

Department of Land Conservation and Development

1175 COURT STREET NE, SALEM, OREGON 97310-0590 PHONE (503) 373-0050

July 31, 1989

TO: Governor Goldschmidt

FROM: Susan Brody, Director, DLCD
Robert N. Bothman, Director, ODOT

SUBJECT: STATUS OF TRANSPORTATION PLANNING RULE

Susan Brody
Robert N. Bothman

We want to update you on the work that we are doing to develop a transportation planning rule.

The purpose of this rulemaking is to guide local governments and ODOT in applying the Goals to major improvement projects like the Westside Bypass. Our departments are committed to developing a rule to deal with major projects outside UGB's by January 1990. The Land Conservation and Development Commission, rather than LUBA and the Courts, should be deciding how the Goals apply to projects.

Some initial observations about the status of rulemaking are outlined below. A draft of DLCD's work program and a brief chronology of our work on this issue are attached.

Observations

- The scope of the proposed rule is a major issue. LCDC wants to deal comprehensively with the question of how transportation planning decisions affecting land use are made. The Commissioners were receptive to 1000 Friends concerns that a "highway only" rule would be biased toward highway solutions to transportation problems.
- Rulemaking is likely to be in two stages: The first stage, completed by January, will address major projects outside UGB's, like the Westside Bypass. The second stage, to follow, will address preparation of transportation plans under the requirements of Goal 12 (Transportation Needs) on a more comprehensive basis. This second step will involve a broader range of projects and linkages between land use and transportation decision-making. Both efforts will be coordinated with the development of ODOT's state agency coordination program.

July 31, 1989

- ODOT will provide additional staff and resources to help DLCD craft the rule. One of our major purposes is to identify measures which would mitigate the land use effects of road improvements outside UGB's. The range of possible mitigative measures is quite broad:

- acquisition of a very wide right of way (i.e. 1/4 mile or more);
- purchasing development rights on nearby lands;
- restricting the timing or location of interchange construction;
- requiring completion of other major transportation improvements within the UGB prior to construction outside the UGB.

It might be useful for you to discuss the status of LCDC's rulemaking on transportation project planning with Dennis Karnopp and Mike Hollern in September. If you would like to have such a meeting please let us know.

<bcort>

Attachments

cc: Gail Achterman
Fred Miller

CHRONOLOGY OF TRANSPORTATION AND LAND USE COORDINATION

- June 1987 ODOT completes its Highway Compatibility Guidelines publication which describes how highway improvement planning relates to state land use procedures and requirements. The publication provides a basis for the present discussion of transportation issues.
- August 1988 Transportation Commission adopts Access Oregon designation for 15 highways including three Portland routes -- Westside Bypass, Sunrise Corridor and the Mt. Hood Parkway.
- March-May 1989 ODOT, DLCD, FHWA, Metro, Washington County and 1000 Friends begin discussion of proposal to refine land use/highway planning process for new metropolitan highway projects.
- May 5 LUBA remands Washington County's adoption of its Transportation Plan Update (TPU). (1000 Friends v. Washington County.) LUBA says the plan must clearly say whether the County is making a decision on the Westside Bypass and adopt findings which explain its position. If the decision is to allow the bypass findings must address the Goals.
- May 15 Transportation Commission receives a two-hour briefing on the highway planning/land use planning relationship. Staff from ODOT, Metro, DLCD, Washington County, 1000 Friends and others participate.
- June 21 LUBA remands appeal on Forest Grove-US 26 connector to Washington County. (Washington County Farm Bureau v. Washington County.) However, LUBA finds that certain road improvements which are allowed by statute in EFU zones can be permitted, notwithstanding Goal 11 and 14 requirements which require an exception to allow urban uses and facilities in rural areas.
- June 30 DLCD distributes draft work program for preparation of an administrative rule to provide guidance on how statewide planning goals apply to highway improvement planning. Calls for rule adoption by January 1990.
- July 20-21 LCDC meets in Bend. Mike Hollern comments to LCDC. Also, ODOT, Metro, Washington County, 1000 Friends and DLCD staff brief LCDC on highway improvement planning issues and comment on DLCD's proposed work program.
- September 20 LCDC meeting will decide scope of rulemaking.

Work Program for Development of a Highway Planning Rule

Department of Land Conservation and Development
June 30, 1989

OBJECTIVES

- To integrate the land use planning and highway planning processes to provide timely decisions on proposed highway improvement projects.

Integration means specifying the sequence in which relevant highway and land use decisions should be made.

This includes a mechanism to assist ODOT in determining consistency with the acknowledged comprehensive plan as well as to address projects not currently provided for in the acknowledged plan.

- To provide guidance on how individual Statewide Planning Goals apply to highway improvement projects which are not currently provided for in local comprehensive plans.

Key issue is providing guidance on how Goals 11, 12 and 14 affect siting of highway improvements outside of urban growth boundaries.

- Adoption of a rule by January 1990.

PRINCIPLES

The following principles are suggested as a general guide to preparation of an administrative rule.

1. Transportation is an important part of urban infrastructure and a critical element in implementing acknowledged comprehensive plans. Rulemaking is necessary to clarify land use planning requirements for several major highway improvement projects now being considered.
2. Transportation improvements should support the land use designations in acknowledged comprehensive plans and overall land use planning objectives considering statewide, regional and local transportation needs.
3. Land use planning requirements should be integrated into the existing highway planning process. This can be accomplished by clearly identifying land use planning prerequisites to critical steps in the highway planning process.
4. Individual land use planning requirements will need to be addressed at different points in the highway project planning process. Early steps in the process should address broad issues of project need and alternative modes of

transportation. Later steps in the process should be confined to design-related issues and should not reconsider broader decisions that have already been made about project need or mode.

PRODUCT

An administrative rule which specifies when and how Statewide Planning Goals apply to planning decisions for highway improvement projects.

TASKS

1. Identify highway and roadway improvement projects which are likely to affect land use.

This should focus subsequent work on Class I and III modernization projects including:

- new facilities
- new interchanges
- adding at least one travel lane
- auxiliary lanes that require major right-of-way acquisition or change in access
- significant alignment changes

This analysis should be the basis for deciding what projects categorically do not affect land use.

Responsibility: ODOT and DLCD.

2. Identify key decision-making steps in the highway improvement project planning process.

Describe key decision-making points in the highway siting process. Identify which of these decisions affect land use. (Projects are approved through a series of increasingly specific decisions with increasingly specific effects. Land use decisions may occur at more than one decision-making step.)

Responsibility: ODOT and DLCD. Much of this work has already been done in the Highway Compatibility Guidelines and other work.

3. Identify Statewide Planning Goal requirements which affect the siting of highway improvement projects.

Identify Statewide Planning Goals potentially applicable to the siting of highway projects.

- Review relevant LUBA and Court opinions
- Review BGRS/ODOT Highway Compatibility Guidelines
- Review previous highway projects
- Staff discussion by ODOT/DLCD to review and refine

Relevant Goals include: 3, 4, 5, 7, 11, 12, 14, 15, 16, 17, and 18. (Goals which directly affect permissible uses of land or design requirements for highways).

Group requirements by type of effect on highway project: Some regulate permissibility (3, 4, 11, 14) while others will primarily affect facility design (5, 7, 15, 16, 17, 18.)

Responsibility: DLCD.

4. Identify when (i.e. at which step) in the highway improvement project planning process individual goal requirements should be applied.

Specify points in the highway project planning process which require land use decisions by either ODOT or the affected local government.

Focus will be on applicable Goals to answer the following:

- Define whether highway improvement projects are urban or rural. (This will discuss specific characteristics or effects of projects which make them urban or rural in nature, rather than treating projects in broad categories.)
- Determine whether or not exceptions or other steps are required to locate urban highway facilities in rural areas.
- If exceptions are required, provide guidance to ODOT and local governments on how exceptions tests may be satisfied.

This may be in matrix form. (Goal-by-project type or Project-type by goal.)

This should identify the earliest point at which applicable Goal requirements should be considered.

Responsibility: DLCD with assistance from ODOT.

5. Identify design or mitigation measures necessary to make highway improvement projects consistent with Goal requirements.

Review past highway improvement projects and experience in other states to identify effective design and mitigation measures.

Review applicable goal requirements to identify mitigation or design measures appropriate for different types of highway improvement projects.

Specify under what conditions a project would be acceptable, subject to subsequent decisions about design or construction which would avoid potential adverse effects.

Responsibility: DLCD with research assistance from ODOT.

6. Determine scope of rulemaking process.

Is rulemaking the appropriate response to the problem?
(Are Goal amendments or other changes, such as changes to ODOT rules, more appropriate to solve the problem?)

Identify possible alternative rule approaches.

Determine whether rulemaking should be accomplished in two phases to resolve critical issues by January 1990. One alternative is to focus initial rulemaking on siting of new highways near major urban areas.

Responsibility: DLCD with assistance from ODOT.

7. Prepare draft administrative rule.

List types of projects which do not have land use impacts and which can be exempt from rule.

List applicable Goal requirements. Describe how specific Goal requirements apply to each type of highway improvement projects with land use impacts. Specify when Goal requirements are to be applied.

As appropriate, provide guidance on the taking of exceptions and appropriate mitigation measures.

Provide direction for local governments on consideration of ODOT plans (i.e. the State Highway Plan, Access Control Plan, etc.) during periodic plan review and coordination with ODOT.

Responsibility: DLCD with assistance from ODOT.

PROPOSED SCHEDULE

July 20-21 Commission reviews work program.

August/September DLCDC meets with interested groups
 DLCDC/ODOT prepare analysis; per tasks 1-5.

September DLCDC mails out possible alternatives for
 scope of rulemaking.

September 20 Status report to LCDC. Commission provides
 guidance on scope of rulemaking based on
 staff analysis to date.

October 26 Draft rule reviewed by Commission.

Mid-November DLCDC mails draft rule to public.

December 7 Comments and recommendations on draft rule
 to Commission. Commission guidance.

Mid-December DLCDC mails revised draft rule to public.

January Revised rule to Commission for adoption.

Proposed Schedule for Highway Planning Rule

TASK	Jul	Aug	Sep	Oct	Nov	Dec	Jan
1. Identify highway projects which affect land use	XXXXXXX						
2. Identify key highway decision-making steps	XXXXXXXXXX						
3. Identify Goals which affect highway siting	XXXXXXXXXX						
4. Identify when Goals apply to highway siting decisions		XXXXXXXXXX					
5. Specify measures which make highway projects meet goals		XXXXXXXXXX					
6. Determine scope of rule			XXXX				
7. Draft and review rule				XXXXXXXXXXXXXXXXXX			
8. Commission Adoption							XX

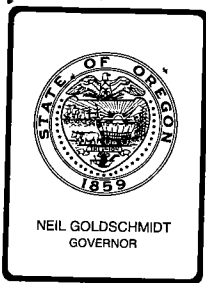
PUBLIC INVOLVEMENT

By distributing this work program, the Department is encouraging comment from interested groups and individuals. Department staff will actively solicit input on items 1-6 in the work program during August and September. During this time the Department invites written comments and suggestions. The Department staff will also be available to meet with interested parties to discuss suggestions on these topics.

DLCD will provide drafts of this work program and other products to anyone requesting a copy approximately one week prior to each Commission meeting. The public will have a formal opportunity to comment to the Commission at the September, October, December and January Commission meetings.

Formation of a technical advisory committee to assist the Department is not anticipated at this time.

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Department of Land Conservation and Development

1175 COURT STREET NE, SALEM, OREGON 97310-0590 PHONE (503) 373-0050

July 28, 1989

TO: Governor Neil Goldschmidt
FROM: Susan Brody, Director *Susan Brody*
SUBJECT: MOBILE HOME OWNER PILOT PROJECT

Our department has developed the following proposal based on your interest in a tenant-owned mobile home park in Jackson County. I am available to meet with you and discuss this concept further.

Objectives

1. Establish projects which combine:
 - (a) state financial and technical start-up assistance;
 - (b) county and city interests in meeting local housing needs; and
 - (c) mobile home owners desire for control over their housing costs and park operation.
2. Develop projects where mobile home owners would share ownership of the project.
3. Obtain city and county assistance in identifying target areas for project development.

Project Proposal

Develop mobile home parks in two or three locations within the state where mobile home owners would share ownership in the park. Another option is to facilitate the development of mobile home subdivisions by the public or private sector.

Preliminary Local Interest

Two counties are known to have an interest in the concept. Other counties and cities could be contacted to determine additional interest and capacity to proceed.

Linn County--Linn County Commissioner Richard Stach is a member of the local housing authority. He indicates that a developer in the City of Halsey owns 10 acres for which he has obtained conditional use approval to develop a 14-unit mobile home park. The developer, as well as the housing authority, is interested in constructing a mobile home park which will ultimately be owned by the tenants. The developer needs technical assistance to carry out the project.

Jackson County--The only areas in Jackson County which contain adequate serviced areas, including sufficient sewage line capacity, are within the urban boundaries or city limits of Central Point, Medford, or Phoenix/Talent. Medford allows mobile home parks in all residential zones on lots of three acres or more. County Commissioner Jeff Golden believes a project which starts relatively small (i.e., 50-units) and is developed in phases would be a prudent way to proceed. His locational preference would be inside a UGB.

Existing Projects

We know of two examples where this concept has been implemented. We can conduct further research to identify other areas that have tried this approach.

King County, Washington--The county has developed a mobile home park which is incrementally purchased by tenants as they move in. The county is also in the planning stages for a second development of a similar nature.

Lane County, Oregon--Greentrees Mobilehome Park in Florence is a subdivision which is tenant owned.

Site Selection

The following steps and responsibilities are necessary for site selection.

1. **Need Assessment**--Target cities and counties should examine local mobile home park vacancy rates, rent levels, and community and tenant interest within their jurisdiction and identify areas which would benefit most from a pilot project. Both DLCD and the state Housing Agency could assist in this assessment.
2. **Infrastructure Support**--Cities and counties should identify areas where sewer and water service as well as other services (such as schools, shopping, etc.) are available.
3. **Land Availability**--For the construction of new parks, cities and counties should identify the vacant lands suitable for development which are planned and zoned for mobile home

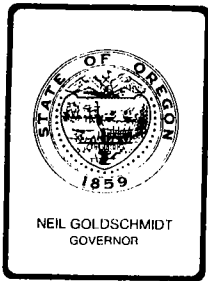
parcs, subdivisions, or planned unit developments. This is consistent with HB 3277 which requires local governments to report to the Housing Agency ombudsman on supply of land available for mobile home parks. If insufficient lands are available, DLCD should assist counties and cities in identifying areas appropriate for comprehensive plan and zoning designation change.

Project Implementation Steps

1. Identify potential state funding sources:
 - (a) Housing Agency multifamily loan program;
 - (b) EDD lottery funds;
 - (c) Other.
2. Assess private sector support and concerns about the proposal.
3. Confirm city/county interest and appropriate role in acquiring sites.
4. Acquire target properties in two or three locations within the state.
5. Provide technical assistance to local governments and mobile home tenants. DLCD and the Housing Agency should cooperate in providing assistance. HB 3280 defines the Housing Agency's role in tenant park ownership..

SB:GW/sp
<wp>

cc: Gail Achterman
Fred Miller



Division of State Lands

1600 STATE STREET, SALEM, OREGON 97310 PHONE (503) 378-3805

*File
Land
Board*

OREGON STATE
LAND BOARD

NEIL GOLDSCHMIDT
Governor

BARBARA ROBERTS
Secretary of State

ANTHONY MEEKER
State Treasurer

March 9, 1989

NOTICE

The Oregon State Land Board will meet in regular session Tuesday, March 21, 1989, at 10:00 a.m. The meeting will be held in the 2nd Floor Conference Room at the Oregon Department of Veterans' Affairs, 700 Summer Street NE, in Salem. Issues to be discussed are listed as follows:

TENTATIVE AGENDA

1. Request for authorization to initiate formal rulemaking procedures for abandoned and escheated property program.
2. Oral update on Tongue Point leasing process, including introduction of Larry Williams, Williams-Kuebelbeck, and Associates, Inc., consultant, and possible executive session to discuss legal advice.
3. Oral briefing on legislative matters.
4. Consent Agenda:
 - a. Request by Multnomah County for a 200-foot perpetual easement on and across the Willamette River in the City of Portland at Broadway Bridge.
 - b. Approval of January 24, and January 27, 1989, minutes.
5. Report on semi-annual distribution of the Common School Fund earnings for the period ending December 31, 1988. (Information only, no action required.)
6. Oral briefing on progress of new building construction.
7. Other

*File
Land Board*

Supplemental Statement of Reasons
in the matter of
Eastport Equities, Inc. Lease No. ML- 0410

On January 24, 1989 the Land Board considered a request by Eastport Equities, Inc. urging the Land Board to take two actions: (1) rescind an Order adopted by the Land Board in 1984 which prohibits the Division of State Lands from considering an extension of Eastport's lease; and (2) enter into immediate negotiations for a lease extension. A contested case hearing had been held on the matter and the Board adopted the Hearings Officer's findings of fact and conclusions of law.

