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MEETING
STATE LANDS COMMISSION

STATE CAPITOL
ROOM 4203

ORIGINAL

EXCERPT
MORNING SESSION

THURSDAY, DECEMBER 17, 1981

Evelyn U. Duggan
Shorthand Reporter

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APPEARANCES

Commission Members:

Kenneth Cory, Chairperson

Susanne Morgan, representing Mary Ann Graves,
Director of Finance

David Ackerman, representing Mike Curb,
Lieutenant Governor

Staff Present:

William Northrop, Executive Officer

James F. Trout, Assistant Executive Officer

Robert C. Nigh, Esq., Chief Counsel

N. Gregory Taylor, Esq., Assistant Attorney
General

Jane Mochon

Betty Louie

Also Present:

Ball, Hunt, Hart, Brown & Barerwitz
By: Charles Greenberg, Esq.

Representing: Santa Catalina Island Company and
Santa Catalina Island Conservancy

Hertzberg, Koslow & Franzen

By: Harrison W. Hertzberg, Esq.

Representing: Catalina Marine Services Corp.

James H. Radcliffe, Esq.

Representing: Island Navigation Company, Inc.

Clancey Leland, Los Angeles Board of Supervisors

Mr. Charles Rutherford

Mr. Gordon Saunders

I N D E X

	<u>Page</u>
1	
2	
3	1
4	1
5	2
6	2
7	
8	4
9	17
10	13
11	19
12	21
13	22
14	23
15	29
16	31
17	31
18	34
19	41
20	41
21	46
22	56
23	
24	
25	

PROCEEDINGS

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(After preliminary orders of business and approval of the Consent Calendar, the following public meeting was held:)

CHAIRPERSON CORY: Item 19, consideration of bids regarding tidal submerged lands in Santa Catalina. Staff, can you tell us where we are?

EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Ms. Jane Mochon, who's really doing the work on that, and Betty Louie will make the presentation to the commission.

MS. MOCHON: We've made a review of all the bids that have been submitted to us. Our evaluation is set forth in the Calendar item based on three factors that were to be considered, including the type and extent of services that were to be provided, the fee schedules that were to be made for charges to members of the public using the lease premises, and also the percentage of growth income that was bid as a basis for rental to the state.

We have determined -- staff's evaluation is that the Island Company Conservancy bid is the best bid.

CHAIRPERSON CORY: And your recommendation is?

MS. MOCHON: The staff recommendation basically is that the commission award the bid to the Catalina Island Company and the Catalina Island Conservancy.

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COMMISSIONER MORGAN: Mr. Chairman, maybe I could kick this thing off by putting in a motion. I'll move the staff recommendation.

CHAIRPERSON CORY: Before we get to that, I think there's some procedural questions we maybe ought to look at. Whether or not, for example, looking at the second page of the staff report, there was a bid of the Island Navigation Company, Incorporated, which was received late.

MR. TAYLOR: That is correct.

CHAIRPERSON CORY: Do we need to deal with that issue before we deal --

MR. TAYLOR: Yes, Mr. Chairman. You need to determine whether to consider that bid. It was late by ten minutes. The facts are set forth in the Calendar item.

The reason for being late was the fact that there was fog. There had been no -- although the Island Conservancy bid had been opened, there was no disclosure of any terms at the time that the Island Navigation Company walked into the room. They walked in and handed a sealed bid. It was received with a notation that it was late, and the bidder was informed that there would be a ruling on that question.

As a matter of law, you have discretion as to whether or not to accept the bid or to reject it. You could

4
1 reject it on the basis that everyone knew what the time
2 deadline was. It was basically set forth. It was
3 specifically set forth in the bid proposal, and it was
4 confirmed on the phone to a number of people.

5 The two other bidders did make it on time,
6 despite problems with fog. On the other hand, there was no
7 prejudice to any of the other bidders or to the state.
8 There had been no disclosure of any material facts.

9 Under those circumstances, it is whatever your
10 pleasure is with regards to whichever way you want to go.

11 CHAIRPERSON CORY: We should dispose of that
12 question?

13 MR. TAYLOR: I believe you should, yes.

14 CHAIRPERSON CORY: Then should we go through the
15 question of any other questions of qualification of bidders
16 before we get down to --

17 MR. TAYLOR: Yes, the other procedural item
18 which should be dealt with is the ratification of the staff
19 responses to questions. That needs to be ratified.

20 Perhaps in the order of things, on page 9 of your
21 Calendar item, that would be the first item to take. Then
22 the next item would be the opening of bids, whether the
23 opening of the Island Navigation Company's bid should be --
24 whether that bid should be accepted because of its lateness.

25 Then the next matter would be on the merits of

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1 the proposal.

2 CHAIRPERSON CORY: Going through them, one, two,
3 three, you think we should do first --

4 MR. TAYLOR: Ratification of the staff's
5 answers to questions that were asked by the bidders, and
6 a number of questions arose. The bidders were told that
7 we would not orally answer questions, but they wanted to
8 submit them all in writing by a certain date, and the staff
9 would respond by another date.

10 CHAIRPERSON CORY: Well, if we don't wish to
11 ratify the staff's answers, what happens?

12 COMMISSIONER ACKERMAN: I have a problem with
13 some of the staff's answers.

14 CHAIRPERSON CORY: I have some problems with the
15 staff's answers.

16 MS. MOCHON: Can we ratify portions of them and
17 discuss others?

18 MR. TAYLOR: I would think that you would have
19 the problem in considering the bids because they were based
20 upon the answers which were given.

21 COMMISSIONER ACKERMAN: I carefully reviewed the
22 testimony from the October 30th and November 3rd meetings,
23 and I'm not sure, in a couple of cases, that staff's
24 answers correctly interpreted the intent of the commissioners
25 when we took our actions.

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1 What course of action does that leave us if, in
2 fact, the Request for Proposals do not accurately, in actual
3 writing, reflect the intent of the commission? Can we
4 change it?

5 MR. TAYLOR: I believe that your concerns are
6 addressed to two matters. One is whether the date for
7 determining the right, the preferential right of renewal of
8 sublessees would be October the 1st or December the 31st.
9 The other question is whether it would be six over 15 years.

10 There were some variations of whether or not a
11 change for a number of people entitled to get on a sublease
12 for preferential rights would be limited to only certain --
13 only family members or things of that sort. I think that
14 it changed from the October 1st date to the December 31st
15 date, as a blanket matter, would cover all of those, although
16 it would be broader than had previously been discussed.

17 Oh, the third problem was with regard to persons
18 who had multiple buoy subleases. And the question is
19 whether or not they would be allowed to make an assignment
20 of their additional subleases prior to the 31st, so that the
21 person would have a preferential right to renew under the
22 new lease.

23 Those are the three questions which I understand
24 that the commission has had since sending out of those
25 matters.

1 CHAIRPERSON CORY: It is my recollection -- I have
 2 not read the transcript -- but it was my recollection when
 3 those questions came up, and part of what I was thinking,
 4 that people had until January 1 to do whatever they wished
 5 with those leases, that we were not in any way opposing any
 6 limitation. I'm not so sure that we legally can impose any
 7 limitation on those people. And that left a lot of options
 8 that, in essence, dealt with those three types of problems.

9 That was my thinking and part of why I voted for
 10 what I did, that anybody that had a problem had a mechanism
 11 to put their house in order in the best shape they could by
 12 the end of the year. And the staff imposition of an
 13 arbitrary cutoff of some date in October --

14 EXECUTIVE OFFICER NORTHROP: October 1,
 15 Mr. Chairman.

16 CHAIRPERSON CORY: -- tended to preclude that.
 17 I'm not sure what we do. I don't know whether the
 18 other commissioners agree with my recollection of that, but
 19 having had the staff recommendation go out, if they do, then
 20 we've got a problem whether or not people have been afforded
 21 sufficient opportunity to transfer, given the fact that it
 22 is now the 17th of December. I don't know what to do with
 23 the problem.

24 But that's the area that I have trouble
 25 ratifying the staff letter, and I have not read the staff

1 letter, but I've been told of that portion of it. I will
2 want to read the rest of it.

3 MR. TAYLOR: Mr. Chairman, we have examined the
4 record, and there were three or four items going on. Some
5 were resolved and some weren't. The staff did its best to
6 understand what had been said.

7 If they were incorrect on that, that is still a
8 fact that they misunderstood you.

9 We have polled, however, all of the bidders, and
10 we have asked them if it would make any difference to the
11 bids which they have submitted if the period of assignments
12 was moved from October 1st to December 31st. It's my
13 understanding that their answer to the question is no.
14 I think we'd have to poll each of them. If each of the
15 bidders are willing to waive that, and so state here today,
16 then I believe that the answers that staff gave, with the
17 two or possibly three changes which we have just talked
18 about, could be ratified and then you'd be in a position to
19 go on to the next question as to whether to accept the late
20 bid.

21 If the date is changed from October the 1st to
22 January the 31st in all -- December the 31st in all
23 instances, then I believe that that would give anyone a
24 right to rearrange themselves with regard to how they hold a
25 sublease or to assign it. In the case of multiple

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1 ownerships of subleases by a single individual, it would
 2 give them until the 31st in which to get rid of the other
 3 two subleases, and that person who acquired that would have
 4 the preferential right to renew on January the 1st. So,
 5 that would take care of the first two problems.

6 With regard to the third problem, the third
 7 problem is extending the period of time in which the buoys
 8 which the sublessee currently owns the equipment on, and
 9 at the last commission meeting that period of time was
 10 limited -- first, there was no right to assign. Then, after
 11 extended debate on the Monday or Tuesday meeting following
 12 the Friday meeting, it was decided that they would be given
 13 the right to make one more assignment within a six-year
 14 period.

15 Now, I don't believe that there is any mistake as
 16 far as the staff is concerned in interpreting that in any
 17 answers. There has been a question that that be
 18 reconsidered by the commission, but as far as the first item
 19 is concerned, if there is a consensus on the commission that
 20 the date ought to be, for assignments and so on, the 31st of
 21 December, then that would take care of all those problems
 22 and put you in a position to ratify the statement of the
 23 staff.

24 CHAIRPERSON CORY: First let's hear from
 25 commissioners as to how they recall what we were doing.

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1 Dave

2 COMMISSIONER ACKERMAN: More than just a
3 recollection, a reading of the transcript, I think, makes
4 our intent very clear that we intended to hold current
5 mooring lessees and owners harmless until December 31st to
6 take whatever options they wanted, and then they would
7 enter into the new agreement beginning January 1 on the
8 basis of the new lease that we're entering into.

9 CHAIRPERSON CORY: Susanne?

10 COMMISSIONER MORGAN: I don't remember the dates
11 specifically, but I do recall that we said until the new
12 lease starts, they'll have an opportunity to rearrange
13 themselves.

14 MR. TAYLOR: If that is the understanding of the
15 commission, then at this point it would be appropriate to
16 ask a representative of each of the three bidders if the
17 change of that factor would make any difference in the bid
18 they've submitted.

19 CHAIRPERSON CORY: Let's back up.

20 I'm not so sure that the suggested solution
21 provides the equity that's needed. We were talking in
22 October or November of affording those holders basically
23 a two-month period of time. I don't know whether we can do
24 any more than that, but I'm saying that what you're now
25 doing is, due to a staff error, collapsing a two-month

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1 period of time flexibility of the owner of the tackle,
2 to collapse that into a two-week period of time, and during
3 the particular two-week period of time in which there is
4 some limitations on normal commerce.

5 COMMISSIONER ACKERMAN: Can we pick an arbitrary
6 date, Greg, of say, March 1st?

7 MR. TAYLOR: Yes, you can.

8 The only other thing that also has to be written
9 into this statement is the fact that it would only be as --
10 yes, you could pick that date.

11 COMMISSIONER ACKERMAN: Where it would give
12 someone an additional two months.

13 MR. HIGHT: Providing that the bidders will agree
14 to that.

15 CHAIRPERSON CORY: If we could do that, I would
16 feel more comfortable, rather than telling somebody that
17 they've got 13 days, with the Christmas holidays in there,
18 to make their change.

19 MR. TAYLOR: A person cannot have multiple
20 subleases after the 1st of January. If they did --

21 COMMISSIONER ACKERMAN: Can we give them until
22 March 1st to dispose of that?

23 MR. TAYLOR: You can give them until March 1st
24 to dispose of the multiple ones, and then everyone else
25 would have until March 1st to make assignments for the

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1 preferential rights of renewal.

2 CHAIRPERSON CORY: Would you read that statement
3 back, because I'm not sure that's what you wanted to say.

4 (Thereupon the record was read.)

5 CHAIRPERSON CORY: That's it?

6 MR. TAYLOR: In essence, that's right. It's not
7 very artful.

8 CHAIRPERSON CORY: Do you think we could give
9 multiple owners the right to dispose until March 1, which
10 really just means, it seems to me, to be a generic clause
11 that allows free transfer of owned until March 1. And then,
12 you get one subsequent transfer from March 1 for a time
13 certain, during a time certain.

14 MR. TAYLOR: I think there are two categories of
15 people. There are sublessees where the equipment is owned
16 by the company, and there are sublessees where they own the
17 equipment. So you've got two categories of people. You're
18 only addressing one of those categories.

19 I think that the provision would be that anyone
20 who has a multiple sublease could assign or transfer that
21 to anyone on the same status that he currently had on
22 December the 31st. In other words, that would cover both
23 sides.

24 In other words, if he owned it, he could transfer
25 it and get the rights of the owned equipment. If he was

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1 just a lessee of the company equipment, then he would get
2 the right just to make another transfer to somebody else
3 who would then have only the automatic right of renewal.

4 CHAIRPERSON CORY: All right.

5 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, so the
6 staff understands where we're going, to paraphrase it, there
7 are really four groups of individuals. The group who owns
8 in combine with other individuals a mooring, and what
9 you're saying is, if they wanted to add or subtract from
10 that combine, they have until March 1st; is that correct?

11 COMMISSIONER ACKERMAN: That's my intent.

12 EXECUTIVE OFFICER NORTHROP: Now we have another
13 group of individuals where one individual may own more than
14 one mooring. And also, they have that same time period to
15 transfer that mooring to another person or persons or group,
16 so we wind up with only one mooring; is that correct?

17 COMMISSIONER ACKERMAN: That's correct.

18 EXECUTIVE OFFICER NORTHROP: Thank you.

19 MR. TAYLOR: Well, there was a third problem
20 addressed, and that was family members and other people who
21 wanted to get on record.

22 EXECUTIVE OFFICER NORTHROP: We covered that in
23 the first section.

24 COMMISSIONER ACKERMAN: Isn't that covered by the
25 first item?

1 MR. TAYLOR: I thought that that was where there
2 was a combine of people presently.

3 I think there is another group of people, where
4 a father of the family has a lease, and the question was
5 addressed --

6 CHAIRPERSON CORY: Are you suggesting the mother
7 couldn't? Go ahead.

8 COMMISSIONER MORGAN: Thank you.

9 MR. TAYLOR: Whatever the person in the family,
10 had a sublease. There was a desire expressed at the
11 hearings that they be in a position to put that into a
12 multiple ownership.

13 COMMISSIONER ACKERMAN: Can't we just give
14 everybody until March 1st?

15 CHAIRPERSON CORY: That's not precluded in the
16 generic statement of Mr. Northrop's, I don't believe.
17 That was all-encompassing, where you could add, subtract,
18 put your dog on.

19 EXECUTIVE OFFICER NORTHROP: Change dog to kitten.

20 CHAIRPERSON CORY: Why? A dog has a right to
21 own things as far as I'm concerned, he said facetiously.

22 MR. TAYLOR: I think that you just say that
23 anyone who had a sublease on the 31st of December has the
24 right to make any kind of assignment or transfer or change
25 in ownership as long as it complies with the terms of the new

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1 lease until March the 1st. And that such an assignee will
2 have the right, all the rights of the prior sublessee, which
3 means that they will, in the case of the company-owned
4 tackle, that they would have the right of an annual renewal
5 to the period of the new lease, and in the case of the
6 persons who own the equipment on the sublease, that they
7 would have the right of annual renewal and the right to
8 transfer it once more in a period of six years.

9 COMMISSION MORGAN: And avoid any discussion of
10 family relationships.

11 MR. TAYLOR: Yes. That means that anyone can do
12 anything.

13 CHAIRPERSON CORY: That would preclude anybody
14 from altering the number of owned tackle to nonowned tackle,
15 or vice versa?

16 MR. TAYLOR: Right, that can't change their
17 status with regard to that.

18 COMMISSIONER MORGAN: If that's what the commission
19 feels they wanted to do, what impact does that have to
20 the bid process that has taken place?

21 MR. TAYLOR: It is our understanding from each of
22 the bidders who were polled that that change would have no
23 effect on the bid that they have submitted to the commission
24 for considering. I would like to have that affirmed today.

25 CHAIRPERSON CORY: If you do that, do we need to

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1 deal with the question of whether or not we consider all
2 of these to be valid bidders now, before we take the poll,
3 or can we do that after the fact?

4 MR. HIGHT: I think after the fact, Mr. Chairman.

5 CHAIRPERSON CORY: There is no implication by
6 polling at this point that we have made any value judgments
7 as to who is qualified and who is not?

8 MR. TAYLOR: That is correct.

9 COMMISSIONER MORGAN: Does that clarify all the
10 questions of the staff?

11 MR. TAYLOR: No, that does not take up the
12 question of whether or not the commission wishes to
13 reconsider its decision about only one assignment for
14 sublessee-owned tackle in a six-year period.

15 But the record is clear on that that the commission
16 did make a decision. I think that is not something that
17 would be ratified by the responses. This one thing, then,
18 would put you in a position to ratify the staff's
19 responses, if that is all right with the other parties.

20 COMMISSIONER MORGAN: Our question is, if a new
21 lease starts January 1st, and people have a right to change,
22 as you described, until March 1st, would that have an
23 impact to the bids that have been submitted?

24 MR. TAYLOR: Right. I think that perhaps you can
25 call a representative of each of the three parties to submit

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1 packages today and ask them if their answer to that -- what
2 their answer would be.

3 CHAIRPERSON CORY: Is that concept agreeable to
4 the commission? It's fine with me. Solves my problems in
5 terms of providing equity to those people.

6 COMMISSIONER ACKERMAN: Yes.

7 CHAIRPERSON CORY: So then, that is what we have
8 a preference of doing, but we want to check with the three
9 bidders, if there are representatives for the bidders.

10 MR. TAYLOR: Mr. Greenberg is here for the
11 Island Company Conservancy group. Charles Greenberg.

12 CHAIRPERSON CORY: Mr. Greenberg, do you
13 understand?

14 MR. GREENBERG: Yes, we do, Mr. Chairman. We have
15 absolutely no objection to the change indicated.

16 CHAIRPERSON CORY: All right.

17 MR. RADCLIFFE: Jim Radcliffe, representing
18 Island Navigation Company, and we likewise have no objection
19 whatsoever to the change.

20 MR. HERTZBERG: Harrison Hertzberg, representing
21 Pioneer-Marine Services Corporation.

22 We have no objection, so long as we get an
23 opportunity to talk on the other points.

24 MR. TAYLOR: That being the case, a motion to
25 ratify the staff responses with the amendments which I have

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1 just described to you would be in order.

2 CHAIRPERSON CORY: I have another question about
3 the staff responses which was a question that was in the
4 Ball, Hunt, Hart, Brown & Barerwitz letter, on page 4,
5 with respect to the term "minimum annual rental."

6 Can the staff explain what this is about, and
7 what the confusion was or was not about this item?

8 MS. MOCHON: I think the confusion on this item
9 is whether or not the minimum annual rental is a biddable
10 factor.

11 I believe that the record of the last commission
12 meeting indicates fairly clearly that that was not to be a
13 biddable factor, that in fact the only biddable factor with
14 regard to rental was the percentage of gross annual income
15 that would be made to the state. \$125,000 was a fixed
16 minimum annual rental and was not subject to discussion.
17 The responses reflect that also.

18 CHAIRPERSON CORY: Are there any other questions
19 about that?

20 MR. TAYLOR: I think the history of this is that
21 the way the proposal was originally worded, was that it was
22 going to be similar to a form of oil and gas proposals, which
23 is that you have a fixed minimum and you bid the percentage.
24 All that was ever changed on this was to take out the other
25 end of it, which was the highest end, but there was never

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1 any change to the fact that the 125,000 would be minimum,
2 and that has been consistent throughout the record.

3 CHAIRPERSON CORY: Any other questions from
4 commissioners?

5 COMMISSIONER MORGAN: The ratification that you're
6 proposing is to clarify that this package is part of the
7 bid process?

8 MR. TAYLOR: That is correct.

9 COMMISSIONER MORGAN: And that the commission
10 understands what's in there with the clarifications that we
11 made.

12 MR. TAYLOR: That's correct.

13 COMMISSIONER MORGAN: Then I think we should
14 proceed to make it part of the ratifying.

15 CHAIRPERSON CORY: Without objection, then the
16 staff -- we will ratify the staff documentation, with the
17 exception of the cutoff time.

18 MR. TAYLOR: And we will work out the specific
19 language of that afterwards for the minutes.

20 CHAIRPERSON CORY: All right.

21 Then the next item to deal with is the question of
22 who --

23 MR. TAYLOR: The next question is whether or not
24 you wish to consider the bid of the Island Navigation
25 Company which arrived ten minutes late.

1 CHAIRPERSON CORY: It would seem to me that
2 there was a question of timeliness of bids, and then there
3 is a subsequent question of qualified bidders.

4 MR. TAYLOR: That's correct.

5 CHAIRPERSON CORY: Totality, so the discussion at
6 this point is the question of time?

7 MR. TAYLOR: That is correct.

8 COMMISSIONER MORGAN: It's my feeling that the
9 bid was timely, that the fact that they were ten minutes
10 late did not have a material impact on the bid process. We
11 should accept the bid for consideration.

12 CHAIRPERSON CORY: Is that okay with you?

13 COMMISSIONER ACKERMAN: I'll agree to that.

14 CHAIRPERSON CORY: So timeliness is not an issue,
15 nothing was disclosed. There was no advantage to anybody,
16 the bids were still sealed at the time it arrived.

17 The next question --

18 EXECUTIVE OFFICER NORTROP: A technicality, one
19 bid may not have been still sealed, but its contents had
20 not been made public. They had physically opened the
21 envelope and looked at the check, and that's as far as they
22 had gotten when the representative from Island Navigation
23 entered the room. So no disclosure had been made, nor had
24 the pages been turned to look at that. But the seal had
25 been broken on the envelope.

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1 CHAIRPERSON CORY: What was the time lapse between
2 the breaking of the seal to the entering?

3 EXECUTIVE OFFICER NORTHROP: Probably the time
4 frame -- the whole thing we're talking about is ten minutes.

5 MR. TROUT: Mr. Chairman, I was opening the bids
6 that day. We announced at 4:03 that we would commence the
7 bid opening.

8 The first thing we did was read a letter to the
9 commission from the Rather Corporation, which will be
10 submitted for the record today, indicating that the
11 corporation did not wish to submit a bid at this time. We
12 read the essence of the letter.

13 Then I opened the Island Company bid and removed
14 the material that was in it, set that aside, made a note that
15 there was a check that was required by the bid package.

16 At about that moment the late bid package was
17 brought to the room. The time elapsed was approximately
18 seven minutes.

19 MR. TAYLOR: Mr. Chairman, there are two other
20 matters which should be brought to the commission's
21 attention.

22 One of them is a letter of the Rather Corporation
23 requesting that all bids be rejected and that this matter
24 go to an interim study of the year, and the interim renewal
25 of the existing lease, or in some way a continuation of the

1 Island Company's operation for a year's period.

2 There was also a second communication from the
3 County of Los Angeles, which requests renewal-- requests
4 reconsideration of their proposal. You'll recall at the
5 meeting, the first meeting on this subject in the city hall,
6 that a representative of the County of Los Angeles indicated
7 that the county was only interested in an operating agree-
8 ment with the state, similar to that entered into between
9 the county and the Department of Parks and Recreation.
10 The county also stated that it intended then to go out to
11 an operator or to have someone else operate it and to use
12 the revenues for general county purposes, or purposes
13 regarding its services at Catalina.

14 The county was asked at that time if they wished
15 to be considered on any other basis than that, and they said
16 no, and waived any other consideration with regard to that.

17 I think you'll recall that after we came back
18 from a break for lunch that was put into the record. I
19 don't know whether there's any representative here from the
20 County of Los Angeles, but I think that before you proceed
21 further, at least with regard to the county's request, that
22 should be dealt with first, and it should be determined if
23 you want to deal with the county on that basis.

24 If you do not want to proceed with it on that
25 basis, they have a preferential right. You have the right

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1 to specify the terms upon which the county, or any other
2 body, will accept the renewal lease to any other county
3 body.

4 You previously said you aren't interested in
5 going on the route that the county was suggesting.
6 Therefore, a rejection of that would then put you on a
7 basis to consider the bids again, and the county has
8 indicated it's not willing to be considered on that basis.

9 CHAIRPERSON CORY: Is there a representative from
10 the county here?

11 Yes, sir.

12 Is the county interested in having this project
13 based upon their request for bids?

14 MR. LELAND: Mr. Chairman, my name is Clarence
15 Leland, representing the Board of Supervisors for Los
16 Angeles County.

17 I'm not sure if there is another representative
18 here, but I am not aware of the situation at this time and
19 am unable to comment.

20 COMMISSIONER MORGAN: Mr. Chairman, what's the
21 basis for reconsideration of the request? Is there
22 information that was not provided, or is it simply that
23 they disagree with the decision of the commission?

24 EXECUTIVE OFFICER NORTHROP: Ms. Morgan, I have
25 a letter that we received by telecopy this morning.

1 However, it's dated December the 1st, but we received it
2 this morning.

3 It recites the history of the October 29th meeting,
4 and then the October 30th meeting, rejection of the county's
5 proposal, and on November 6th, our issuing of bids for
6 solicitation packages for these submerged lands.

7 Then it goes on to say:

8 "Inasmuch as your commission in its
9 Request for Proposal recognizes that the
10 County currently performs a variety of
11 recreational boating and life safety
12 services at Santa Catalina Island and
13 inasmuch as these activities are presently
14 funded by County-wide general fund tax
15 levy, it is appropriate that the revenue
16 generated by the rental or lease of moor-
17 ing facilities be used to support these
18 services to boaters and visitors to the
19 island. In short, the boating and
20 recreational public should be funding the
21 services received by them with the revenue
22 they generate when renting or leasing moor-
23 ing facilities.

24 "Faced with severe budgetary constraints,
25 Los Angeles County may be unable to continue

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1 providing such discretionary services at
2 Santa Catalina."

3 COMMISSIONER ACKERMAN: Police and fire, that's
4 now discretionary? Wonderful.

5 EXECUTIVE OFFICER NORTHROP:

6 "The 1980-81 cost for these nonmandatory
7 services totaled approximately \$500,000. We
8 are closely reviewing current service levels,
9 and it is projected that a curtailment will
10 be required to operate within budgeted
11 resources. To avert the negative impact of
12 such a curtailment, alternative sources of
13 service will have to be sought or arrange-
14 ments will have to be negotiated wherein
15 revenue would be received by the County to
16 continue financing its services.

17 "Therefore, in that the County currently
18 provides recreational and essential life-
19 saving functions at Santa Catalina Island,
20 and to ensure their continuation for the
21 benefit of the boating and recreational
22 public, I strongly urge the commission:

23 "To reconsider the County's proposal
24 for a management agreement for the
25 administration of the public resources; or

1 "To finance County services with the
2 revenues derived from the leasing of the
3 mooring facilities.

4 "Very truly yours,

5 "Peter F. Schabarum, Chairman, Board
6 of Supervisors."

7 It is unsigned on my copy.

8 CHAIRPERSON CORY: You just haven't been
9 instructed by your mayor as to what their position is?

10 MR. LELAND: I have not.

11 COMMISSIONER MORGAN: He was afraid we would
12 recognize he was from LA County, so he had to speak up.

13 CHAIRPERSON CORY: "My concern is that appears to
14 be -- I'm prepared to assume that what the county is
15 requesting and stating is that they are interested in
16 something other than what we are interested in doing.

17 MR. LELAND: I would say that's correct.
18 They're basically talking about the cost of services
19 provided, fire boats, certain rescue services provided by
20 the county offshore.

21 CHAIRPERSON CORY: I understand the problem.

22 We're prepared to lease on this kind of a basis,
23 and if the county wishes to be a bidder to this, I don't
24 know whether they make money or lose money on this kind of
25 proposal, but I do not want to preclude the county from

1 participating on this proposal, is sort of where my head's
2 at. I don't know about the other commissioners.

3 COMMISSIONER ACKERMAN: If I remember, on
4 October 30th, when you appeared before us, we rejected at
5 that time the entertaining of a management contract, and
6 instead said you were welcome to bid as any other party, and
7 apparently you're choosing not to do so.

8 MR. LELAND: That's correct.

9 COMMISSIONER ACKERMAN: I think that's what is
10 before us. You had the opportunity to bid as any other
11 bidder on the project. And I think my position hasn't
12 changed.

13 COMMISSIONER MORGAN: We will have to --

14 MR. TAYLOR: The county would be in a preferential
15 position with regard to that, which I guess would mean that
16 they could match a bid, but they would have to be considered
17 on that basis.

18 You can define the ball game in which you'll
19 consider proposals. The county will have a preferential
20 right in whatever ball game you define.

21 CHAIRPERSON CORY: Does that extend in perpetuity
22 for the term of the lease?

23 COMMISSIONER ACKERMAN: No, just now.

24 MR. TAYLOR: Just now.

25 CHAIRPERSON CORY: All right, thank you.

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1 At this point, I take it there is no willingness
2 on the part of any commissioner to reconsider our previous
3 position. The record will so reflect.

4 MR. TAYLOR: Mr. Chairman, it should be noted
5 that the county has the ability to assess possessory
6 interest taxes on the leasehold interests of people leasing
7 state property, and apparently regularly does so. If it is
8 omitting the possibility of assessing possessory interest
9 taxes on the value of the huoyos, that's the county's
10 problem. But there are sufficient areas for the county to
11 make up its costs with providing necessary services, in
12 addition to the boats.

