the State has the public
24 trust easement. As late as June 24th, his letter to
25 Miss Snyder, who was just up here, was that the State -- the

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1 State recognized that the settlement that it made and would
2 abide by it, and consider that the State had a public
3 trust easement. I don't know what happened between June
4 24th and July 5th when the staff did a 180 degree turn-
5 around.

6 I don't know what happened between July 1st,
7 when we were told that there wasn't going to be a
8 settlement, until July 5th. The only thing that I can
9 fathom is that the title company increased the offer from
10 10,000 to \$60,000. And from a practical standpoint,
11 that is not an amount of money that should lead this
12 Commission to jeopardize the interest of the State and the
13 public in this case.

14 COMMISSIONER TUCKER: Okay. I still haven't
15 seen how this settlement of a boundary dispute jeopardizes
16 the other claims.

17 MR. LEHRER-GRAWER: Well, it moots out the claim
18 that they did not obtain a determination from the State
19 Lands Commission.

20 COMMISSIONER TUCKER: But they're trying to do
21 that.

22 MR. LEHRER-GRAWER: No, no. That determination
23 was required before they obtained the conditional use
24 permit.

25 COMMISSIONER TUCKER: You're saying once they

1 failed to attempt to get it at that point, they are
2 foreclosed from ever attempting in the future to get
3 that sign-off?

4 MR. LEHRER-GRAWER: It is not simply a matter
5 of a technical procedural point. It is a matter that I
6 think leads to a very serious policy consideration for
7 this Commission. Because if a developer is allowed to do
8 what this developer has done, then this Commission will
9 simply be validating proposals to settle title disputes
10 instead of preserving public trust easements.

11 If this developer had gone to the State Lands
12 Commission before he received a conditional use permit and
13 before there was any development on this property, and
14 it got the letter from Mr. Grimes saying there is a public
15 trust easement, he couldn't have proceeded with any
16 development on this property. And then staff wouldn't
17 be recommending that the State give up its interest for
18 \$60,000.

19 COMMISSIONER TUCKER: I don't think that's
20 correct. If they had come here earlier -- it's not unusual
21 for us to settle boundary disputes. It happens probably
22 in almost every single hearing the Commission has.

23 MR. LEHRER-GRAWER: That's right, but --

24 COMMISSIONER TUCKER: And all of the developers,
25 whether they come in early or late, if our legal staff

1 determines that there is a valid or a potential dispute
2 that we may or may not win in court, then they have to
3 make a judgment, as attorneys, as to what course of action
4 to recommend to the Commission to take. Anyway, we don't
5 have to continue this.

6 MR. LEHRER-GRAWER: But the --

7 COMMISSIONER TUCKER: Has the city council
8 approved this? The development itself?

9 MR. LEHRER-GRAWER: The city council originally
10 approved the development without knowing that this property
11 had a public trust easement and without knowing that the
12 geological reports were fraudulent.

13 COMMISSIONER TUCKER: And then you brought those
14 things to the city council's attention?

15 MR. LEHRER-GRAWER: No. They had approved it.
16 We didn't know about them until after they approved the
17 development.

18 COMMISSIONER TUCKER: Are you in the process of
19 trying to get the city council's attention for this?

20 MR. LEHRER-GRAWER: The city council's position
21 is that, once they have approved it, they have no legal
22 recourse until some other body intervenes -- either a
23 court or some other agency -- and prevents the development.

24 COMMISSIONER TUCKER: Did the Coastal Commission
25 approve --

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1 MR. LEHRER-GRAWER: Yes. The Coastal Commission
2 also did not have before it the State Lands, did not know
3 about the geological falsity.

4 COMMISSIONER TUCKER: When did they take their
5 action?

6 MR. LEHRER-GRAWER: May the -- March 15th of
7 1990. And that was the hearing when this developer
8 specifically lied to Commissioner Glickfeld on the
9 Alquist-Priolo issues.

10 COMMISSIONER TUCKER: Okay. Thank you.

11 CHAIRMAN MC CARTHY: Ms. Devlin?

12 MS. DEVLIN: I'd like to present to you
13 petitions --

14 CHAIRMAN MC CARTHY: We have copies of them.

15 MS. DEVLIN: No, no. These are a lot more that
16 came in. You know, we only had one week. In one week,
17 we've gathered over 400 petitions from citizens of
18 Huntington Harbour.

19 And I'm up here today because, Mayor Green,
20 Peter Green of the City of Huntington Beach and
21 Mr. Uberaga, the City Manager, suggested I come up here,
22 because the staff made a report that they have discussed
23 this matter with the State Lands Commission, and they
24 talked to Mr. Green, and they approve of this.

25 Mr. Green was going to call the State Lands

1 Commission today and tell you that he has never contacted
2 this and he has never had any contact with the State
3 Lands Commission. He never said anything about it.

4 Mr. Uberaga also said he has had no contact
5 with the State Land: --

6 CHAIRMAN MC CARTHY: Why don't you sit down and
7 use the microphone, Ms. Devlin. Thank you.

8 MS. DEVLIN: Oh. No one has contacted him.
9 They also checked with Mike Adams of the Planning
10 Department. There's been no contact at all with the city
11 to find out how the city feels about this.

12 And I'm one of the plaintiffs in the case against
13 Coultray Development, and I'm here to present the petitions
14 to you. And even though we only had less than one week
15 to prepare for this day, we have -- you have refused to
16 postpone the meeting, and I've been able to gather 400
17 petitions against your releasing the land trust easement
18 on this property.

19 I don't know if you realize how upset the people
20 in the area are about this project. If you will give me
21 a few more weeks, I will get you probably 98 percent of the
22 people in the harbor to sign this petition. That's about
23 3,000 families. Even people who were on the side of the
24 developer in the beginning have signed our petition.

25 I have been overwhelmed by the support I have

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1 been getting from residents. And why would some of the
2 supporters change their minds? Because the developer has
3 been unscrupulous and deceitful all throughout the
4 planning of this project in regard to both State and
5 local issues.

6 The people are very easily -- extremely upset
7 and they're not going to forget what happened. They feel
8 that all of the developers in the State should obey the
9 laws of the State and the city. Previous supporters are
10 incensed of how the government is catering to an
11 unscrupulous developer who lied to the Coastal Commission
12 in my presence, who lied to the Department of Real
13 Estate, whose geologist lied about the age of a fossil
14 bed on the property, and who lied about the placement of
15 the earthquake fault.

16 He told the Coastal Commission in my presence
17 that he had a 71-foot setback from the earthquake line,
18 when the reality is the building is on top of the earthquake
19 line.

20 And now he is in a jam, because he has violated
21 a State law, a State law that he knew about before he
22 received his building permit on July 10th, 1990.