This statement is submitted to clarify for the record my reasons for voting against the motion the Board adopted in this proceeding. The Board voted to deny Eastport's request to remove the 1984 prohibition on extending the lease and voted to defer any reopening of lease negotiations until the lease is up for review in 1995 or until the Lower Willamette River Management Plan revision is completed. I supported the staff recommendation to remove the prohibition on lease extension.

I am very concerned about the violation of ORS 192.640, our Open Meetings Law, that occurred in 1984. The Hearings Officer found in this case that a violation had occurred because adequate notice of the Land Board meeting was not provided to houseboat owners moored at the Watery Lane moorage, even though the action the Land Board took affected them. They had no notice so they did not appear at the meeting. Based on statements of two of the three Land Board members then serving, it appears that such testimony would have influenced their decision.

Clearly the Land Board has the power to refuse to remove the restriction on renewal of this lease. Technically, the lack of proper notice does not void the earlier Board action and those affected by the lack of notice did not perfect their claims procedurally. We had the opportunity here to correct the unfairness of the earlier action. The Board did not have to do so, but I believe we should have.

The earlier Land Board did not have all the facts before them. We do. I believe the Land Board has an obligation to correct past wrongs when they are identified, particularly in situations where important laws controlling how government is supposed to conduct its affairs have been violated.

Failing to correct the past mistake here is also troubling when no one would be damaged by removing the restriction. The neighboring landowners still face the prospect of reopening the issue in 1995 by a future Land Board considering lease renewal and in the revision of the Lower Willamette River Management Plan. The city, which was a party to the 1984 proceeding, actually supports rebuilding of the moorage and made extensive findings to support its conclusion that the moorage is in the public interest. The state would not be damaged either, at least not its interest in the leased lands.

In conclusion, I believe that the procedural error in 1984 was substantial enough to demand correction now by removing the restriction on lease renewal. I would go even further and immediately negotiate a lease extension, but removing the restriction would at least put Eastport in the same position as other lessees on the Willamette River and correct the earlier error. I believe that this is necessary in order to assure fairness in Land Board proceedings, to assure that government is willing to correct its own mistakes even if they technically do not have to do so. It is for this reason that I voted no on the motion before the Board.

O'DONNELL, RAMIS, ELLIOTT & CREW

ATTORNEYS AT LAW

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JEFF BACHRACH
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MARK P. O'DONNELL
TIMOTHY V. RAMIS
WILLIAM J. STALNAKER

MICHAEL REDDEN
OF COUNSEL

*ALSO ADMITTED TO PRACTICE
IN STATE OF WASHINGTON

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Governor's Office

February 8, 1989

VIA FAX AND MAIL

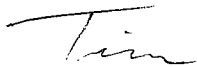
Ms. Gail Achterman
Governor's Office
254 State Capitol
Salem, OR 97310

RE: Application of Eastport Equities

Dear Gail:

Enclosed please find a draft statement requested by the Governor.
If you have questions, please call me at 222-4402.

Very truly yours,



Timothy V. Ramis
TVR/mch

STATEMENT REGARDING THE APPLICATION OF EASTPORT EQUITIES

This statement is submitted in order that the record may clearly reflect my position on the failure of the Land Board to act in the interests of the public when an obvious violation of the Open Meetings Law has been discovered.

Arno Denecke conducted a contested proceeding and found a critical procedural defect in the 1984 Land Board proceeding which imposed a limitation on the renewal of the Watery Lane lease. Our Hearings Officer found, as did this Land Board, that the 1984 hearing was conducted without providing adequate notice under the Oregon statutes to certain critically affected individuals. These individuals included the owners of houseboats and other improvements whose neighborhood was phased out during the hearing.

Despite our knowledge that the law was broken, the present Land Board has willfully refused to remedy the error.

I do not join that decision and I urge the Land Board to reverse its decision based upon the following:

- (1) The Land Board should not hide behind the limited judicial remedy provided by the statute when an obvious notice defect is discovered. There is no limitation in the law preventing us from providing an equitable remedy to persons who have been damaged by the failure of the

Land Board to follow the state law on open meetings. In fact, appeal to the Land Board is the only nonjudicial remedy available. We have now willfully refused to grant that remedy to persons who have been harmed.

- (2) The defect in this case was not merely technical. It affected the outcome of the decision. In fact, we have statements before us from two of the three members of the 1984 Land Board indicating that the outcome would have been different had they known the true facts.

That Land Board was informed that the action it was taking was in the best interests of the houseboat owners. They were advised, incorrectly, that there was no need to hear from the houseboat owners because they supported the phase out of the moorage.

If proper notice had been given, the houseboat owners could have appeared to let the Land Board know that loss of their neighborhood was a disaster they were seeking to avoid. Based upon the information we now have, it is obvious that this kind of testimony would have affected the outcome of the hearing.

- (3) The Land Board should not force citizens of the state to seek judicial remedies for problems which we can solve easily. Our decision forces affected property owners to

seek a judicial remedy for a mistake which we have admitted. It is unjust to force affected citizens to spend their own resources to require this body to follow the law.

We have the issue before us. We know that the hearing procedure was defective. We should not hide behind the limited statutory remedy. Instead, we should act forthrightly to eliminate the 1984 condition because it directly affected the interests of people whose right to notice was denied.

I thank the Land Board for this opportunity to include my comments in the record of the proceeding.

1 AGENDA ITEM NO. 3

2 DIRECTOR MARTHA PAGEL: Members of the Board, Item
3 Number 3, is a request by Eastport Equities, Inc., apparently
4 a lessee of a houseboat moorage from the state. The lease is
5 due to expire in 1995 and is the subject of a 1984 Land Board
6 Order that prohibits the Division of State Lands from
7 considering an extension of that lease. We received a request
8 last summer from the company that we enter into immediate
9 negotiations for a lease extension and that the Board rescind
10 its previous Order barring that lease extension.

11 When the Board heard the matter in July of this year,
12 you directed us to go forward with a contested case hearing to
13 establish the facts in the matter. If you'll recall when you
14 heard the matter in July, there were a number of people present
15 to offer testimony and the facts were in question and we went
16 forward with the contested case proceeding. You have before
17 you the Hearing Officers' Proposed Final Order, which deals with
18 findings of fact and conclusion of law. So one action that
19 you're requested to make today is to approve or reject that
20 Hearings Officer's report with respect to the facts and the
21 conclusions of law.

22 The next step that you're asked to deal with is the
23 policy question of whether the lease should be extended and
24 whether the previous Land Board action should be changed. I
25 should point out that there is an error in the agenda item that

1 was presented to you by my omission. We failed to include in
2 the alternatives an alternative that is simply to deny the
3 request. We have several variations of action that the Board
4 might take, including approve the request, but we should add a
5 fifth alternative, which is to deny the request.

6 GOVERNOR NEIL GOLDSCHMIDT: Which one is approve?

7 DIRECTOR MARTHA PAGEL: Approve would be number one.

8 GOVERNOR NEIL GOLDSCHMIDT: Okay. And so number five
9 is deny?

10 DIRECTOR MARTHA PAGEL: Deny, correct.

11 GOVERNOR NEIL GOLDSCHMIDT: Okay.

12 SECRETARY OF STATE BARBARA ROBERTS: Martha, number
13 five alternative is to deny both the option of keeping the
14 prohibition in place and the option about extending the lease?

15 DIRECTOR MARTHA PAGEL: Correct.

16 GOVERNOR NEIL GOLDSCHMIDT: I want to turn to our
17 legal counsel here to make sure that all the work that's been
18 done to date isn't fouled up by the management of the presiding
19 officer. It is my impression that you would like us to break
20 this discussion into two parts and take action first on the
21 Hearings Officer's report and then take action on the policy
22 decision. And we've had whatever briefing you two wish to give
23 us on what has gone before, I presume, is appropriate at this
24 point?

25 DIRECTOR MARTHA PAGEL: I will refer you to the

1 written briefing materials that we've provided. And what I'd
2 like to do is talk about the process that has occurred so far.
3 And that is that a contested case hearing was held. The
4 Hearing Officer was Arno Denecke, Former Supreme Court Justice,
5 who prepared findings based on the information that he received
6 at the hearing. A Proposed Order was circulated among the
7 parties. There were exceptions filed to the Proposed Order and
8 a revised Proposed Order or Final Order was submitted then for
9 the Board's consideration. The Division of State Lands
10 participated in the hearing in a limited party status to make
11 sure that the record was supplemented with all of our files on
12 the matter and to help frame the legal issues that we sought
13 the Hearings Officer's comment on. Janet, do you have anything
14 to add?

15 DEPUTY DIRECTOR JANET NEUMAN: Nothing. The amended
16 findings, as you know, are attached as Appendix A to the
17 report.

18 GOVERNOR NEIL GOLDSCHMIDT: Anne, you want to
19 suggest what we do next?

20 ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER: Governor,
21 I believe it would be both my and the staff's recommendation
22 that unless you have questions for staff at this time that you
23 allot an opportunity for the parties to comment if they wish,
24 on--

25 GOVERNOR NEIL GOLDSCHMIDT: And is their comment
directed to the Board--

1 ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER: That's--

2 GOVERNOR NEIL GOLDSCHMIDT: The suggestion that the
3 Board adopt or--

4 ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER: That's
5 correct.

6 GOVERNOR NEIL GOLDSCHMIDT: Someplace regret or modify
7 these findings?

8 ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER: That's
9 correct. Limited to the issues set out in the Hearing
10 Officer's conclusions here.

11 GOVERNOR NEIL GOLDSCHMIDT: And what ability does the
12 Board have to fuss with these? Accept all of it, regret all of
13 it, anything in between?

14 ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER: I think
15 you have the opportunity to take something in between, although
16 depending on the complexity, we might not want to complete
17 revising it today.

18 GOVERNOR NEIL GOLDSCHMIDT: Let me be specific.

19 ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER: Sure.

20 GOVERNOR NEIL GOLDSCHMIDT: I think that it is not my
21 intention -- I want to listen to the testimony -- but spend a
22 lot of time quarreling with the findings of fact, which is what
23 we sent the Hearings Officer out to do. But there are proposed
24 conclusions of law here as well, which obviously may get some
25 attention. And I'm trying to understand whether the Board is

1 capable of saying it will accept the findings of fact and then
2 take the findings that follow that one at a time or--

3 ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER: If I
4 understand the question correctly, Governor.

5 GOVERNOR NEIL GOLDSCHMIDT: I'm not sure I understood
6 it.

7 ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER: Some of
8 the conclusions of law that are set out in this Proposed Order
9 are dependent on some of the findings. If you were to find
10 certain of the findings defective, we might have to examine,
11 then, the conclusions of law that rely on those findings. I
12 think until we have some feel for exactly what the Board's
13 response to testimony is, it's hard to be too specific. But it
14 is within your discretion today, obviously, to consider what has
15 been proposed by the Hearing Officer, to listen to the parties
16 and the staff and to make your own decision on any or all
17 points in that order.

18 GOVERNOR NEIL GOLDSCHMIDT: Well, we are prepared to
19 hear from both parties. I would like at the outset to assume
20 that both parties in this case means the applicant, that is,
21 the proponent of an extension who, I assume, is represented by
22 Mr. Ramis from the note I have here, and do you intend to
23 appear on the applicant's behalf?

24 MR. TIMOTHY RAMIS: Yes.

25 GOVERNOR NEIL GOLDSCHMIDT: And I have been provided

1 Dennis Elliott's name on a belief that you would be prepared to
2 appear on behalf of more than one party that is objecting?

3 MR. DENNIS ELLIOTT: Right. Mr. Pape' and I are both
4 willing.

5 GOVERNOR NEIL GOLDSCHMIDT: All right. Are you
6 comfortable with five minutes each to open and then see where
7 you want to go from there?

8 SECRETARY OF STATE BARBARA ROBERTS: And Governor, I
9 would assume the five minutes relates to the findings.

10 GOVERNOR NEIL GOLDSCHMIDT: Yes.

11 SECRETARY OF STATE BARBARA ROBERTS: And not to
12 conclusions?

13 GOVERNOR NEIL GOLDSCHMIDT: Yes. I know how
14 uncomfortable this is for the two of you to address it this
15 way, but we get some of this issue of the findings in front of
16 us and behind us and we'll come back to more time on other
17 matters as we go forward. Maybe we can't divide them the way
18 we're suggesting here and I'm willing to hear that from you
19 now. I'm not trying to reorganize your presentation. But what
20 I'm concerned about is that we're going to spend a lot of time
21 flipping back and forth and never really build a foundation
22 underneath us that leads us someplace. Martha?

23 DIRECTOR MARTHA PAGEL: If I might add and, Anne,
24 correct me if I'm wrong, but it's my understanding that a
25 concern is that the parties who participate in the contested

1 case hearing would be those parties who you would want to hear
2 on the Order. So if those parties represented by Counsel would
3 want to discuss some of the policy issues for expediency, that's
4 okay, and doesn't violate anything so long as other parties
5 aren't introduced at this point or we don't attempt to introduce
6 new parties to the record.

7 GOVERNOR NEIL GOLDSCHMIDT: What I would like to do
8 and this is not normally what I would do is to say this to the
9 attorneys and their principals. What I'm looking for is a
10 motion to adopt the findings and conclusions, which then the
11 Board could amend in any manner it saw fit, and I guess what
12 I'm saying is that after going to all this trouble to have the
13 work done, the burden is on somebody to persuade any individual
14 member of this Board that some particular finding and conclusion
15 isn't appropriate. Is that a comfortable way to proceed?
16 Again, I want to make sure the Board and the participants here
17 -- I didn't really have this all figured out. I've got some
18 notes here. You know, they're writing them as fast as I can
19 read them. This is a ventriloquist and dummy deal here, as you
20 can tell.

21 (LAUGHTER)

22 SECRETARY OF STATE BARBARA ROBERTS: Governor, it
23 seems like with a motion from a Member of the Board and thereby
24 putting action in front of us and people responding to that
25 action on just the findings that we would be on a course that

1 would lead us to a discussion of the motion before us rather
2 than some of the broader questions that might follow.

3 ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER: I think
4 it would be more appropriate to hear from the parties before we
5 get--

6 GOVERNOR NEIL GOLDSCHMIDT: That's all right.

7 ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER: Yeah.

8 GOVERNOR NEIL GOLDSCHMIDT: But I want to see they're
9 gonna have five minutes.

10 ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER: Yeah.

11 GOVERNOR NEIL GOLDSCHMIDT: And then we need a motion
12 and then there's still a chance for them to talk to something
13 in specific. What I'm trying to say is we need at some point
14 to move beyond generalities. Who is it that gets to come first
15 in this deal, Martha?

16 DIRECTOR MARTHA PAGEL: I think Mr. Ramis on behalf
17 of Eastport Equities.

18 GOVERNOR NEIL GOLDSCHMIDT: Fine.

19 MR. TIMOTHY RAMIS: I'm handing you photographs that
20 you may use for reference.

21 GOVERNOR NEIL GOLDSCHMIDT: Do you have a copy for the
22 opposition?

23 MR. TIMOTHY RAMIS: They're the same photos that we've
24 used throughout. It's a picture of the overall site from the
25 air and a picture of the bay we've all seen. I have put an

1 exhibit up here to identify three general issues that I see.
2 And I think that the first question, the 1984 condition, really
3 speaks to the immediate issue of do you adopt the findings or
4 not. I can proceed to talk about the lease extension procedure
5 under any discussion you have about the recommendation if that's
6 all right.