13 CHAIRPERSON CORY: It seems to me that that's
14 more than the county's problem, since one member of this
15 board is a member of the Board of Equalization, I think
16 they're charged with their constitutional duty of assessing
17 that property. If they haven't, that's something for various
18 taxpayers and the like to deal with, but I don't think it's
19 a discretionary matter on the part of the county to tax or
20 not tax. I think the constitution says that it shall be
21 taxed.

22 MR. TAYLOR: That is correct, but in any event,
23 the point being made was, there is available to the county
24 a source of funds to take care of the costs which are
25 encountered around the island and the waterways.

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1 CHAIRPERSON CORY: All right.

2 There's a question of whether or not we wish to
3 entertain any discussions of any further modifications of
4 the proposed lease, and whether or not we want to find all
5 people who submitted documents, as to whether or not all
6 are, in fact, qualified bidders.

7 MR. TAYLOR: That's correct. There really is
8 nothing formally before you on the question of the six-year
9 as opposed to 15-year, except that the staff and the
10 commission has been contacted individually, mail, various
11 ways, about the fact that they would like that question
12 reconsidered.

13 There's also a question that has been requested to
14 be reconsidered, and that is whether or not the person who,
15 under the existing lease, owns the equipment on the sublease,
16 would have the right to let his friends use that equipment
17 free. Under our proposal, that would make an effect not only
18 on the bids, but it would also have an effect upon the
19 income to the state. So, that would be a very material
20 change to the proposal that is before you.

21 However, you have unlimited options in front of you
22 today, anything from turning down all the bids, to accepting
23 ~~one~~ of them, to following the Rather Corporation's
24 suggestions, or anything else.

25 So I guess if you want to consider that, you could

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1 consider that, but that would present a far more serious
2 problem than has been presented by the other matters that
3 have been discussed.

4 CHAIRPERSON CORY: What would --

5 MR. TAYLOR: If a person who currently owns the
6 equipment on the sublease has a right to phone up whoever is
7 the Harbormaster and say, "I'm not going to be over there
8 this weekend, but I'd like my friend, John Doe, to be
9 allowed to use it free."

10 That has been the situation in the past, and
11 under the proposal that went out, that is not the case. The
12 person who owns the tackle, owned the tackle under the past
13 lease, under the new lease would only have the right to use
14 it when he or she wants to do so. But if they were not
15 there on a weekend, then whoever was running the lease from
16 the state would have the right to lease that to any member
17 of the public on a first-come, first-serve basis at the
18 normal rate for daily use.

19 COMMISSIONER ACKERMAN: Or other reservation, or
20 whatever system we want to use?

21 MR. TAYLOR: Right.

22 CHAIRPERSON CORY: We, the commissioners, looking
23 at the final product and the continual dialogue with the
24 public, are there any other things that Greg has suggested,
25 or any other concerns that you have with the proposed

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1 contract that you'd like to address at this point in time?

2 COMMISSIONER ACKERMAN: No.

3 CHAIRPERSON CORY: Do you want to deal with -- you
4 mentioned the authorized use, is there any sympathy by
5 commissioners to alter the existing practice, or existing
6 bid package concerning authorized use, allowing the lessees
7 or owner to authorize his friends to use it?

8 Hearing none, there will be no changes in that
9 regard.

10 The other question is the length of time in which
11 the single transfer can occur. Is everybody happy with the
12 six-year limitation?

13 COMMISSIONER ACKERMAN: No.

14 COMMISSIONER MORGAN: You mean after all our
15 quibbling at the last meeting?

16 COMMISSIONER ACKERMAN: I still feel strongly
17 about that issue.

18 I would propose that we go to the entire length of
19 the lease for terms of transferability and use 15 years
20 transferability rather than six, which, in a way, kind of
21 makes it a moot point to some of the previous discussions
22 if this is happening.

23 MR. TAYLOR: I guess there would be two aspects
24 of your prior decision.

25 Your last decision was that a person who currently

1 owns the tackle on a sublease would have the right to sell
2 it once in six years.

3 Now, are you proposing to continue that and say
4 you can do it once in 15 years, or are you saying that they
5 can -- that whoever that person is, can assign it to
6 anybody as many times as they want? There were two levels
7 to your decision in the past.

8 COMMISSIONER ACKERMAN: I would say once in 15
9 years.

10 COMMISSIONER MORGAN: Well, the other point is
11 what happens at the end of six years?

12 MR. TAYLOR: Then they would just be a normal
13 sublessee, and if they checked out for some reason, disposed
14 of their boat, became deceased, or for some other reason,
15 this sublease would go back and be reassigned on the basis
16 of the waiting list for that particular cove.

17 COMMISSIONER MORGAN: What about the property?

18 CHAIRPERSON CORY: The tackle, as I understand it,
19 would still, at the end of six years, be owned by the
20 individual that could remove it from the premises, or they
21 could sell it to the master lessee.

22 MR. TAYLOR: No, that just isn't covered, and if
23 you read your previous debate on that subject, it was left
24 that that was for them to work out with the new lessee at
25 this time.

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1 CHAIRPERSON CORY: The terms of the law would
2 provide that the stuff is there, it is personal property,
3 owned by the individual, and they could leave it, or they
4 could not leave it.

5 MR. TAYLOR: As far as their rights under the
6 existing lease is concerned, that is correct. Once the new
7 lease comes into effect, all of the personality on the
8 property, at the state's option, becomes the state's at the
9 end of the 15 years.

10 Now, how it's handled in between that time is a
11 question between the people who own the equipment right now
12 and the next lessee of the state. And there is nothing in
13 the package that addresses that question.

14 So the sublessee who owns the equipment right now
15 has two options: one is to make some kind of an arrangement
16 with the new lessee; or, two, if he's concerned that he's
17 going to lose all title in this thing at the end of it
18 because it will become part of the realty and go back to the
19 state, he can pick it up and take it out within 90 days of
20 January 1st. Those are his two options.

21 If he doesn't take it out by the 31st, it becomes
22 the property of the state by operation of the lease, because
23 that's the period of time in which a person has to take it
24 out.

25 But under the new lease, that has changed. And it

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1 is the property of the state, and it's the state's option
2 whether it wishes to keep the equipment or require the
3 lessees to take it out.

4 CHAIRPERSON CORY: Where is your head on six
5 years? Dave wants to go to 15 years.

6 COMMISSIONER MORGAN: The reason we settled on
7 six years was to stop our quibbling and get something moved
8 along. It's really an arbitrary point in time.

9 CHAIRPERSON CORY: It is arbitrary.

10 COMMISSIONER MORGAN: Dave's right. I think there
11 really is no difference from our point of view between six
12 years and 15 years. Six years doesn't do anything more for
13 asserting the state's rights vis-a-vis these trespassers
14 than 15 years would, as far as I'm concerned.

15 I mean, it's up to you two if you want to go to
16 15 instead of six. That's fine with me.

17 My question was whether to allow this trespass to
18 continue at all, and we decided to allow it.

19 COMMISSIONER ACKERMAN: Part of the discussion we
20 had last time on the six years was, we previously discussed a
21 situation similar to Avalon, to where it's allowed to be
22 transferred and a fee is charged for that transfer. We did
23 not discuss a fee last time because it was felt we give them
24 the six years but no fee. It was kind of a quid pro quo on
25 that.

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1 I would think if you go for the 15 years,
2 realistically, I think some consideration for transfer fee
3 or charge is appropriate.

4 MR. TAYLOR: You are limiting it to only one, and
5 so that is one you can consider.

6 You can also charge a fee, but if you limit it to
7 only one, then if they sell it, say, in the tenth year to
8 somebody else, there's sublease to somebody else on the
9 tenth year, that person doesn't have -- may pay so that they
10 don't have to stay on a waiting list and come up to the top
11 of it.

12 COMMISSIONER ACKERMAN: Maybe a fee isn't
13 appropriate.

14 MR. TAYLOR: But then, the person who acquires it
15 is in the same status as any other sublessee, whether they
16 ever owned the equipment or not under the new lease doesn't
17 make any difference, and that person who acquires it would
18 not have a right to sell it. When that person, or persons,
19 or whatever group it was that came in and took over that
20 sublease at the end of that time, and that person leaves,
21 then the assignment of that sublease goes back to the first
22 person on whatever list is applicable.

23 But you can do it any way you want if you want
24 to put a transfer fee on it.

25 CHAIRPERSON CORY: You are comfortable that the

1 legal questions are clear as to ownership at the end of this
2 lease, that by allowing the transferability and the
3 possibility of confusion as to title, you do not believe
4 there will be any confusion of title beyond the commencement
5 of the lease?

6 MR. TAYLOR: In the new master lease, the lessee
7 is required to give notice to all of the lessees of their
8 status. We can work out however the lessee becomes, we can
9 work out the notices to each category of persons and what
10 happens in each situation. Those are to be distributed to
11 them at the beginning of this lease and upon each transfer
12 there is to be an acknowledgment signed that says they
13 acknowledge what the condition is. But this is a standard
14 provision. We're going to standard provisions currently
15 used by the commission in its leases, and that is that any
16 improvements on the property, at the commission's option,
17 become the commission's property.

18 CHAIRPERSON CORY: I just want to make sure that,
19 if we go to 15, whether there's any legal advantage to having
20 that period of time not be coterminous with the lease, so that
21 you do not have an additional lawsuit or cause of action at
22 the time you're up for renewal. You think that that issue
23 will be resolved, or that it will not be a very difficult
24 lawsuit for the state 15 years from now?

25 MR. TAYLOR: The title to the tackle on the

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1 property at the present time is going to be settled on
2 January the 1st. Their only rights to that equipment will
3 continue for a 90-day period after that time.

4 CHAIRPERSON CORY: What about the March 1 change
5 we made, will that cloud that?

6 MR. TAYLOR: No.

7 CHAIRPERSON CORY: I just want to make sure that
8 we have thought about that.

9 MR. TAYLOR: There's going to be some drafting,
10 going to have to think about it in terms of the drafting,
11 but there won't be any problem to it.

12 COMMISSIONER ACKERMAN: What you're really saying
13 is that 15 years from now, you don't want to have this issue
14 before you?

15 CHAIRPERSON CORY: I'd like to get it behind us.

16 MR. TAYLOR: I think that you're getting out of the
17 owned tackle situation. In essence what's being done here
18 is, you're phasing out the owned tackle situation. They are
19 given the right to sell it one more time. They have
20 certain rental effects at the beginning, and then, by the
21 end of this lease, it should be over. That may be looking
22 for the millennium, but --

23 MR. TROUT: That's not true.

24 MR. TAYLOR: What do you think it is, Jim?

25 MR. TROUT: The commission left it last time --

1 we specifically asked, and at the end of the transfer period,
 2 did all tackle belong to the lessee? And at that time,
 3 Mr. Chairman, you indicated that that was something to be
 4 negotiated between the individuals and the new lessee.
 5 And that was -- would be left to the marketplace. So that
 6 we don't resolve the problem except under the general terms
 7 of the lease, where at the end of 15 years, everything on the
 8 premises belongs to the State Lands Commission.

9 COMMISSIONER ACKERMAN: Unless 15 years from now,
 10 we do the same thing -- not we, but the commission does the
 11 same thing it's considering now.

12 MR. TAYLOR: History has a funny way of repeating
 13 itself.

14 COMMISSIONER MORGAN: That distinction wasn't
 15 clear on the prior leases.

16 COMMISSIONER ACKERMAN: Now it is.

17 CHAIRPERSON CORY: I would like the record to
 18 reflect that it was our position that it was clear. Some
 19 other people may have some confusion, but on our side, we
 20 are sure that we own that property and we haven't given any
 21 of it away. Those people are tenants, and they cannot
 22 possibly own real estate or any interest in any real estate.
 23 They have an interest in personal property.

24 MR. TAYLOR: Mr. Northrop has suggested that
 25 perhaps the period in which there would be one more

1 assignment or transfer by the people who currently own the
2 tackle would be 13 or 14 years, so that before the 15th year
3 runs, everyone is on an equal footing.

4 COMMISSIONER ACKERMAN: Pick 14 years, or
5 something like that?

6 EXECUTIVE OFFICER NORTHROP: So we don't have the
7 problem of a concurring --

8 CHAIRPERSON CORY: If you don't have a problem
9 legally. I just raised that question, but I'm trying to
10 avoid going through the same stuff again.

11 MR. TAYLOR: I'm taking this in stages. I think
12 we still have to ask each of the three bidders if this
13 would in any way affect the bid which they have submitted.
14 This presents somewhat more of a significant question than
15 the other.

16 CHAIRPERSON CORY: Before we get to that question,
17 is there a possibility of dealing with any changes in this
18 issue in terms of a concept that, legislatively, I would
19 call severability.

20 If these changes have any deficiencies in them,
21 can we address ourselves to what portions of the contract
22 are annulities or not?

23 MR. TAYLOR: No, I think this might go to the whole
24 picture, and I don't think that would be severable.

25 What your option would be would be to reject all the bids.

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1 CHAIRPERSON CORY: No, what I'm saying is that, if
2 somebody -- if we make these changes, I don't want to give
3 someone adverse to the state's interests two bites at the
4 apple: a change in this and the ability to go to court to
5 get it made a little better.

6 MR. TAYLOR: No, the appropriate remedy would be
7 a remand. This would have to be an administrative mandamus
8 proceeding. The appropriate redress if there was anything
9 wrong would be to remand it to the commission with whatever
10 instructions the Court felt were appropriate, with the
11 commission then to reconsider it in light of the order.
12 So, the court can improve their position.

13 It's our position that --

14 CHAIRPERSON CORY: I'm not talking about a bidder,
15 now.

16 MR. TAYLOR: I understand.

17 I don't think those people have any rights
18 whatsoever, and that's the position the commission has
19 taken, and that's the position that we have asserted on
20 behalf of the commission in court. These people are
21 sublessees of sovereign land on a lease which is going to
22 run out on the 31st. And after the 31st, if there is not
23 renewal, they don't have any rights.

24 CHAIRPERSON CORY: All right.

25 What's the wish of the commissioners?

1 COMMISSIONER ACKERMAN: I would move amendment
2 of the lease to reflect a 14-year transferability.

3 MR. TAYLOR: One time?

4 COMMISSIONER ACKERMAN: One time, 14 years.

5 CHAIRPERSON CORY: I have no objection, do you?

6 MR. TAYLOR: Now, before you vote on that, I
7 think it would be appropriate, Mr. Chairman, to ask each of
8 the bidders again if that makes any difference to the
9 bids which they have submitted, and whether they would
10 agree with the acceptance of such a change.

11 CHAIRPERSON CORY: Okay, can we hear from the
12 three bidders.

13 MR. HERTZBERG: Harrison Hertzberg on behalf of
14 Catalina Marine Services Corporation.

15 We have no objection.

16 MR. GREENBERG: Charles Greenberg on behalf of
17 the Santa Catalina Island Company and Santa Catalina Island
18 Conservancy.

19 No objection. It makes no change in our bid.

20 MR. RADCLIFFE: Jim Radcliffe on behalf of
21 Island Navigation Company.

22 We have no objection.

23 CHAIRPERSON CORY: All right.

24 MR. TAYLOR: I take it that disposes of the
25 question.

1 CHAIRPERSON CORY: Wait a minute. We have not
2 resolved it up here.

3 COMMISSIONER MORGAN: Substitute motion that no
4 transfers would take place, and starting January 1st there
5 were no private moorings.

6 CHAIRPERSON CORY: January 1st which year?

7 COMMISSIONER MORGAN: Beginning of the new lease,
8 January 1st, '82.

9 CHAIRPERSON CORY: I'm trying to fit that together
10 with what we had done on previous occasions, and what you're
11 trying to accomplish with that.

12 COMMISSIONER MORGAN: Well, I mean, we struggled
13 at the last meeting to try and resolve the difference
14 between the public's right to use this facility and the
15 rights of the people who I consider to be trespassers,
16 basically, but have been there for a long time. And it was
17 my feeling that, by allowing these people an opportunity to
18 have a lease, a guaranteed right of a lease if they wanted,
19 to, that we extended ourselves sufficiently to take care of
20 their concerns.

21 And the other commissioners did not feel the same
22 way, so in the spirit of compromise, we said, "Okay, Morgan
23 is browbeaten, and we'll allow six years."

24 I mean, as far as I was concerned, two years, six
25 years, 15 years, it really doesn't matter. The issue was

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1 there.

2 I'm glad to see that the staff says to give a
3 certain number of years. It's clear that the state owns
4 the equipment. But it's a difficult issue, I can understand
5 that, and I just felt that the situation had reached as far
6 as it needed to reach to resolve the difference between
7 private use and public facilities.

8 So, while Dave is proposing 15, I'm saying, let's
9 first see if we really want to continue to reach farther
10 than I felt we should have reached in the first place, and
11 nobody seconded my motion.

12 CHAIRPERSON CORY: In terms of this one, I think
13 the record is clear that these people who find themselves
14 in a, quote, ownership, end quote, position, in my view,
15 legally have nothing other than the ownership of some tackle.

16 Unfortunately, there are some of those people who
17 do not understand their position. There is an equity
18 argument on the other side that I am drawn towards.

19 Six years -- I feel uncomfortable making it
20 coterminus with the other lease. Six years, 14 years
21 doesn't make that much difference, and I think I'm willing
22 to vote for the 14 as long as we get it resolved so that
23 future commissioners don't have the same problem we have.
24 So, I'm prepared to go along with it.

25 I'm not denying your side of the argument, it's

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1 just that when I meet with people who have paid out \$30,000,
2 giving them a maximum time to amortize that which I
3 consider a foolish expenditure that they made provides more
4 equity.

5 So, I'm willing to go along with the 14 years,
6 understanding that it's an equity call, but I want to make
7 sure the staff, in terms of drafting and the notice, make it
8 abundantly clear to everybody that we start shoring it up,
9 that people cannot be told from implication that they own
10 some part of the realty. Because there are, unfortunately,
11 people who at this point think they own something, when in
12 fact they don't.

13 COMMISSIONER MORGAN: I agree. Once we've crossed
14 the hurdle of saying we'll extend for a period of time,
15 you're correct, and 14 years --

16 CHAIRPERSON CORY: The record will clearly
17 reflect that.

18 COMMISSIONER MORGAN: -- there's no reason to
19 have six as opposed to 14.

20 CHAIRPERSON CORY: Now, the bidders do not
21 disagree, so we have authorized that amendment, so the
22 record is clear that the Morgan position is the pure
23 position.

24 MS. MOCHON: We have one question, please.

25 There was some discussion about a transfer fee.

1 Have you resolved that?

2 CHAIRPERSON CORY: No fee.

3 COMMISSIONER ACKERMAN: One other legal question,
4 not being an attorney, do we also need to consider the
5 interests of any other interested party that did not bid
6 on answering these questions concerning leases? We're
7 kind of changing rules in midstream.

8 MR. TAYLOR: No, I don't think that anything has
9 been material, particularly in light of the statements that
10 have been made by the bidders. All of those people
11 certainly had the right to keep themselves in the same
12 position as bidders, and they failed to do so, and that'll
13 be our position.

14 COMMISSIONER ACKERMAN: I'm satisfied with that.
15 I just had to ask the question.

16 CHAIRPERSON CORY: The next question is whether
17 or not the three people who submitted proposals are, in the
18 minds of the commissioners, acceptable bidders.

19 COMMISSIONER MORGAN: What about the proposal to
20 reject all the bids? Does that come later, the Rother
21 Corporation letter?

22 CHAIRPERSON CORY: Procedurally we've got that
23 question. We also have one card here which indicates that a
24 Mr. Rutherford wishes to speak. I don't know if anyone else
25 wishes to, and what the commissioners' tolerance is for much

1 further public testimony.

2 Mr. Rutherford, do you wish to testify?

3 MR. RUTHERFORD: I would like to have a moment of
4 conference to decide that.

5 COMMISSIONER MORGAN: Since we are a public body,
6 I think we should listen to anyone who wants to testify,
7 but I do agree that we've had quite a bit of discussion, so
8 if we're going to take testimony it should be on issues that
9 are new or were not clear previously.

10 CHAIRPERSON CORY: Yes, sir.

11 MR. SAUNDERS: I would like a point of
12 clarification.

13 CHAIRPERSON CORY: Would you identify yourself
14 for the record, please.

15 MR. SAUNDERS: I would like a point of
16 clarification on multiple ownership.

17 There are quite a few people who, through the
18 years, own half of one mooring and, say, half of another
19 mooring. And the reason is obvious, that they worked it out
20 amongst themselves that they would have, you know, a mooring
21 to use, so that if they have half of one and half of
22 another, is that considered multiple ownership?

23 It's a real point. There are quite a few people
24 that are involved.

25 COMMISSIONER ACKERMAN: What does ownership of a

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1 mooring mean?

2 MR. TAYLOR: The way that it stands now is that a
3 person may only own one sublease. That's the way it has
4 been written, and if there is multiple ownership of a
5 sublease, it must be in equal shares.

6 Quite frankly, we've been amazed at everything
7 we've heard at every meeting, and this is the newest
8 wrinkle which I don't think we've considered.

9 If you want to say as long as a person's interest
10 in any sublease doesn't exceed in the aggregate one, that's
11 one way to go, I guess.

12 COMMISSIONER MORGAN: It's like having one
13 mustache among two people.

14 MR. SAUNDERS: It's a real thing, because say you
15 purchased a percentage of one mooring, and purchased a
16 percentage in the other, now who is going to buy your
17 percentage, or what can you do with your percentage?

18 If, as he suggested, if you make the aggregate
19 no more than one, I'm sure that the intent of the commission
20 is that one person doesn't own more than one mooring. But
21 if you do anything else, it's not really the same.

22 CHAIRPERSON CORY: What advantage could there be
23 to a nefarious mind of having a percentage of every mooring?

24 MR. TAYLOR: That could happen.

25 COMMISSIONER MORGAN: That's interesting.

1 CHAIRPERSON CORY: Would there be any down side
2 from the state's viewpoint to that concept, because the
3 proposed solution would permit that, and I don't know whether
4 public policy --

5 MR. TAYLOR: The down side would be that for the
6 foreseeable --

7 CHAIRPERSON CORY: If my nefarious mind cannot
8 contemplate the advantage of that, maybe there is none.

9 MR. TAYLOR: Well, the problem is that, in essence,
10 you may have a situation where the waiting list never came
11 into play. So, you may want to consider limiting multiple
12 ownerships and also the number of multiple ownerships you
13 can be a party to. I don't know. I hadn't even thought
14 about that problem today.

15 COMMISSIONER MORGAN: Let me ask you a question.
16 Do you think that this type of ownership occurs
17 because the person has two boats of different sizes and
18 needs two different moorings, or it's because they want to
19 have access to two locations?

20 MR. SAUNDERS: The way it occurred in most cases
21 is that two people bought a mooring together, or three
22 people bought a mooring together, and then found out that,
23 well, three people want to use it every time. So, they
24 bought another mooring together, or something, so that each
25 could use their own mooring.

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1 It's still less than one.

2 MR. TAYLOR: I think that if you run that out,
3 then that could have an effect on the return. And I would
4 have to say, in light of further examination of that, that
5 I think that in order not to affect the bids which have
6 been made, that you may only have one sublease under the
7 lease, and that that would also include -- that that would
8 be satisfied by any part ownership in a sublease.
9 Otherwise, what's been described is a situation where you
10 could get into a place where you would never be able to go
11 out to the public for a first-come, first-serve person.

12 Here's a situation of most of the people who own
13 their tackle on these existing subleases used only so many
14 days. The assumption has been made that they use it only
15 20 days a year, leaving the remainder of the year for the
16 state's prime lessee to lease it out on a first-come, first-
17 serve basis.

18 The commission has now widened the scope of the
19 assignability, so that if anyone wanted to go out and enter
20 into a whole bunch of multiple ownership interests before
21 the 31st, then it would be possible that all of the income
22 that was counted on by the various bidders in three days
23 off of buoys would be hurt. The income projections would
24 be hurt.

25 Therefore, I think in light of the discussion, that

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1 the answer, at least as it now is, would be that a person
 2 may only have one sublease or interest in a sublease. And
 3 if that question had been presented at the time of the
 4 hearings, so that we could have written it in, it might have
 5 been easier to include the situation. But otherwise, you're
 6 going to get into a situation where there's never going to
 7 be many subleases available for public use where the lessee
 8 would keep the money.

9 CHAIRPERSON CORY: The additional problem of
 10 transfer is what constitutes a transfer?

11 If you have a mooring, and a person or
 12 corporation transfers a partial interest, is that a transfer?

13 MR. TAYLOR: I would think that the answer to
 14 that would be yes, any transfer.

15 CHAIRPERSON CORY: But that means that if you have
 16 two people, somebody owns a mooring, they have an acrimonious
 17 divorce, the first one that can get their transfer in, the
 18 other one gets the shaft? I mean, there are bizarre problems
 19 to deal with here.

20 MR. TAYLOR: Well, I'm not sure that that would
 21 count as a transfer. I'm not sure for tax purposes bases
 22 to slide over. I don't know.

23 CHAIRPERSON CORY: Well, not necessarily a divorce
 24 itself, but if you've got two people splitting the mooring,
 25 each of them now owns 50 percent. And they look at this new

1 contract, and there is then competition amongst the owners,
2 that there is a single transfer available, and therefore
3 the first one to find a customer gets a freebie and the
4 others get the green weenie. I mean, that's hardly
5 equitable, but if you don't do that, the multiplicity of
6 transfers starts obviating the waiting list.

7 MR. TAYLOR: I think that to be consistent with
8 your ruling, we have to say that any transfer. So, you're
9 going to have to exercise real care when that thing
10 occurs, and that's one of the numbers of items that, in the
11 case of separation, would have to be carefully debated by
12 somebody.

13 CHAIRPERSON CORY: Forget about divorce. Take
14 two people who have never been married, and each own 50
15 percent of a mooring. They have diverse interests. One
16 decides to sell, one goes bankrupt and the creditors take
17 the mooring.

18 COMMISSIONER ACKERMAN: On Ken's point, if we
19 were silent to that, isn't that up to a personal agreement
20 between two joint owners to work out themselves as part of
21 their original purchase agreement, or joint agreement, or
22 joint purchase or something, and really something that we
23 don't have to be concerned about?

24 MR. TAYLOR: I think it will probably have to be
25 addressed, but I don't think we're prepared to address it

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1 today.

2 COMMISSIONER ACKERMAN: If I go into partnership
3 with somebody to buy something, I'm pretty careful in terms
4 of the financial arrangements going in, and I think it's
5 my responsibility to exercise that caution.

6 MR. TAYLOR: Jane has pointed out an answer on
7 page 2 of the response to W. V. Davidson.

8 MS. MOCHON: It's part of Exhibit A.

9 MR. TAYLOR: It says:

10 "Each of the multiple parties appearing
11 upon an individual mooring site sublease as
12 of January 1, 1982, under the Bid Lease will
13 have the right to transfer his or her
14 proportionate interest in the sublease once
15 on or before..."

16 And now it would be the 14th year.

17 "No further assignments of that
18 proportionate interest will be allowed."

19 So, that's covered.

20 COMMISSIONER ACKERMAN: For each party, right?

21 MR. TAYLOR: I guess the answer to the gentleman's
22 question in the audience, in light of how the bid proposals
23 went out, is that an individual mooring site means one or a
24 fraction. If you have a fraction, you've had your bite at
25 the apple. I'm sorry, but that's --

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1 CHAIRPERSON CORY: You can transfer your fraction,
2 and each other fraction holder can transfer their fraction
3 once?

4 MR. TAYLOR: But there's an additional problem,
5 and that is that under the thing the way it's out right now,
6 a person may only have one sublease, and that would have to
7 be that one would count as any fractional part of one.

8 CHAIRPERSON CORY: I can live with the concept
9 that the aggregate total cannot exceed one. I don't know
10 about the other commissioners.

11 Do you have a problem with that?

12 EXECUTIVE OFFICER NORTHROP: My problem with that,
13 Mr. Chairman, is, the gentleman who spoke has as much as a
14 50 percent interest. He then could go and find 49 other
15 people with 50 percent interest, and each one of them would
16 have 50 percent interest in 50 moorings. And that still
17 wouldn't exceed one in the aggregate, but they would have a
18 piece of 50 moorings. That's the problem, and that's the
19 question.

20 CHAIRPERSON CORY: It would foul up the priority
21 on the waiting list unless we put a limit on how small the
22 units could be.

23 MR. SAUNDERS: Yes, we could handle that very
24 realistically. Just grandfather the present owners that they
25 couldn't go out and do it as you're grandfathering something

1 else.

2 It's not the intent, I'm sure, of the question --
3 or I'm sure it's not the intent of the mooring owners that
4 do own a fraction. All of these situations have occurred
5 over the years. And, you know, we're sort of locked in.
6 We can't do anything about it.

7 And, you know, it's three owners. So who's going
8 to end up with what, and one person only owns one-third of
9 another? It's just impossible to equitably solve the
10 situation among, you know, the mooring owners.

11 And if you just grandfathered it, I think it
12 would take care of itself.

13 COMMISSIONER MORGAN: I think one thing is clear,
14 that we'll never have a solution to all the combinations that
15 might possibly exist on the moorings.

16 I mean, from my point of view, having an interest
17 in more than one location means the same thing as having
18 an interest in two or three, having two places to go, and not
19 making it available to somebody else to use.

20 What do you guys want to do?

21 CHAIRPERSON CORY: I don't see how we can address
22 that problem.

23 MR. TAYLOR: Well, I think that if it's not further
24 addressed today, the answer would have to be that any
25 individual site can only be occupied by one mooring site

1 sublease. And anyone could only hold one, even if it's
2 less than a fraction.

3 CHAIRPERSON CORY: It seems to me that having
4 until March 1 gives sufficient flexibility that people
5 should be able to accommodate to some degree their
6 difficulties. If I were in that position, knowing that I
7 had a free haven of transfer between now and then, I think
8 I could figure out a way not to be adversely affected.

9 MR. SAUNDERS: It's possible if you own one-third
10 of one mooring, and that's the only mooring that you own a
11 third of, and you try -- the other people are multiple
12 owners, as you call them, but only own a half of one and a
13 third of another, okay? Now, they own a half of one and
14 a third of another --

15 CHAIRPERSON CORY: That is their problem, not
16 your problem if you own one-third.

17 MR. SAUNDERS: What are you going to do? How
18 are you going to be Solomon and split that up?

19 EXECUTIVE OFFICER NORTHROP: Mr. Cory, I think
20 we've got to keep in mind the fact that all leases are up
21 at the end of December, every lease is up, and that may be
22 something we should think about.