23 I sent you a letter in the mail dated -- showing
24 you that on May 10th, 1990, he was told about the land
25 trust easement. I don't know when he approached you

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1 about releasing the land trust easement, but on January
2 18, 1991, in the Huntington Beach News, I would like to
3 quote John Coultrup.

4 "It is all very clear that it is
5 not tideland, Coultrup said."

6 I don't know whether he approached you before January 19th,
7 or was this another lie?

8 We thought we were be in trial on this case in
9 three months. We filed suit before Coultrup had a building
10 permit. Coultrup delayed and delayed the suit, always
11 telling the city and the court he was continuing at his
12 own risk. It looked like his delaying tactics have enabled
13 him to complete his building, proving that the old adage --
14 justice delayed is justice denied.

15 When we first discovered from Les Grimes that
16 there was a land trust easement on this property, we
17 notified the city and Coultrup on May 10th, 1990. Les
18 Grimes told us that he had notified the Attorney General,
19 but that the State had no money to prosecute or pursue this
20 case. So we, the public, stepped up and hired a lawyer
21 to make the developer obey the laws of the State of
22 California, because the State had no money to do so.

23 Instead of congratulating us as good citizens,
24 you're going to pull the rug right out from under us.
25 Actually, it was former Mayor Tom Mays, who is now in the

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1 State Legislature, who called me after the city council
2 meeting on January, 1990 (sic), and told me to get a
3 lawyer and file suit.

4 He told me that I was right and that the city
5 was wrong in this instance. But the former city council
6 had made a colossal error in approving the 42 original
7 homes -- units. He repeated these comments to Ann Pepper,
8 a newspaper reporter for the Orange County Register. At
9 the time, neither Mayor Mays nor I knew that the original
10 42 permit was in error. The former council gave permission
11 to the original owner for a three-story building with no
12 more than six adjoining apartments on any one floor; six
13 units per floor times three equals 18. And 18 and 18 is
14 35 -- six.

15 We looked back at the tapes of the meeting
16 and it seems as if a typographical error was made stating
17 seven units per floor. And Mr. Mike Adams of the
18 Planning Department told the council that it was a
19 typographical error and should have been six instead of
20 seven, and that he would correct it. He never did.

21 Mr. Mays told me that he just could not support
22 me in the city council meeting because he was afraid 42
23 built units went up instead of 36, which was the new
24 CUP, that the people would be so angry that he allowed
25 42 units to go on the property. And Mr. Uberaga, who is the

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1 City Manager of the City of Huntington Beach, at a meeting
2 in March with our group and Mr. Adams of the Planning
3 Department at city hall, told Mr. Adams that this was a
4 new conditional use permit and asked him if a letter from
5 the State Lands Commission was required in this case.

6 Mr. Adams answered, yes. Mr. Uberaga then
7 asked Mr. Adams if he had such a letter. And Mr. Adams
8 said, no.

9 He went on and said it was not his job to get
10 the letter from the State Lands Commission. It was
11 Mr. Coultrup's Development's job (sic) to get the letter
12 and that was the responsibility of the Coastal Commission
13 to make sure that there was a letter as a member of the
14 State Lands Commission sits on the Coastal Commission.

15 And I have here a little thing from the
16 Coastal Commission. And when we went before the Coastal
17 Commission, they said that the city was -- had obeyed
18 the law on the CUP. Well, they haven't, because they
19 didn't have that letter.

20 And I assume that you might ask why we did not
21 get an injunction to stop the building. We tried to do
22 so again and again, without coming up with the bond. We
23 would have had to come up with a cash bond of \$5 million,
24 and we could not come up with that kind of money. We are
25 individual homeowners. We are not a rich development

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1 company or a title insurance company. If we had put up
2 our homes, I would be here in tears before you now, because
3 all of us would be losing our homes to Coultrup
4 Development removing one of our biggest causes in our
5 action.

6 My husband is retired, and if we had stopped --
7 (Thereupon, the court reporter
8 requested the witness to speak
9 slower for the sake of clarity.)

10 MS. DEVLIN: I'm nervous. I've never spoken
11 before. -- we'd be out in the cold and probably be on
12 welfare the rest of our lives.

13 And evidently, Chicago Title has been working
14 on this problem with you for quite a while. And you gave
15 them a long time to present their position. And the
16 citizens of California were just given one week to
17 prepare the contest -- to contest this decision.

18 You might be interested that I spoke to Jim Silva,
19 one of our council members, after our original court
20 date in February. And when I told him the results, he
21 said, "I can't believe that the court did not order a
22 new geological study." The city thought the court would
23 surely order a new study, because the previous one is so
24 flawed.

25 I told him what the judge said. The judge said

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1 he didn't even read the material we submitted to him,
2 because it was too complicated, and he was not going to
3 second-guess the city.

4 He did not even look at it.

5 Mr. Silva then -- I'm going to quote him --
6 said, "Damn." I told him the city council would order a --
7 could order a new study. And his answer was, "We can't.
8 We thought the court would do so. I can't believe they
9 didn't. The city has no money. If we order a new
10 geological study, Mr. Coultrup will sue the city. But if
11 the court orders the study, then Mr. Coultrup would sue
12 Action Geotech."

13 I then said, "Mr. Silva, you are letting a
14 building stay on an active branch of the Newport/Inglewood
15 fault with the State always having to help cities pay for
16 damage when a quake occurs."

17 He said his hands were tied. You asked me
18 before why the city council didn't do anything. The
19 city attorney, everytime we have presented things before
20 the city council, the city attorney would say, "I don't
21 want any actions on this, because this matter is in the
22 court. I don't want you to take any actions. Let the
23 court decide." That's the question (sic) that he said all
24 the time.

25 And we hired a lawyer and paid a lawyer on the

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1 advice of Mayor Tom Mays, who told me that I was right
2 and the city was wrong. And we also relied on the letter
3 from Les Grimes that we had a substantial issue. And,
4 gentlemen, I turned down \$150,000 offer one year ago
5 from Chicago Title for releasing the land trust
6 easement on this property.

7 We also had a separate offer up in the six
8 figures from Mr. Coultrup. But, you know, you're going
9 to take away from us -- honest citizens who obey the law,
10 went to the planning commission, went to the city council,
11 went to the Coastal Commission, never lied, never were
12 deceitful, never tried to delay the court case -- and
13 you want to give it to a man who has lied to the city,
14 lied to the Coastal Commission, lied to the Department of
15 Real Estate, and reward him because he has invested so
16 much money.

17 On the phone, someone from the State Lands
18 Commission said, they were very concerned about
19 Mr. Coultrup, because he had invested a lot of money. But,
20 as I told you, a reasonably intelligent man would try to
21 do something about it before he built the building. But he
22 was hoping that if the building went up, he could have done
23 all these things and no one would do anything about it.

24 And I think that's a wonderful story for him to
25 tell his children. Lie and cheat your way through life like

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1 I do, and then beg for mercy until we get it. Don't be
2 honest and be upright, and do everything that you try to
3 do the right way, because the government then will not be
4 on your side (sic).