7 The first issue, the central issue in the case, is are
8 the opponents correct in saying that the 1984 condition is
9 somehow binding on the Land Board. And that issue is resolved
10 by the staff report which says that that condition ought to be
11 excluded and resolved by the Hearings Officer's report, which
12 says that the '84 decision is not binding upon you. In fact,
13 the Hearings Officer found that the '84 Order was not binding
14 and said there was good reason not to follow it, citing
15 violation of the open meetings law that took place in '84, lack
16 of notice to the houseboat owners, and citing the mistaken
17 reliance by the Land Board on the belief that somehow the
18 eviction of these people had already taken place and was already
19 a completed accomplishment.

20 In reaching that conclusion the Hearings Officer
21 upheld our position for basically the third time in three years.
22 We've been through three contested proceedings, and each time
23 this claim by the applicants that there's a binding '84 Order
24 has been rejected. As you know, the Condominium Association
25 asked for the hearing in this case. They promised to provide

1 us with compelling legal argument that that '84 Order was
2 binding upon you, and in each of their arguments Judge Denecke
3 rejected their claims and therefore we advocate the adoption of
4 the Order as it's proposed.

5 The first argument they raised was that there was
6 somehow a binding contract between themselves and the State Land
7 Board. The Judge rejected that argument. They argued that the
8 Lower Willamette Management Plan would be violated. The Judge
9 again rejected that and said that this project is specifically
10 authorized at this location under the plan. They claim that
11 there couldn't be development of the Willamette Moorage in '84
12 without a swap of the rights of the Watery Lane Moorage. The
13 Judge specifically rejected that claim saying the swap was
14 unnecessary to the 1984 decision. That new moorage could have
15 been built without transferring any development rights. That
16 position was testified to and supported by both your current
17 Land Board staff and your former Land Board director.

18 A fourth argument was that notice to the houseboat
19 owners was not necessary because Mr. Furman had received notice.
20 The Judge quickly eliminated that contention and said there has
21 been a violation of the public meetings law in this case
22 because the houseboat owners didn't receive notice. The only
23 solace to the other side really in the decision earlier on was
24 in the first draft, and most of those items have been
25 eliminated after the Judge heard argument, decided that his

1 first draft contained factual and legal errors and then he
2 revised it. So we are, for the most part with few exceptions,
3 very happy with that current draft and would advocate it.

4 You not only have the support for rejection of the '84
5 condition coming from your staff report and the Hearings
6 Officer's report, both those documents are consistent with
7 Portland's findings on the matter and by LUBA's findings on the
8 matter. In addition you have the statements of two members of
9 the prior Land Board in your record who say it was not their
10 intention to cause the demise of this moorage. They were given
11 the information that that legal machinery was already in place
12 and was going to happen. And also it was not their intention
13 to trade away anybody's rights without a public hearing. They,
14 in fact, asked "What happened? Why aren't the other people
15 here?" And the record shows the prior Land Board was told that
16 the tenants of the moorage were in favor of the Proposed Order
17 that was in front of them. That's turned out to be not true.

18 So your staff recommendation is well supported at
19 least to the elimination of the '84 condition, as well as
20 supported by the Hearing Order that's before you. We had
21 lengthy debates where we went over and rehashed the same ground
22 we've been over for the last three years. The third time those
23 arguments were rejected. And in this particular case we've gone
24 into incredible detail about things like when did Burtchaell
25 know that there was an Order? His testimony has been

1 consistent throughout. He found out before he signed the deal,
2 but he didn't sign until he had consulted with the director of
3 the agency. And the director of the agency at that time
4 advised him that the 1984 Order was based on some errors in the
5 facts and Mr. Zajonc's statements on that point were upheld and
6 have been upheld by the Hearings Officer's findings where he
7 said that the '84 decision is based upon some mistaken
8 information. Taking that--

9 ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER: Excuse me.

10 MR. TIMOTHY RAMIS: Yes.

11 ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER: But you
12 have about thirty seconds.

13 MR. TIMOTHY RAMIS: Okay. Taking that into account
14 it's our position that those findings ought to be adopted as
15 they are. We'd like to come back and be able to address you on
16 the question of which of the four recommendations you might
17 take.

18 GOVERNOR NEIL GOLDSCHMIDT: That's in another life.

19 MR. TIMOTHY RAMIS: Yeah. Thank you.

20 SECRETARY OF STATE BARBARA ROBERTS: Five
21 recommendations.

22 MR. TIMOTHY RAMIS: Five, sorry.

23 GOVERNOR NEIL GOLDSCHMIDT: Thank you. See, I was
24 distracted. I was busy doing other stuff.

25 MR. DENNIS ELLIOTT: We have copies of the original

1 Proposed Order by Judge Denecke which I would like to provide
2 the Board.

3 GOVERNOR NEIL GOLDSCHMIDT: I think this was provided
4 to us earlier. Was it not distributed to the Board?

5 ASSISTANT TO THE GOVERNOR GAIL ACHTERMAN: Is this an
6 Order?

7 GOVERNOR NEIL GOLDSCHMIDT: Well, I don't know. But
8 I'm not going to object to having it handed in. I assume this
9 is--

10 MR. DENNIS ELLIOTT: I wasn't sure whether--

11 GOVERNOR NEIL GOLDSCHMIDT: That's all right.

12 MR. TIMOTHY RAMIS: Governor, I'd like to object to
13 the document. You have the final decision by the Hearings
14 Officer.

15 GOVERNOR NEIL GOLDSCHMIDT: Well, it's all right,
16 Mr. Ramis. I've read this one before and I read the second
17 one. I think we've all seen this, have we not? Does the Board
18 have any -- are you afraid of this one?

19 STATE TREASURER ANTHONY MEEKER: No.

20 MR. DENNIS ELLIOTT: I would only point out is that
21 he heard ample argument on it and determine that he'd made
22 factual legal errors on the first document.

23 GOVERNOR NEIL GOLDSCHMIDT: Thank you.

24 MR. TIMOTHY RAMIS: That's why he changed it.

25 MR. DENNIS ELLIOTT: Thank you. Dennis Elliott for

1 the Sellwood Harbor Condominium Association. I'd also like to
2 point out that I'm here also on behalf of the Friends of the
3 Greenway who were not able to make it, and rather than bury you
4 in another piece of paper they asked me to also use their name
5 in my remarks. The reason why we provided you a copy with the
6 original Proposed Order by Judge Denecke is because there is one
7 item which he did not contradict or change, but which was
8 merely a deletion on a procedural question, and that's why I
9 bring it before the Board today.

10 Judge Denecke in his original Order came to an
11 ultimate conclusion, which was should this extension past 1995
12 be allowed, and he was the independent party who heard all of
13 evidence, the demeanor of the witnesses, the arguments of the
14 lawyers, read through the briefs, hundreds of exhibits, and came
15 to a final conclusion that in his opinion, applying the law
16 that the State Land Board is to administer to the facts which
17 he heard in front of him in the contested case hearing process,
18 that, in fact in his view this extension request should be
19 denied. That appears on page 10 of the Proposed Order which I
20 have presented to you. Now, we are not here to try to convince
21 you as the Land Board that particular findings of Judge Denecke
22 or conclusions of law of Judge Denecke should be rejected in
23 the Final Order that he submitted. We are here on this
24 procedural issue only to urge the Board to include in the items
25 before it the recommendation of Judge Denecke on the issue of

1 whether the extension should be granted in 1995, which is the
2 language that appears after Line 8 on page 10 under Proposed
3 Order.

4 GOVERNOR NEIL GOLDSCHMIDT: And could you just stop
5 the clock running for a minute here?

6 ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER: Sure.

7 GOVERNOR NEIL GOLDSCHMIDT: I'd like to have a
8 conversation amongst ourselves. I don't want to practice law,
9 but I don't think this is appropriate or legal what he's
10 asking, and I do not object to you bringing it up, but I don't
11 want to spend a lot of time creating something in this Board
12 proceeding which essentially is going to put us in a position
13 of almost everything we do being appealed. This is like, in my
14 view, a draft of a Supreme Court Decision that somebody hands
15 out and circulates around the room being hauled back out and
16 somebody saying, "You know, he almost decided it this way." Am
17 I missing something here?

18 ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER: Governor,
19 without characterizing it in any particular fashion, what I hear
20 is a suggestion that the Board include within the findings and
21 conclusions of law in the Order it adopts something in the
22 nature of a recommendation on the policy question--

23 MR. DENNIS ELLIOTT: Correct.

24 ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER: Of which
25 way the Board ought to proceed in choosing among those five--

1 MR. DENNIS ELLIOTT: Right.

2 ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER: Policy
3 questions. If the Board agrees with the recommendation you have
4 from the staff and from me that it is best to deal first with
5 the question of what legal restraints there may be on your
6 policy actions out of the record of this contested case hearing
7 based on what you have before you from the Hearing Officer, you
8 won't accomplish that if we then draw in the policy issues that
9 come in the second decision that's recommended to you here.
10 That is, it will, in fact, bump the policy arguments back into
11 what is before you now as a purely findings of fact and
12 conclusions of law document so that it is appropriate for you
13 to consider these points perhaps, but it's the second decision.

14 GOVERNOR NEIL GOLDSCHMIDT: Well, I don't want to use
15 up Mr. Elliott's time with an internal discussion. My
16 suggestion would be you go on to make whatever other points you
17 want to make.

18 MR. DENNIS ELLIOTT: Certainly.

19 GOVERNOR NEIL GOLDSCHMIDT: I think I understand now
20 better than before what it is you were asking of us and the
21 Board can inquire of our legal counsel what each of you
22 individually think ought to be done.

23 MR. DENNIS ELLIOTT: This part of Judge Denecke's
24 first decision was not presented to you on a procedural question
25 because the question was did the State Land Board want this

1 kind of a recommendation when it sent it out to a contested
2 case hearing? The Division of State Lands felt that the State
3 Land Board did not want an ultimate recommendation and so they
4 asked Judge Denecke to delete it. The only reason I bring it
5 up is because in the event the State Land Board feels that it
6 would like to have an ultimate recommendation from Judge
7 Denecke, there is one contained in that Order. On the--

8 ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER: Excuse me
9 without taking your time.

10 MR. DENNIS ELLIOTT: You bet.

11 ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER: Could I
12 interrupt then? I think put in that fashion, that is a
13 decision that is clearly within your discretion. If you would
14 like to have the Hearing Officer come to you with policy
15 recommendations, then you would need to direct that. He has
16 not done so at this time.

17 MR. DENNIS ELLIOTT: There is one available if you
18 would like to hear it.

19 SECRETARY OF STATE BARBARA ROBERTS: I think we got
20 that.

21 MR. DENNIS ELLIOTT: All right. The other question
22 I'll deal with the findings themselves and the conclusions of
23 law, first of all, with regard to the 1984 Order. There was a
24 finding by Judge Denecke that there was a procedural question
25 about notification of the tenants. But as Judge Denecke pointed

1 out, this does not require that the Order be set aside, number
2 one. Number two, the procedure for attacking that Order would
3 be for an aggrieved party, which would have been a tenant of
4 the Watery Lane Moorage, to file some kind of a objection under
5 the open meetings law. None of that was done in this case.
6 And in fact, Eastport Equities, the applicant here, was not a
7 tenant of this moorage at the time the '84 Order was entered.

8 The second question which gets to the policy
9 questions, and I want to address that in detail, is that there
10 are no compelling reasons in Judge Denecke's opinion, the final
11 findings, to set aside that Order. In other words,
12 circumstances have not changed and, in fact, the original
13 understandings are the same. For example, allowing the
14 houseboats to exist after 1995 will, in fact, put additional
15 houseboats on the river and those additional houseboats will
16 occupy substantial additional space. So the underlying policy
17 considerations that led the '84 Land Board to issue an '84
18 Order are still present in terms of the public versus private
19 use on the river.

20 Secondly, the other issue as far as the '84 Order is
21 concerned is that the procedural questions were raised initially
22 about whether the Board can go beyond the LWRMP and apply LWRMP
23 standards to some other area, and I think Judge Denecke's
24 findings and the staff recommendation of DSL indicate that it
25 was okay for the Board in 1984 to apply LWRMP standards

1 immediately outside the borders of the plan in an unplanned
2 area, and it was okay and it would be okay now, and the
3 Attorney General has indicated it would be okay now to do that.

4 As I said, we are not contesting the particular
5 findings of Judge Denecke nor the particular conclusions of law.
6 Those probably should be entered in this record and reviewed by
7 the Land Board. We do have significant comments we would like
8 to make on the policy issues of which of the five alternatives
9 should be considered by the Land Board in light of Judge
10 Denecke's findings as presented to you today. And so I would
11 ask to be heard on those issues at the appropriate time.

12 GOVERNOR NEIL GOLDSCHMIDT: Thank you.

13 DIRECTOR MARTHA PAGEL: Governor, Members of the
14 Board, I believe what I just heard is that both parties
15 essentially said that they were okay with the findings of fact
16 and conclusions of law and wouldn't take exception to them, and
17 the one fact question related to the Proposed Order would be
18 whether you wish to consider another alternative of sending it
19 back to the Hearings Officer to develop a policy recommendation
20 as Mr. Elliott just discussed.

21 GOVERNOR NEIL GOLDSCHMIDT: Well, we don't have
22 anything quite in front of us. I'm willing to just sort of
23 open it for a minute here for discussion. I am not
24 particularly interested in prolonging this proceeding as a
25 matter over which this Board has jurisdiction. I can't imagine

1 that there's great enthusiasm for dedicating more of the staff's
2 resources or staff of the members' resources to this, not
3 because it isn't important to the parties that are here, but it
4 is, after all, a case that we're familiar with. And in the
5 end, ultimately we're charged with the decision.

6 I read the first draft and I want to say for the
7 record I found it confusing. I found the last one easier to
8 read. This is not a comment on the merits. I'm talking about
9 the style in which it was written and sort of the orderliness.
10 I do not object to the request Mr. Elliott has made. I'm not
11 sure it has to be sent back in order for this Board on its own
12 initiative to add whatever conclusions it wishes or to reorder
13 the manner in which the case -- sort of the process of which we
14 get to the conclusion.

15 I still, I guess, am where I started, which is I
16 think we ought to start with the document that's there. I
17 think both parties agree most of it stands on its merits and
18 really wouldn't propose to change it. I have questions about
19 a couple of them that I want to raise more by way of
20 information so that I understand what it is that I'm talking
21 about than it is that I know that there's something I object
22 to. But if there's some other process other members feel
23 better about, let's fly with it. I'm just open to suggestion.
24 I think our attorney has provided a structure that gets us to
25 the debate on the issues that individuals on the Land Board are

1 concerned about, and the findings of fact, I think, are not the
2 place probably where most of that argument is gonna come.
3 Barbara?

4 **SECRETARY OF STATE BARBARA ROBERTS:** Governor, I think
5 for purposes of moving forward, because we need to do that,
6 whatever it takes us to get there, if it's appropriate at this
7 time what I would like to do is to move that we accept the
8 amended version, which is the one that's in our notebook, of
9 the findings of fact and conclusions of law submitted to this
10 Board following the hearing by Arno Denecke.

11 **STATE TREASURER ANTHONY MEEKER:** Second.

12 **GOVERNOR NEIL GOLDSCHMIDT:** It has been moved and
13 seconded. And we ought to now begin discussion. I presume
14 each of counsel has a copy of this with the numbered sections.
15 What I would like to do for myself personally -- and I'm really
16 going to ask Tony and Barbara, is beginning in the section
17 where it says, "CONTENTIONS OF THE PARTIES," and it goes through
18 these Proposed Conclusions of Law, are there any of those that
19 you would like to ask questions about? That is, are there any
20 of them that you personally are interested in understanding
21 something that may not be clear on the surface of? Well, just
22 as an example, I want to ask a question. These were provided
23 to us by Arno Denecke.

24 **ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER:** Correct.

25 **GOVERNOR NEIL GOLDSCHMIDT:** That is, this document is

1 his document.

2 ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER: That is
3 correct.

4 GOVERNOR NEIL GOLDSCHMIDT: These findings were
5 reviewed, I guess, by the staff. That is, you're aware of them
6 and I would presume by counsel. Is he reaching into legal
7 areas in which separate advice from the Attorney General's
8 Office is needed, required or was provided?