23 CHAIRPERSON CORY: Come January it's all a new
24 ball game anyway.

25 Yes, sir, Mr. Rutherford.

1 MR. RUTHERFORD: Yes, Charles Rutherford is the
2 name.

3 I put myself down as speaking for the Mooring
4 Owners Defense Fund, a group which you perhaps know as the
5 crackers who filed the lawsuit which was thrown out as being
6 premature because no damage had been done since you hadn't
7 issued the contract.

8 But you're going to issue a contract, and then it
9 won't be premature. However, we don't like -- I mean,
10 there's better ways of doing things than lawsuits.

11 CHAIRPERSON CORY: I take it you're not a lawyer.

12 MR. RUTHERFORD: No, I am not a lawyer. If I was
13 a lawyer, I'd be speaking much more fluently, and I feel
14 myself at a slight disadvantage with the phalanx of lawyers
15 that I seem to be facing.

16 And considering the cost of lawyers, that's
17 why ours isn't here. Besides that, he'd be sitting in the
18 fog anyway.

19 CHAIRMAN CORY: They usually are regardless.

20 (Laughter.)

21 MR. RUTHERFORD: Well, I think that -- well, let's
22 put it this way: You've got a platoon of very mad mooring
23 owners and boat users and boaters. And in all of these
24 hearings up to now, the question has been are we going to
25 negotiate a lease, are we going to have it with the previous

1 bidder, you know, there's a lot of testimony down there at
2 Long Beach. And nowhere did the rights of the users and the
3 mooring owners get entered into the record.

4 Now, you look, we have an attorney who feels
5 differently. But as I say, I don't want -- our attorney
6 reviewed with the attorneys for Pioneer and Island
7 Navigation some proposed changes. You've approached some of
8 them. We couldn't get any commitment from the Island
9 Company's attorney, but these changes have been common
10 practice. I would say they've been acquiesced in by the last
11 15 years' action by the part of the Island Company.

12 I have here a document, and I would like to enter
13 it into the record if that's the correct procedure, a copy
14 of it later.

15 CHAIRPERSON CORY: All right.

16 MR. RUTHERFORD: You have approached the question
17 of multiple moorings, and you have moved that until, I
18 believe it was March 31, was it not?

19 COMMISSIONER ACKERMAN: March 1st.

20 MR. RUTHERFORD: Well, Mr. Cory was, I believe,
21 quite correct in stating that the next few days is not
22 a reasonable time to conduct business negotiations. There
23 are other activities going on. We would agree with the
24 two attorneys that December 31st, 1982, would be a more
25 equitable time. Well, it's negotiable.

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1 It's a very complicated document here.
 2 Paragraph (b)(e), now in the amendments, you put in the
 3 October 31st claim, and I believe you've eliminated that.
 4 That parties holding existing individual mooring site sub-
 5 leases be given a preferential right to renew those
 6 subleases under any new lease terms. Other words, on
 7 paragraph (e) on page 17 of your solicitation for bids,
 8 you're going to remove the October 1st limitation, I
 9 believe.

10 We suggest a modification of paragraph 2. See,
 11 presently paragraph 2 says that he'll have no further right
 12 to assign the sublease, and we suggest that the paragraph 2
 13 be rewritten to say that the new assignee has been informed
 14 in writing of the limitations on assignments as set forth in
 15 this subdivision.

16 Now paragraph 4 -- where is that thing -- that's
 17 on page 19 --

18 COMMISSIONER MORGAN: I don't mean to interrupt
 19 so that you lose your place, but is it possible for you to
 20 tell us the essence of your disagreement with the package?

21 MR. RUTHERFORD: Well, that's the essence of it.
 22 It's a number of small points.

23 COMMISSIONER MORGAN: Have you discussed those
 24 with staff or has your attorney approached the staff?

25 MR. RUTHERFORD: My attorney, I believe, has

1 reviewed them with staff.

2 MR. TAYLOR: It was my understanding that the
3 primary concern of the people who filed the lawsuit was
4 on the question of extending the six-year period. Well, I
5 guess, you know, this just never ends in terms of if you
6 satisfy one, then something else seems to occur.

7 But there was an offer to dismiss the lawsuit
8 if the commission would have extended the period of time to
9 15 years. At that time, we told him that we couldn't do
10 that because bids had not been received or opened, that that
11 could constitute a material change, and therefore we would
12 not agree to have that discretion.

13 It was argued in court that the other part of
14 that whole question of any interest of these parties, other
15 than as the state's lessee, was also addressed, and in
16 their pleadings they admit that the state owns the
17 property and that they are sublessees.

18 I think that the commission, if it had not been
19 for the concerns of the existing sublessees, this matter
20 would have been over in about three hours' time. This
21 commission has been extremely patient and has addressed
22 most of the concerns that have been raised by the
23 sublessees, but I think that there is a basic misunderstanding
24 as to the relationship between the sublessees and the state
25 over whose property it is.

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1 I guess those things will exist. I thought that
2 the commission had gone 99 percent of the way with the
3 attorney who was handling this case. If there are
4 additional matters, I think that the commission, as far as
5 what I understand what Mr. Rutherford is saying, is a
6 repeat of what was said and discussed before and the
7 commission has acted on it. Maybe there is something we
8 have overlooked, but I thought that those were the initial
9 items we took up this morning. That was everything that I
10 could gather from anyone who was making any statements to
11 anyone who would listen.

12 COMMISSIONER MORGAN: What I'm trying to find out
13 is is there something that we haven't discussed or acted
14 on this morning or in prior hearings that we could act on
15 today that would resolve any concerns you have?

16 MR. RUTHERFORD: There are some very technical
17 problems here, but I think that, if I was to hand this in,
18 that might -- just make the matter of record.

19 As I say, I'm up against a platoon of lawyers here,
20 and I don't want --

21 COMMISSIONER MORGAN: Do you think these
22 technical problems that he has raised are drafting
23 problems or material problems?

24 MR. RUTHERFORD: I think that's what you might
25 call them.

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1 I would at this point --

2 MR. TAYLOR: Were there any additional ones other
3 than the ones that were already addressed this morning?

4 It's my understanding that the statements I made
5 this morning were the concerns that were being made by your
6 attorney and by others in your group.

7 Are there any other things which you feel that
8 the commission should consider?

9 MR. RUTHERFORD: I guess that these points are
10 not for the commission but rather the little technicalities
11 of how you determine whose boat is on the mooring, and
12 things like that, whether the boat is a chartered boat,
13 whether --

14 COMMISSIONER MORGAN: A question of management
15 and operation of the lease?

16 MR. RUTHERFORD: Yes, you might call it that.

17 But I just felt that I should make the statement
18 saying that the mooring owners have an interest in this.

19 CHAIRPERSON CORY: You've identified yourself as
20 representing the Santa Catalina Mooring Defense Fund.

21 Could you identify for me who the members of that
22 are?

23 MR. RUTHERFORD: No, I cannot identify for you
24 who the members of that are because the members -- it's a
25 very loose organization composed primarily of people who

1 put up some money to hire the lawyer, and as the money
2 keeps flowing in, I suppose you could say more people are
3 joining it.

4 But we'd rather stop the procedure, frankly.
5 I don't want to go to court.

6 COMMISSIONER MORGAN: Can you give us an idea of
7 how many people you represent in this group?

8 MR. RUTHERFORD: No, I can't. I can say I
9 represent myself.

10 COMMISSIONER MORGAN: Is it anyone besides
11 yourself?

12 MR. RUTHERFORD: Oh, yes. Yes, we have got --
13 I couldn't afford a lawyer. The prices they're asking.
14 But, yes, there are a number of people.

15 COMMISSIONER MORGAN: I wanted to make one other
16 point.

17 I disagree with the statement you made,
18 Mr. Rutherford, about the rights of the mooring owners have
19 not been represented or heard or listened to.

20 Actually you said they were not in the record
21 when, in fact, at our prior hearing, we made it very clear
22 that we considered all the testimony that had been taken in
23 Long Beach, and all the testimony taken at our prior hearing
24 to be part of the record that went towards the decisions
25 that were made. And I want you to know that most of us

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1 read the entire transcript from the Long Beach hearing and
2 participated, including staff and the commission members
3 both, participated in the hearing to the point where we do
4 feel that these concerns are in the record, and I just
5 wanted to clarify that.

6 MR. TAYLOR: Your comments are directed towards
7 their concerns, because I think it's the position of the
8 commission that they have no rights other than their
9 discussion as to their past conduct, but they have no
10 rights other than their existing rights as a sublessee,
11 which expires on December the 31st.

12 CHAIRPERSON CORY: If I can clarify, I presume
13 that you meant the sublessees are the tackle owners?

14 MR. TAYLOR: Or all sublessees.

15 CHAIRPERSON CORY: I'm talking about Susanne's
16 terminology, mooring owners, because I think that
17 terminology starts to give rise to greater than the facts
18 will dictate.

19 COMMISSIONER MORGAN: I was merely objecting to
20 the point, the implication that consideration was not given
21 to people who are boat owners to present their case.

22 CHAIRPERSON CORY: We'll take a five-minute break.

23 (Thereupon a brief recess was taken.)

24 CHAIRPERSON CORY: I call the meeting to order.

25 I think the question that was before us before the

1 break was making sure that we had resolved the various
2 options in terms of some of these final issues that have
3 been raised vis-a-vis tackle owners.

4 It is my belief that the amendments that were
5 made as to the time should provide sufficient flexibility
6 on the part of the individuals to accommodate their fact
7 situations to the bid package before they are locked into
8 the program. There is some time the people can do what they
9 have to do to maximize their position, and that we realize
10 that we cannot deal with every eventuality, and to attempt
11 to do so at this time, I would prefer to remain silent on
12 that issue and not address it lest we make matters worse
13 by not contemplating all the other problems. So, that's
14 where I am.

15 If the other commissioners agree, we will proceed.

16 MR. TAYLOR: Then the situation is, a person can
17 only have a fractional interest up to a whole interest in
18 one sublease, and that would be it at the present time.

19 The commissioners nodded in the affirmative.

20 CHAIRPERSON CORY: The next question is the
21 question of whether or not the commission wishes to come to
22 the conclusion that all three bidders are, in fact -- whether
23 any or all of the bidders are adequate and proper bidders.
24 I think that is the question in terms of their capabilities,
25 their ability to perform the lease under the terms of the

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1 proposed lease.

2 COMMISSIONER ACKERMAN: Maybe we should ask the
3 staff's opinion.

4 Did all bidders satisfy the requirements as set
5 forth in the bid package?

6 MR. TAYLOR: The answer to that question is no,
7 and on page 7 of the Calendar item the staff statement is
8 that Island Navigation Company proposes a lesser increase --
9 I'm sorry, that's not where it is.

10 EXECUTIVE OFFICER NORTHROP: It starts on the
11 bottom of page 3.

12 MR. TAYLOR: On page 4.

13 EXECUTIVE OFFICER NORTHROP: Page 4 of the
14 Calendar item, Mr. Chairman, starting at really the bottom
15 of page 3 under the title "Financial Qualifications of
16 Bidders."

17 MR. TAYLOR: Mr. Chairman, the conclusion of the
18 staff is stated in the last sentence on page 4, just before
19 paragraph 3, just before the number 3, "Bid Criteria", the
20 sentence prior to that:

21 "Staff, based upon the information
22 submitted to it, is not satisfied that
23 Island Navigation Company could meet the
24 financial obligations of the Bid Lease
25 without extreme difficulty."

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1 COMMISSIONER ACKERMAN: Could the staff elaborate
2 on that finding?

3 CHAIRPERSON CORY: There is a problem, I think,
4 in terms of the fact that there was financial data that
5 was submitted under the protection of confidentiality; is
6 that correct?

7 MS. MOCHON: Yes, that's correct.

8 CHAIRPERSON CORY: So at this point in the meeting,
9 how much of that can be discussed how openly is something
10 that, you know, counsel at the table ought to advise the
11 staff before they proceed with that as to what they can and
12 can't say.

13 MR. TAYLOR: I think we ought to make it clear
14 at the beginning that we're not -- that it's based upon the
15 information submitted, and it's only a judgment with regard
16 to this lease. It doesn't reflect on the bidder any other
17 way. And I think that the problems that staff had with that
18 is a deficiency of information submitted to establish the
19 ability to come up with the necessary capital to get the
20 lease under way on the operating day. And the statement
21 that it's available is not the same thing as a guarantee
22 attached, a guarantee attached to a bid proposal saying
23 that we stand behind it to the extent of X dollars.
24 The capitalization required to accomplish this lease is
25 computable from the information supplied.

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1 COMMISSIONER MORGAN: So is it staff's opinion
2 that the insufficiency of data disqualifies this bidder
3 from consideration?

4 EXECUTIVE OFFICER NORTHROP: That's what we're
5 saying.

6 MR. MOCHON: Yes, I think that's true, based on
7 the information we've gotten, we did not have enough
8 information to be assured that they have these capital
9 resources.

10 COMMISSIONER ACKERMAN: Maybe that's a
11 consideration for us to make in actually considering who
12 the bid is awarded to, and consider that as part of our
13 receipt of their bid, not make that judgment or considering
14 it as part of the complications.

15 I would like to not disqualify them based on that
16 one element.

17 COMMISSIONER MORGAN: Well, apparently they were
18 not disqualified based on that element, because staff
19 proceeded to evaluate the three bids that were received.

20 COMMISSIONER ACKERMAN: I think their evaluation
21 should be considered.

22 CHAIRPERSON CORY: I have a slightly different
23 viewpoint, just in keeping with the difficulty that I have
24 in terms of the percentage, and the percentage that the
25 state might receive if they can't, in fact, perform, then I

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1 have trouble dealing with the data and the estimates of the
2 staff if they aren't going to be there and can't provide
3 the services, so that in fact nobody will be there. I've
4 got some difficulty.

5 That's, I guess, another question, we can leave
6 it there. I just want the record to show that I have some
7 qualms given their hesitancy.

8 Do you feel that the other two bidders can meet?

9 MS. MOCHON: I think the staff has evaluated them
10 in order of the -- I think the staff feels the Island
11 Company and Conservancy has the strongest -- I believe that
12 the staff has evaluated these in order that they feel they
13 are most or least qualified.

14 CHAIRPERSON CORY: That's not the question I
15 asked you.

16 Does the staff believe that the other two bidders
17 can perform, yes or no? I just need to know if --

18 COMMISSIONER ACKERMAN: There was a question
19 asked earlier, in order to agree receiving bids, should one
20 of the bidders be rejected because of financial considera-
21 tions and not be considered. And the question I believe was:
22 Of the three bidders that had submitted bids, should the
23 commission receive and consider all three bids, or should
24 any one of those be rejected on these grounds?

25 EXECUTIVE OFFICER NORTHROP: Mr. Chairman,

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1 Mr. Ackerman, Mr. Harry Schreiman, chief of our
2 Administrative Services staff, his department went over
3 the bids in some detail. I think we can well direct that
4 question to Mr. Schreiman as the man in charge.

5 CHAIRPERSON CORY: I don't care who answers, as
6 long as somebody gives me an answer.

7 COMMISSIONER ACKERMAN: Staff is recommending
8 that based upon financial information submitted, one of the
9 bids should not be considered by the commission today.
10 Is that the recommendation of the staff? That the bid of
11 the Navigation Company not be considered?

12 MS. MOCHON: I think that the recommendation of
13 the staff is that you consider them the least qualified
14 through a financial soundness point of view. I think it's
15 up to the commission whether they determine them to be
16 qualified or not.

17 MR. TAYLOR: Again, that is based upon the data
18 they supplied, the statement that they could do some things,
19 but no substantiation.

20 COMMISSIONER ACKERMAN: I feel if we considered
21 their bid, Mr. Cory's concerns could be addressed that way
22 rather than rejecting their ability to lay their proposal
23 on the table at the outset.

24 COMMISSIONER MORGAN: Well, except that is part of
25 the package, we asked for a demonstration of financial

1 ability to perform the work that was requested. And staff
2 is saying that they have some reservations and some
3 questions about one of the bidder's ability to perform the
4 work based on the financial information which they have
5 reviewed.

6 I mean, from my point of view, that throws into
7 question the entire bid.

8 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, on
9 behalf of the staff, I think the answer to the question
10 first is no, the staff had serious questions as to whether
11 Island Navigation could perform.

12 The second question is, yes, we believe the other
13 two bidders are financially able to handle it. And we have,
14 of course, some degree of variation, and that's reflected
15 in one, two, three.

16 CHAIRPERSON CORY: Harry, is there any specific
17 detail that you believe we should have? I'm trying to find
18 out from my viewpoint what shades of gray we're dealing with
19 here, or whether we've got some over in the area of black
20 and white.

21 MR. SCHREIMAN: No, the auditing staff has
22 reviewed this, and it is our opinion that the Island
23 Company will have extreme difficulty in handling this based
24 on their financial statement.

25 MR. TAYLOR: Island Navigation Company.

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1 CHAIRPERSON CORY: Okay, and you believe the other
2 two, looking at the information you have, can in fact
3 perform?

4 MR. SCHREIMAN: I do.

5 CHAIRPERSON CORY: Procedurally, then, it's the
6 wish of the commission to consider all, with the data, and
7 the qualifications, and the information that the staff has
8 put out.

9 The next question, at some point in the break
10 somebody had indicated, I believe, that they wanted to know
11 how procedurally they went about saying something to the
12 commission. Ms. Morgan has indicated that somebody needed
13 to say something, and we were a public body and we should
14 accommodate them.

15 Keeping in mind that the mind cannot cure what
16 the seat cannot endure, are there any of you that need to
17 say something?

18 Would you please identify yourself.

19 MR. HERTZBERG: Harrison Hertzberg.

20 I wish to speak on behalf of the Catalina Marine
21 Services Corporation. I want to reserve that right at a
22 time when I get to the issue I wish to speak about, instead
23 of going over a number of issues. I want to talk about our
24 bid as far as the minimum annual rental is concerned, the
25 fact that we've guaranteed the state over \$1,361,000 more

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1 than the next bidder, when you get to that point.

2 CHAIRPERSON CORY: I think you had better take
3 this time to cover what you wish to cover, make sure we know
4 it, because if other people have things that are lurking in
5 the sides of their minds, I'm not sure that after we take
6 the final input, that there's going to be every point of
that contract discussed.

8 COMMISSIONER ACKERMAN: That's one question.

9 Has the commission now agreed, then, to consider
10 and receive three bids?

11 CHAIRPERSON CORY: That's my view. There are
12 three here that are going to be considered, and the personal
13 evaluation of each commissioner based upon what the staff
14 has told us about the three. That's my understanding.

15 COMMISSIONER ACKERMAN: We now have three bids
16 before us. We've made that decision.

17 MR. HERTZBERG: May we approach the commissioners
18 to pass out a comparison we prepared, which I would like to
19 speak about.

20 COMMISSIONER MORGAN: Has this been provided to
21 the staff?

22 MR. HERTZBERG: No, we'll give them to the staff
23 now. I guess they can follow.

24 MR. TAYLOR: Mr. Chairman, in looking at some of
25 the material here, one of the problems with the bid proposal

1 was that it went beyond items that were called for. And in
2 considering or evaluating it, not all of these were
3 considered germane or responsive. And to the extent that
4 Pioneer was not responsive, that was not considered.

5 And I think that was the point in answering your
6 questions. Despite the fact that we answered the questions
7 in that manner, Pioneer did submit some additional material,
8 and that material was not considered by the staff in its
9 evaluation, since it was not responsive to the bid
10 proposal.

11 I don't know just how you handle that with some
12 of these items.

13 MR. HERTZBERG: May I answer that, Mr. Chairman?

14 CHAIRPERSON CORY: It's your time. Go ahead.

15 MR. HERTZBERG: Thank you, Mr. Chairman.

16 Suffice it to say we didn't agree with the staff.
17 And suffice it to say we had a different interpretation,
18 different opinion than the staff.

19 And I will state very emphatically what that
20 difference is, but first I passed out some comparisons of
21 the financial aspects of the bids between Catalina Marine
22 Services Corporation and the Catalina Island Company.

23 We have both bid 20 percent. Now, on items 12 to
24 15, on our Category 2, which is on page 4 of our bid
25 package, our bid lease, the staff report has said we didn't.

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1 go up to 17 percent, so therefore they either wanted to
2 consider us being ruled out, or as reducing our percentage.

3 Well first of all, we state in our package we're
4 not going to charge for water. We're not going to charge
5 for pickup. Therefore, there would be no percentage.

6 If I'm going to be true to you and say I'm not
7 going to charge for it, I can't give you a percentage on it.

8 CHAIRPERSON CORY: Actually, you could give us
9 100 percent, but go ahead.

10 MR. HERTZBERG: You've got it.

11 Now, I posed a question on the 30th when I was
12 here, and I posed that question to the staff in my letter,
13 and that was this, I said: You got a unique situation here,
14 ladies and gentlemen. You've got a situation where, if we
15 win the bid, we are in competition with the Island Company
16 because they own the land. But, if they win the bid, they're
17 a monopoly.

18 Now, they asked us for a percentage on towing.
19 I've got two items here, 12 and 15, Coastal Shuttle,
20 Coastal Cruises and Towing.

21 I took those out because I considered that those
22 two items were so far unrelated to the demise of these
23 premises, because they're conducted away from the premises
24 about 90 percent. But primarily I took them out for this
25 reason: If we win the bid, and we would have said 20

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1 percent, and they own the land, they're in competition with
2 us and not giving the state a dime. They can conduct the
3 same activity, towing boats. They've got the boats to do
4 it. They've got the shuttle service. They've got the
5 shore boats. They've got everything.

6 So look at the position that this locks us into
7 when we make such bid. That's why it is this way.

8 But we went ahead and we offered the state, in
9 Category 2 -- and I disagree with the staff. I think it's
10 related to the lease premises -- we offered you percentages
11 on bait, tackle, swimwear, sporting goods, you name it,
12 it's all here, restaurants. They got a restaurant; they
13 don't have to pay a dime. We're going to give you five
14 percent on food and six percent on beverages, when we build
15 it, and we hope to if we get the bid, to do it within a
16 reasonable period of time.

17 So, you know, the bid itself is comparing apples
18 to oranges. Let's take minimum annual rental.

19 The staff says that you can't guarantee the state
20 more than \$125,000 a year.

21 Now, I put a postscript or footnote on my letter
22 of transmittal. Gentlemen, I've been a lawyer for a long
23 time, and I just can't understand, unless I see some reason
24 why I can't give the state a guarantee of \$150,000 a year,
25 plus five percent increase every year, which is \$1,363,000

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1 more that you are then going to take to the bank if you give
2 us the lease. You know you're going to take that to the
3 bank. You don't know what you're going to take to the bank
4 if you don't give us the lease and give it to our
5 competitor. We guarantee you \$3,238,000 against
6 1,000,875.

7 Now, another divergence between us and the
8 Island Company, Commissioners, there are 300,000 boats
9 between the Channel Islands and San Diego. Marina Del Rey
10 has got six to seven thousand pleasure boats. There's
11 four to five thousand between San Pedro and Long Beach.
12 You've got Huntington Harbor, Balboa, Newport, and all the
13 way down there. And you're going to lease 729 moorings.

14 And we did this: We said that if a person has a
15 lease, they're still going to have to pay when they go out
16 there and stay for the weekend, because we figure that the
17 value of that lease is the right to use it before anybody
18 else. There's such a demand for these moorings. And that's
19 a valuable asset.

20 And let's look at the big picture. What are we
21 really talking about here. I've got a boat. And I'd say
22 it's worth about \$185,000. I go to Catalina. I must spend
23 \$200 to \$250 on fuel; I probably spend another \$100 on food,
24 and 50 bucks on whisky.

25 Do you think it makes any difference to me to

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1 spend \$18 to know I'm going to sleep that night and not
2 have to throw my hook out and my boat's going to drift on
3 the beach? Doesn't mean a thing.

4 The important thing here is the servicing of the
5 public. And if you're going to contain and continue this
6 monopoly of certain people, and only those people using
7 those moorings, you've precluded the one service you owe to
8 the public.

9 We intend -- first of all, we have projected our
10 income for 1982 at about a million eight. That's opposed
11 to 800,000 of our competitor. Why? We're going to see to
12 it those moorings are used year round, weather permitting.
13 We're going to promote it. We're not going to sit back like
14 has been done for 30 years and let the yacht clubs and the
15 same people have the pleasure and beauty of Catalina, and
16 they're hopeful they'll catch some good gill fish, like I'm
17 hopeful and trying to do every weekend. We're going to
18 promote it, and we're going to make it available to so many
19 more people.

20 That's why we're going to charge them. But we're
21 only going to charge 50 percent if a man owns it, and 100
22 percent if he doesn't own it. But yet, we're still cheaper
23 than the Island Company.

24 I'd like to go through the figures. Where there's
25 an annual mooring lease, and that's where they build leases,

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1 the cement and the chain, he pays us a minimum of \$490, and
2 he pays them \$520.

3 If it's a mooring contract, wherein he owns it,
4 just leases the land, he pays us \$10.70 per deck line foot
5 to take care of his mooring, plus \$1.60 per deck line foot.
6 That's 406 plus 49, which is about the same as our
7 competitor charges.

8 Now as to daily rates, which as I just said are
9 applicable to a so-called permanent lessor, you can see that
10 we're going to charge them \$8 daily. That's seven days
11 a week. There's no difference between Saturdays and
12 Sundays. That's to try to encourage the small guy to come
13 out there, 10 to 30 feet, and they're a little bit higher
14 then. It's \$9 and 11 on Saturdays.

15 The schedule is readily apparent, and you can see
16 the difference in what we've done. Here's what we have
17 done. We have made it cheaper for the smaller guy,
18 increased it a little bit more for the larger guy.

19 And I figure, gentlemen, if I got a boat that's
20 over 71 feet in length, I can pay \$2 more to moor on
21 Saturday than the competition's going to charge. That boat
22 over 70 feet has got to be worth three-quarters of a
23 million dollars if it's anywhere near new.

24 So really the issue is not, gentlemen, the issue
25 is really not the dollars you're charging. The issue is to

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1 make this place available to a greater segment of the
 2 public. And that's what we intend to create, and we're
 3 going to do it. I believe that we have a team that's got
 4 the proper vision, the proper ingenuity to make Catalina
 5 come alive. There's no question that we got the proper
 6 chairman of the board, president of our organization, who
 7 can see to it that that place is properly secured.

8 Mr. Pitchess, whom I notice just came in, has
 9 authorized me to state to you that he intends to spend
 10 full time if the bid is awarded to Catalina Marine
 11 Services.

12 At the proper time it is awarded to us, we intend
 13 to, as we have told you in our statement of qualifications,
 14 to expend up to a million dollars, if it costs us that, to
 15 build in that harbor a marina, floating barge, which can
 16 be towed out to sea in rough weather if it's necessary,
 17 which would have on it the restaurants, which would have on
 18 it the stores that are necessary, where you can pull up with
 19 your boat, buy what you want, and you won't have to pay a
 20 cent.

21 Today, you've got to pay \$3 per person to go on
 22 shore in Catalina to get rid of your garbage. We'll have a
 23 barge for that garbage. We'll have one for water. We're
 24 not going to charge. And that can go into the lease that
 25 we won't charge.

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1 Continuing on down, our projected revenue, if you
2 take our projected revenue for 1982, we will produce for
3 the State of California \$197,214 more than the Island
4 Company in the first year of operation, based upon our
5 projections.

6 And I'll say one thing: It may be true that
7 Wigley has more money than we got today. But don't forget,
8 he only paid \$19,000 to the state for the last 15 years,
9 so maybe he's got it because the state doesn't have it.

10 As far as the garbage is concerned, as I hereto-
11 fore stated, that's on the last page of our comparison
12 sheet, that will be free. And access to all of our
13 restaurants and stores and snack bars, bait, diving
14 equipment, that will all be free.

15 I believe that our organization is sufficiently
16 creative and aggressive to make and give access to a great,
17 great extent to the people that have never had the
18 opportunity to see Catalina.

19 As far as the interim takeover is concerned, I'm
20 prepared to answer any questions. We will be ready. If
21 awarded this bid, we will be ready on January 1st.
22 We have made arrangements with the Edison Company for
23 water, Edison Company for power, telephone company. We've
24 made arrangements for the garbage and solid waste disposal,
25 made arrangements for offices, and made arrangements for

1 shore boats and made arrangements for patrol boats.

2 All of these will be ready to go if we are
3 awarded the bid.

4 MS. MOCHON: Mr. Chairman, may staff explain
5 briefly what we based our evaluation on?

6 CHAIRPERSON CORY: When he gets done. Let
7 everybody say what they want to say.

8 MS. MOCHON: I'm sorry, I thought he was finished.

9 MR. HERTZBERG: I'd like to point out a few
10 things in the staff report which I do not agree with.

11 Number one, on the last page of their Exhibit A,
12 on the fourth paragraph on the top, actually the last page
13 of the exhibits, they say that we charge \$17.60 per deck
14 line foot. It's \$16 per deck line foot when you lease.

15 CHAIRPERSON CORY: Is this the page?

16 MR. HERTZBERG: The page right before the end,
17 right before Exhibit B, Mr. Commissioner. It says:

18 "For example, the owner of a 35' boat
19 who leases the mooring equipment would pay
20 an annual fee of..."

21 They got 17.60, and it's \$16.

22 Drop down two paragraphs:

23 "In other words, the owner of a 35'
24 boat who owns the mooring equipment will pay
25 an annual fee of \$17.60 per deck line foot."

1 It's not seventeen sixty. Our bid package says
2 twelve thirty.

3 Now, I did make some comparisons with what we
4 charge and what the Island Company charges on two sizes of
5 boats. I took a 46-foot, because that happens to be the
6 size of my own boat, and I took a 37-foot because that
7 happened to be the size of a very popular number of boats.

8 On the annual mooring lease, a 46-foot boat, we
9 would charge \$736 for a lease. The Island Company will
10 charge \$798.10. They're \$26 higher than us, or 85 percent.

11 On a mooring contract, which includes the
12 maintenance of your mooring if you own it, and the price of
13 the sand it sits on, if you sublease the ground, we charge
14 on a 46-foot, \$565.80, and they charge \$713. Their charge
15 is 26 percent higher.