5 And I also have a letter from the Huntington
6 Harbor Property Owners Association telling you -- well,
7 I thought there would be more members here, that --

8 CHAIRMAN MC CARTHY: That's all right. Why
9 don't you just sit down and we'll get it.

10 Have you concluded your --

11 MS. DEVLIN: Well, I just feel that we were
12 given, you know, really a very inadequate time to prepare,
13 you know, for this. And I don't know who told them that the
14 city would approve this, because the city doesn't approve
15 this. They would like it to go to court. And Mr. Uberaga
16 said he would send you a FAX, and Mr. Green would call
17 this morning.

18 And I'm requesting that the Commission deny the
19 proposed settlement as not in the public interest, because the
20 value of the State interest has not been established,
21 because the subject property should be maintained for
22 marine-related purposes, and because the developer has
23 violated and is continuing to violate a number of State
24 laws, and because the proposed settlement may adversely
25 affect the existing, ongoing litigation.

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1 I'm requesting, at a minimum, a continuance
2 of the proposed settlement agreement until a proper
3 appraisal is completed and in order to provide residents
4 with a reasonable time for preparing their opposition.

5 You read my petition. And when I took it
6 around, most of the residents were very unhappy that I
7 was willing even to have an appraisal. But I know that
8 the State of California is indeed in financial trouble,
9 and I don't know what the answer is. But it might be
10 interested that yesterday morning, we talked to Ray Logan,
11 who's president of Christiana, and we told him about this
12 60,000 offer.

13 We asked him if he thought it was a fair one,
14 and he just started laughing, and he never stopped
15 laughing and wouldn't answer the question.

16 So, you know, I just feel that there are laws
17 and that the laws should be the same for everyone. And
18 the City of Huntington Beach did require a new letter from
19 the State Lands Commission. And Mr. Coultrup just did not
20 bother to get it even though he knew he was supposed to
21 get it, because he was hoping he would get the building
22 completed, and then he'd say, "Oh, please, be sorry for
23 me." And, you know, and then you would -- he would be in
24 a jam, and you would bail him out.

25 And in reality, you're bailing out Chicago

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1 Title Insurance Company, because they're the ones who
2 are going to have to pay Mr. Coultrup what he paid for the
3 land if he doesn't get a clear title. And I think I
4 wrote -- and I don't know if you have my letter in front
5 of you, but I told you that Mr. Coultrup bought the land
6 for \$5 million some-odd dollars. And then he resold it
7 six months later to Destiny II, which is, I believe,
8 a Japanese investor holding company, and he made two
9 and a half million dollars profit on this land that was
10 a State Lands trust easement that never was supposed to
11 be any residence on, according to Mr. Grimes.

12 It was supposed to be used for a marina and for
13 recreation. And this was the open space for our homes --
14 my home is called Beach Club Development.

15 CHAIRMAN MC CARTHY: Thank you. Is there a
16 Kevin Stowe in the audience? There is an emergency call
17 for Mr. Kevin Stowe.

18 Are you Mr. Stowe?

19 UNIDENTIFIED PERSON IN AUDIENCE: No, but I'll
20 take it for him.

21 CHAIRMAN MC CARTHY: All right. This is from a
22 Frank Holmes.

23 Let me just sympathetically try to put into
24 focus what our function is here. This Commission is not
25 a city planning commission. We do not attempt to

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1 substitute our judgment for local government planning
2 decisions, unless they have clearly violated State law
3 or some provision of the State Constitution, which mandates
4 and defines our responsibilities to uphold the public
5 trust doctrine.

6 Now, some of the testimony I've just heard the
7 two of you give has bearing in that area. A good deal of
8 it does not. We are not an ombudsman agency that reviews
9 every conversation that was had by a mayor of Huntington
10 Beach or the city council, or other State agencies, unless
11 their actions somehow step on what our responsibilities
12 are.

13 So, I'm not making a judgment on the accuracy
14 or the inaccuracy of what you say happened at the local
15 government, nor are the other members of this Commission
16 here.

17 I just want you to understand. And we are not
18 narrowly construing what our responsibilities are.
19 We carry them out very aggressively -- public access to
20 the coast. And we have contentious boundary dispute
21 hearings all the time. And incidentally, I don't know
22 this developer. Never heard of this developer, have not
23 met anybody connected with this. And I doubt -- I think
24 it's safe to say that neither of these two Commissioners
25 have. This one nor the preceding one who sold to this one

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1 in interest. So, we can just put that out there.

2 Now, I want to ask our staff to say anything
3 relevant bearing upon our responsibilities, not narrowly
4 construing our responsibilities, but our responsibilities
5 in this matter based on the testimony just given by these
6 two witnesses. We might start with that \$150,000
7 appraisal. I don't know where that came from.

8 If you have anything in writing, you know, if
9 you have anything to verify that, that would be of
10 considerable relevance to me. You know, it doesn't do
11 us a lot of good --

12 MS. DEVLIN: (Interjecting) Mr. Grimes said
13 he spoke to Patricia Snyder this week, and she verified
14 it. I believe she's here today and she probably can
15 verify the conversation.

16 MR. LEHRER-GRAWER: That was an offer made to
17 me by the attorney for Chicago Title for \$150,000 just
18 on the State tidelands issue and the pending lawsuit.

19 CHAIRMAN MC CARTHY: Let's let our staff make
20 some remarks.

21 MR. FOSSUM: Mr. Chairman and Commissioners,
22 I'll try to address several issues.

23 The opponents of our agenda item have suggested
24 that the proposal that the staff has presented to the
25 Commission is a bad deal for the State and the community;

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1 that it was rushed and premature, and undercuts their
2 litigation.

3 The staff has analyzed the situation and believes
4 that it is a good deal for the State of California in
5 settlement of the claims of the State as to the potential
6 public trust easement in the subject area.

7 The community in the area, as was pointed out,
8 both the city and Coastal Commission have approved the
9 project -- whether based on claims of inaccuracy or not,
10 it has been approved.

11 The opponents were notified last week -- excuse
12 me -- they were notified the prior week through their
13 representative that was in contact with me that we would
14 be, in fact, presenting this to the Commission, and
15 were given the legal public notice that all members of the
16 public are given, both to their attorney and to the
17 representative of the opponents.

18 We do not believe this is premature. We've been
19 in contact with the property owners through their
20 attorneys and their title company for close to a year
21 on the question of whether or not there is a public trust
22 easement in the area. We have been involved in numerous
23 negotiations. They've submitted numerous documents which
24 they believe show that there is no public trust
25 easement. The staff has spent many weeks and months

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1 analyzing the status of the property, and have come to the
2 conclusion, after obtaining an appraisal from the staff
3 and evaluating the value of the easement, the potential
4 easement on the property, and have concluded that the
5 \$60,000 is equal to or greater than the State's claim on
6 this property.