9 ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER: Governor,
10 he did not consult with us for advice to him as Hearing
11 Officer. There is nothing here that raises flags to me, and as
12 was pointed out, our office as involved in the case on behalf
13 of the Division.

14 GOVERNOR NEIL GOLDSCHMIDT: Because of Arno's stature,
15 one would hesitate to question his capacity to practice public
16 law. But as a practical matter, he really wasn't hired in this
17 situation to make rulings on the State Constitution. And I
18 would presume if we had questions about his conclusions, we
19 would have felt free before he reached his final conclusion to
20 seek advice of the Attorney General and to notify him if we had
21 any concerns.

22 DIRECTOR MARTHA PAGEL: Governor, Members of
23 the Board, we did ask the Hearing Officer to prepare findings
24 of fact and conclusions of law on some specific legal issues
25 that we helped frame with the other parties in the hearing, so
the Hearing Officer was responding directly to our requests on

1 these issues. Our attorney did provide briefing materials and
2 argue the issues and we have no objections to these findings
3 and conclusions.

4 GOVERNOR NEIL GOLDSCHMIDT: Anyone else? Do either
5 of the parties want to speak to anything that is in this
6 document? Mr. Elliott, I know you have a specific proposal to
7 make, and the way this is structured I assume we're proposing
8 it be taken in the second half instead of the first half of
9 this proceeding?

10 ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER: That is
11 correct, Governor. Unless it is the desire of the Land Board
12 to have as part of the Order it would approve from the Hearing
13 Office a policy recommendation which you would then be approving
14 as part of that Order.

15 GOVERNOR NEIL GOLDSCHMIDT: But basically if we want
16 to do that, let me see if I can restate this, is that we have
17 a choice. Vote for this the way it is or get a recommendation
18 which would be attached to this document. That is, specifically
19 request policy recommendation for Mr. Denecke or from somebody
20 that we have to delay it.

21 DIRECTOR MARTHA PAGEL: Or that the Board--

22 ASSISTANT TO THE GOVERNOR GAIL ACHTERMAN: Or
23 shouldn't we adopt the one that Mr. Elliott suggested from the
24 Proposed Order?

25 GOVERNOR NEIL GOLDSCHMIDT: You mean (unintelligible)?

1 ASSISTANT TO THE GOVERNOR GAIL ACHTERMAN: From the
2 original?

3 GOVERNOR NEIL GOLDSCHMIDT: But I cannot presume that
4 that is still Mr. Denecke's recommendation and attach it to his
5 second draft.

6 ASSISTANT TO THE GOVERNOR GAIL ACHTERMAN: No, right.

7 GOVERNOR NEIL GOLDSCHMIDT: So it's basically I'm just
8 taking an advocate's -- that's okay. I mean, I understand
9 that. We could do that.

10 SECRETARY OF STATE BARBARA ROBERTS: Yeah, my motion
11 intentionally did not include it. It was to deal with the
12 findings without the conclusion--

13 GOVERNOR NEIL GOLDSCHMIDT: But it's now possible for
14 you or anyone to make a motion to--

15 SECRETARY OF STATE BARBARA ROBERTS: Yeah.

16 GOVERNOR NEIL GOLDSCHMIDT: Amend these findings--

17 SECRETARY OF STATE BARBARA ROBERTS: Could be amended.

18 GOVERNOR NEIL GOLDSCHMIDT: To add it.

19 SECRETARY OF STATE BARBARA ROBERTS: Right. Or to
20 amend the motion as well.

21 GOVERNOR NEIL GOLDSCHMIDT: Right, that's what I
22 meant.

23 SECRETARY OF STATE BARBARA ROBERTS: Yeah, yeah.

24 DIRECTOR MARTHA PAGEL: Governor and Members of the
25 Board, if I could clarify and, Anne, please help me out. The

1 option that we're proposing is that the Board may adopt these
2 findings and conclusions and then may take a next step to add
3 on your own policy conclusion or recommendation without sending
4 it back to Justice Denecke to do that for you. If you want to
5 send it back to him, that's another alternative altogether.

6 GOVERNOR NEIL GOLDSCHMIDT: Further discussion? All
7 those in favor of the motion say aye.

8 SECRETARY OF STATE BARBARA ROBERTS: Aye.

9 STATE TREASURER ANTHONY MEEKER: Aye.

10 GOVERNOR NEIL GOLDSCHMIDT: Aye. I move we adjourn
11 and leave.

12 (LAUGHTER)

13 SECRETARY OF STATE BARBARA ROBERTS: Good idea.

14 GOVERNOR NEIL GOLDSCHMIDT: Let's quit while we be
15 ahead here.

16 SECRETARY OF STATE BARBARA ROBERTS: Yeah. Let's
17 stop, yeah.

18 GOVERNOR NEIL GOLDSCHMIDT: Okay.

19 ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER: Governor,
20 by approving the conclusions in the Order, you have really
21 cleared the way for a policy decision by the Land Board. The
22 Order basically set the framework within which it's clear that
23 you are not constrained by a need for particular findings
24 against the plan, and it allows you then to look at the five
25 alternatives that staff has set out.

1 **ASSISTANT TO THE GOVERNOR GAIL ACHTERMAN:** A
2 clarifying question, if I may, for counsel. Is it your opinion
3 that any of the five alternatives that are outlined on page 2
4 of the Staff Report from a policy standpoint could be supported
5 by the findings and conclusions that the Board has just adopted?

6 **ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER:** Yes, with
7 the understanding that certain of these would direct staff to
8 take certain additional action and it would be implicit that
9 staff would take that action within existing policies and rules
10 that guide them in any other activity.

11 **GOVERNOR NEIL GOLDSCHMIDT:** Does anybody object to a
12 five-minute recess?

13 (OFF THE RECORD)

14 This meeting is resumed. And Martha, do you have anything to
15 say on the business in front of us?

16 **DIRECTOR MARTHA PAGEL:** Well, just direct our
17 attention back to the alternatives that have been laid out with
18 the addition of the fifth alternative, the correction that I
19 provided. In developing these alternatives it was our staff
20 determination, and that's been confirmed by counsel, that any
21 of these alternatives can be supported by the findings that
22 you've just adopted. And it truly is a policy question for the
23 Board. If there are questions, we can walk you through it.

24 **GOVERNOR NEIL GOLDSCHMIDT:** I will confess to the
25 Members of the Board, and I think the audience might suspect

1 this, that there is hardly unanimity of opinion about this case.
2 But there is one thing I do want to communicate is that there
3 is no interest by this member and I'm sure it's true of my
4 colleagues in undermining the machinery of the State Land Board
5 to conduct this business or future business. It was my advice
6 to Martha that they actually make some recommendation to give
7 us a place to start to argue. There may be opinions by other
8 members that you wish to discard the recommendation and pick
9 some other place to start to argue. And I mean the parties
10 here came to argue and they ought to be permitted to do so. I
11 have the same feeling about this as a vehicle to do it as I do
12 about the first motion, which is it is a place that gets
13 something in front of us where we can debate.

14 So the Chair would appreciate either a motion to push
15 forward the staff's recommendation or in lieu of that I'm
16 prepared if the Board has some other place they'd like to start
17 to start there. But this would be a chance for Mr. Elliott to
18 come back or whoever wants to come up here again and say, "You
19 haven't got it right" and to talk exactly about how this thing
20 ought to be framed.

21 You have proposed in your recommendations on page 4
22 that we approve the Hearing Officer's proposed findings of facts
23 and conclusions of law which we have just accomplished. And in
24 addition upon those findings, staff further recommend that Board
25 approve Policy Alternative 3, thereby taking immediate action

1 to remove the prohibition against a lease extension but
2 deferring any action concerning extension until 1995. I would
3 like you to explain to me what this achieves for the petitioner
4 -- that is, for the person who's coming to this Board saying
5 they need us to do something in order that they can finance the
6 moorage or whatever their arguments are going to be.

7 DIRECTOR MARTHA PAGEL: Governor and Members of the
8 Board, this alternative addresses the petitioner's argument that
9 he or his company was harmed by a prior decision of the Land
10 Board that was taken without proper notice and that has then
11 subsequently disadvantaged him with respect to other lessees
12 among the river. It doesn't get to the issue of amortization
13 or his financing question, but that wasn't, as I understand it,
14 an issue that was raised before the Hearing Officer or that a
15 finding was made upon.

16 If we look to the issue of whether he was harmed, and
17 the Hearing Officer has concluded one, that he did have notice
18 of the Land Board action at the time that he purchased the
19 property but on the other hand the Hearing Officer also
20 concludes that action was taken in violation of the public
21 meetings law, and although that doesn't invalidate the Order,
22 it does go to the weight that the Board may want to give it.

23 So we looked at that finding and from the policy
24 issues and the needs of the Division of State Lands in carrying
25 out its job of orderly management of the waterways, and

1 concluded that the best alternative, given all those
2 circumstances, is to restore Eastport Equities to the same
3 position as any other lessee along the waterway at this point
4 in time but to defer the policy decision to allow the Land
5 Board to go through the policy process of reviewing the Lower
6 Willamette Plan, and then consider the lease extension at the
7 time when the lease would ordinarily expire in 1995, and apply
8 at that time whatever policy decisions are reflected in the
9 Lower Willamette Plan as it exists then.

10 GOVERNOR NEIL GOLDSCHMIDT: There is nothing implicit
11 in what you say that the Board would thereby be pledging itself
12 to restrain itself from reaching some new, different or the same
13 conclusion about the Lower Willamette River Plan at a time
14 earlier than 1995?

15 DIRECTOR MARTHA PAGEL: The Land Board and the
16 Division will, we expect to, undertake that review and make
17 those decisions through the Land Board prior to 1995. But
18 ordinarily a lease isn't extended until it's due to expire.
19 And we would propose that this lease be revisited at a time
20 closer to when it's due to expire.

21 GOVERNOR NEIL GOLDSCHMIDT: Question?

22 STATE TREASURER ANTHONY MEEKER: No, I didn't.

23 GOVERNOR NEIL GOLDSCHMIDT: Barbara?

24 SECRETARY OF STATE BARBARA ROBERTS: I don't have a
25 question, Governor.

1 **GOVERNOR NEIL GOLDSCHMIDT:** I would like to get
2 something in front of the Board on which to proceed. Does the
3 Board want to talk through the other options that are here with
4 the staff? The staff drafted them and I think I sort of get
5 the gist of them. Actually, this is the one that, I must say,
6 confused me a little. The first one was described in the
7 Secretary of State's question as approved, which would grant to
8 the Petitioner essentially what it is that they requested. The
9 fifth would be a denial, would be the flip side of the coin.
10 And the three that are in between, I presume, are various ways
11 of expressing the Board's position on what ought to happen now
12 or in the future?

13 **DIRECTOR MARTHA PAGEL:** Yes, Governor and Members of
14 the Board. Those three in the middle address the policy
15 questions that are presented by the Lower Willamette Plan and
16 the fact that it is scheduled for review in the near future.
17 I should also point out that on the first alternative we have
18 phrased that in terms of the applicant's request to us, which
19 was to remove the prohibition and extend it for 30 years, but
20 the Board could also consider negotiations for any period of
21 time less than 30 years as a variation of that alternative.

22 **STATE TREASURER ANTHONY MEEKER:** Governor.

23 **GOVERNOR NEIL GOLDSCHMIDT:** Mr. Treasurer.

24 **STATE TREASURER ANTHONY MEEKER:** I'd like to ask
25 Martha a question. There are four options on the paper, page

1 4, staff recommendations. Now, it's my understanding that there
2 is a fifth option. Why don't you tell us what the application
3 says?

4 DIRECTOR MARTHA PAGEL: The application is a request
5 to extend the lease for a 30-year period.

6 STATE TREASURER ANTHONY MEEKER: Describe for me what
7 the fifth option is since it's not on this piece of paper.

8 DIRECTOR MARTHA PAGEL: The fifth option would be to
9 deny the request to extend the lease for a 30-year period and
10 along with that would be either implicitly or expressly a
11 refusal to change the 1984 Land Board Order.

12 STATE TREASURER ANTHONY MEEKER: Legally and
13 technically, what is the difference between a denial of the
14 application before us and recommendation number 2, which is to
15 defer any policy decision? Does that keep the permit alive or
16 the application before the Board alive and it would just lay
17 here?

18 DIRECTOR MARTHA PAGEL: As I described that
19 Alternative 2 in the materials that you have, my thinking and
20 phrasing it that way was that it would be, in effect, a denial
21 but with leave to renew the application at some point in the
22 future. Anne might address whether the Board could deny it
23 with some permanency attached to it without leave to renew it
24 in the future.

25 GOVERNOR NEIL GOLDSCHMIDT: I don't think we can tell

1 a citizen at any time they can't petition the government. I
2 think the question is the rationale with which we make the
3 denial may make it clear that a petition is received by the
4 current sitting members of the Board without a change of
5 circumstances wouldn't go anywhere as opposed to we pass on
6 making a decision and we don't say very much. I think the
7 Treasurer's made an interesting point, which is it's a razor
8 thin differential there. Is that what you're saying?

9 STATE TREASURER ANTHONY MEEKER: Well, I'm trying to
10 understand legally, since I'm a grain seed dealer from Amity,
11 not a lawyer.

12 GOVERNOR NEIL GOLDSCHMIDT: Does the Attorney General
13 want to comment on this? Now that I've screwed up your law for
14 you?

15 STATE TREASURER ANTHONY MEEKER: Yeah.

16 GOVERNOR NEIL GOLDSCHMIDT: And by the way, did you
17 get this? I'm just a seed farmer from Tangent? Give me a
18 five!

19 (PAUSE)

20 ASSISTANT TO THE GOVERNOR GAIL ACHTERMAN: No, he said
21 Amity.

22 GOVERNOR NEIL GOLDSCHMIDT: Oh, Amity?

23 SECRETARY OF STATE BARBARA ROBERTS: Amity, yeah.

24 GOVERNOR NEIL GOLDSCHMIDT: Well, they're a smart
25 bunch in Amity.

1 **SECRETARY OF STATE BARBARA ROBERTS:** Is it fair to
2 say--

3 **GOVERNOR NEIL GOLDSCHMIDT:** Just a second, Barbara.

4 **SECRETARY OF STATE BARBARA ROBERTS:** Okay.

5 **GOVERNOR NEIL GOLDSCHMIDT:** I interrupted. Our
6 attorney was asked a question. I'll let you answer it.

7 **ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER:** I think
8 what I had understood Alternative 5 to contain would be the
9 denial with prejudice as to this Land Board's view of things
10 unless and until circumstances changed perhaps after
11 modification of the Lower Willamette Plan as opposed to deferral
12 or denial with leave to reapply at any time.

13 **STATE TREASURER ANTHONY MEEKER:** I understand your
14 answer. If the Land Board were to adopt Item 5, which implies
15 denial with prejudice, although we don't have anything in
16 writing, I assume that we can make a motion of any kind, any
17 citizen still has the right to apply to the Board, the only
18 difference being a very thin, grey line as the Governor pointed
19 out. Deferral implies that there's another step that could
20 happen that the Land Board might listen to, whereas Item 5,
21 which again, is not on the paper and not in writing, would
22 imply that if we denied the permit now there may be the chance
23 that you wouldn't get much access the next time. Am I putting
24 it in words that describe the grey-line difference between the
25 two?

1 **DIRECTOR MARTHA PAGEL:** Yes, I believe you are,
2 Mr. Treasurer, and I think that what we have is some confusion
3 in use of the word "deferring" a decision versus "denying" the
4 petition that's before you. Really you're getting to the same
5 place. An option would be to totally defer the decision, not
6 take any action and say, "Come back and talk to us later."
7 That isn't what was really intended here, but that's what the
8 words say. So that's why we went forward with a fifth very
9 clear alternative to deny the request, and at some point in
10 time any citizen could come back to the Board and raise the
11 issue again.

12 **STATE TREASURER ANTHONY MEEKER:** Okay.

13 **GOVERNOR NEIL GOLDSCHMIDT:** Barbara?