16 In summary --

17 CHAIRPERSON CORY: Those charges you're giving
18 include all charges to the consumer?

19 MR. HERTZBERG: Yes, the difference being --
20 I'll tell you what it is very fairly. The difference is
21 the Island Company, if someone leases it, if they have a
22 lease for it and they want to come out and use it, their
23 bid package does not charge them; we do. We charge them
24 the same as we charge anybody else.

25 We consider that valued right to use it before

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1 anybody else worth what they pay. It would cost me seven
2 to eight hundred dollars, and it's really worth it. But if
3 you own it, we figure you've got a pretty solid investment
4 in it so we only charge you 50 percent to use it.

5 That's why I said, gentlemen, how bad can it be?
6 You're spending hundreds of dollars to go over there for
7 fuel, et cetera, et cetera, and 12 or 13 or 14 dollars a
8 night really doesn't make that much difference.

9 It makes a lot of difference to the state, and it
10 makes a lot of difference to the people that will use it.
11 It will open it up to so many more people, and that's our
12 purpose, is to make it available to so many more people.

13 Gentlemen, I submit that I don't see how the
14 state can refute the fact that we're telling you we're
15 going to give you \$1,361,000 more to take to the bank over
16 15 years, and yet they say we won't consider it.

17 I'll answer any questions at the proper time if
18 you have any.

19 COMMISSIONER MORGAN: Yes, on page 2 of your
20 summary sheet, where it says "Projected Revenue".

21 MR. HERTZBERG: Yes, ma'am.

22 COMMISSIONER MORGAN: Could you break down the
23 projected revenue?

24 MR. HERTZBERG: Our projected revenue, that's
25 contained in our statement of qualifications. For the year

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1 of 1982, we project a gross of \$1,856,000.

2 COMMISSIONER MORGAN: That's the figure. Can you
3 break that figure down?

4 MR. HERTZBERG: Yes. It's completely broken down.
5 I personally did not do it, but the man that did it is here,
6 Mr. Franklin is here, and he will be able to break it down
7 for you.

8 That figure was arrived at by the utilization
9 of the knowledge of someone who worked for the Island
10 Company for many years, is harbor commissioner in Avalon
11 right now, and their observance over years over what the
12 occupancy is. And I would rather have him explain.
13 He's the statistical man, Mr. Franklin.

14 MR. FRANKLIN: You want the breakdown on the
15 1.8 million.

16 CHAIRPERSON CORY: How did you arrive at that
17 number?

18 MR. FRANKLIN: The 400 moorings that are on the
19 lease comes out to \$317,240. The 329 --

20 COMMISSIONER MORGAN: Can you give me the
21 comparable figure for the Catalina Island Company?

22 MR. FRANKLIN: I don't have that with me. I have
23 my own projections.

24 That's 317,240 for the 400 on the annual.
25 329 that are on contract for maintenance. The annual total.

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1 would be 187,750. Our daily mooring rentals add up to
2 1,080,364. Additional revenues from existing rentals,
3 30,720, and there's two other figures showing a total of --
4 those two figures are the shore boat revenue, \$200,000, and
5 the projected towing and diving, 40,000.

6 COMMISSIONER MORGAN: Is the million eight, when
7 you compared it with the Catalina Island Company figure,
8 which you don't have, apparently, did you do the comparison?

9 MR. FRANKLIN: I did not do the comparison. I
10 did our projection up to the million eight.

11 COMMISSIONER MORGAN: Do you know if the million
12 eight depends on greater use of the facilities than
13 currently?

14 MR. FRANKLIN: We think it does. Of course, we do
15 not have access to their figures. It wasn't a matter of
16 public record. But we feel that it would have a greater
17 usage.

18 COMMISSIONER MORGAN: Thank you.

19 COMMISSIONER ACKERMAN: I have one question, and
20 maybe it's more appropriate for staff at this time.

21 There seems to be some legal question over what
22 we could actually consider as submitted in the bids
23 concerning the annual gross rental figures that were
24 presented just a moment ago.

25 Is there an opinion from the staff as to what can

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1 be considered by the commissioners as far as revenue to the
2 state?

3 MR. TAYLOR: Yes, that was not made a factor by
4 the commission, was the gross. I thought we had reaffirmed
5 that at the beginning of the meeting this morning.

6 Since that was the way the instructions went out,
7 one of the bidders has not followed the instructions.

8 Now, what the other bidders would have done had
9 they felt free to bid the minimum, no one knows because
10 they followed the instructions. And so, you cannot
11 consider those materials in the Pioneer package which are
12 not responsive to the initial bid proposal and the answers
13 to the questions that came in, and they were told a second
14 time on that one. As a matter of fact, they acknowledged
15 that there was a question about it, because in their
16 response, they put in a letter, "Well, we talked to somebody
17 who said this might be okay, but in the event that it isn't
18 okay, then don't consider the minimum." Don't consider the
19 rising minimum, and those are the words to that effect in
20 their bid.

21 So, I am afraid that, given the rules of play,
22 unless the commission wants to reject all bids and then
23 consider some other bases, that you cannot consider the fact
24 that they offered more of a minimum than the other people
25 did.

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1 CHAIRPERSON CORY: Let me take that to the next
2 step. Does that mean that we could not enter into a
3 contract based upon this, which would subsequently require
4 the additional minimum with either this bidder or any of
5 the bidders?

6 MS. MOCHON: I would like to point out already
7 that we do have a five-year rent review built into the
8 lease, so that accommodates that to a certain extent.

9 CHAIRPERSON CORY: Right now --

10 MR. TAYLOR: The answer is, if you want to
11 consider that, you can reject all bids and authorize
12 negotiation by the staff, or whatever you term that you
13 want.

14 COMMISSIONER MORGAN: You're saying that we can't
15 enter into a lease that's based on a bid where this
16 portion of the bid that's in excess of 125,000 --

17 MR. TAYLOR: As long as you're considering the
18 bids that have been submitted, you have got to consider
19 them on the basis of what is responsive to the instructions
20 given. And all of the other extraneous matter that was
21 submitted has to be disregarded.

22 CHAIRPERSON CORY: I presume that the projections
23 by the staff of the data put everybody on equal footing
24 pursuant to the terms of the lease. There's a sheet that
25 you gave us, financial estimates based upon data submitted

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1 by the bidders and data projected by staff.

2 On the projected staff data, in all cases, it
3 would be your projections exceed the nonrequested increase
4 in minimums that one bidder presented?

5 MR. SEKELSKY: It had nothing to do with that.

6 My name is Steve Sekelsky, and I'm a Senior Land
7 Agent with the State Lands Commission.

8 It had nothing to do with that.

9 COMMISSIONER MORGAN: Did you use 150 or 125?

10 MR. SEKELSKY: I did not consider that. That
11 was not a consideration in this analysis.

12 CHAIRPERSON CORY: But in the analysis, did, in
13 each case, each year, the projected revenues exceed the
14 contractual minimum and the proposed additional minimum?

15 MR. SEKELSKY: No, I just used the one figure that
16 they gave us, the projected gross for the first year.

17 The figures that I used have to do with -- or I
18 changed or adjusted were for utilization.

19 CHAIRPERSON CORY: I understand that. If you
20 take that utilization, then this is just for the first year?

21 MR. SEKELSKY: Based on the first year, right,
22 all the way across.

23 CHAIRPERSON CORY: So that the Pioneer would be
24 252, the Island Company Conservancy would be 216,000, and the
25 Navigation Company would be 213,000 to the state, all of

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1 which would exceed the minimum.

2 MR. SEKELSKY: That is correct.

3 COMMISSIONER MORGAN: Can I ask him a question.

4 The summary that you put together, comparing the
5 bids, do you use the same number of days of mooring for all
6 of these?

7 MR. SEKELSKY: Yes, it is a standard figure
8 applied to each one. Basically it is a comparison based
9 on equal utilization projections. And it really doesn't
10 reflect any actual income. That wasn't my purpose here.

11 COMMISSIONER ACKERMAN: Is the utilization rate
12 you selected one which was provided by the Island Company
13 as their current utilization?

14 MR. SEKELSKY: I did not use the Island Company's
15 information. I used my own information based on the past
16 history of the Island Company in a way, but I did not use
17 their figures specifically.

18 I did adjust down, because the main fact that I
19 had was, I know 93 days out of the year there is not 100
20 percent utilization at this time. In the future there might
21 be; I can't say, but at this time there are not 93 days
22 throughout the summer months of 100 percent utilization.

23 This made me go on to say, well, if there isn't,
24 maybe the projections are way too high, the gross income
25 that first year. So what it actually shows, in my opinion,

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1 is that there might not be the large differential.

2 CHAIRPERSON CORY: We'll get to that end of it.
3 Just answer the commissioner's questions.

4 Dave, you're in the middle.

5 COMMISSIONER ACKERMAN: The other point that I was
6 making is, if you used an average or took an average
7 utilization rate, the way the bids were submitted, the net
8 or gross income to the state could fluctuate under the
9 proposals submitted by Pioneer Corporation either up or
10 down, depending on what error factor that they had in that
11 utilization rate, but the bid by the Island Company would
12 not have that fluctuation; is that correct?

13 MR. SEKELSKY: It is not analyzed. It doesn't
14 matter what they did as far as their minimum is concerned
15 in this analysis.

16 COMMISSIONER ACKERMAN: Yes, but what we've got,
17 you know, is a bottom line here, as Mr. Cory just mentioned.
18 We have dollar amounts and they're based on an assumption.

19 I'm trying to look at this, and if that assumption
20 changes, it may have the effect of changing the dollar
21 figure for one bidder and not changing the dollar factor
22 for another bidder.

23 MR. SEKELSKY: I don't think the minimum does that
24 in this case.

25 COMMISSIONER ACKERMAN: Not the assumption changes,

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1 but the actual utilization rate is different.

2 In other words, Mr. Hertzberg just mentioned
3 that they intend to proceed and have a very aggressive
4 campaign for use of the facilities. If their actual
5 usage exceeds your assumption rates, then the bottom line
6 dollar amount represented here will increase.

7 MR. SEKELSKY: That is correct.

8 COMMISSIONER ACKERMAN: That would not be true of
9 the Island Company.

10 MR. SEKELSKY: No, all the way across it could
11 change.

12 COMMISSIONER ACKERMAN: The Island Company is not
13 charging, if I understand it right, a daily use fee;
14 therefore, utilization would not have such an impact.

15 MR. SEKELSKY: That is correct. I had a figure
16 in there. I subtracted that out. That is true.

17 COMMISSIONER MORGAN: It would only increase if
18 the non-leaseholders increase; is that right?

19 COMMISSIONER ACKERMAN: Not necessarily, because
20 again we have to go back and look at the moorings over
21 there, and they're vacant right now a considerable amount of
22 time. If the usage of that increases dramatically, so will
23 a daily use fee increase dramatically. That is
24 accommodated in one of the bidder's proposals but not in
25 another.

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1 Therefore, the assumptions made by staff have
2 to take that into consideration when you're looking at the
3 bottom line comparison.

4 COMMISSIONER MORGAN: Is there a daily use fee
5 in only one of the bids?

6 MS. MOCHON: No, the daily use fee in the case
7 of the Island Company bid, for example, applies to anyone
8 who does not have a sublease. Individuals who have
9 subleases will not pay daily use fees.

10 Under Pioneer's bid, if you have a sublease, you
11 also pay a daily use fee.

12 Now, what you're saying would result, I would
13 assume, if they could get a great deal more usage out of
14 their sublessees.

15 COMMISSIONER MORGAN: That would be the
16 distinction.

17 COMMISSIONER ACKERMAN: Probably a small variable.

18 CHAIRPERSON CORY: Any other questions of the
19 commissioners?

20 MR. FRANKLIN: The difference on that is a half
21 million dollars in revenue, plus charging a daily fee to
22 those people who are on lease or maintenance.

23 COMMISSIONER MORGAN: That's what I was trying to
24 get at.

25 COMMISSIONER ACKERMAN: I'm clear on that.

1 CHAIRPERSON CORY: All right.

2 You've got your question answered in terms of how
3 he arrived at that number?

4 COMMISSIONER MORGAN: Right.

5 But now I hear staff saying that the million
6 eight figure is our figure, not theirs.

7 MR. SEKELSKY: No, the million eight five seven
8 six zero four is a given as what was projected as gross
9 income by Pioneer.

10 CHAIRPERSON CORY: The top part of that chart, as
11 I understand it, is each bidder has projected what they're
12 going to do. The bottom part of the chart is to try to go
13 through with the staff's professional analysis of what they
14 think --

15 COMMISSIONER MORGAN: Would result from that.

16 CHAIRPERSON CORY: No, I think they've assumed
17 constant usage by all three bidders.

18 MR. SEKELSKY: That's correct, other than what
19 was really submitted.

20 COMMISSIONER ACKERMAN: Staff's trying to take the
21 different variables out and compare apples with apples so
22 that we've got a constant comparison, so we can compare one
23 bid against another under an actual use situation, an
24 assumed use situation, and to reflect it.

25 COMMISSIONER MORGAN: Thank you.

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1 CHAIRPERSON CORY: To the extent that there may
2 be blue sky in a bidder's proposal, this was an attempt to
3 remove that so that the people doing the analysis, which
4 the staff presumably does not have a bias one way or the
5 other, and to take a constant usage, applying each of the
6 three bidders' proposals to that. That's what it would be?

7 MR. SEKELSKY: That's correct.

8 CHAIRPERSON CORY: As I understand it, that is
9 what you've done on that.

10 MR. SEKELSKY: That's exactly what I've done.

11 COMMISSIONER MORGAN: And the fact that you used
12 one year, the first year, as the comparison is because you
13 assume that the relative relationship would not change,
14 because over time --

15 MR. SEKELSKY: I didn't use it because the other
16 bidders did not have those projections. It wasn't a part
17 of the bid, so I didn't use it.

18 COMMISSIONER MORGAN: But there is a provision
19 for a five-year rent review. Thank you.

20 CHAIRPERSON CORY: All right. Have you concluded?

21 MR. HERTZBERG: I have nothing further unless the
22 commission has any further questions or would like to hear
23 from any of our group as to our preparedness or readiness
24 to proceed, or our expertise, or anything along those lines.

25 CHAIRPERSON CORY: Thank you.

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1 MR. HERTZBERG: Thank you.

2 CHAIRPERSON CORY: Is there anyone else in the
3 audience, either of the other two bidders, who would like
4 to make some comments?

5 MR. JOHNSON: My name is Bob Johnson.

6 Yesterday I went down and spent \$5 to get a copy
7 of all these bids. If you take on page 69, he was
8 admitting it, \$16 per deck line foot with a minimum, plus
9 the normal daily fee.

10 But I just figured out what it would have cost me
11 last summer. I got a 32-foot boat. I'm paying seventeen
12 sixty a foot for the privilege of having a mooring, and
13 then I pay him another \$1200 for using it, which comes to
14 \$1763.20. And frankly, it wouldn't pay me to own a mooring.

15 I could go over there any Sunday. With luck I
16 could use one until Saturday, because there aren't owners
17 over there using it. It would be a lot cheaper to do that.

18 I'd just as soon give up my mooring if that were
19 true.

20 Another thing, how many boats did he say there
21 were in Southern California? There's 164,776.

22 Would you like a copy of that?

23 CHAIRPERSON CORY: Staff might be interested.

24 MR. JOHNSON: He's been talking about \$3 a day
25 every time you go to shore in Catalina. That's true if you

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1 just go in for one day. But in my case, I pay them \$20
2 for the year. I'm sure it costs them \$20 to haul my trash
3 up to the yard.

4 CHAIRPERSON CORY: The chart does reflect a
5 yearly pass of \$20, or \$3 a day.

6 MR. JOHNSON: With that I could take four guests
7 ashore.

8 Thank you.

9 CHAIRPERSON CORY: All right.

10 MR. GREENBERG: Charles Greenberg, Ball, Hunt,
11 Hart, Brown & Barerwitz, representing the Santa Catalina
12 Island Company and Santa Catalina Conservancy.

13 I think it's a general approach and underlying
14 tone of Mr. Hertzberg's presentation illustrates to the
15 commission the difference in philosophy and business
16 approach to the island that gives you a clear choice as to
17 which type of philosophy and business approach you want to
18 be your lessee.

19 Mr. Hertzberg was solely concerned with economic
20 return: economic return to his company; economic return to
21 the state.

22 We view the problem as one of balancing economic
23 return with services rendered, with preservation of the
24 ecology, preservation of the island as it is, with
25 maximizing services to the boat owners, both the daily

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1 boaters and the longer term boaters to whom we are
2 responsible.

3 I think in 30 years, the reason this bid is
4 before you and Catalina is before you in the fashion it is,
5 and we are not looking at a mini-Marina Del Rey, is because
6 of these philosophies and business practices of the Island
7 Company and, since 1972, the Island Conservancy in
8 administering both the island and the Island Company in
9 administering these leases.

10 I think that makes a big difference. We, for
11 instance, would be absolutely appalled at leasing the
12 mooring leasings to one of our lessees and then charging
13 him from 8 to \$25 a day to come use the mooring leasing
14 that he has rented from us on a longer term basis. That is
15 not the kind of business decision we would make, and I'm
16 not faulting Pioneer for it for making the decision that
17 they have.

18 If you look at the situation from a purely
19 economic point of view, it may very well be that, since
20 there are only very few limited moorings around Catalina,
21 and since there's a large boating public, that you could
22 extract from the boating public the kind of daily charges
23 that Pioneer expects to do, to abstract, to take from them.
24 Maybe you could.

25 We think, however, you have to weigh a lot of

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1 things in whether you should extract such a charge from
2 them. And you also ought to keep in mind the actual
3 information and assumptions that Pionder is making, because
4 some of them are wrong.

5 First of all, you don't have 93 days a year of
6 100 percent occupancy. What you have on the island is,
7 every Saturday night during the busy season, you basically
8 have 100 percent occupancy. On Friday night, you basically
9 have 78 percent occupancy. The rest of the week you're
10 down 10, 15, 20 percent occupancy. You have a 30 to 40
11 percent weekly occupancy rate over the summer season, and
12 those are historical and clear figures.

13 So except for Saturday night, the public always
14 has a mooring open to it. And on Saturday night, to get
15 your 100 percent occupancy, the public also has mooring
16 open to it also.

17 I don't see how you're going to encourage -- as
18 Mr. Ackerman's questions indicated, the only difference in
19 our bids as far as the state revenue is concerned, when you
20 come down to the bottom line on this situation, is the
21 policy of charging those people who have moorings already,
22 have long-term leases, will that policy, if you add onto that
23 lease a daily payment, cause them to come over more often?
24 Because if they come over more often, then they're going to
25 be paying more money for their daily charges, and the daily

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1 charges will then be switched between the lessee and the
2 state.

3 And I submit to you that just won't -- with human
4 nature, that just isn't going to happen. If you charge the
5 fellow more, he's not going to come over more. If anything,
6 he's going to come over less.

7 But that's not a problem in terms of our bid,
8 because we are in a position, except for Saturday night,
9 of accounting as many of the public on a daily basis to come
10 over for daily rent as are available.

11 There were some questions by Commissioner Morgan
12 concerning where the differences in revenues flow are
13 between the various bids.

14 There are only three differences really. We
15 project at \$824,000 a year. Pioneer projects about a
16 million eight. Of course, the major, major difference in
17 that is about a billion one in income referable to these
18 daily charges, or string-line charges for the daily use.

19 Two other differences where we think Pioneer is
20 just wrong has to do with shore boat revenues, which we
21 project at 67,000, and them at 200,000. We would submit to
22 you, historically, they're just wrong on that. And we
23 project a normal increase from our shore boat revenues of
24 last year, which were about \$50,000.

25 And the diving and towing service, where we

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1 projected \$10,000 and they project \$40,000, again based on
2 our records, they're just not accurate. Otherwise, the
3 revenue side is not that different between the parties.
4 Other than this one basic item of philosophy as to whether
5 you want to charge a daily fee, the revenue sides aren't
6 that different between the two projects.

7 But what we think Mr. Hertzberg's presentation
8 ignores are the problems and costs involved in adhering to
9 the kind of services that your lessees will need and expect
10 when they visit Catalina Island. And I would think that
11 the state, as landlord, would want its lessee to provide
12 to those people.

13 I'm not going to run through all of them, but I
14 would like to run through just a few to illustrate where
15 we believe that the Pioneer bid would run into severe
16 problems if accepted by the state.

17 The first item I'd like to look at is how -- and
18 it seems like I picked the most mundane thing really to
19 start with, and that's garbage -- how do you handle garbage
20 from the boating public?

21 The way we've handled it in the past, and the way
22 we would intend to handle it in the future is, have two
23 garbage systems -- one a daily pickup system at the boat;
24 another where the boater brings the garbage ashore. It's
25 placed in receptacles, and then, in either case, taken by

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1 truck over our land to a state-approved solid-waste disposal
2 dump.

3 Now, how does Pioneer intend to handle something
4 simple like garbage? First, they intend to put compactors
5 on. They can't have a landside pickup, but they can have
6 a boatside pickup. Then they want to put compactors on the
7 boats to compact that garbage down so that they can handle
8 it and haul it further, and it wouldn't be so bulky.

9 We looked at the compactor idea several years
10 ago, and right or wrong, we rejected it, because compactors
11 basically have steerable components. And while Pioneer
12 runs a marina in fresh water, we didn't believe, in a
13 salt-water environment, that those compactors were going to
14 work very long. So we rejected that as a business
15 decision. And it's really an essential part of the Pioneer
16 system, because if you can't compact that garbage, where
17 are you going to dispose it to?

18 Second, we have worked very hard to encourage,
19 and we've been really pleased at the response of boaters,
20 to use our shoreside system. Pioneer will offer something
21 like that. In our shoreside system, you bring your own
22 garbage to shore.

23 In the Pioneer system, you go to what I take to
24 be about 140- to 150-foot-long barge to deposit your
25 garbage, and there it will be compacted. I frankly can't --

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1 I think it would be very inconvenient for the boaters,
2 particularly on a weekend, to line up, to be coming aboard
3 to dispose of their garbage, or whatever else they want to
4 do on the boat.

5 And that's a concern to us, because if it's
6 inconvenient to the boater, what he's going to do is what
7 he did years ago and dump it over the back into the
8 pristine waters of the bay. And it's going to have
9 environmental effects that neither the state nor my clients
10 would like to see.

11 Now then, Pioneer wants to haul the garbage. And
12 the bid isn't clear whether it's -- I think they've left
13 both options open, to Avalon or maybe even the mainland,
14 but primarily to Avalon.

15 There is one disposal site on Avalon. The lease
16 on that disposal site runs out the end of this year. That
17 disposal site has five to seven years' life left in it,
18 given the volume of garbage it now handles, and nobody knows
19 what's going to happen after that. And if you put
20 increased garbage to be handled from this leasehold into
21 that site, I don't know what's going to happen.

22 Now, I'm not going to go through all the other
23 elements with the same care as I did garbage, because
24 there's two reasons for going through this long narration
25 after you've been so patient for all these hours on the

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1 issues.

2 The first reason is this: It is our legal opinion
3 that you cannot award this bid to Pioneer without a complete
4 environmental impact analysis of all of the systems and all
5 the services which may have an environmental effect. If
6 the bid is awarded Pioneer, and garbage is merely one of
7 many items where I think you are going to have to need
8 such an environmental analysis before you would be
9 qualified to do the bid.

10 The second reason is not a lawyer-like reason,
11 it's a matter of common sense. We worked out all our
12 systems for handling all of these kinds of matters 30 years,
13 in an organic manner, to meet the needs of the public. We
14 don't believe that Pioneer can come in and do that in a mad
15 scramble, picking up the lease, depending on an untested
16 concept of a huge superbarge, sort of a Catalina ark, to
17 handle all these kinds of functions.

18 I'll only take one more. You know all the
19 functions they're going to do, so I'll just take one more
20 to show you what I mean, and that's water. It's apparently
21 a very easy thing, but take water.

22 We now offer water free at the dock to the boaters.
23 Pioneer says it will offer water free at the barge. But
24 they don't say where they're going to get the water from.
25 Are they going to get it from Avalon? If they get it from

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1 Avalon, they're going to run into a Public Utilities
2 Commission problem, that all additional increments of water
3 that may be produced for Avalon have already been allocated
4 in Public Utilities Commission allocations. Their bid
5 doesn't specify where they're going to get it from.

6 Are they going to get it from desalinization?
7 If they do, the costs of that are going to be so
8 prohibitive that you're going to have problems.

9 Are they going to get it from the mainland?
10 Well, I don't know the answer to that. But we need an
11 environmental impact report to tell you the answers to that
12 before you can award it.

13 Yes, sir.

14 CHAIRPERSON CORY: I have a question about water.
15 I thought we had structured this so that the
16 dock was going to be a negotiated lease with the upland
17 owner?

18 MR. GREENBERG: That's correct.

19 CHAIRPERSON CORY: And that the lease was going
20 to require you to continue to provide the same services,
21 so the water is going to be available there, I presume.

22 Are you telling me that you're not -- your client
23 is not planning on making water available at that dock?

24 MR. GREENBERG: I can't tell you that, because we
25 haven't -- I have not discussed it with my client.

1 CHAIRPERSON CORY: I want to make it clear, my
2 view is that if you don't, you aren't going to have a dock.

3 MR. GREENBERG: So in your view, Pioneer will not
4 have to have any responsibility for providing water should
5 they get the bid.

6 CHAIRPERSON CORY: I'm not saying that.

7 I'm just saying that it was my clear understanding
8 that we were accommodating the upland owner in a manner
9 that the upland owner had certain obligations to provide
10 to the public. If they aren't going to provide for the
11 public, then I'm going to have an entirely different view
12 as to their lease on that dock.

13 I don't know what the other commissioners are
14 going to do, but I just would like to know, because there
15 was an implication in your position.

16 MR. GREENBERG: I'm sorry if there was such an
17 implication. Let me tell you where it came from.

18 The bid for this lease specified that you should
19 state in detail how you're going to provide water. We
20 explained how we were going to provide water. Pioneer
21 attempted to explain how it was going to provide water, and
22 I was indicating to you the difficulties we saw with
23 Pioneer's method of providing water, and it would require an
24 environmental analysis.

25 I'm not sure where you got the implication from

1 that we would or would not supply water from the dock.

2 CHAIRPERSON CORY: I want to make it explicitly
3 clear to you and to your client, if you expect to have a
4 negotiated lease based upon your position as littoral owner,
5 and if you think you are free not to provide services to the
6 public because of that, then I'm going to have a different
7 view as to what the purpose of that is, and what fee should
8 be charged if you want to use it for some exclusive-type
9 purpose.

10 It was my understanding when we cut the thing out
11 that the littoral owner had some obligations to the public,
12 and was accommodating them, and had a very good record of
13 doing so. And because of that, we were trying to reach
14 over and make sure that they got some accommodations.

15 I just want to not leave stand some implication
16 that there is an option without a price.

17 MR. GREENBERG: That's crystal clear to me. I
18 hope there was no implication in what I was saying that we
19 won't provide the water. I don't know.

20 CHAIRPERSON CORY: Make sure that there was an
21 understanding based upon the past history of your client
22 that they would continue to do that, and that's why we were
23 trying to make sure that that dock was available to the
24 boating public rather than to be some private dock. Because
25 a private dock bears a different financial responsibility

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1 than a quasi-public place.

2 COMMISSIONER ACKERMAN: If I recall right, we also
3 discussed where you draw a line between a public dock and a
4 private dock, concerns a gate, or fee for shore access, or
5 things like that. This was a concern during our earlier
6 discussions about how to actually set up the bid package.
7 I don't think there was any clarity.

8 CHAIRPERSON CORY: You've got a lot of rights
9 on the land, which I think we need to make clear. You can
10 do what you want on the land, but in terms of that dock,
11 we've got some problems since we're giving you an exclusive
12 negotiated lease. I wanted to clarify that.

13 MR. GREENBERG: Fine.

14 I'll make the rest of these very brief.

15 Pioneer indicates it will use four patrol boats.
16 We now use eight. Our proposal, which we would have done
17 anyway, whether or not the thing went out to bid, would be
18 to increase that to 11. We believe that's a very inadequate
19 amount of patrol boats to take care of Fourth of July,
20 Emerald Bay, White's Landing and Cat Harbor. We just don't
21 think it's going to work.

22 We also have looked into a hover craft, which is
23 a key component of Pioneer bid. We decided we did not wish
24 to rely on hover craft, because we are very uncertain as to
25 its performance ability in rough weather, when you need it

1 most. And we would suggest again that that's something
2 you'd better look at in an environmental impact report
3 before you rely upon a hover craft for those kinds of
4 facilities.

5 Pioneer indicated it was going to use four shore
6 boats to do its shore boat service. That's fine at the
7 isthmus for shore boat service. However, we're growing to be
8 such a size, and it's so large, at least in the bid, that
9 they will not fit into the rest of the cove. They're
10 too large to do it.

11 That's the reason we're putting this out, is that
12 they're going to have a lot of problems if they get the bid
13 in trying to put this package into business.

14 We have great difficulty in obtaining very prompt
15 delivery of boats that we order. We have never been able
16 to trust even delivery dates given to us by boat yards. And
17 yet the Pioneer bid is dependent on prompt delivery of those
18 kinds of boats for use to the public.

19 Finally, in our view, if you look at the
20 replacement costs of the equipment we use to administer the
21 lease as we administer the lease, we believe we have about
22 a million six in that kind of equipment.

23 We believe that in addition to that, you take a
24 look at our lands that support it, such as the way we
25 operate such things as the disposal site and garbage dump,

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1 employee housing, that sort of thing, if you look at those,
2 we have at least another million six or better in those
3 kinds of values.

4 We would urge you to look very carefully to a
5 guarantee from the parent corporation to Pioneer to the
6 subsidiary that would be running this operation should you
7 award this lease to them of \$750,000. We don't believe
8 that's anywhere near adequate to take care of the kind of
9 capital investment they will have, which will be so
10 considerably larger than ours because they don't have the
11 easier support of, say, a disposal site available to them
12 nearby.