7 I can't speak to the ongoing litigation as far
8 as undercutting it. We were led to believe that the
9 litigation that was filed was based on several things.
10 As pointed out to you, that litigation apparently claims
11 a lot of misleading statements or failures to comply with
12 certain local governmental regulations as well as
13 violation of the Alquist-Priolo Act.

14 And I'm lead recently to believe that they
15 added a public trust claim into their lawsuit. As to that
16 issue, presumably, our claim of a potential easement in
17 the property would be resolved by the settlement that's
18 presented to the Commission, but it wouldn't get to any
19 of the other issues that they have raised as to the
20 violation of other provisions of either the Coastal Act,
21 or the local planning laws, or the Alquist-Priolo Act.

22 Mr. Grawer raised the issue of this being a
23 sale. I'm sure you're all familiar, even if he is not,
24 with the Kapiloff Land Bank Act, which allows the
25 Commission to take money to acquire additional lands in

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1 exchange for the property interest that the State is
2 claiming in this property. And therefore, it is not a
3 sale. He was informed, I believe, of those sections, but
4 I'm not sure why he wasn't able to conclude that this is
5 not a sale.

6 The sequence of events of the last year in
7 1990, when the opponents filed their lawsuit, the Coastal
8 Commission had already taken its action as well as the
9 city council. According to the landowner and his
10 representatives, a purchase and sale of the property, based
11 upon our staff's representation to them in 1985 regarding
12 the subject property, that -- if I can quote from a
13 portion of our response letter -- was that, based on
14 information available to us at this time, the project does
15 not appear to involve State land; therefore, a permit
16 from the State Lands Commission will not be required."

17 We're informed by them that that was the letter
18 upon which they relied for this project, both the
19 purchase and development and proceeding with construction.

20 The statements that if they had contacted us
21 later -- at a later date, we may have had a different
22 statement, are apt. However, we do have a situation of a
23 great deal of money being spent on this development. This
24 property had maps going back a hundred years. There's
25 photographs from 1974. This property was developed

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1 basically in the 1960s -- bulkhead, filled, utilities
2 placed down. And for practical purposes, any existence
3 of tide or submerged lands post-1960, there's no
4 evidence of it. So, for the last 30 years, at least,
5 it's been filled and reclaimed.

6 Access -- we checked with the city on the access
7 issue, and we're assured and have copies of both the deed
8 and acceptance by the city of public access along the
9 waterfront of this property. The waterfront of this
10 property, which was solicited to have the trust cleared,
11 the staff does not recommend a public trust easement or
12 a claim of easement be terminated on that property,
13 since it is waterfront and provides public access.

14 The only area that we're proposing to settle
15 title to are the lots which involve the actual
16 condominiums that have been built and are for sale now.

17 The value of that property is estimated
18 somewhere around \$20 million. As you are well aware,
19 if the State Lands Commission were to exercise the
20 easement for a use, such as public access at this point,
21 we would be potentially liable for the value of the property
22 less the easement value. That is certainly one
23 consideration that the staff has put into the analysis of
24 the value of the easement, as well as prior correspondence,
25 and the actual factual information that led us to our

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1 claim in the first place.

2 I might point out lastly that Ms. Devlin, who
3 represents the Huntington Harbour Property Owners
4 Association, which consists of at least hundreds of
5 citizens of Huntington Harbour, is in a similar situation
6 as the Coultrup Company and Destiny II. That is, that
7 they are on filled tidelands on which a residence has been
8 constructed.

9 And I think, if they are asking the Commission
10 to take an action that would threaten the existing
11 residences that have been built on there, they should
12 consider the impact that kind of request would have on
13 those other hundreds of property owners as well as
14 Mrs. Devlin herself. Her house is built on property that
15 is within the tideland path.

16 CHAIRMAN MC CARTHY: Have you finished? Any
17 other staff comments on this?

18 MS. DEVLIN: Mr. Fossum, my -- a lot of the
19 homes in the Harbour are built on tideland. Actually,
20 mine is not. Mine is built on what was called Las
21 Pajos (phonetic). Mine was not built on tideland. But
22 the houses across the street are on tideland. However, the
23 people happen to be in the suit are not the people that
24 built on tideland property. Our property was there before,
25 because people who grew up there said they used to bicycle

1 by my house many years ago.

2 MR. FOSSUM: That kind of points to the existence
3 of the fact that the State has only claiming an easement
4 in this area. We're not saying that your property is
5 owned by the State or has an easement. But I'm --

6 MS. DEVLIN: I'm just --

7 MR. FOSSUM: Well, the USGS quad sheet, which
8 I've got here somewhere, does show, in fact, that the
9 house, which according to the assessor's records, would
10 show -- concludes your house is within a tideland path.
11 That's just one piece of evidence.

12 But it is a major concern, and if the State of
13 California owned this piece of property, it would be a very
14 valuable piece of property. However, our claim of an
15 easement in the property and the situation, factual
16 situation, the legal situation surrounding the piece of
17 property, the \$60,000 staff has determined is equal or
18 greater than the value of our easement claims.

19 MR. LEHRER-GRAWER: May I respond to Mr. Fossum?
20 I am not an expert on State tidelands that are in
21 California. And I reviewed what he referred me to and
22 what the Deputy State Attorney General referred me to. And
23 my reading did not reveal any authority for the sale for
24 cash for this property.

25 It reveals authority for land exchanges for

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1 land of equal value. It did not reveal that the
2 Kapiloff Land Bank also has -- provides the right to
3 sell the property. And I don't know what, you know, what
4 verbal semantics we're playing here, "This is not a sale."
5 By any definition, this is a straight sale of the State
6 interest for \$60,000.

7 Mr. Tucker, you brought up previously that
8 this is a settlement of a dispute, and that it's no
9 different whether it occurs before or after the
10 development. And I beg to differ with you. A prime
11 consideration, and it was alluded by Mr. Fossum, a
12 prime consideration by the staff in recommending \$60,000
13 is the fact that this development has occurred. This
14 development has occurred contrary in violation of your
15 trust, of the public trust easement. And this developer
16 has done it with knowledge that he was violating that
17 easement. He may have relied initially on the 1985 letter,
18 but in that same package, you have a letter by Mr. Grimes
19 of May 31 -- you have his letter that then says -- that
20 letter of May 31 supersedes all other letters.

21 You have the fact that this developer was on
22 notice at least of May 11th or May 12th that that letter
23 was coming, and that the State was asserting the public
24 trust easement one day after obtaining the grading permit,
25 no building permit had been issued. And this developer;

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1 nevertheless, proceeded with development.