14 **SECRETARY OF STATE BARBARA ROBERTS:** If you looked at
15 the options we have here and you looked at number one
16 alternative as sort of a yes-yes, you get both things you ask
17 for, the prohibition change and the lease. And the five option
18 became a no-no, you don't get either one. And then in between
19 you have some yes's and no's and yes's and maybe's, okay?
20 That's sort of like what it looks like when you try to get it
21 down into yes-yes/no-no. If you use the word "defer", do you
22 see "defer" meaning the same thing as delaying? I don't mean
23 just this whole decision. But if you defer any reopening of
24 the lease until closer to the time that it is, in fact, coming
25 to termination, is there a difference between delaying that

1 until sometime like after the LWRMP review and so forth or
2 delaying? Is there a difference that you see between those
3 two?

4 **DIRECTOR MARTHA PAGEL:** I'd really have to defer to
5 Anne. I don't see a difference in practical effect. I think
6 what you're doing is denying the request right now, but without
7 prejudice and with leave to refile it after the Lower Willamette
8 Plan is revised. And that's what I intended to communicate in
9 that alternative.

10 **ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER:** I
11 apologize, Secretary Roberts.

12 **SECRETARY OF STATE BARBARA ROBERTS:** That's all.

13 **ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER:** I didn't
14 hear the entire question. Let me attempt to answer and then
15 you can rephrase. I think the issue would go to what
16 disposition is made of the application that is now sitting in
17 the Division's office. I had understood alternative two as
18 leaving that application in the office in a deferred status or
19 some later trigger as opposed to a denial which would require
20 the individual to come back, start again.

21 **DIRECTOR MARTHA PAGEL:** Yes. I think that's how we
22 should view them at this point. And number two would be to
23 leave the application on the table but defer any final decision
24 on it until after the Lower Willamette Plan, and alternative
25 number five would be to give notice that it is denied with the

1 applicant having the prerogative to reinstate it at some point
2 in the future.

3 GOVERNOR NEIL GOLDSCHMIDT: Well, the reason for all
4 of this, which I'm sure is of some tedium to the audience, is
5 not to make a decision but to make sure that the record is
6 clear we understood whatever it is that ends up being what we
7 voted for. Mr. Elliott, with a little more work here we may
8 make this even better than Arno Denecke's product. No one will
9 understand the first, second or third draft.

10 STATE TREASURER ANTHONY MEEKER: Governor, I'd like
11 to ask one more question--

12 GOVERNOR NEIL GOLDSCHMIDT: Yes, sir.

13 STATE TREASURER ANTHONY MEEKER: Of Counsel. There
14 is another alternative if I understand everything that's going
15 on. You could deny the permit without prejudice, is that not
16 a sixth alternative? Or what would be the implication of such
17 a denial?

18 ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER:
19 Mr. Meeker, I believe that the distinction between "with
20 prejudice" and "without prejudice" was more one of message than
21 legal effect--

22 STATE TREASURER ANTHONY MEEKER: Okay.

23 ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER: In this
24 circumstance. If the application is denied -- unless you have
25 a rule that precludes the filing of an application for this

1 type of extension or renewal -- the Division would accept it if
2 it was filed.

3 STATE TREASURER ANTHONY MEEKER: And it's my
4 understanding that no such rule exists.

5 ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER: Not to my
6 knowledge, that's correct.

7 STATE TREASURER ANTHONY MEEKER: I mean, you could put
8 a permit in every week if you wanted to?

9 ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER: That's
10 right.

11 DIRECTOR MARTHA PAGEL: For the purpose of finality
12 and clarity of the message that the Land Board is giving to
13 staff and to the applicant, there's a reason to distinguish
14 between a denial saying that this is the way this Land Board is
15 going to react to this set of facts from this point forward and
16 a denial that says come back to us at some later point in time.

17 STATE TREASURER ANTHONY MEEKER: Okay, I understand.

18 GOVERNOR NEIL GOLDSCHMIDT: Fair enough. That's been
19 helpful. The Chair would like to request someone to move the
20 staff proposal as a point of beginning or, if that's not
21 acceptable, tell me and we'll pick something else.

22 SECRETARY OF STATE BARBARA ROBERTS: Governor, I would
23 do it as a courtesy and to give the two parties an opportunity
24 to discuss it.

25 GOVERNOR NEIL GOLDSCHMIDT: That's all--

1 **SECRETARY OF STATE BARBARA ROBERTS:** It's not the
2 position I probably--

3 **GOVERNOR NEIL GOLDSCHMIDT:** Yeah, that's all right.

4 **SECRETARY OF STATE BARBARA ROBERTS:** Would vote for,
5 but it will give us a chance to move. I will move the staff
6 recommendation for purpose of discussion.

7 **GOVERNOR NEIL GOLDSCHMIDT:** I would presume at this
8 point we return to contested presentations and at this point
9 actually it would be helpful to me. I don't know whether
10 there's some process here that has to be followed. If I could
11 get Mr. Elliott back here now to talk to us directly about what
12 it is you asked us to do before. Is that acceptable,
13 Mr. Ramis?

14 **MR. TIMOTHY RAMIS:** Sure.

15 **GOVERNOR NEIL GOLDSCHMIDT:** Is that acceptable to you?

16 **MR. DENNIS ELLIOTT:** Certainly.

17 **GOVERNOR NEIL GOLDSCHMIDT:** Thank you.

18 **STATE TREASURER ANTHONY MEEKER:** You need a second.

19 **GOVERNOR NEIL GOLDSCHMIDT:** Yes. A second would be
20 nice.

21 **STATE TREASURER ANTHONY MEEKER:** I'll give you--

22 **GOVERNOR NEIL GOLDSCHMIDT:** I don't know if I need a
23 second or not actually. I never thought about it. Thank you.
24 It's a great idea.

25 **MR. DENNIS ELLIOTT:** I'd like to have Mr. Pape' join

1 me also. As I understand what we're addressing now is the
2 staff recommendation that alternative three be adopted, and also
3 addressing the other alternatives that are available to the--

4 GOVERNOR NEIL GOLDSCHMIDT: You bet.

5 MR. DENNIS ELLIOTT: To the Land Board.

6 GOVERNOR NEIL GOLDSCHMIDT: At this point as far as
7 I'm concerned, you're in a situation where you can say, you
8 know, your first choice would be A, your second choice would be
9 B, and so on. But I hope as a part of this at the end,
10 whatever it's treated in your list of fall-back positions, what
11 specifically about this is flawed? Partly I just would like to
12 get somebody to help us go through one of these in enough
13 detail that we can understand specifically how it impacts the
14 people that are offended by it and why it doesn't work or
15 whatever you want to say about it. But you're free to talk to
16 the others.

17 MR. DENNIS ELLIOTT: All right, certainly. We would
18 urge adoption of Alternative Number 5 on the basis that it
19 denies the application for an extension and it denies the
20 request to rescind the 1984 Order. What that will do will be
21 to leave in place the 1984 Order. Eastport Equities has a
22 permit from the City of Portland which is valid and which they
23 went through that process to get. But this would give a final
24 decision once and for all on the question of what should be
25 done with this moorage and this area under the set of facts

1 that are in front of the Land Board. The other alternatives,
2 for example, Alternative Number 2, which would be characterized
3 as taking the existing application and keeping it in the State
4 Land Board Office, and telling Eastport that essentially it can
5 reraise that application after the LWRMP is overhauled will not
6 be an addressing by this Land Board to the facts that have been
7 developed in front of it. It will be a deferral of addressing
8 that issue.

9 Alternative Number 2 also addresses the 1984 Order
10 in that it denies the request to set aside the '84 Order. So
11 Alternative 2 does two things: denies the request to set aside
12 the '84 Order so that Order continues as a valid existing
13 Order, but it defers the question of extension. We think that
14 Alternative 5 will send the decision of the State Land Board,
15 close the issue as far as this State Land Board is concerned on
16 this moorage and on this question, and we also feel that
17 Alternative 5, as has already been indicated by Ms. Squier,
18 that Alternative 5 is consistent with Judge Denecke's findings
19 and conclusions which you addressed a moment ago. There is
20 another alternative which is the one recommended by staff, and
21 that's Alternative Number 3.

22 GOVERNOR NEIL GOLDSCHMIDT: Before you go on, may I
23 interrupt just a second?

24 MR. DENNIS ELLIOTT: Certainly.

25 GOVERNOR NEIL GOLDSCHMIDT: I'm trying to make sure

1 I get this. Five is your preferred option?

2 MR. DENNIS ELLIOTT: Correct.

3 GOVERNOR NEIL GOLDSCHMIDT: And after that would be
4 two?

5 MR. DENNIS ELLIOTT: Correct.

6 GOVERNOR NEIL GOLDSCHMIDT: Okay.

7 MR. DENNIS ELLIOTT: Alternative 3 is the one that
8 the staff recommends. We do not believe that should be
9 followed for a couple of reasons. First of all, it sets aside
10 the '84 Order, which we don't believe should be done.
11 Secondly, it also defers a decision on the lease request until
12 after the LWRMP is overhauled. Now, one of the reasons why we
13 are asking that the decision not be deferred until after the
14 LWRMP is overhauled is that we originally came to the Land
15 Board back in July and suggested that as an alternative, let's
16 delay this until the LWRMP review is completed.

17 However, the Land Board at that point decided that on
18 this issue a contested case hearing should be held. And so as
19 interested parties we participated in that process, and it was
20 a lengthy process and an expensive process. And we now have a
21 set of facts that are before this Board to review.

22 If no decision is made on the extension today and it's
23 deferred through the LWRMP process, then we are going to end up
24 having another series of contested case hearings on virtually
25 the same issues that we just went through a hearing in October.

1 So we feel that the extension should be denied at the present
2 time and without any language about reraising it or deferring
3 it. Obviously under the law as Ms. Squier pointed out, an
4 applicant can come back at any time and ask that a lease be
5 extended. So this would not preclude Eastport from coming back
6 down the road and saying we would like to have our application
7 to extend past 1995 be considered again. But this does put
8 this Land Board on record as to what should be done with that
9 kind of a request that's brought to it.

10 Just briefly, on the merits of the 1984 Order, I
11 addressed that a little bit earlier, but we feel that that
12 should be upheld because there are no significant change [sic]
13 in circumstances. The LWRMP, the Greenway regulations presently
14 in force, the public agencies from the federal to the state
15 which have commented on this, have all taken a position that
16 houseboats are not a preferred or water-related use, therefore
17 they should not be encouraged or allowed. There's no question
18 on this record but that extending the houseboats past 1995 will
19 result in additional houseboats being in the area, and it will
20 result in additional water surface space being taken away from
21 the public domain and put into the private sector. This Land
22 Board has the job, as you know much better than I, to balance
23 those public and private needs. And this gets back to Judge
24 Denecke's recommendation, which although you're indicating is
25 not an official part of the findings that you've adopted, it

1 gets back to the question that he as one of the independent
2 members looking at these facts, an individual which the Land
3 Board had confidence in to assign as a Hearings Examiner in
4 this case, came to the conclusion that when those public and
5 private needs are balanced that in this case for these
6 houseboats in this area the public need should prevail over the
7 private and the request for extension should be denied.

8 Whether the applicant in this case, Eastport Equities,
9 will be harmed by continuing the 1984 Order and a denial of the
10 request for an extension, I'd like to just briefly address that.
11 First of all, it's clear from the record that's in front of the
12 State Land Board that the applicant in this case, Eastport
13 Equities, knew of the State Land Board Order before it closed
14 the purchase on this property, could have gotten out of the
15 deal without expending any money in terms of purchase price
16 once -- after they found out about the Order, and in fact, all
17 investment in terms of any development which has been done at
18 this site in terms of plans or permits, that type of thing,
19 has been done after they were aware of this Order.
20 Additionally, there has been no construction activity at the
21 site. Some of the pilings have been removed, but this is not
22 a situation where Eastport Equities has actually put in the
23 houseboat moorage. Third, by upholding the '84 Order and
24 denying the extension request, the Land Board is not depriving
25 Eastport Equities of all use for the waterfront. It is merely

1 denying the use of the waterfront for houseboat purposes. So
2 there could be uses by Eastport Equities consistent with the
3 LWRMP, consistent with planning goals in the area, small-boat
4 moorage, that kind of thing, which would preserve public access
5 yet provide some commercial enterprise and income to Eastport
6 Equities. So we feel there is not harm based on the '84 Order
7 sufficient to allow or to warrant overturning the '84 Order or
8 granting the extension.

9 Mr. Pape' would also like to make some comments on the
10 question from the houseboat owners' point of view. I would
11 merely close with the issue that this Land Board has the
12 authority to apply the public versus private balancing test on
13 both sides of the Sellwood Bridge, both with inside the plan
14 and outside the plan. That is what this Land Board did in
15 1984, with different members, reached a conclusion. We think
16 that that same conclusion is supportable today, is justified
17 today and that there has not been a change in circumstances
18 which would warrant setting aside the '84 Order or setting aside
19 the prohibition or the policy that was laid down, which said
20 "After 1995 we as a State Land Board do not want to have
21 houseboats in this area." Now, I'll turn it over to Mr. Pape'
22 for comments.

23 MR. PAPE': Thank you, Madam Secretary, Governor and
24 Mr. Treasurer. Governor, I agree with you explicitly. There
25 has been enough hearings, there's been enough meetings, enough

1 reviews, enough of everything on this issue. The owners at
2 Sellwood Harbor Condominium bought in there with the complete
3 understanding that the houseboats would go because of the 1984
4 written Order by the State Land Board. It may have been those
5 owners who felt that their Government Order was written in
6 concrete. I certainly thought that a State Land Board Order
7 was in cement, at least on an issue such as this.

8 Most recent sale at the condominiums was Mr. Harry
9 Glickman, better known as Mr. Trailblazer. That investment,
10 coupled with the others using his figures of roughly around
11 \$300,000, puts that issue at a roughly \$12 million program of
12 property owners. That puts about \$300,000 and more into the
13 county yearly state taxes. We think that we've already made
14 the investment long before Eastport or any other entity came.
15 We think very definitely that Number 5 would put this thing to
16 rest once and for all.

17 We are on the side of the public. We think there
18 should be access down there. At 9:30 this morning I observed
19 a fisherman fishing right smack in the area where the houseboats
20 are intended to be. There's wildlife moving up and down that
21 area all the time. We do not propose and do not wish to cause
22 Eastport a financial hardship. We're willing to sit down and
23 talk with them on the hard dollars that they have got involved.
24 We have already seen an investment made by them underneath the
25 Sellwood Bridge in the form of steps. I have a letter from the

1 City stating that that was done without even a building permit.
2 Now, if that happens on just the steps going down from the area
3 of parking to the area of the greenway, what else can we expect
4 there without attempt to get a building permit. All in all,
5 we think that we've made our investment. We've brought it to
6 your issue and we think instead of laying it out here for
7 review and other time, let's cut and dry the thing and get it
8 over with. The ball is in your court and whatever you three
9 decide is what we at Sellwood Harbor Condominium are gonna live
10 by. Remember, those are our homes there, that's where we live.
11 It's our residence. Thank you.

12 GOVERNOR NEIL GOLDSCHMIDT: Thank you. Anything
13 further, Mr. Elliott?

14 MR. DENNIS ELLIOTT: We have a copy of the letter
15 Mr. Pape' was referring to in terms of the notice from the City
16 of Portland that construction has been undertaken at the Watery
17 Lane site.

18 SECRETARY OF STATE BARBARA ROBERTS: Has or has not?

19 MR. DENNIS ELLIOTT: Has. That there was some steps
20 that were put in at the Watery Lane site by the applicant,
21 Eastport Equities, without a building permit. That is was a
22 violation of--

23 GOVERNOR NEIL GOLDSCHMIDT: Are you gonna supply those
24 to us--

25 MR. DENNIS ELLIOTT: Yes.

1 GOVERNOR NEIL GOLDSCHMIDT: As part of the comments?

2 Thank you.

3 STATE TREASURER ANTHONY MEEKER: I'd like to ask
4 Mr. Elliott a question.

5 GOVERNOR NEIL GOLDSCHMIDT: The Treasurer has a
6 question of you, Mr. Elliott.

7 MR. DENNIS ELLIOTT: Sure.

8 STATE TREASURER ANTHONY MEEKER: Is this the
9 appropriate time to do that?

10 GOVERNOR NEIL GOLDSCHMIDT: Sure.

11 STATE TREASURER ANTHONY MEEKER: Is it your
12 understanding and those of your clients that if the application
13 currently before the Board is denied that there still is a
14 standing permit that would allow a houseboat until 1995?