13 Finally, we would ask you to take a very close
14 look at the superbarge concept. We have not researched
15 this. We did this all off the top of our heads, so I don't
16 vouch for its accuracy. But at least for the imposition of
17 such a superbarge, I would think that such a barge would be
18 a documented vessel, requiring Coast Guard approval pursuant
19 to the Coast Guard rules. It would require a permit from
20 the Coastal Commission. And I think you would have some
21 very serious environmental issues involved in whether such
22 a barge should be registered with the Coastal Commission,
23 approved by the Coastal Commission.

24 I think you need a permit, at least from your
25 body, under different sections of your law and

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1 administration, but I assume that probably could be worked
2 out.

3 The kind of businesses that are going to be
4 operated there by Pioneer would certainly require County of
5 Los Angeles at least business licenses, in meeting code
6 requirements for conducting of such businesses.

7 And if water is dispensed from the barge as
8 indicated, it would need Public Utilities Commission
9 approval and allocation for the water that would be done.

10 I don't see how, given the problems in today's
11 climate, such as a superbarge, could be put into place and
12 in timely manner as assumed by Pioneer in making its bid.

13 Finally, I'd like to say this and bring this
14 matter to a close, and it goes back to the original note.
15 We agree with Pioneer, a lot more money can be extracted
16 from the boating public from the operation of this lease
17 if that is the inclination of either the state or its
18 master lessee. We believe that that consideration should be
19 balanced with all of the other complex situations and
20 policies that have gone into making Catalina the kind of
21 unique experience it is for everybody who utilizes it.

22 I think it's very rare -- in fact, I can't
23 remember, in 22 years of practice, a situation where a
24 landlord, such as the Catalina Company, the Island Company,
25 has ever had all of its tenants come in, and there hasn't

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1 been any complaints about overcharging; there hasn't been
2 any complaint about lack of services; there hasn't been any
3 complaints about any kind of deleterious conduct on the part
4 of the landlord. To me that is a really unique situation.
5 It reflects the unique business philosophy of the companies,
6 how they feel about the island, how they feel about the
7 submerged waters around the island, how they try to work
8 them together to make the island work as it does work.

9 And I submit to you, you wouldn't have such a
10 precious asset for people in California if my clients hadn't
11 had that philosophy for so many years in administering the
12 island. And I urge you to allow us, as your lessee, to
13 continue to implement that philosophy with respect to this
14 lease.

15 Thank you.

16 MR. HERTZBERG: Can I get a three-minute
17 rebuttal?

18 CHAIRPERSON CORY: No, I don't think so. Wait
19 and see.

20 There's a third bidder. Do you wish to say
21 something?

22 MR. RADCLIFFE: Mr. Chairman, members of the
23 commission and staff, my name is Jim Radcliffe. I'm here
24 representing Island Navigation Company, one of the bidders.

25 It's not too difficult to see that I have one

1 hurdle that none of the other two bidders have. Make no
 2 mistake about it, Island Navigation Company does not have
 3 the kind of money that Mr. Wigley has. We do not have the
 4 kind of money that Pioneer Chicken has, I assume, not
 5 having seen their financial material.

6 We don't know much about chewing gum, and we
 7 don't know much about chicken, but Island Navigation knows
 8 a lot about boats and a lot about moorings.

9 I would like to say at the outset, too, that we
 10 differ philosophically both with the Santa Catalina Island
 11 Company and with the Pioneer Chicken or Marine Services
 12 application. The commission would note in our bid
 13 proposal that we're not going to sell gym shoes, and
 14 swimming trunks, and alcoholic beverages, and construct
 15 restaurants and that kind of thing. On the other hand, we're
 16 not going to use the moorings and our servicing of the
 17 moorings to accommodate any of our business enterprises on
 18 the uplands.

19 Philosophically what we want to do is maintain a
 20 low profile, to provide for the boating public, the
 21 commission, the State of California, the kind of service
 22 to the tidelands that, as a practical matter, the tidelands
 23 have not received.

24 As a point of example, when counsel speaking for
 25 the Santa Catalina Island Company was talking about the

1 number of boats, patrol boats that were required, there
2 was a mention of isthmus, mention of Cat Harbor. There's
3 a mention of Cherry Cove. What was not mentioned is the
4 moorings in other areas: White's Landing, Toyon, that
5 are also moorings on the tidelands of the State of
6 California.

7 From the isthmus to Avalon Bay, since 1976, the
8 mooring shore boat services have been provided by Island
9 Navigation Company, and for several years by another
10 shore boat company. As a matter of fact, right now the
11 shore boat services are provided in that area and to all
12 points and places on Catalina Island except the isthmus
13 cove by Island Navigation Company.

14 Now, I might add by way of preface that I have
15 not been privy to the hearings that have gone before. I
16 came in rather late in the game, and I'd like to take this
17 opportunity to thank those members of the staff with whom
18 I have spoken to get this information, to get up to speed.

19 I will address myself particularly to the subject
20 of financial responsibility. I'm disappointed, frankly,
21 in that staff notion.

22 I would invite the commission's attention to the
23 fact that, all the applicants, Island Navigation Company
24 has more shore boat equipment, has 800 moorings ready to go
25 and to be put in place, has a mooring service vessel, brand

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1 new, constructed in 1981, ready to go. And I think
2 sometimes when you're talking about the ability financially
3 to respond, it depends really on what you look at.

4 I would use as an example that Note 4, I think it
5 is, on the financial data. And I don't mind mentioning
6 this for the public record. So that is the fair market
7 value of the six shore boats that Island Navigation Company
8 now has is something like \$470,000. The replacement value
9 of those boats is \$600,000.

10 The commission can reflect on the shareholders'
11 equity as is represented in the financial declaration.

12 But there's another little item that I think is
13 even more significant as to what kind of a company Island
14 Navigation is. In May of 1981, Island Navigation Company
15 decided to construct a barge. This is described in the bid
16 proposal. The cost of that barge was between 143 and
17 \$145,000. It was completed in July of 1981, and on
18 December 31st, it will be paid in full. Presently there's
19 \$25,000 owed on the vessel.

20 Now, the reason I mention that is, it depends on
21 where you look at and what you're looking for. Possibly
22 some people would have been impressed if we had \$120,000 in
23 cash in the bank and owed \$140,000 on the boat. But this
24 is a company that has -- has been building since 1976.
25 It's a company that has taken the proceeds of their

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1 business and dumped it back into equipment. And I don't
2 think there's anyone in this room from any of the parties
3 who would not agree that, of the five shore boats presently
4 servicing the area in Avalon and its environs, that they're
5 the finest shore boats in California today, certainly in
6 Southern California. They were constructed for the Catalina
7 service or modified for the Catalina service.

8 But these are just small points. We're talking
9 about maybe financial responsibility, the ability of
10 Island Navigation to perform.

11 I guess I should ask -- I'm not really clear on
12 whether or not the commission has seen the bid proposal
13 itself, or whether the commission has seen the staff report
14 of the bid proposal. Might I be enlightened? I don't want
15 to repeat what the commission has read.

16 CHAIRPERSON CORY: We have, I believe, an entire
17 bid package. I believe they have all been presented.

18 MR. RADCLIFFE: That is the copy of all the
19 applications, very well. I don't want to repeat anything
20 that has been available to the commission.

21 We're talking about financial responsibility and
22 the ability of Island Navigation Company to perform. I've
23 recited for the commission some facts about the kind of
24 an organization it is.

25 But let's consider now what the commission and the

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1 people of the State of California have received over the
2 last 15 years: 15 years times \$19,000 is \$285,000.

3 By the terms of this solicitation to bid, if the
4 bid is awarded to Island Navigation Company, we have
5 already provided to the commission a check, cashier's
6 check, in the amount of \$25,000. Within ten days of the
7 award of the bid, we are to provide the commission the
8 additional \$100,000, being the minimum annual rental in
9 advance. In addition to that, within that same period, we
10 are to provide the commission or the state with a security
11 bond, a performance bond, of \$125,000. Within ten days
12 of the award of the bid, the State of California will have,
13 as evidence of financial responsibility, \$250,000, within
14 \$35,000 of what they've gotten in the last 15 years from the
15 present lessee.

16 I would suggest that that being a condition of a
17 corporation with a history that this one has, we're small
18 but we're building. And we've got the ability, and if it's
19 financial responsibility we're talking about, I can't
20 conceive of the state being in a better situation than
21 having \$250,000 worth of financial responsibility within
22 ten days.

23 I would suggest to the commission that it consider
24 that obligation, along with the assets which the corporation
25 now has. We're not going to come up -- some years ago I was

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1 city attorney in Avalon. The going conversation in those
2 days in Avalon was, "If you're going to oppose a man who
3 owns the island, who has \$585 million, you'd better have
4 \$585 million." That was a common expression.

5 I don't think that's the case here. I don't
6 think we have to have \$585 million. And I don't think we
7 have to be able to compete financially with Pioneer Chicken
8 and their resources.

9 But I think what we have to show is a financial
10 responsibility, and the ability to perform, and a proposal
11 that is philosophically in line with what the State Land
12 Commission, in the public interest, wants to happen in
13 Catalina Island.

14 I want to compare just a few figures. But before
15 I do, and I mentioned earlier that I haven't been privy to
16 the earlier hearings and some of the letters that were
17 referred to this morning -- one thing did occur to me when
18 we're talking about -- or when the conversation was about
19 multiple mooring ownerships.

20 When I was city attorney of Avalon, I rewrote the
21 mooring lease which is presently in effect in Avalon now.
22 As the commission knows, the City of Avalon holds the
23 tidelands in trust by virtue of a statute in 1943, where
24 the state conveyed to the City of Avalon in trust. They
25 have certainly the same mooring situation on those tidelands

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1 that is the situation on the tidelands around Catalina
2 Island. How they handle it, however, is the example that
3 I would make which would have something to do with the
4 figures I want to talk about.

5 In Avalon, a so-called mooring owner, whatever
6 that is, registers a vessel on a mooring. If there's one
7 mooring owner, and he comes to Avalon in somebody else's
8 vessel, he has the right to use the mooring but he pays the
9 daily rental rate.

10 Now, the existing situation, talking about
11 multiple ownership, the existing situation on the rest of
12 Catalina Island today, if there is a conveyance by a
13 mooring owner, just one conveyance to the Young Men's
14 Republican Club, and being as affluent as Young Republicans
15 usually are, they have 50 boats. Under present circumstances,
16 50 people would have the right to use that mooring for free.

17 The difference when we're talking multiple
18 ownership of the mooring site, or the mooring hardware,
19 whatever we're talking about, is really not significant so
20 long as there's a limitation in how many vessels. If we're
21 only talking about one vessel on a mooring, and 50 people
22 own it, we could care less. But if we're talking about
23 a mooring that 50 people own a piece of, and they all have
24 a boat, and they're all entitled to be on that mooring for
25 free, effectively what could happen, and what is happening,

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1 is revenue is being removed from the State of California.

2 There are mooring sites in Avalon which are on
3 public tidelands which are leased as a part of a land
4 lease for which the mooring or the land lessee does not
5 pay mooring charges. It's part of the deal. That happens
6 in a number of places in Catalina Island. There are clubs
7 who charge membership who are entitled to moorings on
8 state tidelands. As a result, that money isn't going to the
9 State of California.

10 The point is that what we're talking about, and
11 I think what Pioneer Chicken in some measure was talking
12 about, is some semblance of organization of just what is
13 the application of the proposed bid lease.

14 Now, when Island Navigation put together its
15 figures and its proposal, it was basing it on, at page 13,
16 the bottom, subparagraph 3, it says:

17 "Except as provided in this paragraph,
18 all individual mooring site subleases shall
19 be nontransferable."

20 And then four is really the operative phrase:

21 "In order to assure continued use of the
22 mooring site by the same party, a copy of a
23 current boat registration shall be provided
24 annually as a prerequisite to issuance of an
25 individual mooring."

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1 " Now, we intended that to mean that that was a new
2 interpretation, effective January the 1st, to be something
3 akin to what was in Avalon, namely that to each mooring
4 there would be assigned a boat. And if that boat was sold,
5 that's all right. The mooring owner could put the other
6 boat there. But we can't have, and we didn't account for
7 having, 50 people, only one-fiftieth of a mooring, and all
8 of them having a boat, and the right to designate guests
9 on that mooring.

10 So to that extent, there is a difference in our
11 computations from what, apparently, are those computations
12 of the Santa Catalina Island Company.

13 There was some comment about a comparison of the
14 mooring fees. I have run -- just in my figuring, but just
15 to give the commission an example -- a comparison between
16 the Santa Catalina Island fees and the fees proposed by
17 Island Navigation Company. For a 30-foot boat of a non-
18 mooring owner but a lessee, for a 30-foot boat the charges
19 proposed by the Santa Catalina Island Company would be
20 \$985 a year. Now, that includes the mooring contract, which
21 by their terms also includes the sublease and the mooring
22 tenants.

23 For a 40-foot boat, the charges proposed by the
24 Santa Catalina Island Company would be \$1314. That includes
25 the minimum for a 40-foot vessel and a maintenance contract.

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1 Now, as far as those fees proposed by us, as the
2 commission may know, we separate the submerged lands
3 sublease from anything else, so there wouldn't be any
4 confusion about what was being charged. For a 30-foot boat
5 of the proposed Island Navigation Company, it would be
6 \$39 for the submerged land sublease site, \$540 for the
7 mooring hardware, and \$306 for the mooring service contract,
8 for a 30-foot boat, \$885 as opposed to \$985.

9 For a 40-foot vessel, our figures come to \$1160,
10 including the sublease, the mooring hardware lease and the
11 service contract. The Santa Catalina Island Company, for
12 a 40-foot boat, their minimum fee would be \$1314, a
13 difference of \$154.

14 Now, as far as the so-called mooring owners are
15 concerned, for a 40-foot boat, the charges for the Santa
16 Catalina Island Company, which would be for the mooring
17 service contract, which includes the sublease, \$620. By
18 the proposed charges of Island Navigation Company, we have
19 a \$52 minimum charge for the submerged land sublease annual,
20 and \$388 for mooring and maintenance, for a total of \$440,
21 as opposed to 620.

22 Island Navigation Company also disagrees heartily
23 and philosophically with the proposals that someone who
24 owns a mooring, or pays an annual mooring sublease charge,
25 and who pays a contract maintenance, should also have to pay

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1 when they occupy the mooring site. Our fees and our
2 proposed charges are based on when the mooring owner
3 occupies his site, he does at no charge. When anyone else
4 does, they pay the daily rate which is set forth in the
5 application.

6 And I might add that we propose, and it's foot-
7 noted in the bid proposal, assuming that it is not in
8 violation of any existing enforceable contractual
9 obligation, that a mooring owner, whether or not he
10 consents, if he isn't occupying and hasn't reserved his
11 mooring, that it be available for a first-come, first-serve
12 basis. It's my understanding that presently, a mooring
13 owner who doesn't consent is charged more on his contract
14 of maintenance, or something. But our proposal is that
15 all these moorings would be available to the public in the
16 absence of the mooring owner.

17 I also mentioned -- or, I did not mention, but I
18 would like to mention, what it is that the Island
19 Navigation Company proposes as to the increase of rates.

20 We have committed ourselves with respect to the
21 mooring daily rate, the mooring service contract, the
22 mooring hardware lease, and the submerged land lease to a
23 diennial or greater, longer adjustment, but not a lesser
24 adjustment, based upon the consumer price index. I submit
25 that, fair as it may not be, sometimes in these days, it is

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1 still probably the fairest test we have, and we're willing
2 to be tied into it. And we do agree and commit to do that.

3 Now, with respect to shore boat services, Island
4 Navigation Company is a certificated common carrier by
5 vessel certified by the Public Utilities Commission. We
6 operate under a tariff of the Public Utilities Commission
7 which sets forth the rates and charges for shore boats and
8 harbor boat activities to and around Catalina Island, or
9 to and from points and places around Catalina Island.
10 We have vessels which are under five tons net register
11 which are not within the jurisdiction of the PUC, but we
12 abide by it for all of our charges.

13 In addition, the Island Navigation Company is a
14 franchise holder of a franchise with the City of Avalon to
15 provide shore boat services which are included in the
16 certificate of public convenience or necessity.

17 The wholly owned subsidiary that's mentioned is
18 the West Coast Navigation. West Coast Navigation Company's
19 primarily engaged in installing, maintaining, repairing, and
20 servicing moorings at the Queen's Way Hilton Marina in Long
21 Beach. Presently there are 176 moorings there. The
22 services required for that facility are essentially those
23 that are required for the Avalon service.

24 CHAIRPERSON CORY: I'd like to get through this
25 if it's possible, because we've got another agenda to get

1 on to, so try to wrap it up.

2 MR. RADCLIFFE: I understand.

3 I think one of the other things that bears
4 comment is what it is that Island Navigation proposes to
5 do. We set out our proposal for service in the bid
6 proposal. It is, in virtually every case, if not superior --
7 that may be a poor choice of words -- it is greater than,
8 a level of service greater than that which has ever been
9 provided insofar as patrol boat service, shore boat
10 service, mooring service, availability 24 hours all around
11 the tidelands, not just at the isthmus cove, but in all
12 the tidelands of the subject premises.

13 I think probably I would like to return simply
14 and emphasize the ability, the financial ability, the
15 guarantees that are available to the state, and to say
16 that -- or to summarize.

17 I'm not clear, as I mentioned, I am disappointed
18 that staff would have the opinion that they do. In
19 response to a staff inquiry as to where the funds -- and
20 it's the only inquiry we received in the financial areas --
21 as to where the funds would come from, where this \$100,000,
22 we responded as to where it would come from and also
23 invited them to confirm the financial arrangements that had
24 been put together with the Security Pacific National Bank
25 and a representative there. I don't know whether that

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1 confirmation was ever sought or obtained. But we feel we
2 are a sound, financially sound company to do the job that
3 we feel the state is invited by the solicitation to bid.

4 We don't have proposals that go beyond to create a
5 Disneyland West, or invest or involve or develop the
6 tidelands. Our application and our business proposal is to
7 service the tidelands and the boating public.

8 If there are any questions in connection with our
9 bid proposal, or with the financial data, the proposed
10 revenues and so forth, I'd be happy to answer them.

11 I would make one comment. We feel that our -- in
12 response to the request of the commission, we feel that our
13 projected gross revenues based upon the experience and the
14 sources available to us in Avalon and Catalina Island are
15 conservative. The total gross revenue which we project
16 is \$1,664,778; 25 percent of that is a substantial amount of
17 money.

18 I would prefer -- and make only one final
19 comment -- the offer of the Marine Services to raise the
20 minimum, I suppose. Well, that has been decided by the
21 commission, has it not?

22 MR. TAYLOR: Yes.

23 CHAIRPERSON CORY: We didn't decide it.

24 MR. RADCLIFFE: I think a comparison of proposed
25 revenues of Island Navigation Company with either of the

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1 other applicants or bidders would indicate that the most
2 realistic, and in fact probably the most accurate, are
3 those set forth in our projected revenues.

4 One final word, a lot has been said about garbage
5 and how it's going to be handled. And I would hope -- I
6 can think of something else to conclude on other than
7 garbage. But the Santa Catalina Island Company and
8 Mr. Greenberg, who made the presentation, made a considerable
9 reference. The projected revenues based on 75 cents a
10 pickup of the Santa Catalina Island Company for 1972 is
11 \$5,000. I won't question the commission to the
12 mathematics, because I've already done it. \$5,000 at
13 75 cents a pickup is 6666 pickups over the course of a year.
14 That's 18 a day. 18 bags of garbage a day is what they
15 project they're going to do.

16 Now in their bid proposal, however, they talk
17 about two bulldozers, or one bulldozer and two dump trucks,
18 a lot of the facilities that have absolutely nothing
19 whatsoever to do with the tidelands. A lot of assets,
20 available equipment, have nothing whatsoever. They're to
21 service camps and coves and the isthmus and other
22 enterprises of the Catalina Island Company which have
23 nothing whatsoever to do.

24 But I was somewhat appalled at the emphasis on
25 garbage when, by their own estimate, they're talking about

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1 18 bags a day over the course of a year. In any event, the
2 proposal of Island Navigation to patrol and to handle the
3 garbage disposal, I would submit, is a practical one.

4 The Southern California Edison Company, with
5 respect to water, has indicated that water would be
6 available to us in the isthmus. The Avalon lessees of the
7 Avalon dump has indicated to us that we, like the rest of
8 the public, can use the dump. These problems, these
9 straw men which have been raised are not really problems at
10 all.

11 We would submit that, for the past 16 years, it's
12 possible and probable to say for those who have observed
13 closely the administration of the tidelands, that the
14 tide has been going out for the people of the State of
15 California until these hearings were instituted.

16 We would suggest that the question is not what can
17 the people of the State of California and the voting public
18 do to the uplands owners or for them, or assist them in
19 developing their various projects; the question is what can
20 the bidder in this situation most do for the boating public
21 and the people of the State of California.

22 I would suggest to the commission that a careful
23 analysis would show that we are financially able, more than
24 that, to do the job that the solicitation asks to be done;
25 that we have the expertise, that we have the line equipment,

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1 that we're ready to start on January the 1st, 1982, and
2 prior to the summer season we'll develop the additional
3 three or four pieces of equipment which are also footnoted
4 that are required.

5 On that basis, I would submit as far as our
6 application is concerned, and I invite any questions that
7 the commission may have with respect to our documentation.

8 CHAIRPERSON CORY: Commissioners?

9 Thank you.

10 Is there anybody else that has not spoken that
11 wishes to say something? Hearing none, all right.

12 Commissioners, there was an indication that
13 Mr. Hertzberg, I believe, wanted a rebuttal. I am
14 reluctant to get into that unless other commissioners want
15 to.

16 MR. HERTZBERG: I'll withdraw it.

17 COMMISSIONER MORGAN: I think he'll be available
18 to answer questions if there any.

19 CHAIRPERSON CORY: If the commissioners have
20 questions, we are going to address those before we go to a
21 vote. I'm not sure how much longer everybody can take this
22 marathon session.

23 Do you have questions of staff or other specific
24 things the commissioners want answered?

25 COMMISSIONER ACKERMAN: I had one.

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1 In the letter that was submitted to the commission,
2 which we really haven't discussed, by the Rather
3 Corporation, Mr. Stevens, president, raises the question
4 of CEQA, which has also been raised by several others of
5 the witnesses.

6 I wonder if the staff would make appropriate
7 reference to the California Environmental Quality Act, and
8 if any of the proposed bids would have the likelihood of
9 triggering CEQA. And if the answer's affirmative, what the
10 impact would be on the situation that occurs about two
11 weeks from now of having, possibly, some litigation or
12 problems in court concerning the lease.

13 MR. TAYLOR: Mr. Ackerman, this bid proposal has
14 been submitted, or has been sent out to everyone. On the
15 basis that it would be categorically exempt from CEQA, that
16 means that they have to provide essentially what is going
17 on, or repair and maintenance. They can replace, or they
18 can maintain, and they can substitute what exists. Then
19 they will not have a problem with CEQA.

20 Some of the proposals have discussed rather
21 extensive developments. As far as that is concerned, that
22 was disregarded by staff in making its evaluation. The
23 bidder will have to understand that until they can get an
24 amendment of the lease with the commission, or at least a
25 complete and full environmental evaluation, they must be

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1 prepared to operate given the existing circumstances out
2 there at the present time. And I wish to emphasize that,
3 because that was what they bid on, and if they can't do it,
4 I'm sure that the commission is going to look on them for
5 damages for not being able to proceed in that kind of
6 manner.

7 That is how we went. That is how the situation
8 stands. That's how it was evaluated.

9 COMMISSIONER ACKERMAN: In the revenues and
10 expenditures provided, the staff, then, has scoped the
11 projects down into the parameters that were asked for in
12 the bid package, and the revenue comparisons and all
13 reflect a program that any of the bidders would operate
14 out there that wouldn't be inconsistent with CEQA; is that
15 right? That we would not trigger CEQA under the way staff
16 has analyzed it?

17 MR. TAYLOR: We have done everything possible to
18 prevent the triggering of CEQA. And we have repeatedly made
19 that statement in the prior hearings and in the bid packages
20 to the parties, that they have to understand that if they
21 get the lease, that they have to operate with those
22 constraints until they can complete all of the environmental
23 work.

24 EXECUTIVE OFFICER NORTHROP: I'm not sure the
25 answer to your question is yes.

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1 MR. TROUT: I think Steve has to answer it, but
2 on the assumption that the leveling analysis, did we
3 consider the revenue, like for Pioneer, did we consider the
4 revenue from the barge? Did you consider that in this
5 revenue?

6 MR. SEKELSKY: No. Those projections are just for
7 the daily average mooring, and the revenues produced from
8 the leases, contracts, and sublease. It doesn't include
9 any of those other revenues.

10 MR. TROUT: So, they are extracted from it?

11 MR. SEKELSKY: That's correct.

12 COMMISSIONER ACKERMAN: There's one other
13 question.

14 I heard mention by one of the bidders, I think it
15 was Mr. Greenberg, of the Coastal Commission. That also
16 bothers me.

17 What likelihood is there that any Coastal
18 Commission permit or consideration is required on Catalina,
19 and what is the extent of the Coastal Commission's
20 responsibility at Catalina and the tidelands?

21 MR. T LOR: If there is a development, the
22 Coastal Commission has jurisdiction over our lessees.
23 If there is a development there, a coastal permit of some
24 sort will be required.

25 And there's been no misrepresentations made in the

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1 bid proposal as to the exemption. As a matter of fact, it's
2 called out that they may have to get those.

3 COMMISSIONER ACKERMAN: The Coastal Commission can
4 act independently and come in and preempt the Lands
5 Commission whenever it feels like it?

6 MR. TAYLOR: You're talking about one of my
7 other clients.

8 COMMISSIONER ACKERMAN: You mean you might be
9 representing them against us?

10 MR. TROUT: Mr. Chairman, I think in answer to
11 Mr. Ackerman's question, staff has looked at it from the
12 standpoint that, in comparing the services part of it, and
13 assigning the better position to the Island Company, is
14 that we don't believe that either of the other two
15 applicants can provide the services required by the lease
16 within the time frame of the lease package. That it would
17 require them to go to CEQA and go through an environmental
18 process, and probably would require them to go to the
19 Coastal Commission.

20 For example, the Island Navigation proposes as an
21 alternative a one-acre site on the uplands purchased from
22 the Island Company. Well, what if the Island Company
23 doesn't sell it? They can't do it, and even if they do
24 build something, that would require -- that may require a
25 coastal permit.

1 MR. TAYLOR: Mr. Ackerman, it's difficult to
2 answer your questions since I am going to have to defend
3 your decision today.

4 I think that we've done the best that we can to
5 avoid the problems of CEQA and to avoid the problems with
6 the Coastal Commission.

7 I've stated what the position and the assumptions
8 have been. I can't say that it is free from doubt. But we
9 have done the best we can.

10 I think that if they continue to offer the
11 existing facilities, they may be able to get around the
12 CEQA problems. They cannot do anything new without a
13 CEQA report. Substitution of a barge of like kind,
14 substitution of some other things, running services from
15 existing facilities and so on, until they can get the other
16 stuff done, would probably be okay.

17 If there is a change in taking up and putting down
18 new mooring equipment, because there can't be any agreement
19 if one of the bidders is not the current one and there
20 can't be a substitution so something could be worked out,
21 it might be necessary to get a coastal permit for that
22 activity. Whether the staff of the Coastal Commission
23 regards that as an administrative-type permit or will
24 require going to a full hearing, I wouldn't predict even
25 as their attorney how they would view it. But that would be

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1 a problem, could be a problem.

2 It's one of the things that they should have taken
3 into consideration in making their bid.

4 CHAIRPERSON CORY: I'm not sure from your answer
5 and Jim Trout's answer --

6 MR. TAYLOR: I would not be as strong as
7 Mr. Trout on the statement.

8 CHAIRPERSON CORY: It was my belief that some
9 weeks back, when we started this, that the concept was that
10 we could go to bid on the existing structure, and that the
11 financial burden of complying with providing existing
12 service without causing an environmental impact report or
13 Coastal Commission activities involved, that rested with the
14 bidder.

15 I assumed that these bids reflected their
16 independent judgment that, in fact, they could accomplish
17 the existing status quo without any adjustments.

18 Now, that does not appear to be what you and
19 Mr. Trout are telling us.

20 MR. TAYLOR: We have to make that assumption that
21 they have, that's correct, Mr. Cory, that you've certainly
22 made it clear. Staff in all the announcements and the
23 other commissioners have made it clear that those things
24 would be problems for a bidder in performing.

25 I guess the only question in assessing how to award

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1 the bid is your assessment of how well they took that into
2 consideration in terms of the problems the commission might
3 have if there were some interruption in mooring services
4 at Catalina as a result of these problems.

5 Clearly, I'm sure, though, that the commission
6 would direct us to sue someone that ran into those problems
7 on the grounds that we made it absolutely clear to them in
8 the beginning that they had to understand how they were
9 going to take those on.

10 CHAIRPERSON CORY: But then, Mr. Trout's assumption
11 seems to be contrary to that position. That's what I'm
12 troubled with in terms of where we are.

13 I see no evidence in the staff report or anything
14 else that any of the proposed bidders cannot, in fact,
15 comply without going through the CEQA process.

16 Now, if that is not the case, then this bid is a
17 sham, and we should not have wasted all these people's
18 time. I'm really sort of puzzled.

19 It may be difficult; it may be costly for them, but
20 it seems to me that the financial impact for those people
21 who sat through the hearings and wished to bid were aware
22 of what their problems were and they had to conform to them.

23 But from the staff, I seem to be hearing that
24 maybe they can't, and they're going to have to do something,
25 or in fact that these bidders do not -- in fact, what they

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1 propose doing, they cannot maintain that status quo without
2 an EIR.

3 It seems to me that that question has to be
4 answered before we can look at the bids. Now I could be
5 mistaken.

6 COMMISSIONER ACKERMAN: I think we were very
7 careful at the beginning. That's why we spent so much time
8 on the lease document, so that we narrowed the scope of
9 services and activities to reflect the current status quo,
10 so that we didn't get into a situation of triggering
11 Coastal Commission intervention, CEQA, or anything else.
12 That's the last thing we want out there.

13 MR. TAYLOR: I think we've always noted that
14 that was going to be a very difficult problem. And we
15 have tried to write it the best way we can.