2 Now, under the case that I think was alluded
3 to -- City of Long Beach versus Mansell (phonetic), where
4 the court lays down standards and conditions where the
5 State may be estopped from asserting the State easement
6 for parties that develop their property on State public
7 lands, one critical element that is there is that the
8 party that develops did not have notice that it was a
9 public trust easement. That element is totally missing
10 in this case.

11 This developer knew at least as of May 11th --
12 and there is a further complication that this developer
13 knew that he was under a legal obligation to obtain from
14 the State "tidelands" Commission a letter of determination
15 before proceeding with any development on that property.

16 And he specifically violated that. And it
17 doesn't take much to conclude that he did that knowing
18 that the 1985 letter was not ironclad, and the State
19 tidelands -- the staff has never -- has always taken the
20 position -- Mr. Grimes took the position that that 1985
21 letter was ambiguous at best. It did not specifically
22 state that the State did not have a public trust easement.

23 Mr. Fossum also indicated that if the State Lands
24 Commission exercises its easement, it would be liable
25 to this developer, that gets back to the same point. It

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1 would only be liable if this developer proceeded under
2 the standards of the California Supreme Court and was not --
3 was not knowledgeable of that public trust easement.

4 This is a shrewd, deceitful developer that
5 you're dealing with here and you're bailing him out.
6 And you're not doing a service to the public interest or
7 to the State, or the people of the State of California
8 if you support the position of the staff.

9 At a minimum, there are major issues open here
10 that should be resolved. I have not seen a determination
11 by the Attorney General's Office that this deal is valid.
12 I would like to see that. I think this Commission should
13 have that opinion before it proceeds.

14 MS. DEVLIN: Mr. McCarthy, I have written to
15 Dan Lungren, and sent him the copy of the same letter,
16 plus other information. And I did write to him about it.
17 I wrote to Governor Wilson about it, too.

18 CHAIRMAN MC CARTHY: The Attorney General's
19 Office is represented here, Ms. Devlin.

20 MS. DEVLIN: Oh, all right.

21 CHAIRMAN MC CARTHY: Do you have any further
22 points you want to make in response to counsel's?

23 MR. FOSSUM: Well, the only point I want to
24 clarify is the impression that the Commission would only
25 have to pay for the development if these recent improvements

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1 were constructed under lawful permits.

2 The Commission is required to pay for any lawful
3 improvements which would have included those improvements
4 that may exist on the property prior to the latest phase
5 of development, which could include such things as
6 bulkheads, utilities, roads, and other types of
7 improvements.

8 So, there would still be value to the property
9 that would have to be compensated. And to date, as far
10 as I'm aware, the Commission has never exercised the
11 trust and paid for improvements in one of our trust
12 exercises. They can if they want, but it would be very
13 difficult for the Commission presumably to come up
14 with the funds for that.

15 CHAIRMAN MC CARTHY: Commissioner Tucker.

16 COMMISSIONER TUCKER: My suggestion would be
17 that we consider putting this over for a very limited
18 period of time, depending on everyone's calendar, perhaps
19 as little as ten days, so that the appraisal can be made
20 available and other other information that could be
21 shared that is not confidential because of its legal
22 status, legal advice status with the parties here.

23 I think that there needs to be some understanding,
24 however, that our review is going to be -- I would expect
25 be very limited. And that is, if the appraisal is

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1 adequate, we're going to have to rely upon the advice
2 of our attorneys and the Attorney General's Office that
3 this is an appropriate legal action. And that's based upon
4 their evaluation of the merits of our case. And quite
5 frankly, we can't take legal advice from some other
6 attorney who doesn't owe an obligation to us that owes
7 an obligation to other people and is, I'm sure, very
8 adequately and forcibly representing the interest of those
9 people. But we have to rely upon our legal advice.
10 And that is that this is an appropriate action based upon
11 the merits of our claim, weighing of those merits, and
12 weighing the likelihood that we'll succeed or not succeed
13 if we were to go to trial and the risks of going to
14 trial.

15 If that's their conclusion, then it seems to
16 me that -- it's my opinion that the Commission is
17 certainly not in a position to second-guess that legal
18 advice, particularly when it comes both from our staff and
19 from the Attorney General.

20 So then, I think the focus would shift at our
21 next hearing, if the other Commissioners are agreeable to
22 that and it seems appropriate, to the adequacy of the
23 appraisal. And quite frankly, I don't think you're going
24 to be satisfied, when we finish that discussion -- and I
25 certainly don't want to prejudge it. I haven't seen the

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1 appraisal. But I really don't think your issue is whether
2 we get 60,000 or 600,000. I think your concerns are
3 other things. And I do think it's gratuitous, to say the least,
4 for members of the city council, for Tom Mays, and all
5 these other people to tell you to come here, and that
6 they don't have any way of rectifying this. I think
7 that's baloney. If they really felt that they were
8 misled by the action, certainly, they can join in your
9 lawsuit. The city attorney could be a part of this,
10 asking the court to overturn this action, and documenting
11 ways in which they were misled.

12 If that's the case, you know, it's the easiest
13 thing in the world to say, hey, take your problems to
14 somebody else and tell them all about it, because our
15 hands are tied.

16 And unfortunately, we get that from time to
17 time. And as Governor McCarthy's indicated, we're not
18 really in a position to weigh the merits and demerits
19 of local development projects. That's why we have a
20 Coastal Commission, and that's why we have a planning
21 commission, and that's we have a city council. And
22 certainly all those local officials are subject to,
23 hopefully, to input by local voters and property owners.
24 And I think if they're telling you, "Jeez, it's really too
25 bad. You know, we passed this, and we didn't quite know

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1 what we were doing, and take your case to somebody
2 else," I don't think that they're being straightforward
3 with you on exactly what's going on.

4 They're probably giving you an easy answer. I
5 think that would be pretty clear. But I think if they
6 honestly believe that they have been lied to, that the
7 process has been distorted to the extent that they would
8 have come out with a different opinion and a different
9 vote at that time, that they would be involved in this
10 lawsuit, if nothing else, filing affidavits, being an
11 amicus; if not, actually intervening as a party.

12 MS. DEVLIN: Mr. Tucker, Mr. Grimes said that the
13 State would be willing to join in amicus curiae in the
14 beginning of this suit. He told us that not at the --
15 when he told us that the State Attorney General said they
16 didn't have the money, he said that they wouldn't be able
17 to joint in on the actual suit, but if we appealed, they
18 would joint in as an amicus curiae --

19 CHAIRMAN MC CARTHY: Who said that?

20 MS. DEVLIN: Les Grimes told us that he had talked
21 to the Attorney General, and the Attorney General said
22 that he would join in --

23 CHAIRMAN MC CARTHY: Ms. Devlin, I'm sorry.
24 You're missing the Commissioner Tucker's comments.

25 MS. DEVLIN: No. I wanted to say something else

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1 to Commissioner Tucker. When he said --

2 CHAIRMAN MC CARTHY: We're not talking about
3 joining in a lawsuit here. His point was --

4 MS. DEVLIN: (Interjecting) I realize. I
5 realize. But when you said that, that made me feel that
6 you want to encourage --

7 CHAIRMAN MC CARTHY: Could we respond to the
8 point that he was making?

9 MS. DEVLIN: But I would like to make --
10 respond to what he said about the Coastal Commission.
11 When I found out about the laws of the Coastal
12 Commission, I did tell them, and they agreed that they
13 were lies. But they said, once they have given a coastal
14 permit, they have no way of rescinding it, even for
15 lies.