15 MR. DENNIS ELLIOTT: Yes, under the permit granted by
16 the City of Portland they would have the right to, tomorrow,
17 put in houseboats consistent with the building code and that
18 kind of thing, but they have the right to do that. And if the
19 application is denied, then they would -- come 1995, their lease
20 for that use would expire and they would have to use some other
21 lease. As the owner of the adjacent real estate, the
22 shoreline, Eastport Equities has a right by statute to first
23 preference for the lease of this water surface area. So by
24 taking this action in Alternative Number 5, the State Land Board
25 is not denying them their rights to a lease for the adjacent

1 water surface. It is merely restricting one use of the lease,
2 which it has the right to do under the statutes and the
3 regulations.

4 STATE TREASURER ANTHONY MEEKER: Thank you.

5 GOVERNOR NEIL GOLDSCHMIDT: What did we just find out?
6 That's a serious question. You asked a good question and I'm
7 not sure I -- he was clear, but I'm not sure I followed the
8 match-up. Your question was?

9 STATE TREASURER ANTHONY MEEKER: My question was, is
10 it the understanding of the attorney representing the applicants
11 and the understanding of the applicants that if the Land Board
12 were to act on Number 5, in other words, adopt the denial, that
13 it is possible for Eastport Equities to put a houseboat moorage
14 at this lease facility up until the year 1995 and then they'd
15 have to take it away.

16 MR. PAPE': That's correct.

17 MR. DENNIS ELLIOTT: That's correct. We would as
18 attorneys for the opposition.

19 GOVERNOR NEIL GOLDSCHMIDT: Does Secretary of State
20 have a question or a comment?

21 SECRETARY OF STATE BARBARA ROBERTS: Tony's
22 absolutely right and Mr. Elliott is right. I don't think
23 there's any question they could do that. I think the question
24 is that if they begin building houseboats or houseboat moorage
25 tomorrow in that leased area, the only thing that would be true

1 is that they could not guarantee that they would have a lease
2 after 1995.

3 MR. DENNIS ELLIOTT: Correct. Correct. And the
4 existing Order would state that they would not, so they would
5 have to get that changed by some affirmative action prior to
6 1995.

7 GOVERNOR NEIL GOLDSCHMIDT: Additional questions of
8 Mr. Elliott or Mr. Pape'? Thank you.

9 MR. PAPE': Thank you.

10 MR. DENNIS ELLIOTT: Thank you.

11 MR. TIMOTHY RAMIS: Well, returning to the list of
12 alternatives and giving our choices, our preference is obviously
13 one. And our second choice is Number 3, which has been
14 recommended by the staff. The thing that they both have in
15 common, of course, is that they begin by eliminating the 1984
16 condition. Having adopted the Hearings Officer's proposed
17 findings and conclusions, you have ample basis to do that. You
18 found that there was no binding deal, as it's been called, that
19 the swap was completely unnecessary to the decision. He said
20 that it was ample reason not to follow the decision because of
21 the notice problems. So there's ample basis upon which to take
22 action on the first set of the staff's recommendation.

23 The second issue for us, of course, is the critical
24 one of whether or not you take choice one or choice three and
25 end up processing this application at this time. From our

1 point of view there is an obvious distinction in the two. One
2 of them gives us much more certainty with respect to the
3 financing of the project. Mr. Packhouse is here and can
4 address some of those uncertainties. A project that we know to
5 have a 30-year amortization term rather than 1995, is obviously
6 going to be a superior project in terms of the kinds of
7 houseboats that are moved in. A short-term lease pretty much
8 guarantees that we'd be moving in existing houseboats giving
9 them a place to park for a while. A long-term lease means a
10 more quality project. It means basically 25 units of additional
11 new housing for the city, which as you see in the Mayor's
12 letter is important to that part of the city.

13 The other choice that's being made here is whether or
14 not after the elimination of the '84 condition whether this
15 project stands in the same shoes as any other along the river
16 that gets hit by a disaster. There's really a policy decision
17 to be made there. What happens in a case where part way
18 through a lease term a project is severely damaged and needs to
19 be repaired or needs to be replaced, what is your policy going
20 to be on it? We feel we stand in the same shoes as anyone else
21 and ought to be treated the same.

22 And we feel that in fairness when you have allowed
23 someone to make an investment in an area that's been whipped
24 out by this sort of a disaster that it is certainly not
25 unreasonable to approach the landlord and say, "I want to make

1 additional investment in this property but I need to have an
2 additional lease term in order to amortize that." We would
3 hope that that's the approach that the Land Board would take in
4 order to create a reasonable business atmosphere in which to
5 make these decisions. Taking a different position sends a
6 different message to the development community. The message is
7 that these leases are subject to the claims of splinter groups
8 and minorities out of neighborhood associations. That
9 ultimately is going to affect value. Ultimately if these leases
10 are subject to this kind of change, in the long run they
11 wouldn't have the market value that they would have if you
12 could provide some assurance that in the event of disaster
13 someone could come in and get a lease extension in order to
14 amortize their investment.

15 I know that a representative of Hillman Properties is
16 here today. They manager over 350 houseboat units. They're
17 critically concerned and sent you a letter on this question of
18 certainty. I think that you have a policy that's relevant.
19 You have a rule that's relevant to this in 141-82-030, which
20 speaks to lease term. And in that provision you state that
21 there is the ability to grant a lease term for a period which
22 allows the owner to amortize the investment under generally
23 accepted accounting procedures. That we think is the general
24 policy that's relevant here and that's why we ask that you
25 process our lease application at this time. We're happy to sit

1 down with the staff and talk about the term, but we would like
2 to extend it past '95 in order to insure the viability of the
3 project.

4 The second issue that I guess is intertwined
5 throughout this proceeding is where are we in the project, and
6 in fact, we have already constructed the walkways that are
7 built. We have already had the welding done on the pilings,
8 they're ready to be installed. As you've heard, the staircase
9 we reinstalled we have some disagreement with the city over
10 which drawing they should be looking at and whether the
11 handrails are on it, whether or not it's permissible to be
12 built at this point under our existing permit. But we do have
13 an existing building permit. We have a permit for this moorage
14 and we could begin construction tomorrow. All of the land use
15 approvals have been granted and we have in hand that permit.

16 So this project is, as far as legal purposes are
17 concerned, approved through the land use process and present
18 there. Really it's a question of the quality of the project
19 that's going to be, the kinds of homes that are going to go
20 into that moorage. On the land use issue, there is no question
21 that we can build. There's no question we're preexisting use.
22 There's no question we have an existing building permit to
23 build. We have been through more land use approval hoops than
24 most projects encounter in their entire life. This project's
25 been approved by your Hearings Officer in compliance with Lower

1 Willamette River Management Plan. LCDC's representative
2 testified at the hearing that this project did not violate the
3 Greenway goals. Portland adopted over 40 pages of findings of
4 the subject. Those findings were upheld by LUBA.

5 At each point in the process over the last three years
6 where the use question was examined, the determination was made
7 that a comprehensive land use planning process has taken place
8 here and has determined that there's an appropriate use. And
9 the supporting information and supporting testimony has been
10 from people who live in houseboat moorages who don't want to
11 see the constriction of supply because they don't want to be in
12 the same position as people in mobile home parks who find their
13 prices rising because the supply is being restricted. Supported
14 by the Neighborhood Association, who wants to see housing and
15 viable housing built in that area. It's been supported all
16 along on the basis of good land-use planning principles.

17 So the use question really should not be a difficult
18 one, particularly in light of the fact that the Land Board that
19 originally authorized the use in the lease for this property
20 approved that use at this site. And that policy determination
21 has been carried through into the only policy document you have
22 to guide your judgment here, which is the Lower Willamette River
23 Management Plan. That plan exists and the Hearings Officer has
24 held -- you've adopted his finding -- that approving this
25 project is not in violation. In fact, the portion of this

1 project that's within the plan is in the only part of the plan
2 that calls for the preservation of houseboats. In terms of
3 comprehensive planning and land use principles the use decision
4 isn't appropriate. I guess those are the reasons we favor
5 moving ahead at this time. And I'll let Tom talk to some of
6 the business aspects.

7 MR. TOM PACKHOUSE: Thanks, Tim. My name's Tom
8 Packhouse. I'm a principal at Eastport Equities. And I just
9 wanted to take a few minutes of the Board's time to point out
10 a couple of items. In regards to the question of the extension
11 of the lease as stated earlier, Eastport could start building
12 houseboats right now and have a moorage up with houseboats in
13 a very short time as we do have some work already completed.
14 But the term of the lease is a very important thing on a
15 bearing as to whether the houseboats will be newer, well-
16 designed houseboats that will complement and add a lot to the
17 area, or if it's a shorter term lease whether there'll be a lot
18 of older houseboats that are moved and moored for the short
19 period of time to 1995 period. And some of that comes both
20 from people filling the commitment for a long-term lease and
21 also with the type of financing that they're able to get on the
22 construction of a houseboat as to the term of the lease.

23 I want to add a few points of our expertise in being
24 the right group to put in the moorage. Our companies have
25 quite an expertise in building of residential development

1 housing and believe that with our expertise we can build a
2 model moorage that our state and our city will be proud of.
3 And I've done quite a bit of traveling and a lot of cities such
4 as Portland really take advantage of their water. And in a lot
5 of areas the houseboat moorages have added, I believe, value and
6 they've added beautification to the water.

7 We also have a long-term commitment in management of
8 properties, and obviously in a long-term lease good management
9 is essential to the project. And I believe that with our 20
10 years of experience in managing properties that we can manage
11 the moorage to its utmost potential that will benefit the
12 houseboat owners in the moorage, the surrounding area, and the
13 state in protection of its lease. And with the findings of our
14 counsel we would request that the Board approve point one.
15 Thank you.

16 **MR. BOB BURTCHEALL:** We have been sent to a contested
17 case hearing to get some answers to some legal questions. We
18 spent \$30,000, by the way, to get those answers. And we came
19 back with a Hearings Officer's report that said that all the
20 legal arguments that the condo people had presented asking for
21 the contested case hearing had been denied. That we had a
22 right to do what we were doing, that the '84 deal didn't mean
23 anything and that we had a right to go ahead.

24 And then they come here with a copy of the Hearings
25 Officer's draft and continue to talk about it like that was it.

1 The reason the Hearings Officer changed it is because he was
2 wrong, and he allowed both sides to argue that fact. He was
3 wrong both in law and in the facts, and so he took it out.
4 We've been given a go-ahead from everybody to go ahead and
5 build this moorage. It's a very small insignificant piece, to
6 some people, on the Willamette River. It's money that goes to
7 the Common School Fund. The City of Portland wants it. The
8 Neighborhood Association wants it. Everybody except the people
9 who live in the condominiums and maybe one or two people from
10 the Friends of the Greenway say that this is a good deal. I
11 can't understand how it could be turned down or that you would
12 even be considering the denial when the idea was go and find
13 out if legally it can be there. And we come back with the
14 answers and they say it can legally be there. These people
15 that I'm partners with manage over 2,000 units. They build 'em
16 and they manage 'em. We have a building permit that was
17 unbelievably hard to get because of all the hoops that we had
18 to go through. It is a well-designed new moorage. We spent
19 \$300,000 in cash money already to put this in. We haven't put
20 them on site because we felt that it was inappropriate while we
21 were before you guys. Thank you.

22 MR. TIMOTHY RAMIS: Governor, one other piece of
23 factual information that may be useful to you in evaluating the
24 claim of the Condominium Association about reliance on your 1984
25 Order. The argument appears to be that everyone in the

1 Association was the aware of the '84 Order and somehow bought
2 their units based in reliance on that. The facts are that 22
3 of those 38 units, the owners purchased them before that Order
4 was ever signed and before the hearing ever took place. So to
5 that extent there could not have been widespread reliance upon
6 any kind of Order. Second, with respect to following the
7 rules, you should be aware that the reason we had to replace
8 the stairs was that the stairs were illegally removed by the
9 Condominium Association. We own the stairs. They're our
10 stairs. They went out and tore them down to prevent access to
11 the property. We now have a lawsuit pending to make sure they
12 pay for those stairs.

13 GOVERNOR NEIL GOLDSCHMIDT: Well, I'm sure there must
14 be some entertainment value in this for the Board someplace, but
15 I've read the report and it isn't quite what Mr. Elliott
16 cracked it up to be in terms of horsepower, but the Board's on
17 notice of both sides' opinions on the subject and I don't think
18 it has much bearing on our conclusion. We appreciate your
19 interest in rebutting it but--

20 MR. TIMOTHY RAMIS: Right.

21 STATE TREASURER ANTHONY MEEKER: That's a city issue.

22 GOVERNOR NEIL GOLDSCHMIDT: God bless them for having
23 one of these things. Would the members--

24 MR. TIMOTHY RAMIS: Thank you.

25 GOVERNOR NEIL GOLDSCHMIDT: No, no. Please sit for

1 a moment. Are there questions that the Board Members have for
2 petitioner? I have a question for you, Mr. Ramis, because
3 really of Mr. Burtchaell's last comment. And I'm trying to
4 find this in the contentions of the parties' proposed
5 conclusions of law and maybe our counsel can find it. But I
6 read everything that the Hearings Officer said in dealing with
7 the facts. I read nothing in them to suggest that the Land
8 Board doesn't have the power to sustain this decision that it
9 made in 1984. Do you agree with that?

10 MR. TIMOTHY RAMIS: That is to agree--

11 GOVERNOR NEIL GOLDSCHMIDT: I'm not talking about what
12 he may conclude as to equity or the facts that he found or
13 anything. I want to just be clear, and you're free to
14 disagree. But my reading of his material does not suggest, and
15 I mean the Final Order, that this Board is incapable of
16 reaching a conclusion using its constitutional authority that
17 it can sustain the 1984 Order.

18 MR. TIMOTHY RAMIS: That is in the Hearings Officer's
19 opinion. That is not in the argument that we made.

20 GOVERNOR NEIL GOLDSCHMIDT: I understand that.

21 MR. TIMOTHY RAMIS: We have preserved other issues.

22 GOVERNOR NEIL GOLDSCHMIDT: Can you show me where that
23 is or, Anne, can you tell me exactly where it is, 'cause I want
24 to follow this with another point that I want to raise which is
25 really your job. I'm looking just literally--

1 MR. TIMOTHY RAMIS: All right.

2 ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER: Governor,
3 I believe it is partly encompassed in number six on page nine,
4 and--

5 ASSISTANT TO THE GOVERNOR GAIL ACHTERMAN: Is it
6 not -- it's number three on line 11 of page eight, I think is
7 the specific point.

8 ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER: That does
9 deal with the same issue, although it goes to the other
10 direction. That is, it says you have the authority--

11 GOVERNOR NEIL GOLDSCHMIDT: Basically it says we
12 aren't bound by it. I think the question is not whether we are
13 bound by it but the question is whether we are free to choose
14 to keep it alive because whatever the procedural problems are
15 that are covered by the open meetings law or other matters that
16 went on do not superscede the Board's authority to reinstate the
17 decision or to reaffirm it. The reason you said, I assume,
18 Anne, that it goes the other direction is that we may depart
19 from it as well. But I imply from Denecke's advice that the
20 power of the Board really was not in his view in question.

21 ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER: That's
22 correct. That's correct. That's implicit in a number of
23 these -- both findings and conclusions of law, including--

24 GOVERNOR NEIL GOLDSCHMIDT: The reason I raised it is
25 that what I read in this is that we have the power to do

1 anything we--

2 ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER: That's
3 right.

4 GOVERNOR NEIL GOLDSCHMIDT: Pretty much please. And
5 I want to return to this because I think it's interesting that
6 it's so much focused on the power we have and in some respects
7 so little focused on some of the other matters. Because at
8 each place sort of indirectly he says, "Yes, these are the
9 circumstances but you may depart" or "Yes, they're the
10 circumstances." I imply from that we may choose to reinstate
11 it. There are three new members here since that decision since
12 '84. In your reading of this opinion, do you agree with that?

13 MR. TIMOTHY RAMIS: That's the reading I give to the
14 opinion. We have raised a question about whether or not your
15 actions might be under the policies of the plan or under some
16 broader policies and powers that you might have. Our problem
17 was with the way the Land Board exercised their authority. We
18 felt it was mistaken. But your overall authority on the river
19 I think is unquestioned.