16 Quite frankly, in reviewing both the bids of
17 Catalina Marine Services and Island Navigation Company,
18 they proposed some things which have been noted in the staff
19 report, and they could run into some very serious problems
20 if they were to immediately implement that. Therefore,
21 treating them as some kind of future thing which is not
22 within the scope of our review at this time, staff is
23 recommending those on the basis that whatever is
24 contemplated that doesn't match with the equivalency of
25 what's out there right now is all that's going to be allowed.

1 MR. CORY: That's my understanding. But then,
2 there's another little additional step that staff seems to
3 be telling us, and that has to be clarified, I think,
4 before the commission can proceed.

5 COMMISSIONER MORGAN: So, we had a bid that was
6 submitted which assumed that the services required by the
7 bid package would be provided through a barge.

8 MR. TAYLOR: Both Catalina Marine Services and
9 Island Navigation Company have talked about some additional
10 barges. They've either got to keep those barges at such a
11 size or equivalent to a yacht, or they've got to be
12 equivalent to the one that Mr. Baumgard currently has out
13 there.

14 And they will certainly, in any circumstance,
15 as we've been told by one of the bidders, there will be a
16 lawsuit to determine this part of the situation.

17 COMMISSIONER MORGAN: If their proposal assumed
18 something greater than what is currently in place, and in
19 order to make the bids capable of being evaluated we had
20 assumed that they won't exceed what's currently there, and
21 so we took the bid and basically staff adjusted them so they
22 could analyze the bids, we have changed the bid packages
23 around so that what was submitted and what was evaluated
24 are two different things.

25 The question is: Are the required services

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1 still being provided, having made that adjustment, number
2 one.

3 Number two, does the bidder believe that he can
4 provide the services with the adjustments that have been
5 made?

6 So where are we on those two questions?

7 MS. LOUIE: I believe in terms of the Catalina
8 Marine Services Corporation, they had indicated that
9 temporary basic facilities be based on three houseboats
10 over the isthmus area.

11 COMMISSIONER MORGAN: A temporary base of
12 facilities.

13 CHAIRPERSON CORY: Whose proposal?

14 MS. LOUIE: Catalina Marine Services' operation.

15 CHAIRPERSON CORY: Are those existing houseboats?

16 MS. LOUIE: No, not existing houseboats.

17 CHAIRPERSON CORY: But is the size, in your
18 opinion and staff's opinion, that that can be accommodated
19 without EIR?

20 MR. TAYLOR: That would be our position in court.

21 COMMISSIONER MORGAN: So we're talking about
22 a temporary. Their proposal is that a temporary measure
23 to accommodate the services that are required by the package.

24 But when we put the package out, we were talking
25 about a 15-year lease.

1 MR. TAYLOR: If they could not get that, they
2 would be stuck with whatever matches what's out there. And
3 they would either have to provide it by ferry from Avalon,
4 by acquisition of some upland facility at the isthmus,
5 or by going back to the mainland. You know, that's their
6 problem.

7 The only problem the commission would have in
8 assessing those would be, if there is a failure to perform,
9 then it would be our problem to go out there and pick up the
10 pieces.

11 COMMISSIONER MORGAN: But it's the staff's feeling
12 that what the bidders consider to be a temporary facility
13 is sufficient to provide the services that are required by
14 the bid? For example, repair services and things like that?

15 MS. LOUIE: There was no indication as to how
16 extensive the houseboats would be.

17 CHAIRPERSON CORY: Jim, your statement, staff's
18 recommendation for the Island Company was based on the
19 inability to perform?

20 MR. TROUT: Mr. Chairman, yes. There were three
21 things that the commission said that the bid would be
22 considered. One was the type and quality of services.
23 Second, the rate schedule to the sublessees, and third
24 is the income to the state.

25 Now, the first thing, of course, was the

1 financial qualifications of the bidders. I think we're
2 past that point now and looking at the three levels of
3 consideration.

4 In evaluating these three levels of consideration,
5 staff looked at, one, the type and quality of services to
6 be provided. And we looked at it on the basis that
7 Mr. Taylor gave you. That is, their ability to perform
8 the services January 1st and throughout the 15-year term of
9 the lease.

10 Now, two of the bidders, in offering the
11 type and quality of services, are possibly, we think quite
12 likely, contingent on approval of other governmental bodies
13 and the implementation of other pieces of law. So in
14 rating --

15 CHAIRPERSON CORY: That is in conflict with
16 Greg Taylor's previous statement as to how we structured the
17 bid. Either we required the services or we didn't.

18 I mean, something is not matching here from what
19 she is saying, that there's no specificity as to the
20 quality and the type of service. You seem to be imposing
21 a judgment value as to what that type and quality is, and
22 then rejecting for that reason. We do not seem to be
23 comparing apples and apples.

24 MR. TROUT: They were asked to tell us in the
25 bid package how they would supply the services. That was

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1 one of the parts of the bid package.

2 Two of the bidders have told us they supply
3 those services through the use of barges. That's what's
4 in the bid packages that we received.

5 So in rating the type and quality of services, in
6 looking at what we have to look to, that is what they
7 submitted to us.

8 And they said they were going to meet it in this
9 fashion. Now, that was what the bidders came up with.

10 And in evaluating that one factor of the bid
11 consideration, then staff rated the three bidders.

12 MR. TAYLOR: I think when you started this, you
13 wanted to get some idea, since people had not told you at a
14 hearing what they could do, and we recognize that it would
15 be a difficult situation since it was going to be a fairly
16 open-ended kind of bidding proposal; that you would ask
17 people what can you do in comparison, you know. Taking the
18 given situation, can you do that and how would you measure
19 up to what's being done. That was what was really, when
20 you went out to this thing, being done.

21 And as I recall one of the commissioner's
22 statements, when you got that back, you take a look at
23 that, and then reassess the situation as to what you wanted
24 to do.

25 COMMISSIONER ACKERMAN: That was my statement.

1 MR. TAYLOR: Yes.

2 And basically, in order to accomplish that within
3 the time constraints they had, at least in coming to a close,
4 we had to structure this down just to as low a basis as
5 possible. And it is a very close case. They were told it
6 was a close case, and that they would have at least three
7 initial periods, and with no guarantee that they would ever
8 get anything more, have to be able to operate this
9 essentially in the same kind of manner that's now being
10 done.

11 CHAIRPERSON CORY: But I'm still saying that I
12 assumed that we had a lease that required specific services
13 that were finite in number.

14 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, we
15 did. We expected -- first, we expected more bidders than
16 three.

17 Secondly, the bidders told us how they were
18 going to supply the services. We didn't tell them to use
19 the barge. They well could have bought an air boat in and
20 flew it.

21 CHAIRPERSON CORY: Nobody has submitted anything
22 that the services cannot be provided by a barge, yet there
23 seems to be an implication there, from Mr. Trout, that in
24 fact they cannot maintain the status quo, that they will
25 need an EIR. I want to know which side of this rock are we

1 looking at?

2 EXECUTIVE OFFICER NORTHROP: It's clear to staff
3 that, if you put a four-story barge out there, you're going
4 to have to have an EIR. We took that into consideration
5 when we evaluated that bid.

6 CHAIRPERSON CORY: Do you believe that the
7 proposal requires a four-story barge?

8 EXECUTIVE OFFICER NORTHROP: Mr. Cory, we did not
9 make the proposal.

10 CHAIRPERSON CORY: Do the existing bids contemplate
11 meeting the services without an EIR and a CEQA application,
12 yea or nay?

13 If the people who have submitted bids have not
14 submitted a proposal to comply without an EIR, then we need
15 to know that now.

16 MR. TAYLOR: I would say that we have noted that
17 there are problems with two of the bids.

18 CHAIRPERSON CORY: I want to know specifically
19 what those problems are.

20 MR. TAYLOR: There may be a problem.

21 CHAIRPERSON CORY: No, I want to know what
22 specifically that is. I mean, we are asked to vote and deal
23 with this thing. It was my assumption that, all right, if
24 they're going to have barges or houseboats, they're going to
25 run it from that. Somebody has said, yeah, that could be

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1 done; that does not appear to me to be an impossible
2 option, for someone to have something about the size of a
3 yacht on a mooring, and they can provide the service.
4 So, I'm prepared to then look at other criteria.

5 But the staff keeps saying no, there's only one
6 bidder that can do this without an EIR. And I want that
7 question answered yea or nay. And if it's nay, I want to
8 know why not.

9 COMMISSIONER ACKERMAN: That was instrumental
10 in our initial decision whether or not to bid. If it could
11 have been concluded that you could not solicit bids without
12 an EIR, there is no point for even going for the solicitation
13 of bids.

14 MR. TAYLOR: There are two problems here. One
15 problem is to see if they could do it. And by that I mean
16 to see if they could offer it.

17 CHAIRPERSON CORY: It's now 2:00 o'clock. We
18 started at 10:00.

19 I'm sorry to do this for the people, but we are
20 going to take an hour break. I want the staff and the
21 commissioners to immediately come to my office to deal with
22 a person matter. We will take care of that one so that'll
23 be resolved, and then we can proceed from here.

24 We will come back here within an hour and take up
25 this discussion right where it is, and the court reporter

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1 can deal with her problems.

2 (Thereupon the luncheon recess was taken,
3 and this terminates the morning-early afternoon session
4 of the State Lands Commission meeting.)

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CERTIFICATE OF SHORTHAND REPORTER


---o0o---

I, EVELYN J. DUGGAN, a shorthand reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing State Lands Commission meeting was reported in shorthand by me, Evelyn J. Duggan, and thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of December, 1981.


EVELYN J. DUGGAN
Shorthand Reporter

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MEETING

STATE LANDS COMMISSION

STATE CAPITOL

ROOM 4203

ORIGINAL

EXCERPT

AFTERNOON SESSION

THURSDAY, DECEMBER 17, 1981

Evelyn J. Duggan
Shorthand Reporter

PETERS SHORTHAND REPORTING CORPORATION

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APPEARANCES

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Commission Members:

- Kenneth Cory, Chairperson
- Susanne Morgan, representing Mary Ann Grave,
Director of Finance
- David Ackerman, representing Mike Curb,
Lieutenant Governor

Staff Present:

- William Northrop, Executive Officer
- James F. Trout, Assistant Executive Officer
- Robert C. Night, Esq., Chief Counsel
- N. Gregory Taylor, Esq., Assistant Attorney
General
- Jane Mochon
- Betty Louie

Also Present:

- Ball, Hunt, Hart, Brown & Barerwitz
By: Charles Greenberg, Esq.
Representing: Santa Catalina Island Company and
Santa Catalina Island Conservancy
- Hertzberg, Koslow & Franzen
By: Harrison W. Hertzberg, Esq.
Representing: Catalina Marine Services
Corporation
- James H. Radcliffe, Esq.
Representing: Island Navigation Company, Inc.
- Clancey Leland, Los Angeles County Board of
Supervisors
- Mr. Charles Rutherford
- Mr. Gordon Saunders

I N D E X

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	<u>Page</u>
Proceedings	2
General discussion	2-5
Statements by Mr. Radcliffe	5-6
General discussion	6-9
Statements by Mr. Hertzberg	9-10
Statements by Mr. Thomas B. Wilson	11
Statements by Mr. Hertzberg	14-15
General discussion	15
Statements by Mr. Radcliffe	16-17
General discussion	19-22
Statements by Mr. Hertzberg	22-24
General discussion	24-51
Adjournment	51
Certificate of court reporter	52

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P R O C E E D I N G S

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CHAIRPERSON CORY: Now we're going to go back to where we started. Item 19.

EXECUTIVE OFFICER NORTHROP: Mr. Chairman, if I may, Mr. Trout had a staff meeting in which we tried to get our act together. I think maybe he'd like to share where we're coming from with you at this time.

MR. TROUT: As to the three bids received --

MR. HIGHT: For the record, Mr. Chairman, the commission met in closed session and discussed matters of personnel and litigation.

CHAIRPERSON CORY: Mr. Trout.

MR. TROUT: Back to 2:00 o'clock, I don't know whether I'm out of the woods yet or not. But of the three lessees, proposed lessees, staff has reviewed it and, in the cases of Pioneer Takeout or Catalina Marine Services Company and in the case of Island Navigation Company, staff believes that their proposals include substantial environmental problems.

We have considered for evaluation of the bids only that part of the bid package which was responsive to the solicitation. Of that portion of the bid package, taking out the portions of the proposal that were not responsive, it would appear that there is still considerable

1 uncertainty as to whether the remaining portions of the
2 packages could be implemented without triggering an
3 environmental treatment. We cannot say for sure. There
4 may be also other problems of regulatory requirements.

5 MR. TAYLOR: Mr. Chairman, I would concur in the
6 statement of Mr. Trout. There are substantial problems
7 with regard to the items that he's mentioned with regard to
8 those two lessees.

9 CHAIRPERSON CORY: So that the staff is now
10 informing us that, given where we are and the bids the
11 way they came in, that we may not be in a position to
12 proceed because they would be triggering the CEQA or other
13 regulatory, Coastal Commission and like problems?

14 MR. TAYLOR: Clearly to implement the four-story
15 or three-story barge is going to take at least amendments,
16 and would take an environmental review.

17 The staff has considered the lease excluding those
18 aspects of the problem, since they were not responsive.
19 There's a problem as to whether the lessee would accept
20 our way we viewed his bid. If he signed it, I guess he
21 will.

22 But, there is substantial likelihood of
23 litigation over these items, even taking the restrictive
24 view of the commission's staff on those matters.

25 With regard to the Coastal Commission, it's

1 difficult to assess what would be required, whether any
 2 permit would be required or not. But based upon the
 3 statement to the staff, it might require at least an
 4 administrative permit, which could take a varying amount of
 5 time to obtain, irrespective of whether or not it would
 6 trigger a CEQA program.

7 CHAIRPERSON CORY: The statement you made
 8 concerning the prospective bidders, it applies to all the
 9 bidders, or one bidder, or two bidders?

10 MR. TROUT: Two bidders, Mr. Chairman.

11 CHAIRPERSON CORY: Who are they?

12 MR. TROUT: Catalina Marine Services and Island
 13 Navigation Company.

14 CHAIRPERSON CORY: And Island Navigation.

15 COMMISSIONER MORGAN: Mr. Chairman, it seems to
 16 me that we touched on these issues at at least one of our
 17 prior meetings discussing this. And we determined after
 18 listening to the staff, saying that it appeared that there
 19 would be some difficulty in entering into a new lease,
 20 but it may not be impossible to enter into a new lease, and
 21 if we wanted to go to bid it was conceivable that a bidder
 22 might come forth with a package that met the conditions
 23 that we had set forth, and did not require extensive time
 24 relating to environmental review, from what I've seen and
 25 heard up to this point, that hasn't happened. What we wanted

1 to do was to maintain a similar operation to the one that
2 has existed at Catalina, to make some changes in the
3 mooring fees, and to test the market to see if what we
4 were getting was a reasonable price.

5 I guess we've tested the market. I don't know.
6 One bid attempted to change the services, and what the
7 staff did was change the bid, I think, in order to make
8 it comply with the restrictions that we put on the bid
9 package.

10 I still feel that if we want to continue the same
11 service, we are not dissatisfied with the operation as it
12 has existed, we have received a bid from the current lessee
13 which satisfies the conditions which we set forth and does
14 not raise the questions which are raised by the other two
15 bidders.

16 And it was because of these considerations that
17 I, at the beginning of the meeting, indicated that I was
18 ready to move the staff recommendation. And I assumed when
19 I did that that we were operating under the Senate rules
20 for small committees, where a second is not required. And
21 my motion was still on the floor.

22 MR. RADCLIFFE: Mr. Chairman, may I address the
23 chair?

24 I have just one -- I am concerned about three
25 substantial errors, erroneous misconceptions stated by a

1 member of the staff as to three additional items proposed
2 by Island Navigation Company.

3 CHAIRPERSON CORY: We have to resolve amongst
4 ourselves where we, as commissioners, are, and if we have
5 any specific questions from anybody, the commissioners are
6 free to ask those questions. I'm hesitant --

7 MR. RADCLIFFE: I understand.

8 CHAIRPERSON CORY: -- to add any more input from
9 the audience. I think we have to find out where the
10 commissioners are at this point as to what our options are
11 or are not.

12 MR. RADCLIFFE: I understand.

13 CHAIRPERSON CORY: Thank you, sir. If anyone
14 has any questions, they are free to address them to you.

15 MR. RADCLIFFE: Thank you.

16 CHAIRPERSON CORY: So, we have Commissioner
17 Morgan's motion that is before us, and we have been
18 proceeding on that discussion with some flexibility as to
19 parliamentary concepts.

20 I want to make sure I understand the import of
21 what I think the staff has just informed us.

22 It is the staff's view that before us there is only
23 one bid which needs the narrow bid restrictions which were
24 drafted to avoid the CEQA in the permitting process.

25 MR. TROUT: That's correct, Mr. Chairman.

1 CHAIRPERSON CORY: That is the Island Company's
2 bid.

3 MR. TROUT: That's correct.

4 CHAIRPERSON CORY: That the others contemplate
5 changes or cannot sustain themselves on the status quo
6 for the term of the lease, that the concept of having
7 three equal bidders at this point, it is the staff's
8 opinion that, no, to provide the services required by the
9 lease, two of the bidders contemplate changes which will
10 precipitate either regulatory applications to other
11 agencies or EIR's or both.

12 MR. TROUT: That's correct.

13 CHAIRPERSON CORY: Greg, that's your view?

14 MR. TAYLOR: That's correct.

15 CHAIRPERSON CORY: Are there any questions, in
16 fact input, that other commissioners need from any of the
17 staff people or resource people that we have in the
18 audience?

19 COMMISSIONER ACKERMAN: One question that I have,
20 and Susie, you raised it.

21 As it impacts one, maybe two bidders, as I heard
22 the gentleman from the Island Navigation Company just a
23 second ago, the bids that they submitted had elements
24 contained in them that have been concluded by the staff and
25 concurred in by the commission as not applicable to the

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1 bid or nonconforming to the initial proposal.

2 Susie, I think you asked if the bidders were
3 still interested in proceeding with the modifications
4 that the commission has instituted today and staff has
5 recommended.

6 In light, I think, of the staff comment right
7 now, which obviously prior to our break there were three
8 different opinions or interpretations --

9 COMMISSIONER MORGAN: Either that, or we weren't
10 receiving.

11 COMMISSIONER ACKERMAN: -- or three different
12 questions asked, whatever. There was some confusion.

13 Maybe I ought to ask each of the bidders, at least
14 the two in question, is there any reassessment from them,
15 is there any change, based upon one of the changes the
16 commission has done?

17 For instance, with the Marine Services Corporation,
18 obviously some changes have been wrought today which change
19 what you offered us, the revenues that you offered us.
20 The staff has advised us, and the commission has said we
21 can't accept the increases, for instance, in the minimum
22 annual rent over the 15-year life of the bid.

23 Is there any change in your position, or any
24 change in your ability to provide services based upon that,
25 because that must change some revenue projections for

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yourselves.

Secondly, I think the concern I had was very obviously in order to provide the services, both other bidders have proposed providing a basis of operations on the water. Those require barges which the staff now advises very realistically might trigger environmental quality statutes from the state. I think the bidders should -- obviously they have had to consider this in putting their packages together. I think we owe it to them the opportunity to state their concerns to the commission as to how they have made this consideration, and obviously they feel that they won't trigger them, and I think they ought to have the opportunity to at least say why it won't. Staff feels that it does.

Since this wasn't in the original staff report, I think the bidders should be given the opportunity to respond to that.

MR. HERTZBERG: Thank you.

COMMISSIONER ACKERMAN: Have you understood?

MR. HERTZBERG: Yes, I understand it.

COMMISSIONER ACKERMAN: Let me point out to you, I mentioned it to one of the audience at the break, that at the very outset when I supported -- in fact I think I made the motion to go to competitive bidding -- originally that was under the basis that we would not trigger all the

1 reports and permits and everything required. I saw that
2 as a pretty monumental task for a bidder to undertake.
3 I felt very strongly that interested parties should have
4 the opportunity to show us how they could do it without
5 triggering those.

6 That's what I would like to hear, how your bid
7 would not trigger the different environmental concerns,
8 because I have grave concerns about that personally. I
9 think it would be a disservice to everyone involved if
10 we got ourselves into that kind of morass.

11 MR. HERTZBERG: Mr. Ackerman, I find myself
12 extremely deeply troubled with the staff's strained and
13 extremely strained interpretation of our statement of
14 qualifications.

15 It is very simple. We said we would go in there,
16 and we would operate this exactly as it's operated now,
17 without triggering anything. If we took out a mooring, we'd
18 put a mooring right back. Put some houseboats out there
19 and operate out of houseboats. They use it now. There is
20 no change.

21 We further said, down the road, it is contemplated
22 that we would put in a barge, but we would comply with
23 all applicable CEQA and everything down the road.

24 If they've got the idea that we're going to come
25 in there with this big barge now, they're wrong. And I

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1 never said that, I never intended that. It is so clear, I
2 don't see how anybody could mistake it.

3 We can go in there without upsetting anything
4 immediately. And we can run it for 15 years that way. And
5 if we don't get the approval for a barge, we won't have a
6 barge. That's what we said.

7 And I can't understand what they're saying.

8 Now, Mr. Wilson is a naval architect. He's a
9 graduate of Annapolis. He's been in naval architecture,
10 one of the most famous on the West Coast, for 30-35 years.
11 He has worked on Coastal Commission matters.

12 He will tell you exactly what we're going to do.
13 There's nothing we're going to trigger. And there's no
14 way a reasonable person could have interpreted it that way.

15 MR. WILSON: For identification, my name's Thomas B.
16 Wilson. I'm a naval architect from Wilmington, California.

17 Mr. Chairman and commissioners, what we are
18 proposing is to put in a barge for general services and
19 two smaller barges, one of them to be a trash barge, the
20 other to be a restaurant barge, along with water supply
21 facilities.

22 As best as I can determine, you're talking a
23 maximum of something like 5,000 gallons a day of water.
24 This is well within the state of the art for a reverse
25 osmosis plant or a regular marine-type evaporator.

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1 The head facilities, we use a Type Two
2 micro four unit which is made in Redwood City. It's a
3 complete flow-through system completely approved by
4 everybody. The one that I put on that barge is designed
5 for 100 people a day. We're using it on the Isle of
6 Redondo, which some of you all may have seen, which is a
7 fishing barge off the coast of Redondo Beach, which is the
8 same size. In fact, it's a larger problem, the barge we're
9 putting up, because it's 120 by 60 at normally about
10 300 people a day. So this is not a new concept. We're
11 adding on to it.

12 The other barge that I'm doing right now is for
13 down on Belmont Shore. It's a 150- by 44-foot barge for
14 fishing that they will put behind the pier. The Navy has
15 used a similar barge concept all the way since 1940 as an
16 advanced base, where they've had machine shops, they've
17 had personnel accommodations, they've had eating facilities
18 on board. Nothing that we are proposing is new and
19 startling.

20 The actual barge itself would be someplace on the
21 order of 120 feet long, and it could be from 35 to
22 possibly 60 feet.

23 As far as it being very high in a building, we
24 don't follow the same rules that the building code does,
25 because we can get by with seven or seven and a half feet.

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1 So, we put three decks on. On the first deck
2 you will have your general service shops, your country
3 store, your marine store and your diving equipment.

4 The second deck would have a restaurant and
5 head facilities.

6 The third deck, so that the Harbormaster can
7 see all around, you put a little cubicle on top where the
8 Harbormaster could get 360-degree vision. I would envision
9 this being 22-24 feet above the water.

10 And the same size barge is run in and out of
11 Catalina all the time. I'm doing one for Catalina Freight
12 Lines right now, a new barge design, for them to carry the
13 motor vehicles over that supply the island. Connolly-
14 Pacific runs a much bigger barge through the rock quarry.

15 Now, I don't claim to be an expert on
16 environmental rules. And we may have a problem because it
17 is a new project and have to go through an environmental
18 study, but I've taken bigger yachts in. I used to take care
19 of Parson's yacht, Pegasus and Arco, and they were 168 and
20 178 feet long. The Silverado, which is Harry See's, from
21 See's Candies, is 125. John Wayne's yacht is 136 feet long.

22 And what we're proposing is nothing that's
23 really much bigger than you're already getting over there
24 on the island now, and it's certainly not going to be any
25 more polluting. Lots of these older yachts are very

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1 polluting.

2 But I'll shut up now, Mr. Chairman, but basically
3 what I'm trying to say, we aren't changing the state of the
4 art. We're not proposing anything that's abnormal.

5 What we are proposing to do is give the public
6 an additional service to what they already have.

7 MR. HERTZBERG: I want to make it unmistakably
8 clear that what we've proposed immediately is to go in there
9 with two simple small barges, one for water and one for
10 garbage, no way could trigger it off. And your staff even
11 said so initially. The houseboats couldn't possibly trigger
12 it off. There's no way.

13 Any future development with Mr. Wilson will go
14 through the normal routine, whatever we need, whatever
15 permits are required.

16 But to say that we couldn't do it now is wrong,
17 And we never proposed that.

18 But I'd like to say one thing in closing, that
19 there's been a lot of comments made here about not wanting
20 a mini-Marina Del Rey. And I'd like to read from the
21 preliminary Santa Catalina Island Local Coastal Plan that
22 is proposed over there as to what the Island Company has
23 proposed at the isthmus, the very place we're talking about.

24 "In April of 1980, a draft design for the
25 two harbors was presented to the staff of the

1 County Department of Regional Planning and
2 Parks and Recreation by the Santa Catalina
3 Island Company."

4 That plan which they have provided provides, at
5 the isthmus, 650 rental units, 2,000 resort units, 400
6 hotel rooms, 90,000 commercial square feet space, and it's
7 75 to 150 possible, total development of 240 acres.

8 And we're talking about two barges. They're
9 talking about a development for 2,000 residents. Two
10 barges, and you want to rule us out.

11 I submit I just don't understand the strange
12 interpretation.

13 CHAIRPERSON CORY: It is your belief that the
14 barges do not trigger, and you could operate with two
15 barges and some houseboats for the 15-year period of the
16 lease without going through an EIR process?

17 MR. HERTZBERG: Yes, absolutely.

18 CHAIRPERSON CORY: Questions from commissioners?

19 COMMISSIONER MORGAN: I want to follow up, because
20 when we asked the staff previously at this interim, I think
21 this is how we got started, this interim provision of
22 services would comply with our required services to be
23 provided.

24 Will the houseboats provide the services
25 sufficiently to comply with the lease?

1 MS. MOCHON: I believe the staff has made an
2 assumption that that is what they would have to work with,
3 and on that basis evaluated their services as not quite as
4 good as the Island Company's.

5 COMMISSIONER MORGAN: All right.

6 CHAIRPERSON CORY: Yes, sir.

7 MR. RADCLIFFE: Jim Radcliffe, again, for Island
8 Navigation Company.

9 I am a bit nonplused as to where the staff has
10 gotten its information.

11 I was concerned about a statement of fact made in
12 the presentation to the effect that, on page 4 of our bid
13 proposal, the one-acre yard facility, leased yard facility
14 available for complete maintenance. And then a member of
15 the staff stated that that was a one-year lease from the
16 Santa Catalina Island Company and would be terminated at
17 the end of one year.

18 First of all, it has nothing whatsoever to do
19 with the Santa Catalina Island Company.

20 Mr. Stickler (phonetic) personally has a lease with them,
21 but that is not the lease for the mooring yard that's
22 set forth here. Now, I don't know where that information
23 came from, but it didn't come from the application and it
24 didn't come from us.

25 Our position is that --

1 MR. TAYLOR: That wasn't a staff statement.
2 That was a statement made in the presentation by the
3 Santa Catalina Island Conservancy Company.

4 MR. RADCLIFFE: I understood it to have been
5 repeated by a member of staff. I stand corrected.

6 In any event, it is our position, and we
7 meticulously tried to stay within the constraints of the
8 solicitation to bid, the one-acre facility is a mooring
9 facility. It's in Long Beach, and our plan there was to
10 remove the welding and the heavy kind of work on moorings
11 and so forth out of the isthmus area completely into the
12 Long Beach mooring yard, where our other moorings, the
13 heavy work on them is done. Island Navigation Company
14 makes two regular runs a week between Santa Catalina Island
15 and the mooring yard.

16 So, rather than having an environmental impact
17 that would increase, this would diminish, in fact, the
18 impact on the island.

19 I refer now, and unfortunately the choice of words
20 in our application to refer -- and I'm referring now to
21 page 10, and this is the acquisition of additional
22 facilities. Items two, three and five.

23 We meticulously tried to assure that any of the
24 additional equipment that we propose to obtain was at no
25 more than is presently located in the isthmus harbor and

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1 probably less.

2 Presently in the isthmus harbor are two steel
3 wood floats, slash, barges, whatever you want to call them.
4 We are proposing, and it's footnoted herein states, items
5 two, three and five, may or may not be required, depending
6 upon whether the bidder is refused by, or unable to
7 negotiate with the Santa Catalina Island Company or the
8 Catalina Island Conservancy.

9 The two barges which were referred to by staff
10 as being possibly invoking or triggering an EIR complication
11 are simply replacements for what are there right now.

12 The existing docks are public docks. Presently
13 there are two floats, plus a fuel float, plus four or five
14 dinghy docks.

15 Our proposal is to put less in the isthmus, not
16 more. The two barges to which we refer are simply replace-
17 ments for those that are in there right now.

18 On that basis, and on the basis of the removal
19 and cleaning up the one-acre facility, and the fact that
20 nothing we propose even meets what's already there, I would
21 submit to the commission that there is no danger whatsoever
22 of triggering an environmental impact. We will be ending
23 up with less of an environmental problem with this proposal
24 than presently exists.

25 Thank you very much.

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1 MR. TAYLOR: Mr. Chairman, if you look at page 49
2 of the Pioneer Island -- Catalina Marine Services-Pioneer
3 bid, if you look at page 49, it talks about an initial
4 60-day period. Temporary arrangements that have been made
5 for that period of time.

6 Then page 39, it talks about proposals that they
7 subsequently presented, which are the barge proposals.

8 On page 21 also:

9 "It is to be noted and discussed at
10 length that upon commencement or takeover,
11 the bidder may be temporarily required to
12 use some services of Avalon prior to the
13 permanent setup. Bidder anticipates this
14 period will be no longer than 60 days."