16 COMMISSIONER STANCELL: Mr. Chairman?

17 CHAIRMAN MC CARTHY: Commissioner Stancell.

18 COMMISSIONER STANCELL: Mr. Tucker, before we
19 leave the issue of your proposal, you mentioned Tom Hayes.
20 Is that the Tom Hayes that I'm familiar with?

21 COMMISSIONER TUCKER: I said Tom Mays.

22 CHAIRMAN MC CARTHY: Former mayor, now an
23 assemblyman.

24 MR. FOSSUM: Commissioners, the offer that was
25 made by Chicago Title on behalf of their clients, the

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1 deadline for acceptance is today basically. And we
2 haven't heard from them. So, if you are proposing to
3 extend it, I would like to at least give them an
4 opportunity to see whether the offer would be continued.

5 COMMISSIONER STANCELL: I would like to ask a
6 question.

7 CHAIRMAN MC CARTHY: Go ahead.

8 COMMISSIONER STANCELL: The appraisal that's
9 before us, was this appraisal derived through the
10 normal process of determination of the value of the
11 easement of properties that --

12 MR. FOSSUM: Yes. It was a land-use appraisal
13 that came to a value for the land itself. At that point,
14 it's reviewed by the staff based upon the other factual
15 evidence that we have and the law as applied to this
16 property. And then a value of what our claim is in the
17 property is concluded based upon that.

18 So, the appraisal is the value of the land
19 itself. So, we're talking in excess of \$6 million. So,
20 if you look at the appraisal, it says 6 million. But
21 that's not what the claim of the State in the public
22 easement in this property, based on what would happen,
23 we believe, in litigation, and the facts involved in the
24 property. And that's how the conclusion on the other
25 number is reached.

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1 COMMISSIONER STANCELL: So, it sounds like, even
2 with the delay, you'll probably come back with the same
3 conclusion.

4 MR. FOSSUM: I haven't seen any other evidence
5 that would change it.

6 COMMISSIONER STANCELL: So, I'm just wondering
7 whether it serves any purpose or not.

8 CHAIRMAN MC CARTHY: Well, the only thing that
9 unsettles me somewhat are the separate allegations from
10 the two opposition witnesses, and the number of 150,000
11 was used in a separate conversation regarding the
12 appraisal of this property. And I think I would like to
13 have that checked out by you.

14 May I just add my voice to Commissioner Tucker's
15 point about what you repeatedly, frequently said about
16 private comments made to you by local government
17 officials or former local government officials. The
18 difference between private sympathy and public support
19 is quite a wide chasm. And, if indeed, Huntington Beach
20 local elected officials or top appointed officials, some of
21 whom may be in this audience, really do support you, as
22 you indicated, as you characterized their comments, why
23 don't you have that reduced to writing? Why don't you have
24 them write this Commission immediately, and tell us that
25 they made a mistake and they're going to review the

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1 decision that they made? And they may join the lawsuit,
2 or whatever course of action it is to show support. It's
3 impossible for us at this stage to listen to your
4 characterizations. And I'm not for a moment suggesting
5 that they're inaccurate. But it's impossible for us to
6 give weight to that at this point in the absence of their
7 willingness to go on the public record with some kind of
8 different position that impacts the issue, the issue as you
9 laid this out to us.

10 I think we've heard this thing rather
11 thoroughly at this point. So, Commissioner Tucker is
12 proposing that we delay final action on this to share the
13 appraisal information. Go ahead.

14 Normally, you know, we don't go back and
15 forth on this. You chose not to take the time you had
16 in the first place. Now, do you want to come up and make
17 a brief comment? We'd be happy to hear from you.

18 MS. SNYDER: Very briefly. Two things.

19 CHAIRMAN MC CARTHY: Would you mind giving up
20 one of the microphones?

21 MS. SNYDER: Thank you. Patricia --

22 CHAIRMAN MC CARTHY: And would you restate your
23 name.

24 MS. SNYDER: Yes. Patricia Snyder on behalf of
25 Coultrup and Destiny II. First of all, with regard to

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1 what the city's position is, yesterday, I read their
2 respondent's brief. They are the respondent in the appeal.
3 And their respondent's brief fully supports all of their
4 prior actions, including the State tidelands issue.

5 So, I think in terms of city people taking a
6 different position, I've never heard it. And the city is
7 fully supporting this project.

8 Secondly, relative to the \$150,000 offer: Assuming
9 that offer was ever made, it has nothing to do with the
10 appraisal. What Mr. Lehrer-Grawer said was that -- excuse
11 me -- an offer of \$150,000 was made at the outset of the
12 litigation. There had been no appraisal made of the
13 property at that time.

14 Assuming that offer was made by my partner,
15 it was to resolve the litigation issue. It was before
16 any expert had been retained by Coultrup Development
17 Company to determine the tidelands trust issue, and it was
18 to resolve the public trust issue.

19 So, I don't think that \$150,000 fee -- \$150,000
20 offer had anything to do with the \$60,000 offer that
21 has been made to the State Lands Bank for settlement of
22 the public trust easement. Since that time, we've hired
23 an expert. We've gone to court. We've won every step of
24 the way. We've won at the city council. We've won at the
25 Coastal Commission. We've won at the trial court. We've

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1 won at the court of appeal when they were trying to have a
2 stay, and a stay of the building permits. We won that
3 issue, and also before the California Supreme Court.

4 CHAIRMAN MC CARTHY: Let me just ask a
5 question of either of the two opposition witnesses.

6 The \$150,000 figure, which I understood you each
7 to represent was mentioned in two separate conversations,
8 was that stated in the context of the appraisal of the
9 State's interest in this? I got your testimony. I'm now
10 asking the opposition.

11 MR. LEHRER-GRAWER: It was stated as a
12 settlement of the State tidelands issue in the litigation.
13 It was simply as a way of eliminating that issue from
14 the litigation.

15 There was no representation made that there had
16 been an assessment or an appraisal. It was a negotiation
17 to eliminate an issue that Chicago Title. That's the
18 only reason they're in the lawsuit because of that one
19 issue.

20 CHAIRMAN MC CARTHY: Was it an attempt to be an
21 overall settlement of the litigation?

22 MR. LEHRER-GRAWER: No, it was not an overall
23 settlement. It was just on that one issue.

24 CHAIRMAN MC CARTHY: Mr. Devlin, do you have a
25 different picture? Was the \$150,000 you referred to -- let

1 me clarify this.