20 GOVERNOR NEIL GOLDSCHMIDT: Well, I will return to
21 this issue. But I want to raise this with the Attorney
22 General. I do not believe that the constitutional power of the
23 Governor of this state acting as its chief executive can in any
24 way supersede the open meetings law of the State of Oregon.
25 No way. There is no conduct of my office which is exempt from

1 that statute unless it is exempted, or unless I propose to test
2 it in a court of law. I'm governed by the state legislature as
3 a co-equal branch of government on this subject unless -- and
4 I'm not talking about my personal conduct, I am talking about
5 the conduct of the agencies that I manage. Am I correct?

6 ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER: I believe
7 that would be correct, Governor.

8 GOVERNOR NEIL GOLDSCHMIDT: Then why do the three of
9 us and neither of my partners in their individual offices have
10 more constitutional authority than I do, and the aggregated
11 authority of the three of us, or in our position as managers of
12 this State Land Board, why are we exempt? Why--

13 ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER: Governor,
14 I--

15 GOVERNOR NEIL GOLDSCHMIDT: Doesn't he reach the
16 conclusion that we have the power to file at the open meetings
17 law or does he? Sit down a moment here, I want to stick with
18 my lawyer.

19 ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER: Governor,
20 I don't believe that the conclusion reached in the Order which
21 you have approved says that you may violate the open meetings
22 law. It does say that because of the lack of perfect notice,
23 of complete notice, in the earlier situation there was a
24 violation of that law. What it goes on to say is, however,
25 that does not by itself void the Order, because no one

1 challenged it under the only procedure that is provided in the
2 law for challenging an action for defect of open meeting or
3 notice. And therefore the Hearing Officer stated that this does
4 not void the 1984 Order, although he allowed that, of course,
5 that might go to the weight the Board would give to that
6 Order.

7 **GOVERNOR NEIL GOLDSCHMIDT:** Basically we have a
8 conclusion that the law was violated, that those that were
9 offended by the violation did not perfect their claim
10 procedurally. And while there may be injured parties involved,
11 it was his conclusion that it can't be serious enough to
12 automatically void whatever the government did, with which I am
13 not prepared to offer an opinion because I haven't gone and
14 looked at it in detail. But really the point I want to make is
15 at no stage then does our own Hearings Officer conclude we are
16 exempt from the statute--

17 **ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER:** Not at
18 all.

19 **GOVERNOR NEIL GOLDSCHMIDT:** Nor is there really any
20 way to perfect our, say in another way, ameliorate or remediate
21 the problem unless we choose to do it in some fashion here,
22 because the parties who had standing to do something about it
23 under the statute before--

24 **ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER:** Did not
25 do so.

1 GOVERNOR NEIL GOLDSCHMIDT: Did not.

2 ASSISTANT ATTORNEY GENERAL ANNE W. SQUIER: That's
3 correct.

4 GOVERNOR NEIL GOLDSCHMIDT: It's an interesting issue.
5 Because the question, of course, is whether the parties who were
6 claiming should have had didn't have notice, and I think
7 eventually some judge is gonna have a real chance to take a
8 crack at this some day. And not in this case necessarily, but
9 this has happened elsewhere in the government. This is not the
10 first time we've had this problem and many times it's been
11 inadvertent.

12 MR. TIMOTHY RAMIS: Well, we've filed some rather
13 voluminous briefs and argument on this. If the message from
14 the Hearings Officer is "Don't come to us, go to court," that
15 we think is--

16 GOVERNOR NEIL GOLDSCHMIDT: Well, I don't mean to give
17 any particular message, Mr. Ramos.

18 MR. TIMOTHY RAMIS: No, it's an unfortunate message
19 if it was, 'cause we want to try and get this thing resolved.

20 SECRETARY OF STATE BARBARA ROBERTS: Governor, if I
21 might, I think that Arno Denecke said that the State Land Board
22 can consider the statutory violations, so he clearly said it
23 was a violation, in determining the weight to be given to the
24 Order. And I venture to guess part of the thing that has kept
25 us at this so long has been our concern over that violation or

1 that purported violation. We might have settled this months
2 ago. So we may have given weight and then some to it. And I'm
3 not sure that that doesn't reflect part of the difficulty we've
4 had as we've gone through this process of decisionmaking with
5 this is because of that, and maybe the weight has already been
6 given to the violation of another Land Board.

7 GOVERNOR NEIL GOLDSCHMIDT: Are there additional
8 questions of Mr. Ramis?

9 STATE TREASURER ANTHONY MEEKER: Yes.

10 GOVERNOR NEIL GOLDSCHMIDT: Mr. Meeker.

11 STATE TREASURER ANTHONY MEEKER: Governor. Can you
12 refresh my memory? I have it upstairs, but I can't remember.
13 When was the Land Use Board of Appeals decision made?

14 MR. TIMOTHY RAMIS: The LUBA opinion?

15 STATE TREASURER ANTHONY MEEKER: Yeah.

16 MR. TIMOTHY RAMIS: Do we have that here?

17 STATE TREASURER ANTHONY MEEKER: I don't need an exact
18 date.

19 MR. TIMOTHY RAMIS: In 1988.

20 STATE TREASURER ANTHONY MEEKER: Thank you.

21 MR. TIMOTHY RAMIS: Part way through the year.

22 STATE TREASURER ANTHONY MEEKER: Thank you.

23 MR. TIMOTHY RAMIS: On this question of the weight to
24 attach to the failure of notice, one of the indicators of the
25 weight, I think, is the record of that '84 decision where each

1 of the Land Board Members at various times asked the question,
2 "Where are the houseboat tenants? Why aren't they here?" And
3 the response came back, "Well, they're in favor of this Proposed
4 Order." And so it was represented to the Land Board that
5 notice error was immaterial because these people didn't care.
6 As it turned out, they did. As it turned out, it was a
7 critical issue. That's why we attach a great deal of
8 significance.

9 STATE TREASURER ANTHONY MEEKER: Almost as critical
10 as a flood.

11 MR. TIMOTHY RAMIS: Yes.

12 GOVERNOR NEIL GOLDSCHMIDT: Further questions? Thank
13 you.

14 MR. TIMOTHY RAMIS: Thank you.

15 GOVERNOR NEIL GOLDSCHMIDT: In the belief, as
16 misplaced as it might be, that there's not likely to be lots of
17 new information that we need to hear directly, given that this
18 was all that was supposed to be made available to the Hearings
19 Officer, I'd like to ask Martha if there's anything additional
20 you want to offer, since I stopped you in your tracks
21 momentarily, assuming you'd always get the last word.

22 DIRECTOR MARTHA PAGEL: That's right.

23 GOVERNOR NEIL GOLDSCHMIDT: You and Janet. And
24 following that leave this maybe to Board conversation.

25 DIRECTOR MARTHA PAGEL: Governor, I was going to jump

1 the gun on Anne and said the same thing that she ultimately
2 said on that issue, which was--

3 GOVERNOR NEIL GOLDSCHMIDT: See, you don't need a law
4 diploma to function in this world. We knew that.

5 SECRETARY OF STATE BARBARA ROBERTS: She has one.

6 DIRECTOR MARTHA PAGEL: I have one.

7 (LAUGHTER)

8 I couldn't resist being a lawyer back here. I was forgetting
9 my role.

10 GOVERNOR NEIL GOLDSCHMIDT: I wouldn't have voted
11 for her for Director if I'd known that.

12 (LAUGHTER)

13 Do you have anything further that you want to--

14 SECRETARY OF STATE BARBARA ROBERTS: Tony, it's good
15 to hear the Governor's new-found respect for those of us who do
16 not have law degrees.

17 GOVERNOR NEIL GOLDSCHMIDT: Oh, I am busy lobbying
18 people not to go to law school. I went.

19 ASSISTANT TO THE GOVERNOR GAIL ACHTERMAN: It warps
20 the mind.

21 GOVERNOR NEIL GOLDSCHMIDT: I went. Yeah. Remember
22 Woodrow Wilson -- he says, "I was once a lawyer and now I'm an
23 honest person"? That was after he got to be President and we
24 were all in doubt, right? "No good, Woodrow, it's not gonna
25 work." All right. Well, we have a courtesy motion, as it was.

1 We actually have a matter in front of us which we can vote up,
2 vote down, amend, vote in, vote out. But we need to, I think,
3 start this by discussion which may generate some questions of
4 one another or maybe of staff, and if there isn't discussion
5 then we can call the question on this item and vote. And if it
6 heads down get a motion and do something else.

7 **SECRETARY OF STATE BARBARA ROBERTS:** Well, Governor,
8 my preference would be and I can't obviously speak for anyone
9 else that the motion was, in fact, a courtesy motion for
10 purposes of discussion, and I by preference would choose to
11 submit, I think, another motion as an amendment, I guess,
12 correctly a replacement amendment for the motion we have on the
13 table. I'm having some difficulty with language after all of
14 our discussion to get where I want to go to to do something
15 that comes close to number five. But I'm going to propose this
16 as an amendment and see if it comes into there. At least we'll
17 have some place to go to start discussion. I'd like to move to
18 keep the 1984 prohibition in place and to defer -- maybe delay,
19 whatever the word is -- any reopening of the negotiation on the
20 1995 lease date until the LWRMP review is complete or until the
21 lease is pending again.

GOVERNOR NEIL GOLDSCHMIDT:

22 Let's just make sure that everybody has that. Martha, do you?

23 **DIRECTOR MARTHA PAGEL:** Yes. Shall I restate that?

24 **SECRETARY OF STATE BARBARA ROBERTS:** I don't know
25 whether that covers all the pieces that I was attempting to do

1 on what I thought--

2 GOVERNOR NEIL GOLDSCHMIDT: I would like her to
3 restate it, so we make sure that--

4 SECRETARY OF STATE BARBARA ROBERTS: Okay.

5 DIRECTOR MARTHA PAGEL: As I understand it your motion
6 would be to keep the 1984 Order in place with no reopening of
7 the issue until completion of the Lower Willamette Plan Review
8 or the expiration date of the lease?

9 SECRETARY OF STATE BARBARA ROBERTS: No reopening of
10 the negotiation on the lease. Can we prohibit the reopening of
11 the '84 prohibition? I don't know if we can do that.

12 DIRECTOR MARTHA PAGEL: The lease is what you intended
13 it?

14 SECRETARY OF STATE BARBARA ROBERTS: Yeah, yeah.

15 DIRECTOR MARTHA PAGEL: That's what I meant to say.

16 SECRETARY OF STATE BARBARA ROBERTS: Okay. I wanted
17 to be clear.

18 GOVERNOR NEIL GOLDSCHMIDT: It's a motion to basically
19 substitute.

20 SECRETARY OF STATE BARBARA ROBERTS: It's a substitute
21 motion.

22 GOVERNOR NEIL GOLDSCHMIDT: Substitute motion. Is
23 there a second?

24 STATE TREASURER ANTHONY MEEKER: Governor, I'd like
25 to have someone tell me what the difference between Secretary

1 of State's motion and number two is.

2 SECRETARY OF STATE BARBARA ROBERTS: No, it's not
3 number two.

4 ASSISTANT TO THE GOVERNOR GAIL ACHTERMAN: It is not
5 number two.

6 SECRETARY OF STATE BARBARA ROBERTS: It's not number
7 two.

8 STATE TREASURER ANTHONY MEEKER: Well--

9 SECRETARY OF STATE BARBARA ROBERTS: It's number five.
10 It's the no-no. A portion of it's encompassed in number two.
11 Number two is less specific in my motion. "A time closer to
12 the current expiration date." I've got the LWRMP component in
13 there which is not in number two.

14 ASSISTANT TO THE GOVERNOR GAIL ACHTERMAN: Isn't the
15 correct way to say your motion that you would deny the
16 request--

17 EXECUTIVE ASSISTANT PATRICIA MCCAIG: To remove the
18 prohibition--

19 ASSISTANT TO THE GOVERNOR GAIL ACHTERMAN: To remove
20 the prohibition and delay reopening of the lease until the LWRMP
21 is amended or--

22 EXECUTIVE ASSISTANT PATRICIA MCCAIG: The lease is up
23 for--

24 ASSISTANT TO THE GOVERNOR GAIL ACHTERMAN: The lease
25 is up for a renewal in the ordinary course?

1 EXECUTIVE ASSISTANT PATRICIA MCCAIG: Uh-huh.

2 SECRETARY OF STATE BARBARA ROBERTS: Yeah, 'cause it's
3 potentially possible LWRMP could be delayed past the '95 date.
4 It's not likely--

5 ASSISTANT TO THE GOVERNOR GAIL ACHTERMAN: Or it might
6 occur earlier?

7 SECRETARY OF STATE BARBARA ROBERTS: Yeah.

8 GOVERNOR NEIL GOLDSCHMIDT: Folks, I know you're
9 enjoying this conversation but we have to have a motion to vote
10 on. And I believe we actually have one. So if the Secretary
11 of State wishes to rewrite it or redescribe it, I'm open. I
12 mean, I'm not trying to be irritable. I just think it's very
13 hard for us to build a record here without--

14 SECRETARY OF STATE BARBARA ROBERTS: Okay. Let me see
15 if I can try once more. I would move to deny the request on
16 the 1984 prohibition and also to defer any reopening of the
17 negotiation on the 1995 lease date until the LWRMP review is
18 complete or until the lease is up for review in 1995.

19 GOVERNOR NEIL GOLDSCHMIDT: Is there a second?

20 STATE TREASURER ANTHONY MEEKER: Governor, with the
21 change in the wording, I'll second the motion.

22 GOVERNOR NEIL GOLDSCHMIDT: It's been moved and
23 seconded. Is there a discussion? You folks ready for a vote?
24 You're free to make remarks. I'm gonna call the roll one at a
25 time, so what I'd like to do is you can make comments of

1 whatever kind you want with the vote. Is that acceptable?
2 Barbara, it's your motion.

3 **SECRETARY OF STATE BARBARA ROBERTS:** Yeah, I think two
4 things I'd like to say, maybe three. One, I want to make very
5 clear, Governor, that I agree with you wholeheartedly about open
6 meetings and it was one of the things I worked on as a
7 legislator and feel strongly about, and I don't think there's
8 justification for ever allowing that to occur. And I did give
9 extra weight to it. I spent longer considering this because
10 that was a portion of what I did. I'd also like to make it
11 very, very clear that I am not an opponent of houseboats. I
12 own a houseboat. My landlord is in the audience. I'll
13 probably get evicted next week, but I feel very strongly that
14 they are a wonderful alternative on the river; that is not my
15 reservation about this and I want to be clear about that.

16 And finally, that I don't think this is a decision
17 that's come easily to any of us. It's been a very complex
18 series of discussions and I think as you pointed out with your
19 questions to Mr. Pape' and to his lawyer there clearly is a
20 status quo that exists on that moorage with regard to an
21 already approved building permit and an already approved lease
22 that lets that property there for use until 1995 and we have
23 not eliminated that nor did I intend to.

24 **GOVERNOR NEIL GOLDSCHMIDT:** And your vote?

25 **SECRETARY OF STATE BARBARA ROBERTS:** Oh, I thought you

1 wanted explanation before vote.

2 GOVERNOR NEIL GOLDSCHMIDT: No, that's okay.

3 SECRETARY OF STATE BARBARA ROBERTS: I am voting yes
4 in favor of the motion.

5 GOVERNOR NEIL GOLDSCHMIDT: Mr. Treasurer.

6 STATE TREASURER ANTHONY MEEKER: Are we discussing our
7 vote and then making--

8 GOVERNOR NEIL GOLDSCHMIDT: I think it's fair for you
9 to explain your vote and then to make it. Is that all right?

10 STATE TREASURER ANTHONY MEEKER: Sure, that's fine.
11 Governor, it's my intention to support this with a yes vote.
12 One of the concerns I've had in this matter all along is that
13 assumptions have been made by people in the planning process,
14 by people who have purchased this lease -- even by the
15 applicant -- and all of the conclusions and findings that I've
16 read and discussed leads me to believe that the process has
17 worked around this '95 date from the very beginning. The
18 process is still open by the review of the Lower Willamette
19 Study, and I think for us to reverse a decision that was made
20 in 1984 would make the presumption that all through the
21 purchasing, the planning and appeals and everything else that
22 we'd now change the deadline or the goalpost, and that's always
23 been a concern of mine that the goalpost continually gets
24 changed. By denying the permit at this time, I think we don't
25 change the goalpost, and that would be my reason for support.