15 And the setup that's mentioned in here is the
16 barge arrangement.

17 CHAIRPERSON CORY: So nothing has altered the
18 staff's position in the last two statements?

19 MR. TROUT: No, sir.

20 MR. TAYLOR: For the record, I would agree. In
21 the last proposal, there is one barge presently, and Marine
22 Services proposes three.

23 MR. TROUT: Mr. Radcliffe was making some
24 reference to the floats currently attached to the wharf,
25 which is not a part of this solicitation and would be

1 included in a separate lease to be negotiated with the
2 Island Company later, that the chairman already mentioned.

3 CHAIRPERSON CORY: So that the area under lease
4 that this bid contemplates putting under lease currently
5 has a single barge, as opposed to two or three barges?

6 MR. TROUT: That's what our visits have developed.

7 CHAIRPERSON CORY: that if we proceed, our
8 best shot is to prevail after litigation, and our position
9 as a commission is a series of steps short of that. That's
10 our best position, is to prevail after litigation, in your
11 judgment, as to where we're at, and more than likely into
12 something short of that.

13 MR. TROUT: There is available to the commission,
14 of course, the option of rejecting all bids, and perhaps
15 following Rather's proposal to negotiate a short-term lease
16 with the present lessee and seek proposals, or to reject
17 all bids and negotiate with the upland owner, or to choose,
18 given the risks, one of the submitted bids.

19 CHAIRPERSON CORY: What is the time to get through
20 the permitting and EIR process?.

21 MR. TROUT: I think, Mr. Chairman, from the
22 staff's standpoint, we could go back to the commission's
23 earlier expressions in the City Hall, that we were looking
24 to see what was out there. We would suggest it would take
25 about 24 months minimum. That would include a period of

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1 requests for proposal, evaluating proposals which come in,
2 and processing the full environmental treating of the
3 proposal the commission chooses. So, one option would be
4 to ask the present --

5 CHAIRPERSON CORY: There's a minimum of 24 months?

6 EXECUTIVE OFFICER NORTHROP: I think the outside
7 probably would be 36.

8 MR. TROUT: I was about to say, one solution
9 would be to ask the company if they would agree to take
10 a three-year lease while this process went along, and it
11 could be five.

12 CHAIRPERSON CORY: But 24 is the minimum time
13 frame, with no delays, for the EIR permit?

14 MR. TROUT: No, sir. I would say that is a
15 reasonable time frame. It could be -- I'd ask Dwight Sanders
16 if he's still here to comment -- but I'd say you could
17 probably do it in maybe 15 to 18 months, but nothing seems
18 to go exactly smoothly, so I would say 24 is a reasonable
19 period of time.

20 CHAIRPERSON CORY: David, any thoughts?

21 COMMISSIONER ACKERMAN: A comment, I guess.

22 This may also be a question to Mr. Hertzberg:
23 On pages 21 and 49, are the permanent facilities that are
24 referenced there greater or in excess than what you already
25 described, or are those two or three barges your permanent

1 facilities?

2 MR. HERTZBERG: I fail to find on this page 49 --

3 COMMISSIONER ACKERMAN: On page 49, it's down
4 about the eighth line, it says anticipated requirements,
5 you made temporary arrangements for 60 days until more
6 permanent facilities can get on line.

7 What are those permanent facilities?

8 MR. HERTZBERG: Oh, the permanent facilities
9 were the barges we're talking about. We were going to go
10 in with three houseboats and use skiffs to pick up the
11 garbage until we can make the barges, cause them to be made.

12 COMMISSIONER ACKERMAN: And barges are your
13 permanent facilities?

14 MR. HERTZBERG: Oh, yeah, they would be
15 permanent.

16 But those barges will comply. They're no bigger
17 than a boat. They'll be moored out there.

18 I forgot to answer your first question when I was
19 up here before, Mr. Ackerman. That is having to do with
20 our minimum annual guaranteed rental.

21 We, of course, guaranteed 150,000, stepped up at
22 five percent.

23 Now I didn't -- could you repeat the question?

24 COMMISSIONER ACKERMAN: I think what I was
25 concerned was that, at the time you made the bid, and today,

1 We have said that certain elements of that bid cannot be
2 considered by the commission.

3 My question to you was: Does that in any way
4 change your position on bidding, or your perception as
5 to whether or not you could effectively, and more or less
6 effectively, provide the services?

7 MR. HERTZBERG: Oh, we can provide the services.
8 As a matter of fact, we can provide even better, because
9 we're giving you even more money by our bid than we would
10 if you reduced it to 125,000. That would be guaranteeing
11 more money. The percentage may be higher, maybe higher
12 than guaranteeing.

13 Am I answering your question?

14 COMMISSIONER ACKERMAN: I'm not sure.

15 COMMISSIONER MORGAN: You're correct, 150 is more
16 than 125, but 150 plus five percent per year is not
17 necessarily more than 125 for five years adjusted at that
18 point, and then the higher rate adjusted at the next five-
19 year point. So over the terms of the lease, it's not
20 necessarily providing a higher rate.

21 And I think Dave's question to you simply is,
22 although you submitted the bid that was 150, and with
23 five percent increases, do you still consider that you have
24 a bid that you want to stand behind when our staff changed
25 the bid to be 125 with a five-year rent review as specified

10

1 in the bid package?

2 MR. HERTZBERG: Ms. Morgan, you have the rent
3 review in our bid, the same as you have the 125, so that
4 don't change.

5 As to the second part of the question, the
6 postscript to my letter said -- have you read the letter?
7 I couldn't understand why the state couldn't take more
8 money, but in the event that they can't, consider it at
9 the highest maximum possible, which would be 125,000.
10 So you would consider 125,000 if you can't take the money.

11 But explain to me someday why you can't.

12 COMMISSIONER ACKERMAN: We can't because we
13 didn't ask for it.

14 MR. HERTZBERG: Well, at any rate, the permanent
15 ones I'm talking about are those barges and that stuff.

16 CHAIRPERSON CORY: Other questions, or is it time
17 to make a decision.

18 The time frame to go through an EIR process is
19 14-15 months minimum, 24 months reasonable. Given that
20 government is unreasonable, and this process clearly shows
21 that --

22 MR. TAYLOR: And an appropriation --

23 EXECUTIVE OFFICER NORTHROP: Appropriate money
24 to do it with as well.

25 MR. TROUT: Well, what I was suggesting was that

1 the commission could consider going out for proposals and
2 six-eight months down the line, evaluating and selecting
3 one of those proposals. That proposal would then
4 finance the environmental document necessary to implement
5 the selected proposal.

6 EXECUTIVE OFFICER NORTHROP: That's six months
7 to two years right there.

8 MR. TROUT: So to be safe, if that were the
9 process to be chosen, then you would need to have an
10 operator for the next three years, I would say.

11 CHAIRPERSON CORY: Or not lease it.

12 MR. TROUT: Or not lease it, or direct the staff
13 to lease it directly. That's kind of a terrifying thought,
14 but --

15 CHAIRPERSON CORY: Susanne, your original
16 proposal was to -- I'm not sure, was that to reject, or to
17 award the bid pursuant to --

18 COMMISSIONER MORGAN: Right.

19 CHAIRPERSON CORY: I am uncomfortable about voting
20 for that one, in that there are three people who are very
21 serious and perhaps a fourth that are interested. I'm not
22 so sure that they have been dealt with all that fairly
23 in this process, given where we find ourselves and what our
24 staff is telling us. That's why I'm hesitant about --
25 assuming that this is the end of that, and I certainly had

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1 hoped to put an end to this at this meeting, but I'm not
2 so sure that we can.

3 " If you have anything you can live with, I'm
4 willing to listen to that.

5 COMMISSIONER ACKERMAN: I'm not in a position
6 right now to support the proposal on the table.

7 CHAIRPERSON CORY: Come up with something.
8 Maybe there's something you can live with or Susie can live
9 with.

10 COMMISSIONER ACKERMAN: When it comes down to
11 realities, it's one of those hypothetical things that one
12 has to live with, but if we get into this, and we either
13 have legal action, or we have an environmental suit, or
14 Coastal Commission activity.

15 But what I'm concerned about, and the reason, I
16 guess, maybe I got into too much detail on this thing in the
17 beginning, is still the one consumer out there, and that's
18 still the boater. And I guess they feel like they've been
19 deserted by everybody, including myself.

20 But come six months down the road, when Memorial
21 Day gets here, if we're in the midst of a lawsuit, and buoys
22 have been unattended because of problems, I think we've
23 done a disservice, if either the Island Company or someone
24 else was the operator, we do a disservice to them and their
25 reputation as well as to the boater.

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1 I definitely, no matter what, do not want to be
2 in that position. It's not fair to anybody.

3 I don't know what options exist in between,
4 except maybe an interim arrangement. That is kind of
5 punting and postponing the problem.

6 I have no good reading right now as to whether
7 the Coastal Commission would interject itself into this.
8 I hope not. I'd like to have a piece of paper in front of
9 me right now that had them take a look at each of the
10 proposals, and have them sign on them saying there's no
11 problem with them. That sure should have been before today,
12 or there should have been adequate time to have the bids
13 received, and since that's a concern, that they would have
14 gone through that consideration. The Coastal Commission
15 would have looked at it, and maybe also rendered an opinion
16 through the Attorney General's office, maybe someone other
17 than Greg -- no offense.

18 (Laughter.)

19 COMMISSIONER ACKERMAN: I want a real lawyer --
20 of what liabilities exist under the CEQA process here.

21 CHAIRPERSON CORY: Where did you go to school?

22 COMMISSIONER ACKERMAN: UCLA.

23 CHAIRPERSON CORY: That explains it, Greg.
24 That explains the bias.

25 COMMISSIONER ACKERMAN: That's just my own thoughts.

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1 I'm concerned about the situation from the bidders,
2 from that aspect.

3 If the staff recommendation is real, and we are
4 looking at some extreme environmental problems, everyone
5 loses. And that's not the intent of the commission.
6 It was never the intent. It's really my number one concern.
7 That doesn't do anybody any good.

8 I guess if you want to look at it that way, the
9 only one that could get through within a year or two,
10 through the process, would be the existing operator.

11 CHAIRPERSON CORY: What period of time?

12 COMMISSIONER ACKERMAN: I'm not necessarily
13 offering that as a proposal.

14 CHAIRPERSON CORY: I think it's time to move one
15 way or the other.

16 COMMISSIONER ACKERMAN: I mean, I could offer it
17 in another way, another motion that would be to go with one
18 of these other two, and offer a motion for each one, see if
19 there's one more vote for them, too.

20 CHAIRPERSON CORY: Given what the staff has
21 informed us of, both counsel and professional staff, I don't
22 think that we have that option.

23 COMMISSIONER ACKERMAN: I don't think the votes
24 are here for the option.

25 CHAIRPERSON CORY: I mean, as I hear and interpret

1 what Greg and Jim have told us, we do not have the option
2 of awarding this bid to anyone other than Island Company
3 if we go with the bid. Or if we do, there is very limited
4 probabilities of us prevailing, and that would be some
5 way down the line. That's what I'm hearing.

6 Now, if that's where we are, I also am
7 uncomfortable, having started this process, about using the
8 mechanism of rejecting the people who wanted to bid on this
9 and giving a bid, in essence, to the sole source for 15
10 years. If you can make it something of a stopgap, I'm
11 willing to go along with that. If not, I would guess that
12 maybe where we are --

13 COMMISSIONER ACKERMAN: I'm opposed to the sole
14 source. That was my whole point of going for bidding in the
15 first place.

16 CHAIRPERSON CORY: So if that's where we are,
17 the option is to either not lease at all, because we don't
18 have enough votes to award a lease, which is clearly one
19 option. Nobody gets it, and nobody has anything. Drop your
20 hook where you want to, guys, and good luck out there.

21 Or, some interim arrangement along the lines that
22 Trout suggests, of asking the staff to request proposals,
23 then go through the full megillah of the environmental
24 thing, and get the ducks in a row on all the regulatory
25 agencies, such as the Coastal Commission. And as I hear it,

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1 it would seem to me that it would be foolhardy to try to
2 do that in 24 months. As preposterous as it seems, it
3 seems to me you've got to go 30 to 36 months.

4 It seems you've got to go a full-year cycle, that
5 you do not want a change occurring in the middle of the
6 summer season.

7 MR. TROUT: I was going to say, I don't think you
8 want 30 months.

9 EXECUTIVE OFFICER NORTHROP: Mr. Chairman,
10 Mr. Ackerman and Ms. Morgan, if I could ask you to perhaps
11 consider one other thing.

12 We're looking at the environmental side of it.
13 It seems as though the commission is in some kind of
14 agreement of what to do with the boat leases.

15 Is that in your mind, to put that to bed so we
16 don't have to deal with that again, or do you want us to
17 deal with that also?

18 CHAIRPERSON CORY: I would contemplate, from my
19 viewpoint, that I'm willing to stand with those issues and
20 not reopen that, that we have decided those issues, and that
21 those people who own tackle, their equity claims and
22 arguments have been heard. And we have reached for them to
23 do what we can, and we should try to extend that protection
24 for them. And whether we have a three-year interim lease
25 or two-year lease, that the new lessee, if there was one,

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1 would be obligated to protect their rights subsequently, so
2 they aren't left hanging. That hopefully is what we
3 developed out of that, that they have some contractual
4 rights.

5 MR. TAYLOR: Have it set up with a master lease,
6 with a master lessee. Have it 15 years with a master lessee,
7 terminating in three years, with the right, at the option
8 of the commission, the right to substitute somebody else
9 at that point.

10 COMMISSIONER MORGAN: The idea you're toying with
11 now is one that I think we considered and rejected several
12 meetings ago in favor of continuing the operation along
13 the lines that's been conducted in the past.

14 And there were people who thought that they could
15 provide those same services, same level of service, and
16 still get the state a better deal. And that's where I'm
17 at at this point today.

18 What you're suggesting is go back to that point
19 and say what we really want is to know if there's a whole
20 new proposal for a commercial development of some sort that
21 would be different from our operation and still give us a
22 good return.

23 CHAIRPERSON CORY: Being more specific, as I
24 understand it from looking at these, there are specific
25 proposals which private entrepreneurs believe they can meet

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1 the same requirements that we set up in terms of providing
2 services. They believe they can meet them without
3 triggering and invoking a regulatory and CEQA mechanism.

4 Our staff says that is not the case. And I am
5 unwilling, on that issue, to override the staff, but I
6 would like to have those people have the opportunity to
7 present their views. But unfortunately, that means a
8 rather long process. We try to do it in a hurry-up-quick
9 way, and somewhere, upon the state's side of the table, we
10 had some problems in understanding and communicating fully
11 between commission and staff as to what was going on, and
12 that's where we are.

13 So, whether it's another proposal or something
14 else, some of these proposals make sense to me. But if it's
15 going to take a full EIR, I don't see how you can start,
16 given what the staff has told us down that road, and award
17 a bid at this point other than to the Island Company.

18 I understand your position.

19 COMMISSIONER MORGAN: It's conceivable. I mean,
20 if we want to rethink our previous decision and status quo
21 operation, about testing the market, if we want to rethink
22 that, and call for a whole new operation at Catalina, then
23 it seems to me that even the proposals that we've been
24 considering today might have been different. And you're
25 talking about a completely different set of rules than what

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1 we've agreed to and considered to this point.

2 I think the boaters would have something to say
3 again.

4 CHAIRPERSON CORY: I'm sure they would.

5 I just would like to preserve in the process some
6 protection for their tenuous equity argument that they have,
7 rather than put them through the full drill of being at
8 full risk again.

9 That's why I would contemplate trying to -- they
10 would be put aside, and that's what the concept that Greg
11 has suggested, a lease with the concept that, if a better
12 proposal, something that makes sense to the majority of the
13 commissioners comes along, presumably at that point, the
14 boaters will still prevail. We could amend mutually based
15 upon that proposal under the master lease. But the boaters
16 would still have their end-line position rather than have
17 someone decide that, no, they're going to have coin-operated
18 electronic boat games in place of moorings, and the people
19 will be out totally.

20 COMMISSIONER ACKERMAN: I don't want my position
21 misrepresented to the fact that I'm opening this up to a
22 whole new development schematic.

23 We spent an awful lot of time zeroing in on the
24 service, we designated the moorings, we designated the coves
25 shall have anchorages, shall be leased. We've gone through

1 it item by item, and not acceptable to anything much at all
2 but that. I think we've set the parameters.

3 It's just when we started this, I think we had
4 every real expectation that the level of service that we
5 had outlined would be easily met without environmental
6 and CEQA problems. I believe that. Otherwise, there would
7 have been no reason to go through this.

8 To some extent, I feel that that's a very risky
9 risk to take. And perhaps it needs an evaluation of the
10 CEQA process, but under the same type of operation that --

11 CHAIRPERSON CORY: But we don't have the time to
12 go through that evaluation.

13 COMMISSIONER ACKERMAN: I can understand that.

14 CHAIRPERSON CORY: We've got to either make a
15 decision that we're not going to have any kind of a lease,
16 we're going to have an interim lease, or we're going to go --

17 COMMISSIONER ACKERMAN: The ideal would have been,
18 five years ago, to have done this process and come up today.

19 MR. TAYLOR: Mr. Chairman, the lease --

20 CHAIRPERSON CORY: That's what Mr. Dymally called
21 up and told me.

22 MR. TAYLOR: Mr. Chairman, the lease terminates
23 on the 31st.

24 There's going to have to be either some kind of
25 short extension of the time, and then a longer interim; or

1 there's going to have to be an interim period set now, and
2 direction to the staff to negotiate. Because there's also
3 got to be -- before you do that, you've got to close off
4 the bidding process. And if that is now your intent, to
5 reject all bids, you must exercise your discretion, which
6 was reserved in the lease, and reject all bids. And then
7 you have to go to the first two things that I discussed,
8 whether you want to do it for a 30-day extension, 90-day
9 extension, and then come back with something more, or
10 direct the staff to try to negotiate a three-year extension
11 with some kind of terms to it.

12 Those are the options at this point.

13 CHAIRPERSON CORY: Go through those again?

14 MR. TAYLOR: The first thing you have to do is
15 to decide whether or not you are going to reject all bids.

16 It's my understanding, at least from what is
17 happening so far, that there is no majority vote for any
18 of the three bidders. If that is the case, then you must
19 reject all bids.

20 At that point, then you can begin discussion about
21 what you're going to do with regard to renewal or extension,
22 or some kind of interim provision.

23 CHAIRPERSON CORY: The concept that you mentioned
24 a short while ago, master lease up to 15 with the state's
25 option of substituting the master lessee at the end of three

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1 is not available?

2 MR. TAYLOR: That's available, yes, that would be
3 one of them. You have to have a party that's willing to
4 enter into that with you, and you'd have to have the terms
5 and conditions. But if that were the case, you could go
6 ahead and do it.

7 It may be that you would just want to -- I don't
8 know whether you want to extend this for 30 days, and then
9 try to put something together, or if you want to try to
10 dispose of it today.

11 COMMISSIONER ACKERMAN: I think we've hammered out
12 the issue relating to the boaters. That's been a fairly
13 painful process as well. I'd like to see that stand and
14 like to leave it alone. I think it's a good arrangement, and
15 I think it ought to stand.

16 MR. TAYLOR: That could be incorporated into a
17 proposed interim lease.

18 COMMISSIONER ACKERMAN: Can that simply be
19 proposed in the interim lease with the stipulation that
20 that also would be incorporated into any subsequent --

21 MR. TAYLOR: Yes, I think that it can, but it's
22 going to be a unique document, but I think that it can.

23 EXECUTIVE OFFICER NORTHROP: Mr. Ackerman, so that
24 we understand and so that the record is clear, you're
25 saying that we leave the number of moorings the same as we

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1 have done in the solicitation, leave the coves the same as
2 we've done in the solicitation, and as far as the
3 geographic locations, hold those the same as we have in
4 our previous solicitations; is that correct?

5 COMMISSIONER ACKERMAN: Correct.

6 EXECUTIVE OFFICER NORTHROP: Thank you.

7 MR. TAYLOR: On an interim arrangement, the
8 consideration is going to have to be set for the interim
9 period. That may be a matter of negotiation, find out if
10 we can get somebody to operate it on an interim basis.

11 COMMISSIONER ACKERMAN: Obviously the three
12 parties that would be eligible to operate it are here.

13 COMMISSIONER MORGAN: Not necessarily.

14 CHAIRPERSON CORY: No, it seems to me from what I
15 understand the staff is saying, there could only be one
16 operator for an interim relation. But if you use anyone
17 other than that, you have a series of problems, the same
18 reason we have difficulty proceeding to award a bid. That
19 would take place if, in fact, you tried to impose a different
20 interim operator.

21 MR. TAYLOR: You would still face the same
22 scale of problems, depending upon what was done, yes.

23 CHAIRPERSON CORY: So, to the extent that we are
24 obviating problems, there is only one potential interim
25 operator, or no lease for anyone.

1 COMMISSIONER ACKERMAN: I see our options are
2 fairly limited if we take that course of action.

3 MR. TAYLOR: I think that in order to get
4 an interim extension, we're going to have to have 30 days
5 to negotiate with somebody. I think --

6 COMMISSIONER ACKERMAN: I'm disturbed at the term
7 "negotiate".

8 Greg, can't the commission just set forth the
9 terms of an interim agreement?

10 MR. TAYLOR: Yes, they could. And if they're
11 accepted, that's fine. If they aren't accepted, then we
12 would have to do something further.

13 CHAIRPERSON CORY: Then there is no lease.

14 MR. TAYLOR: There is no lease.

15 CHAIRPERSON CORY: The lease terminates
16 December 31.

17 MR. TAYLOR: A proposal which could be considered
18 are the terms of the Santa Catalina Island Conservancy's
19 bid on a three-year basis. And it would be up to them to
20 say whether they would accept that or not, and just go on
21 that basis.

22 However, we still haven't concluded the question
23 of whether or not all the bids are going to be rejected.
24 I think for clarity of the record, it would be more
25 appropriate to start at that point.

1 MR. TROUT: Well, the bids are supposed to be
2 good for 60 days under the proposal.

3 CHAIRPERSON CORY: It seems to be that the staff
4 is proposing that we either accept a bid, reject all bids,
5 then move to a motion for setting terms for an interim,
6 for a fixed period of time in that interim period.

7 COMMISSIONER MORGAN: And call for a proposal
8 during that interim to do something other than which we
9 did already.

10 CHAIRPERSON CORY: Or to do that.

11 What I hear is that we cannot do what we requested,
12 given the way people replied.

13 COMMISSIONER MORGAN: I'm not necessarily sure
14 we're into that.

15 MR. HERTZBERG: One quick suggestion.

16 On behalf of my client, we're willing to bond
17 and hold the state harmless from any claim as a result of
18 the issuing problem that has arisen here, whatever bonds
19 would be proper, the amount. And we'd be willing to do
20 that.

21 CHAIRPERSON CORY: I appreciate that and accept it
22 as a good-faith offer.

23 My concern is that there are people who are not
24 here who are likely to be significantly inconvenienced. I'm
25 not so sure we could live with the political consequences of

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1 that inconvenience, and that would not be a bondable item.
2 I don't think I can be a beneficiary of a bond when I'm
3 going to have to bear the brunt. That's the difficulty.

4 You can protect the state. But if we attempt,
5 and there ends up being a court order where there are,
6 in fact, no moorings, if there are going to be no moorings
7 I think we're going to make that decision here and know
8 we're doing it, rather than let some crazy court end up
9 doing that. That's my concern with it.

10 If the other members want to accept that, I'm
11 willing to go along. But I'm more concerned about the
12 political consequences of starting a process which falls
13 apart, rather than financial remuneration to the state. I
14 don't know where the other two commissioners are.

15 MR. SAUNDERS: I'd like to represent the boaters.
16 Everybody's talked except the boaters.

17 Could I just say one thing?

18 CHAIRPERSON CORY: No.

19 MR. SAUNDERS: It's not fair to let him speak --

20 CHAIRPERSON CORY: That's right. It doesn't
21 say anyplace that I have to be fair.

22 Now, as I understand it, we do not have a motion
23 that is capable of passing to award a bid.

24 I am willing to entertain a proposal to reject
25 all bids. If there is someone else who's prepared to vote

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1 for that, I will make the motion.

2 COMMISSIONER MORGAN: No.

3 CHAIRPERSON CORY: Okay, if that is not the case,
4 then procedurally I think where we're going to be -- David.

5 COMMISSIONER ACKERMAN: Otherwise, then, we just
6 let it elapse.

7 CHAIRPERSON CORY: Then there's apparently not
8 two votes to accomplish anything, and there is --

9 MR. TAYLOR: Let me say this: The bids are an
10 offer of 60 days. They haven't run out yet. It's 60 days
11 from the 7th of December.

12 We need at least an extension or something of the
13 lease. The offers are on the table at least for their
14 term to be 60 days. And until that occurs, I think the only
15 option up to you is to extend the existing lease for not
16 to exceed that period of time.

17 CHAIRPERSON CORY: Or to not lease.

18 MR. TAYLOR: Or not to lease. But you'd have
19 to let the 60 days run out.

20 I guess there are several things that could
21 happen. If there's no majority, what you may have to do is
22 simply wait until the end of the 60 days, during which time
23 the lease will expire.

24 And you will have to do something about the
25 outstanding bids, either to act on them or reject them before

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1 you can move on to do anything outside that period of time.

2 EXECUTIVE OFFICER NORTHROP: We could run it
3 ourselves.

4 MR. TAYLOR: Mr. Northrop has raised just another
5 option.

6 CHAIRPERSON CORY: That's really not an option.
7 I don't think so, because when you contemplate the full
8 end of legal probabilities, I don't think that's an option.
9 I may be mistaken, but --

10 MR. HIGHT: There is a way, Mr. Chairman, that
11 could work, but --

12 COMMISSIONER ACKERMAN: We were discussing
13 Mr. Taylor's option of the 60-day period that the bids
14 remain alive on the table.

15 CHAIRPERSON CORY: Which is now 50 days.

16 MR. TROUT: One solution, Mr. Chairman,
17 Mr. Sanders suggested that one thing we might do is put the
18 proposals that we have out as an initial study with an
19 environmental check list, and see what kind of response we
20 get in the next 30 to whatever days. Let's say there's
21 ten of the 60 days, so we've got roughly 50 days to run it
22 out and see what the environmental impacts of the three
23 proposals are.

24 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, to give
25 you the benefit of what we've been discussing here, Dwight

1 Sanders, who runs the Environmental section and is our
2 environmental expert on how things can be done, says that
3 it's possible to -- Dwight, do you want to lay out where
4 we could go on this?

5 MR. SANDERS: Mr. Chairman and members, I believe
6 that it would be possible to put together what is termed an
7 initial study with, as the core, the proposals that are
8 before you now. It is rather unique in one sense, but
9 generally when we go out with such a document asking the
10 responsible agency what type of document is necessary, there
11 is only one project. But there may be the possibility to
12 get at least a reading as to the environmental consequences
13 of one or more of the proposals in that manner.

14 MR. TAYLOR: The biggest problem with that is
15 going to be -- well, I guess it may give you a range of
16 things, but one bidder has shown an awful lot of stuff
17 for the future. One of the other bidders was a little bit
18 further off, in that he has three barges as opposed to one.
19 And then one didn't do anything.

20 I guess that gives you a spectrum, but it doesn't
21 say what the other two would have done if they had read the
22 lease proposal the same way as the Pioneer group did. But it
23 would give you a chance to test the waters on each of the
24 three options, I guess. I don't know what you could get
25 from it.

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1 CHAIRPERSON CORY: We can offer an interim lease
2 for enough time to go through the regulatory and
3 environmental process, or admit that nobody else can bid.
4 I have trouble with that.

5 COMMISSIONER ACKERMAN: I will give you a vote
6 to do something, because just doing nothing doesn't serve
7 anything.

8 MR. TAYLOR: Well, if you want to go off to a
9 study, if your decision is to leave the bids open, then we
10 need a motion to extend the term of the existing lease for
11 another 30 or 40 days, whatever you want to do, some interim
12 time. And then, if you want to direct the staff to put out
13 an interim study to see what kind of reaction is drawn, I
14 think there will be a reaction, but I don't know whether
15 that would change your dilemma.

16 CHAIRPERSON CORY: It would seem to me that, given
17 the way you've stated the dilemma, the problem is that
18 anybody other than the Island Company must go through the
19 full regulatory process. If that's the case, then it seems
20 to me we should reject all bids and set up the proposals
21 that you suggested, Greg, a master lease, make it available
22 if the existing operator wishes to take it, add some fee
23 for a two- or three-year period of time, whichever the
24 staff recommends, so that the regulatory processes can be
25 concluded, rather than to bet on the one chance in a

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1 hundred that you can prevail. That's where I come from.

2 It seems to me that that is not a choice that I
3 like, but it appears to be the only choice, given the
4 obligation to the other prospective bidders, people that
5 have asked to come in here, and resolving that with the
6 fact situation as the staff counsel advises us.

7 Otherwise, I don't see that the 30 to 60 days
8 buys up much, other than further muddying of the water.

9 EXECUTIVE OFFICER NORTHROP: I'm sure it's going
10 to tell us what we already know: We've got an environmental
11 document problem.

12 CHAIRPERSON CORY: I would propose that the
13 existing process be started down that regulatory mechanism,
14 however staff wishes to put that together, rather than to
15 put it off for another 30 to 60 days, where we're going to
16 be at the same point, agonizing over the same imponderables,
17 and we will have lost that 30 to 60 days given the fact that
18 it's going to take that much time. We might as well get
19 the clock running, because from what he's told us, that
20 clock is going to have to run if it's going to be anybody
21 other than the Island Company that has a realistic chance of
22 making a proposal.

23 It may be that one of the other bidders will see
24 that they're no longer going to be interested. That's my
25 view of it, that we go with that option.

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1 So, I would propose that we reject all bids, offer
2 to the existing lessee -- pick a term. I'm not hung up on
3 the term.

4 MR. TAYLOR: Could we do it in separate steps?
5 Do you want to know what you're going to do secondly to
6 make sure you're comfortable with the fact --

7 CHAIRPERSON CORY: Staff, is it your view that
8 that process can be done in 24 months, or is it more
9 realistically three years?

10 EXECUTIVE OFFICER NORTHROP: Given that what we
11 have to do is come back to the commission with a proposal,
12 I think it realistically is three years.