2 Were you in a conversation in which you were a
3 participant where you were told about the \$150,000 figure?

4 MS. DEVLIN: Yes. I was told that, but it was
5 only to drop --

6 CHAIRMAN MC CARTHY: That didn't come from your
7 attorney now, that came --

8 MS. DEVLIN: No, no. That came from our
9 attorney.

10 CHAIRMAN MC CARTHY: And was that \$150,000
11 figure any reference to an appraisal of the value of the
12 State's interest, title interest?

13 MS. DEVLIN: No. It was many classes of action.
14 And Chicaco Title evidently is just representing them
15 because they guaranteed them clear title when they
16 purchased the property. And that was just -- was the --
17 for us to drop -- Chicago Title, I was told, wanted us to
18 drop the land trust part of our suit. Mr. Coultrup
19 offered us a second six-figure amount on his own, which
20 we turned down also, because we were not in this for
21 money. We were in this for the State of California.

22 CHAIRMAN MC CARTHY: So, you're substantively
23 in agreement on this.

24 MS. DEVLIN: Yes.

25 MR. LEHRER-GRAWER: One thing. Ms. Snyder

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1 referred to hiring an expert. There has been no expert
2 testimony provided on the appraisal of the State
3 easement or on --

4 CHAIRMAN MC CARTHY: I consider that irrelevant
5 on this point in any event.

6 MR. LEHRER-GRAWER: Mr. Chairman, I whole-
7 heartedly support the suggestion by Mr. Tucker for a
8 continuance so that we have an opportunity to review the
9 appraisal and have an opportunity to provide some
10 input on that issue.

11 CHAIRMAN MC CARTHY: All right. Commissioner
12 Tucker is still putting forward that suggestion. You're
13 talking about ten days to share the appraisal information?

14 COMMISSIONER TUCKER: We have to notice another
15 meeting, so that's why the ten days.

16 (Thereupon, the Commissioners caucused
17 among themselves off the record.)

18 EXECUTIVE OFFICER WARREN: Mr. Chairman?

19 CHAIRMAN MC CARTHY: Would this require another
20 Commission meeting if we did give the continuance?

21 MR. HIGHT: Yes, Mr. Chairman.

22 EXECUTIVE OFFICER WARREN: I would like to make
23 a couple of comments I think would have some bearing on
24 your deliberations. First off, our recommendation here
25 is based on the value of the claim, not on the appraised

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1 value. It was arrived at after careful discussions
2 with legal counsel, both for the Attorney General's
3 Office and our own staff.

4 It took into consideration the 1985
5 correspondence and other correspondence to which
6 reference has been made. At the time we were making that
7 consideration, the question was who was going to proceed
8 to litigation -- the developer, the State Lands
9 Commission. At that time, we had a proposal that we
10 accept \$10,000 in settlement of the claim. We weighed
11 the offer, and as a result of further negotiations
12 with the developer, arrived at the figure which is
13 presently before you, with the understanding that the
14 offer would be open only until today.

15 Admittedly, compared to other things, this is a
16 minimal amount, the difference between 10 and 60, I guess,
17 is not particularly consequential in terms of major sums.

18 But if the Commission is inclined to continue
19 it for further action, please keep in mind that our
20 recommendation is based not on appraised value, but value
21 of the merits of the claim and, two, that the offer may be
22 withdrawn if not accepted today.

23 CHAIRMAN MC CARTHY: Are there any other points,
24 Mr. Warren, as you listened to all of this, any other
25 points raised by the opposition witnesses --

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1 EXECUTIVE OFFICER WARREN: No, Mr. Chairman.
2 We spent considerable time on this. And we feel that the
3 recommendation to you is in the best interest of the
4 State.

5 CHAIRMAN MC CARTHY: Any further comment by
6 the Commissioners?

7 COMMISSIONER DAVIS: It's my understanding --

8 CHAIRMAN MC CARTHY: Commissioner Davis.

9 COMMISSIONER DAVIS: It's my understanding that
10 what Jim Tucker recommended sitting in my stead would be
11 a courtesy to the people who were very, very recently
12 apprised of the pending settlement and want to provide
13 some information to us that may or may not affect the
14 substantive resolution of this issue.

15 In the past, I've generally been sympathetic
16 to what I felt was a legitimate request for more time.
17 It does inconvenience the Commission. I understand
18 Stan's view in the matter. But I still think that these
19 issues shouldn't turn on the function of 10 to 15 days.
20 I recognize the developer may withdraw his offer. He has
21 all the leverage in this issue, and these people don't have
22 much.

23 CHAIRMAN MC CARTHY: What is it we are seeking
24 to find out? I haven't -- I'm trying to understand. I just
25 want the opposition witnesses to appreciate that if this

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1 were delayed to another Commission vote, the only issue
2 in front of us would be whether or not the appraisal
3 were inadequate. That's what Mr. Tucker has stated before
4 Commissioner Davis arrived.

5 So, there are no other points in front of us
6 we can understand.

7 MS. DEVLIN: Commissioner --

8 CHAIRMAN MC CARTHY: Just so you have an
9 understanding of this. That is the request Commissioner
10 Tucker made. We've heard all the evidence. So, the
11 matter's not going to be reopened at another Commission
12 hearing.

13 MS. DEVLIN: You had told me that if I could
14 get letters from any of these people, to bring them to
15 you.

16 CHAIRMAN MC CARTHY: I didn't say that. When did
17 I say that?

18 MS. DEVLIN: Yes, you did.

19 CHAIRMAN MC CARTHY: Oh, from city officials.

20 MS. DEVLIN: From the city officials. Yes. Or
21 the Coastal Commission, or something like that.

22 CHAIRMAN MC CARTHY: I was echoing Mr. Tucker's
23 point, that private expressions of sympathy by city
24 officials that voted against you or acted against you are not
25 useful here. If they have a position -- if they want to

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1 reverse their position with what limitations they have
2 now to do so, they have recourse to try to do that if they
3 choose to do that.

4 So that might be of some interest for us to
5 look at, at least, but only if it's got bearing upon what
6 our duties are in carrying out the public trust doctrine,
7 not on their land-use decisions at the local level.

8 I want to be very clear about that. We are not
9 an appellate division for the local city council. Okay?

10 Now, with that in mind,, I'm not -- you want to
11 postpone it? It's not ten days really; it's a month.
12 When's the next Commission hearing?

13 MR. HIGHT: August 12th.

14 CHAIRMAN MC CARTHY: So, it's postponed until
15 August 12th.

16 COMMISSIONER DAVIS: Unless you want to advance
17 that meeting.

18 CHAIRMAN MC CARTHY: For this single point?

19 COMMISSIONER DAVIS: No. Just have our normal
20 meeting earlier rather than August 12th.

21 CHAIRMAN MC CARTHY: I don't know. I suppose
22 there are lots of other issues being processed that are
23 going to come before this Commission at that time.