1 So I vote aye.

2 GOVERNOR NEIL GOLDSCHMIDT: Well, I'm gonna vote no
3 on the motion and I'm gonna make a request of this body at the
4 end. But let me explain. I think the Board Members know I've
5 had a problem with this from the very beginning and it comes
6 unfortunately as part of the baggage maybe that I bring with me
7 from my years in city government which is a party to this
8 measure in which I think badly mishandled its share of its
9 duties when this case first came to the state.

10 It's easy to say two State Land Board Members did
11 something that they regret. But in fact, maybe the most
12 important thing is that the city did and it has said so and it
13 isn't any easier for us to figure out their motives then than
14 it is to figure out ours, and I'm not really trying to assign
15 blame, but I do think it's important that we were negotiating
16 with city government, the largest one in the state. And I
17 think the handling of this case on the city's side is really
18 discouraging given what I know about how it ought to do.

19 I am troubled by this case because it has -- the
20 smell about it is that we don't have to do these things because
21 we have the power not to do them. Any organization of a lesser
22 size than ours in this state would have been handed its head
23 with this case a long time ago. The state government has for
24 years passed statutory exemptions for itself in tort claims
25 cases and slowly but surely the courts are rolling up the rug

1 right underneath us and basically saying, "You really can't
2 exempt yourself from negligent behavior." This is not such a
3 circumstance. I don't mean to claim this is a tort case, but
4 it has about it not a case in my view where we are asked to
5 * waive our power, but to exercise our responsibilities to
6 fairness, and I want to describe what I think the choices were.

7 I went back, I think as all of us did after deciding
8 to send this case to a contested hearing, and asked this
9 question: "Who would be damaged by proceeding in the manner
10 which the petitioners had requested?" The neighbors, who I
11 think are the most clear case of assertion of injury, are faced
12 with a problem it seems to me as Mr. Elliott himself pointed
13 out, they were prepared to accept Number 3 when they came in
14 front of the Land Board, if I understand the history, and I
15 don't mean to misstate it, but the point is to conclude that
16 they are damaged by Number 3 I think is not accurate. And it
17 was the one from the staff and while it wasn't my first choice
18 it was one I could have accepted.

19 The city wasn't damaged and, in fact, it has been back
20 in front of us in a rather aggressive fashion as a supporter
21 and I must say, and perhaps I'm speaking out of turn here, it
22 is the only institution on this river that has regularly added
23 land to the Greenway. For all of the talk about the Greenway,
24 the state is not adding land to the Greenway. The City of
25 Portland has added land to the greenway and wealth to the tax

1 rolls, and its judgment, I think, is worth something here about
2 the balancing act between the interest, although I do not
3 believe we ought to fall prey to the idea that whatever local
4 governments say is the Land Board's position. I don't believe
5 that, and I didn't believe it when I was in city government.

6 But I don't think you can claim there's public injury
7 in the City of Portland without running through their case and
8 taking it out. I do not believe Denecke took it on or took it
9 out. We haven't taken it on or taken it out. It stands in
10 front of us basically as a statement that they believe there's
11 no damage from this project and their review deserves some
12 consideration.

13 The big question and it really was the Secretary of
14 State's questions in the first or second hearing about this that
15 got me looking at it, and that was the question of is there
16 damage to the state interest? It's why I ask the question of
17 our counsel were we really being asked to waive our power or to
18 be told we didn't have the power. And I want to be absolutely
19 clear here that I don't think Mr. Denecke implied in his
20 opinion that the power was absent -- that is that we have no
21 authority and I think it has been asserted by two members of
22 this Board.

23 But I don't think it is a power that is without
24 restraint. And I do believe at some point that the advice of
25 counsel here that you can duck the question of the damage that

1 is done by failure to follow processes created by the state
2 government by claiming that some party didn't exercise their
3 administrative remedy when it is a live case in front of us
4 deserves a lot of scrutiny. It isn't something I buy very
5 often in my life in government and I don't buy it now. I don't
6 say we have to ameliorate the pain and the anguish and the
7 expense that we caused for everybody. The Treasurer's pointed
8 out there are some wide-open eyes in this audience. These are
9 not children at play when they spend this money. But it
10 troubles me a lot.

11 And it troubles me because we have on the record two
12 of our predecessors and their party registration and their
13 positions at the time are really not -- they were just as
14 intelligent as I would have been in the same situation, I think
15 is the point. I could not probably have voted any better than
16 they did with what they knew. But we have them on the record
17 indicating they didn't know what they should have known, and
18 had they known more they wouldn't have done it, and if they
19 hadn't have done it we probably wouldn't have this case today.

20 And yet we have by this vote today apparently decided
21 that the interest that we're protecting is not damage to the
22 private parties who have asserted it, Mr. Elliott's clients,
23 Mr. Pape'; we're not protecting the city's interest because it's
24 asserted it has none to be protected and it wants the project
25 to go through. We're not protecting the state's constitutional

1 authority because no one is asserting that we don't have it.
2 And essentially what we are protecting is bad state procedure. ←
3 I find that very, very uncomfortable and our findings suggest
4 that we can remedy the problem without damaging the state's
5 interest.

6 So I look, then, to the final issue of what's the
7 consequence of this motion which is about to pass? Have we
8 protected the constitutional responsibilities of the state for
9 income to the Common School Fund? No, we haven't really made
10 that decision because that issue's really out in front of us
11 until the Lower Willamette River Plan is returned again. That
12 decision really is still there, although I think a claim can be
13 made that it will be very hard to suggest this vote protects
14 it. Have we been fair? As I said to you, I think not.

15 So I'm gonna vote no, and with a request if it's
16 possible because this is my first time in one of these
17 proceedings since I've been on the Board, that this record be
18 kept open long enough for the Governor of the State to submit
19 a brief in support of my comments, because I do intend to raise
20 in every way I can what I believe are very serious flaws in the
21 manner in which we have not handled this procedurally, but in
22 the question of whether or not the interests of the public have
23 been served. And I want to be clear that these handwritten
24 notes I've tried to provide today maybe can be articulated a
25 little bit closer, and if the other members will tolerate it

1 I'd like to submit this to the Board for the record sometime in
2 the next 10 or 15 days.

3 STATE TREASURER ANTHONY MEEKER: Well, Governor, I
4 cert--

5 GOVERNOR NEIL GOLDSCHMIDT: So I vote no.

6 STATE TREASURER ANTHONY MEEKER: Governor, before you
7 pass on the motion there are two points that I'd like to make.
8 First of all, to your request I would make the assumption that
9 if either one of the other Land Board Members wanted to submit
10 written supplement to the record that we could do so.

11 GOVERNOR NEIL GOLDSCHMIDT: Absolutely. I was saying
12 I'd try to put a deadline on it.

13 STATE TREASURER ANTHONY MEEKER: Yeah.

14 GOVERNOR NEIL GOLDSCHMIDT: We have a lot of parties
15 here that are waiting for a Final Order.

16 STATE TREASURER ANTHONY MEEKER: And secondly, kind
17 of a technical, procedural question. I want to make certain
18 that the motion that we are currently voting on, having two
19 yes's and a no, was proper. Is it my understanding to those
20 who are keeping the record that the motion was placed as a
21 substitute motion?

22 GOVERNOR NEIL GOLDSCHMIDT: Yes.

23 STATE TREASURER ANTHONY MEEKER: Okay. So that makes
24 it a proper motion procedurally?

25 SECRETARY OF STATE BARBARA ROBERTS: However, if that

1 is the case, Mr. Treasurer, we need to first vote on the
2 substitute motion and then vote on the motion. We actually
3 will require two votes in order to get where we're going.

4 STATE TREASURER ANTHONY MEEKER: And that's why I
5 raise the issue.

6 GOVERNOR NEIL GOLDSCHMIDT: So we have completed the
7 vote on the first one which is two yes's and one no. We have
8 in front of us the staff recommendation then which you were
9 saying properly we need to do the reverse on?

10 SECRETARY OF STATE BARBARA ROBERTS: Well, what we
11 have done by what we just did, Governor, is to put the
12 substitute motion in place and we now have before us for action
13 the substitute motion which I made earlier, which is now the
14 motion that is in place parliamentarily.

15 ASSISTANT TO THE GOVERNOR GAIL ACHTERMAN: What they
16 voted yes-yes and no on, substituting--

17 GOVERNOR NEIL GOLDSCHMIDT: Well, it was just a motion
18 procedurally.

19 SECRETARY OF STATE BARBARA ROBERTS: Put this one
20 before us.

21 ASSISTANT TO THE GOVERNOR GAIL ACHTERMAN: And now the
22 substitute--

23 GOVERNOR NEIL GOLDSCHMIDT: Call the roll on the
24 substitute motion then is what you're saying?

25 STATE TREASURER ANTHONY MEEKER: Yeah.

1 ASSISTANT TO THE GOVERNOR GAIL ACHTERMAN: Right.

2 SECRETARY OF STATE BARBARA ROBERTS: If I might,
3 Governor, just to reinforce the State Treasurer, I do think that
4 if there is a time like where you could submit a brief there
5 may be others on the Board who would choose to do that.

6 STATE TREASURER ANTHONY MEEKER: And I'm not--

7 SECRETARY OF STATE BARBARA ROBERTS: Yeah.

8 GOVERNOR NEIL GOLDSCHMIDT: No, you're free to. I was
9 asking it as a courtesy of the other members and--

10 STATE TREASURER ANTHONY MEEKER: Sure.

11 SECRETARY OF STATE BARBARA ROBERTS: Yeah. Yeah.

12 GOVERNOR NEIL GOLDSCHMIDT: Obviously if you extend
13 it to me, I assume you're extending it to everybody.

14 SECRETARY OF STATE BARBARA ROBERTS: I think we could
15 say that, Governor.

16 GOVERNOR NEIL GOLDSCHMIDT: I would like to do it with
17 a time limit so that the--

18 STATE TREASURER ANTHONY MEEKER: Sure.

19 GOVERNOR NEIL GOLDSCHMIDT: State Land Board staff
20 could close up this matter and produce a final document and--

21 SECRETARY OF STATE BARBARA ROBERTS: Absolutely.

22 GOVERNOR NEIL GOLDSCHMIDT: So 20 days maximum, is
23 that acceptable?

24 STATE TREASURER ANTHONY MEEKER: That's fine.

25 SECRETARY OF STATE BARBARA ROBERTS: That's fine.

1 GOVERNOR NEIL GOLDSCHMIDT: Call the roll on the
2 original motion. All those in favor say aye.

3 SECRETARY OF STATE BARBARA ROBERTS: Aye.

4 STATE TREASURER ANTHONY MEEKER: Aye.

5 GOVERNOR NEIL GOLDSCHMIDT: This is on the substitute,
6 I'm sorry.

7 STATE TREASURER ANTHONY MEEKER: Right.

8 SECRETARY OF STATE BARBARA ROBERTS: This is the
9 motion we have now before--

10 GOVERNOR NEIL GOLDSCHMIDT: All those in favor say
11 aye.

12 STATE TREASURER ANTHONY MEEKER: Aye.

13 SECRETARY OF STATE BARBARA ROBERTS: Aye.

14 GOVERNOR NEIL GOLDSCHMIDT: Opposed the same, aye --
15 no. And we disposed of the staff one by doing the
16 substitution--

17 SECRETARY OF STATE BARBARA ROBERTS: Yes.

18 GOVERNOR NEIL GOLDSCHMIDT: So we're done?

19 SECRETARY OF STATE BARBARA ROBERTS: Yes.

20

21

22

23

24

25

(3) If we deny —
— Have we protected income
responsibility to com.
School fund — NO

— Have we Been Frank
(No) Background / Sleazy
~~How create~~

Keep Record Open
for 20 days to
allow submission
of brief in support
of vote

(1) The "we don't have to do it because we are powerful"
vs,

we don't waive our power — But we placed her to ensure fairness to all

(2) Who is damaged by #3

- (A) Neighbors — no change / Proposed to the Land Board
- (B) City — no — ^{its supports} the creator of Greenway ^{space & wealth}
- (C) State — no — in fact it ameliorates damage it caused

— 2 members repudiated
vote (i.e., "if I had known...")

So what are we protecting
Bad state procedure

Our findings suggest this can be remedied w/out damage to the state
i.e., public interest

STATE OF OREGON

INTEROFFICE MEMO

GOVERNOR'S OFFICE

TO: Neil Goldschmidt

DATE: January 19, 1989

FROM: Gail Achterman

SUBJECT: Watery Lane - Bob Burtchaell

I met with Bob Burtchaell and Tim Ramis to discuss the Watery Lane case. I explained Tony's and Barbara's positions and the staff recommendation (lifting the prohibition to treat Bob like everyone else, but not extending lease now).

I understand you will try to talk to Tony before the meeting. Tim, Bob and I agreed on key points to cover.

1. The initial City/Land Board deal was wrong. This is consistent with the staff recommendation.
2. If the Land Board is truly going to be businesslike, it should act like a business. Normally lessors routinely extend existing leases before term expiration in order to allow lessees to refinance.
3. The appropriateness of houseboat use at this site has already been decided by the earlier Land Board, the City and the Lower Willamette River plan itself. There is no reason to revisit this issue. In fact, if the condo owners have their way, we will have no lessee, open water and no income, or at most a boat moorage lease.

Tim Ramis outlines these points in more detail on the attached sheet.

GLA:cs
Attachment
cc: Tom Imeson
2510N

JAN 19 1989 THU 12:25 OREGON 5032432944 P. 01

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TIMOTHY V. RAMIS
WILLIAM J. STALNAKER

PLEASE REPLY TO PORTLAND OFFICE

MICHAEL REDDEN
OF COUNSEL

*ALSO ADMITTED TO PRACTICE
IN STATE OF WASHINGTON

FACSIMILE TRANSMISSION COVER SHEET

DATE: January 19, 1989 CLIENT NO. _____

TO: Gail Achterman

FAX # 378-6075

FROM: Tim Ramis

O'DONNELL, RAMIS, ELLIOTT & CREW

1727 N.W. HOYT STREET

PORTLAND, OR 97209

FAX # (503) 243-2944

COMMENTS: Re: Eastport Equities/State Land Board

2 PAGES TO FOLLOW, EXCLUDING COVER SHEET.

IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL THE
UNDERSIGNED AT (503) 222-4402 IMMEDIATELY. THANK YOU.

SIGNED: Chris Hand

- I. 1984 deal is dead. We will get legally slammed if we enforce it.
- A. Denecke rejected it: no notice; no contractual obligation on SLB; no conflict with LWRMP.
 - B. Staff is correct to dump '84 agreement.
 - C. Why should SLB pay for a legal battle over arguments that Pape has already lost before Portland, LUBA and Denecke?
 - D. It is unfair and bad policy for governments to trade away the rights of individuals without minimal notice to them.
 - E. Even Vic and Norma now repudiate their past vote.

II. Without the '84 deal, this is an ordinary lease case. This should be handled like any other deal.

- A. Our responsibility is to use good business practice and renew leases to allow redevelopment of land.
- B. Good business practice is necessary in order to fulfill our duty to the Common School Fund.
- C. Are we going to establish a procedure where any lease can be jerked? That undermines the value of all leases. What would the Port's lease with Flightcraft be worth if renewal was subject to claims of noise or visual pollution?
- D. If we do not renew, the message is anti-Portland, anti-business, anti-local determination and anti-fairness.
- E. Do we want to go through this for every moorage lease renewal? Aren't we inviting every environmental group down here to demand a hearing and a lease denial for every project on the river?
- F. What message are we sending to banks and waterfront developers?

III. Use Questions

- A. If there was something wrong with this lease, the City Council or LUBA would have found it. If Pape had any case at all, he would have appealed the LUBA decision.
- B. Portland adopted 42 pages of supportive findings. The neighborhood association endorses it. We shouldn't

ignore the local planning process on a close question of use.

- C. The original use decision was made by the SLB when the original lease was granted.
- D. The best document we have is the LWRMP and it specifically identifies this area for houseboats.

IV. Political Considerations

- A. This will never be seen as a development versus environment issue. It is a question of reliable business climate versus unpredictable changes of direction which hurt investors.
- B. ...