24 EXECUTIVE OFFICER WARREN: I do not know what
25 prejudice would be relieved by having an earlier meeting of

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1 the Commission than August 12th.

2 I don't think it would benefit any of the parties
3 to have a hearing in two weeks rather than four weeks.
4 So, that being the case, I'd like to stick to the August
5 12th date, because that what staff -- limited as it is
6 these days -- is the schedule with which we have been
7 working.

8 CHAIRMAN MC CARTHY: Any further point? I have
9 to admit I'm very close on this one. I'm not sure I see
10 the reason to go ahead trying to extend courtesies to
11 a citizens' group here. But this one's wearing thin.

12 All right. This matter is postponed until the
13 August 12th meeting solely to review the point of the
14 appraisal, unless there is some further evidence that
15 has not been adduced in this Commission meeting that
16 bears upon this Commission's public trust responsibilities.
17 Anything else to be said?

18 COMMISSIONER STANCELL Record my vote as no.

19 CHAIRMAN MC CARTHY: All right. Two to one.

20 EXECUTIVE OFFICER WARREN: Mr. Chairman, the
21 next item, 42, is the staff request for authority to
22 litigate for ejectment and damages for unauthorized
23 occupation of State-owned land in Imperial County. This is
24 at that site known as the "slabs." This is at the request
25 of the local board of supervisors, and we ask for approval.

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1 CHAIRMAN MC CARTHY: Any questions? Approved as
2 recommended.

3 EXECUTIVE OFFICER WARREN: Item 45, at the
4 request of the applicant, and it's concurred in by our
5 Land Management Division, will be postponed to the next
6 hearing.

7 CHAIRMAN MC CARTHY: Any questions? Approved as
8 recommended.

9 EXECUTIVE OFFICER WARREN: Item 47 is an
10 application for a proposed construction of a two-story
11 recreational structure and placement of bank protection
12 on Snodgrass Slough in Sacramento County. The staff
13 recommends denial of the application for the reasons set
14 forth in its report.

15 CHAIRMAN MC CARTHY: Any questions? Approved.
16 Next?

17 EXECUTIVE OFFICER WARREN: Item 48, Mr. Chairman,
18 is a staff recommendation of consent being given to the
19 City of Long Beach for assignment to Atlantic Richfield
20 Company, ultimately to Arco Long Beach of Mobil Oil
21 Corporation's interest in a field contractors' agreement
22 for the Long Beach Unit. The terms and conditions of the
23 assignment is set forth in the staff report, and we
24 recommend approval.

25 CHAIRMAN MC CARTHY: Okay. Any questions?

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1 Approved as recommended.

2 MR. FRANCHETTI: Mr. Chairman, I'm Michael
3 Franchetti, and may I speak for just a moment, please?

4 CHAIRMAN MC CARTHY: Yes, certainly.

5 MR. FRANCHETTI: Thank you, Mr. Chairman and
6 members. I'm representing Mobil Corporation. There have
7 been some suggested changes to the agreement which were
8 sent to the staff of the Commission relatively late
9 last week. It's my understanding that most of them are
10 greeable to the Commission. They're mainly procedural
11 matters and so on. And we'd like to just as a matter of
12 record to indicate that that agreement would reflect
13 those. Is that a fair statement?

14 MR. LUDLOW: Yes. I'm Rick Ludlow, senior staff
15 counsel of the Commission, Mr. Chairman. The exhibit to
16 the present calendar item will be amended to put in --
17 these are clarification phrases and clauses that Mr.
18 Franchetti's just referring to. They don't change the
19 meaning of the agreement or any of its terms and
20 conditions.

21 COMMISSIONER DAVIS: So they don't change your
22 recommendation.

23 MR. LUDLOW: They don't change the recommendation.

24 MR. FRANCHETTI: And there is one other item
25 that was reflected by Mobil dealing with exactly what

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1 obligations Mobil would have should there be a default
2 of all the parties, and Mobil have to continue to purchase
3 oil under this agreement.

4 We understand the staff is not in agreement with
5 that at this time. But -- and, again, is it fair to
6 say, though, that that is a matter that might be
7 negotiated in the future, assuming that contingency
8 should arise?

9 EXECUTIVE OFFICER WARREN: Well, that's their
10 statement, but it's not a statement that I understand
11 the circumstances to be.

12 MR. FRANCHETTI: Okay.

13 EXECUTIVE OFFICER WARREN: We thought that the
14 percentage --

15 (Thereupon, both conversants spoke
16 simultaneously.)

17 EXECUTIVE OFFICER WARREN: -- Mobil Oil following
18 this assignment were spelled out.

19 MR. FRANCHETTI: It's nothing to do with the
20 percentages. It has to do with whether or not Exxon was
21 to default.

22 MR. LUDLOW: Most favored nation clause.

23 MR. FRANCHETTI: That's something that we can
24 work on, assuming we need to. I just want to get this on
25 the record, so that --

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1 MR. LUDLOW: It can be raised at a later time.
2 That can be raised at a later time if Exxon ever comes
3 forward with a proposal of its own.

4 MR. HIGHT: At the current time, Mr. Chairman,
5 staff is not recommending a most favored nation's provision.
6 However, we are always happy to talk to Mr. Franchetti.
7 But we do not see the reason for recommending it.

8 CHAIRMAN MC CARTHY: Is that a satisfactory
9 answer?

10 MR. FRANCHETTI: That's fine. I just wanted to
11 be up front with everyone to let you know what our concerns
12 were.

13 CHAIRMAN MC CARTHY: All right.

14 MR. FRANCHETTI: Okay. Thank you very much.

15 CHAIRMAN MC CARTHY: Thank you very much,
16 Mr. Franchetti.

17 Any other comments on this? All right.
18 Approved as recommended.

19 EXECUTIVE OFFICER WARREN: That concludes the
20 calendar, Mr. Chairman. But we do have an executive
21 session.

22 CHAIRMAN MC CARTHY: Thank you very much, ladies
23 and gentlemen.

24 (Thereupon, the meeting was adjourned
25 at 10:32 a.m.)

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CERTIFICATE OF SHORTHAND REPORTER

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3 I, Nadine J. Parks, a shorthand reporter of the
4 State of California, hereby certify that I am a
5 disinterested person herein; that the foregoing meeting
6 of the State Lands Commission was reported by me in
7 shorthand writing, and that thereafter my shorthand
8 writing was transcribed into typewriting.

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

12 IN WITNESS WHEREOF, I have hereunto set my
13 hand this 19th day of July, 1991.

14
15 
16 Nadine J. Parks
17 Shorthand Reporter
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