13 If we had a proposal in hand, and ran out with
14 it, then we've got a two-year, slam dunk. But if we've
15 got to come back to the commission with a proposal and lay
16 it out, and then go to an EIR, then we've added six or seven
17 months to the process.

18 CHAIRPERSON CORY: You take the existing request
19 for proposal that we put together, and go out with that,
20 then you can do it --

21 EXECUTIVE OFFICER NORTHROP: We can do that,
22 Dwight, in two years? Wait until I get my expert.

23 MR. SANDERS: Again, Mr. Chairman, what was your
24 question? If we --

25 CHAIRPERSON CORY: We take the existing --

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1 MR. SANDERS: -- request for bids and went out,
 2 the commission, I would presume, would set a time at which
 3 those new bids would come back in. They would be re-
 4 evaluated, and then from then, the process would start with
 5 one proposal being chosen by the commission. From that
 6 time, about 18 months should pass, counting lead agency
 7 action and responsible agency action.

8 CHAIRPERSON CORY: So that if we use the existing,
 9 it can be done in 24; if not, it takes three years.

10 EXECUTIVE OFFICER NORTHROP: If you could give us
 11 a package and say this is what we want, then it's two years.
 12 That would mean that you have to decide today which package
 13 you'd want to look at.

14 CHAIRPERSON CORY: The interim period, I would
 15 guess three years, just given the problem of where we are,
 16 is what they're telling me.

17 EXECUTIVE OFFICER NORTHROP: Under any, before
 18 we have one-year time frame from the time it's deemed
 19 complete, but the catch is "deemed complete".

20 CHAIRPERSON CORY: In that process, you would
 21 have, in essence, a master lease with the boat question
 22 resolved, somebody in place to operate, and as quick as
 23 legally possible in the practical sense, bidders able to
 24 deal with the commission.

25 That seems to me to be the only kind of middle

1 ground that tries to preserve the option for those people
2 that are interested in this project and that are maintaining
3 so that the boaters don't have to go through the process
4 and keeping a lessee in place.

5 I don't know if you've got any minor adjustments
6 you want to make on that. I don't have any strong feelings
7 about any of that. It seems to me that's about all we can
8 do from what staff has told us.

9 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, also
10 it should be understood that the proposer is going to have
11 to front the EIR money. I just want to get that clear on
12 the record.

13 CHAIRPERSON CORY: That is normal of who finances
14 most of the EIR's in the stuff we do?

15 EXECUTIVE OFFICER NORTHROP: The proposer.

16 MR. SANDERS: The commission is responsible for
17 the cost of the document.

18 COMMISSIONER ACKERMAN: I think you've got to have
19 somebody in charge out there January 1st through the boating
20 season. I think it's ridiculous to think otherwise. So,
21 an option to just kind of let it phase out in a free-for-all
22 is not right. It just won't work. If this is the only
23 option --

24 CHAIRPERSON CORY: Think what we could get for
25 the phone rights with that.

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1 COMMISSIONER ACKERMAN: Go west, young man.

2 MR. TAYLOR: It's my understanding there are a
3 couple of ways. But I guess my first understanding with it
4 was that you would -- the second part of it would be, you'd
5 offer the Island Company Conservancy a lease on the terms
6 that they have bid, set it up for 15 years with their
7 interest as the master lessee, terminable in three years
8 at the will of the state.

9 CHAIRPERSON CORY: That would be acceptable with
10 me if that's the case that it could be in there to get
11 something done. If you'd like to make some changes on
12 that, you could do that.

13 COMMISSIONER ACKERMAN: That's OK with me.

14 CHAIRPERSON CORY: We've got two votes for
15 something. Hoopay. I'm gaining.

16 MR. TAYLOR: Then, as I understand it, it is the
17 motion of the commission to reject all bids and --

18 CHAIRPERSON CORY: Start over again.

19 MR. TAYLOR: It's the motion of the commission
20 to reject all bids, and to offer to the Island Company and
21 Santa Catalina Conservancy a master lease which is for the
22 term of 15 years, with all the provisions that you have in
23 it, except for the fact that their right as the master
24 lessee would be terminable at the state's option at the end
25 of three years.

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1 CHAIRPERSON CORY: I'll preserve the rights of
2 the boaters.

3 MR. TAYLOR: The boaters' rights would be fixed
4 for 15 years, and they would be a third-party beneficiary
5 of this contract. And then you would just have to make
6 provisions for sliding somebody into the master lessee role.

7 It would also give you the right to reset the
8 rents as far as that part was concerned also.

9 CHAIRPERSON CORY: I'm prepared to vote for that.

10 MR. TAYLOR: The boaters' rights are for 14 years,
11 all the previous terms we discussed today.

12 CHAIRPERSON CORY: Dave, would you go along with
13 that?

14 COMMISSIONER ACKERMAN: Reluctantly, I guess.
15 I'll go along with it.

16 CHAIRPERSON CORY: All right, that's to be the
17 order.

18 So, at that point now the staff can start putting
19 together how to go out to the proposals and get something
20 together, and you will confer with the commissioners to get
21 that together as quickly as possible.

22 EXECUTIVE OFFICER NORTHROP: Yes, sir.

23 CHAIRPERSON CORY: It's up to the staff.

24 COMMISSIONER MORGAN: What happens if the staff
25 is unable to negotiate?

1 MR. TAYLOR: You have an emergency meeting.

2 CHAIRPERSON CORY: Okay, that's where we are.
3 We've acted on that.

4 Dave and I voted yes.

5 COMMISSIONER MORGAN: I voted no. Do I talk about
6 it, or do you just want to do it?

7 CHAIRPERSON CORY: We've done it.

8 COMMISSIONER MORGAN: All right.

9 CHAIRPERSON CORY: It's already done.

10 Any other item to come before the commission?

11 EXECUTIVE OFFICER NORTHROP: Yes, sir,
12 Mr. Chairman. We have an executive session. Do you want
13 to --

14 CHAIRPERSON CORY: Do those things have to come
15 today?

16 EXECUTIVE OFFICER NORTHROP: Let it go. I want
17 to go over Susie's staff a little more anyway.

18 CHAIRPERSON CORY: I have got to get home.

19 (Thereupon this meeting before the State Lands
20 Commission was adjourned at approximately 5:15 p.m.)

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CERTIFICATE OF SHORTHAND REPORTER

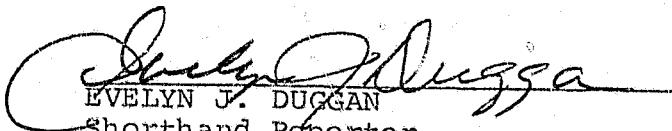
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3 I, EVELYN J. DUGGAN, a shorthand reporter of the State
4 of California, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing State Lands Commission meeting was reported in
7 shorthand by me, Evelyn J. Duggan, and thereafter
8 transcribed into typewriting.

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

12 IN WITNESS WHEREOF, I have hereunto set my hand this
13 21st day of December, 1981.

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EVELYN J. DUGGAN
Shorthand Reporter

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MEETING
STATE LANDS COMMISSION

STATE CAPITOL
ROOM 4203

PARTIAL TRANSCRIPT

ORIGINAL

THURSDAY, DECEMBER 17, 1981

10:20 A.M.

Evelyn J. Duggan
Shorthand Reporter

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APPEARANCES

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Commission Members:

- Kenneth Cory, Chairperson
- Susanne Morgan, representing Mary Ann Grave,
Director of Finance
- David Ackerman, representing Mike Curb,
Lieutenant Governor

Staff Present:

- William Northrop, Executive Officer
- James F. Trout, Assistant Executive Officer
- Robert C. Hight, Esq., Chief Counsel
- N. Gregory Taylor, Esq., Assistant Attorney
General
- Les Grimes
- Moose Thompson
- Dave Hadley
- Robert Faber
- Dwight Sanders
- Don Everitts
- Lance Kiley

I N D E X

	<u>Page</u>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
Proceedings	2
11/23/81 Minutes approved	2
Consent Calendar approved	2
Discussion of Item 20	4
Approval of Item 20	5
Discussion of Item 21	5
Approval of Item 21	5
Discussion of Item 22	5
Approval of Item 22	5
Discussion of Item 23	6
Approval of Item 23	6
Discussion of Item 24	6
Approval of Item 24	6
Discussion of Item 25	6
Approval of Item 25	7
Discussion of Item 26	8
Approval of Item 26	8
Discussion of Item 27	8
Approval of Item 27	9
Discussion of Item 28	9
Approval of Item 28	9
Discussion of Item 29	9
Approval of Item 29	10
Discussion of Item 30	10
Approval of Item 30	12

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	<u>Page</u>
1 INDEX (continued)	
2 Discussion of Item 31	12
3 Approval of Item 31	12
4 Discussion of Item 32	12
5 Approval of Item 32	12
6 Discussion of Item 33	12
7 Approval of Item 33	13
8 Discussion of Item 34	13
9 Approval of Item 34	13
10 Discussion of Item 35	13
11 Discussion of Item 36	16
12 Approval of Item 36	17
13 Discussion of Item 37	17
14 Approval of Item 37	17
15 Discussion of Item 38	17
16 Approval of Item 38	18
17 Discussion of Item 39	18
18 Discussion of Item 40	22
19 Discussion of Item 41	22
20 Approval of Item 41	22
21 Discussion of Item 42	22
22 Approval of Item 42	23
23 Discussion of Item 43	23
24 Approval of Item 43	23
25 Discussion of Item 44	23
Approval of Item 44	24
Certificate of Court Reporter	26

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P R O C E E D I N G S

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3 CHAIRPERSON CORY: All right, we'll call the
4 meeting to order.

5 Are there any corrections or additions to the
6 minutes of the meeting of November 23rd? Without objection,
7 the minutes will be confirmed as presented.

8 Is there a report of the Executive Officer?

9 EXECUTIVE OFFICER NORTHROP: There is no report
10 of the Executive Officer, Mr. Chairman.

11 CHAIRPERSON CORY: Is there a report of the Coastal
12 Commission?

13 EXECUTIVE OFFICER NORTHROP: There is no report
14 of the Coastal Commission today, Mr. Chairman.

15 CHAIRPERSON CORY: The next item is the Consent
16 Calendar item. They're on the front of the agenda, preceded
17 by the letter C, and they go from C1 through C18.

18 Unless there is some objection by somebody in the
19 audience to these proposed staff recommendations, all of
20 those will be taken up at once. If there is anyone who
21 wishes to object to the proposed staff recommendations,
22 please say so now.

23 Without objection, the Consent Calendar will be
24 approved as presented.

25 (Thereupon Calendar Item No. 19 came under

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1 consideration, which has previously been submitted in a
2 prior transcript of this proceeding.)

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AFTERNOON PROCEEDINGS

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CHAIRPERSON CORY: We'll reconvene the meeting.

While part of our staff, the part that is most directly involved with the Catalina Island thing, has not yet returned, we'll go ahead and proceed with the other calendar items and try to dispense with those, and then take Item 19 as soon as they come back or when we have concluded the other items.

The next item on the agenda is Item 20. This is relating to high water/low water.

EXECUTIVE OFFICER NORTHROP: Mr. Chairman, this is a change, revocation of existing policy on high water/low water, and sets up a new policy for administration of that area in the State Lands Commission.

CHAIRPERSON CORY: Is there anyone in the audience on Item 20? Any questions from the commissioners?

COMMISSIONER MORGAN: What was the basis for the change?

CHAIRPERSON CORY: The reason for the change is the Supreme Court in Lyon versus Fogerty.

EXECUTIVE OFFICER NORTHROP: That's correct.

CHAIRPERSON CORY: We need to deal with the easement that they, in essence, ascribed by a court case between high water and low water.

1 COMMISSIONER MORGAN: We didn't do that at the last
2 meeting?

3 EXECUTIVE DIRECTOR NORTHROP: No, the last
4 Commission meeting -- Mr. Hadley is here, who is familiar
5 with that.

6 Dave, would you give them a breakdown on that?

7 MR. HADLEY: Yes.

8 Dave Hadley from the staff.

9 The basic intent of this Calendar Item is to
10 implement the Lyon-Fogerty decision and to change the policy
11 that was in effect at the time the litigation was initiated.

12 COMMISSIONER ACKERMAN: Was Mr. Herger's office
13 notified of this calendar item, because he had some objections
14 the last time.

15 MR. HADLEY: Yes, he was.

16 COMMISSIONER ACKERMAN: Okay, thank you.

17 CHAIRPERSON CORY: Without objection, Item 20
18 will be approved as presented.

19 Item 21, request of approval for a general lease
20 here in Sacramento County to Jolly Roger, Incorporated.

21 Is there anybody in the audience on this item?
22 Any questions from commissioners?

23 COMMISSIONER MORGAN: I want to ask about the
24 lease rate.

25 EXECUTIVE OFFICER NORTHROP: Yes, ma'am.

1 COMMISSIONER MORGAN: Is this done according to
2 our normal policy?

3 MR. GRIMES: This is done according to our normal
4 policies, scheduled to fit a rather confused title
5 situation and allow a development to go ahead.

6 CHAIRPERSON CORY: I have not recalled seeing a
7 lease on electronic game machines before.

8 MR. GRIMES: That's because they're fairly new,
9 I think.

10 CHAIRPERSON CORY: This is our first one?

11 MR. GRIMES: Yes, it's our first.

12 CHAIRPERSON CORY: How did we arrive at 25 percent?

13 MR. GRIMES: According to information that our
14 appraisal staff gathered, that's what is common.

15 CHAIRPERSON CORY: All right.

16 COMMISSIONER MORGAN: Fine.

17 CHAIRPERSON CORY: Without objection, anyone in the
18 audience on that item? Without objection, Item 21 is
19 approved as presented.

20 Item 22 is approval of a 30-year general lease
21 for Thomas Raley in the Sacramento River.

22 Anybody in the audience on this item? Any
23 questions from commissioners?

24 Without objection, Item 22 is approved as
25 presented.

1 Item 23, approve authorization for compensation
2 on a tide and submerged land parcel in Seven Mile Slough
3 from Roy Gustavsen dba Owl Harbor, and a lease on a
4 standard percentage.

5 EXECUTIVE OFFICER NORTHROP: That's correct,
6 Mr. Chairman.

7 CHAIRPERSON CORY: Anybody in the audience on this
8 item? Any questions from the commissioners?

9 Without objection, Item 23 is approved as
10 presented.

11 Item 24, a bunch of people want to give us some
12 land. Is there anybody in the audience on this item?
13 Questions from the commissioners?

14 Without objection, Item 24 is approved as
15 presented.

16 Item 25 gives us some information on Wickland's
17 coal at Selby.

18 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, this
19 is a report on a proposed coal terminal at Selby, and
20 Mr. Dwight Sanders of our staff has been working it out.

21 MR. SANDERS: Mr. Chairman, this is basically an
22 informational item in one sense. The Wickland Oil
23 Company has filed an application to the Commission for
24 a Coal Export Terminal at Selby to be adjacent to their
25 existing oil facility.

7
1 We are reporting to you that it is our intent,
2 pursuant to your delegation to the Executive Officer, to go
3 out to bid for an environmental impact report that is
4 required for the project and to avoid that contract to the
5 best qualified bidder and to enter into a reimbursement
6 agreement with the applicant to pay for such costs.

7 CHAIRPERSON CORY: Any questions from the
8 Commissioners?

9 COMMISSIONER ACKERMAN: My understanding is that
10 the Land Commission is the lead agency?

11 MR. SANDERS: That's correct.

12 COMMISSIONER ACKERMAN: Is this to expedite all
13 permits and requirements, or just for the EIR?

14 MR. SANDERS: The Commission is the lead agency,
15 period. It has one year to act from the time of permit or
16 application deemed approved, and that was done approximately
17 November 2nd of this year.

18 COMMISSIONER ACKERMAN: It is our capacity to take
19 this project through BCDC?

20 EXECUTIVE OFFICER NORTHROP: It's our job to
21 shuffle it through completion.

22 CHAIRPERSON CORY: Any further questions?

23 Any questions from anyone in the audience?

24 Without objection, we will accept the information,
25 as if we could reject it.

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1 Item 26, this is approval of a lease between the
2 City of Long Beach and Crowley Development. This is the day
3 for it. The lease has been assigned to Catalina Landing
4 Associates.

5 EXECUTIVE OFFICER NORTHROP: This is a lease
6 which will eventually result in the construction of, I
7 believe, four office buildings, of which the bulk of the
8 space is dedicated to navigational trust purposes.

9 CHAIRPERSON CORY: Any questions?

10 COMMISSIONER ACKERMAN: This is in Long Beach?

11 EXECUTIVE OFFICER NORTHROP: Right, this is in
12 Long Beach on the water.

13 CHAIRPERSON CORY: Anyone from the audience on
14 this item?

15 MS. ORFANOS: Elaine Orfanos of Crowley Maritime
16 Corporation in San Francisco. I'm appearing on behalf of
17 Catalina Land and Associates.

18 I have nothing further to add, but I'm available
19 to any questions of the Commission's.

20 CHAIRPERSON CORY: Any questions of the
21 commissioners?

22 Without objection, Item 26 is approved as
23 presented.

24 Item 27, this is an application to resume limited
25 drilling. This is the substitution of Exxon wells for

1 Arco wells.

2 EXECUTIVE OFFICER NORTHROP: That's right. It's
3 Exxon wells for Chevron wells.

4 CHAIRPERSON CORY: All right, what's Arco got to
5 do with it?

6 EXECUTIVE OFFICER NORTHROP: They're a joint
7 lessee.

8 CHAIRPERSON CORY: All three of them, okay.
9 Anybody in the audience on this item?
10 Any questions from commissioners?

11 Without objection, Item 27 is approved as
12 presented.

13 Item 28, award of a negotiated oil and gas
14 lease at the confluence of the San Joaquin River and False
15 River, Contra Costa and Sacramento Counties, to Russell
16 Green and Robert Reedy.

17 Is there anybody in the audience on this item?
18 Any questions from commissioners?

19 COMMISSIONER ACKERMAN: Am I to understand this
20 is because there is no other access?

21 EXECUTIVE OFFICER NORTHROP: We have no way of
22 getting to it. We just do not have a land base operation.

23 CHAIRPERSON CORY: Without objection, Item 28 is
24 approved as presented.

25 Item 29, request for approval of a Geothermal

1 Prospecting Permit for two years, option of two-year renewal.

2 EXECUTIVE OFFICER NORTHROP: That's in this
3 particular area right here, Mr. Chairman.

4 COMMISSIONER MORGAN: That's fine.

5 CHAIRPERSON CORY: Any questions from anybody in
6 the audience on this item? Any questions from the
7 commissioners?

8 No problems, Item 29 is approved as presented.

9 Item 30, Phillips Petroleum Company, Prospecting
10 Permit for how much land?

11 EXECUTIVE OFFICER NORTHROP: Eight parcels broken
12 into three separate leases, Mr. Chairman.

13 Staff recommends that we give up these three
14 parcels in one lease, and I believe Bob Faber has the
15 language that would cover that, and these three parcels in
16 another lease, and these two parcels in another.

17 This would have the effect of, while Phillips
18 has some holdings here, and they may want to drill here,
19 but we also own these surrounding parcels which would give us
20 a chance to prove up ours, and if it's productive, make it
21 into a known geothermal area. That would allow these areas
22 to get some play, as well as the top two, it would give the
23 others some play.

24 CHAIRPERSON CORY: Anybody in the audience on
25 this item?

1 COMMISSIONER ACKERMAN: Question, the applicant
2 didn't request three leases. Didn't the applicant request
3 just a single lease?

4 EXECUTIVE OFFICER NORTHROP: That's correct.

5 COMMISSIONER ACKERMAN: Are they in agreement with
6 our counter proposal?

7 EXECUTIVE OFFICER NORTHROP: I've not discussed
8 it.

9 MR. EVERITTS: They applied originally for --
10 I'm Don Everitts on staff.

11 Their original application was for all of those
12 colored sections up there. The surface owner exercised his
13 preferential right on the four pink ones.

14 There was never any specific evidence that they
15 applied for permits on eight sections. We had decided that
16 the best way to issue those eight sections were not through
17 eight leases or one lease, but the three broken-up permits
18 that Mr. Northrop discussed.

19 CHAIRPERSON CORY: Does Phillips like that or
20 dislike it?

21 MR. EVERITTS: They have said that they don't
22 like it, but they'll accept it.

23 COMMISSIONER MORGAN: Is there anyone here to
24 protest?

25 MR. EVERITTS: They are here.

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1 COMMISSIONER ACKERMAN: But not necessarily to
2 protest.

3 CHAIRMAN CORY: Without objection, Item 29 will
4 be approved as presented for three leases.

5 EXECUTIVE OFFICER NORTHROP: That was Item 30,
6 Mr. Chairman.

7 CHAIRPERSON CORY: Item 30, pardon me, you're
8 right.

9 Item 31, Geothermal Prospecting Permit to Larry
10 Durkin in Sonoma.

11 Is there anybody in the audience on this?
12 Any questions from the commissioners?

13 Without objection, Item 31 is approved as presented.

14 Item 32, the City of Emeryville is requesting the
15 issuance of a Dredging Permit for 30,000 cubic yards in
16 Emeryville.

17 Is there anybody in the audience on this item?
18 Any questions from the commissioners?

19 Without objection, Item 32 is approved as
20 presented.

21 Item 33, this is a Sell-Off Bid, in which the
22 bidder was 13-1/2 cents.

23 EXECUTIVE OFFICER NORTHROP: That's correct,
24 Mr. Chairman, there were four bidders that ranged from zero
25 to 13-1/2 cents.

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1 CHAIRPERSON CORY: And the staff recommends that
2 we reject all bids, since the 13-1/2 cents, we are currently
3 getting 10 cents, the 3-1/2 cents would lock us in for a
4 significant period of time, and there is a likelihood of
5 market proportions changing.

6 EXECUTIVE OFFICER NORTHROP: Yes, we tend to
7 think in six or eight months it's going to change.

8 CHAIRPERSON CORY: Is there anybody in the
9 audience on this?

10 Without objection, Item 33 is approved as
11 presented.

12 Item 34, approval to close accounts of tidelands
13 oil revenue in Long Beach on subsidence, \$173,814.55.

14 Is there anybody in the audience on this item?
15 Any questions from commissioners?

16 Without objection.

17 Item 35 is a review of Enhanced Recovery Projects
18 for the Wilmington Oil Field.

19 COMMISSIONER MORGAN: That's where we're pouring
20 money into the ground?

21 MR. THOMPSON: I see this as a bad day all the way
22 around.

23 This is merely an informational calendar item.
24 I don't think we really want to take much time on it.

25 CHAIRPERSON CORY: How much money have we poured

1 into the ground, and is there any chance of getting any of
2 it back?

3 MR. THOMPSON: Well, you multiply that, and we've
4 talked about it several times, and that has returned about
5 three and a half million dollars, and we have about nine
6 and a half million dollars in it. So, the project, again,
7 is a test project. It shows that you can recover additional
8 oil, but the economics are just not there with the present
9 price of oil.

10 COMMISSIONER MORGAN: Have we gotten far enough
11 with that to say it's a lost cause, or do you want to --

12 MR. THOMPSON: This is probably the end of the
13 line for that one as far as getting down to the economics.

14 Some of the more interesting ones are to start
15 injecting carbon dioxide in one project, and we're going to
16 take from the stack of a refinery, and this combination
17 products, as far as environmental, of getting CO₂ out of the
18 air and injecting it into the ground.

19 Another project, of course, we're testing the
20 down-hole generators for steam, and there's two of those;
21 one where we're using air-diesel mix, and another where
22 we're using air-oxygen mix. These projects are, again,
23 right in the testing stage right now and we really can't
24 forecast much. You saw the projects before.

25 CHAIRPERSON CORY: The down-hole scheme is

1 generating steam with a chemical mixture as opposed to
2 institutional combustion?

3 MR. THOMPSON: Yes, actually you're taking diesel
4 and mixing it with air and burning it down there.

5 CHAIRPERSON CORY: You're burning, actually
6 igniting?

7 MR. THOMPSON: Right. Of course the advantage
8 there is if you do it down in the hole is you don't have
9 heat losses going down. Of course all the combustion
10 products are then also left in the ground.

11 CHAIRPERSON CORY: I'm having trouble, without
12 igniting it, how you are going to get the steam, but if
13 you're igniting, you're going to solve that problem.

14 COMMISSIONER MORGAN: What's your testing period
15 anticipated to be?

16 MR. THOMPSON: Again, on CO₂, we probably should
17 be getting an answer to that probably about a year and a half
18 to two years.

19 COMMISSIONER MORGAN: Let's see, I won't be here
20 then.

21 Could you keep us informed about every three months
22 on what you're doing, because if this starts looking like
23 it's going to be pouring more money into the ground, maybe
24 we should stop sooner.

25 MR. THOMPSON: Of course on most of these projects

1 now, we have tertiary loading under the price control
2 situation, so these have a certain advantage to them.

3 CHAIRPERSON CORY: So we're making money even
4 if we lose money. Making it up for volume.

5 MR. THOMPSON: I would say we're using less.

6 COMMISSIONER MORGAN: How much are we spending on
7 these two projects?

8 MR. THOMPSON: Which two projects?

9 COMMISSIONER MORGAN: The two new projects.

10 MR. THOMPSON: The CO₂ projects, I don't have
11 a figure on that right now, but the total package on those
12 will be probably in the millions of dollars. But again,
13 most of that will be gained by the upgrading of the control
14 of oil into uncontrolled oil, and all those expenses were
15 prepaid. So most of the expenses on the front end are behind
16 us already on those projects.

17 COMMISSIONER MORGAN: Okay. Are you going to come
18 to my office and give me a briefing on the financing of these
19 two?

20 MR. THOMPSON: I sure will.

21 CHAIRPERSON CORY: All right, thank you, Moose.

22 EXECUTIVE OFFICER NORTHROP: Chief Counsel is back
23 with us, Mr. Chairman.

24 CHAIRPERSON CORY: Go ahead.

25 MR. HIGHT: Mr. Chairman, on 36, Lincoln Benicia

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1 Associates is asking for modification of an existing title
2 settlement which the Commission approved in August. The
3 modification would allow them until July of 1984 to perfect
4 title to the parcel of land which they will then convey to
5 us. During that time we will have possession of the parcel,
6 and during that time, hopefully, they'll be able to clarify
7 their problems.

8 CHAIRPERSON CORY: Anybody in the audience on this
9 item? Any questions from commissioners?

10 Without objection, authorization is granted.

11 Item 37.

12 MR. HIGHT: The Boundary Line Agreement in the
13 grant area in the City of Morro Bay to allow the City to
14 develop a tidelands park and establish a boundary along
15 that cliff area which has been filled.

16 CHAIRPERSON CORY: Any questions from the
17 commissioners? Anybody in the audience on this item?

18 Without objection, approval is granted as
19 requested in Item 37.

20 Item 38 is clarification of jurisdictional status
21 on retrocession of Los Alamitos Air Station. That's
22 concurrent, and we're supposed to give it exclusive to
23 them?

24 MR. HIGHT: To us.

25 CHAIRPERSON CORY: Exclusively to us.

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1 MR. HIGHT: It went from, we gave them concurrent
2 and we should have -- the wording should have been exclusive.

3 CHAIRPERSON CORY: All right. Is there anybody in
4 the audience on this item?

5 Without objection, the change is made as requested
6 in Item 38.

7 Item 39.

8 EXECUTIVE OFFICER NORTHROP: Mr. Chairman, item 39
9 will be handled by Lance Kiley.

10 MR. KILEY: At the last meeting, Mr. Chairman,
11 the Commission said that Mr. Heist presented a problem that
12 he has had with the Colusa County Board of Supervisors who
13 closed Laux Road, which was the only access into about a
14 12-mile stretch of Butte Creek.

15 Mr. Heist asked for the Commission's assistance
16 and intervention in a lawsuit that he has not yet filed, and
17 he recommended or indicated that it might be premature to
18 talk about this until after he's been before the Council
19 again to ask whether or not they would possibly reconsider
20 their action.

21 They reconsidered their action the following day,
22 after the last Commission meeting. They turned down
23 Mr. Heist's petition, and Laux Road remains closed. They
24 said they would welcome an inquiry by the Commission.

25 I've done some preliminary investigating and found

1 that both the Department of Fish and Game and the
2 Department of Boating and Waterways may be interested in it.
3 They want to know more facts. They would like to have
4 a rundown of it.

5 CHAIRPERSON CORY: What are we to do at this point?

6 MR. KILEY: At this point, it's just more or less
7 up to you whether or not you would like to become involved
8 in this at all. Mr. Taylor pointed out that the Commission
9 has, in the past, not been directly involved in protecting
10 this type of accessway to the waterway. There's no real
11 precedent for it.

12 MR. TAYLOR: I would qualify that in one manner.
13 It was the understanding that it was a nonnavigable waterway.
14 There is a possibility that that may be a navigable waterway.

15 MR. KILEY: Yes, I did some investigating
16 preliminarily. The thing was sold as swamp and overflow
17 lands. The swamp and overflow land patent apparently did
18 not include the waterway; however, we have not had time to
19 make a sufficient investigation to determine whether there
20 was, in fact, navigation in there, at least navigation of a
21 commercial sort. Certainly there has been small-boat
22 navigation for a long period of time. There may never have
23 been steamboats going up this far.

24 COMMISSIONER MORGAN: So, we don't know if we
25 have jurisdiction, but we feel that some State agency does?

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1 MR. KILEY: Yeah, some of the state agencies
2 certainly would have some jurisdiction over it.

3 My personal feeling is that there's a good chance
4 that the State Lands Commission does have jurisdiction over
5 the stream.

6 MR. TAYLOR: You may have a title problem over the
7 stream, similar to other waterway title problems that we
8 have, where we assert that it's a navigable waterway and
9 therefore passed to us on admission to the Union.
10 That's different than the last hearing that we had.

11 CHAIRPERSON CORY: Which was the access across the
12 river?

13 MR. TAYLOR: Which was the access across the
14 road. Your interest would be in the ownership of the river
15 and not in the abandonment of the road, but it would be
16 addressed to the same problem. I guess both of them could
17 be worked out in the process of it if someone wanted to make
18 a reasonable settlement.

19 CHAIRPERSON CORY: The question is, who should be
20 the moving party to initiate the festivities? Is that
21 what you're saying?

22 MR. KILEY: Mr. Heist has already hired an
23 attorney to initiate the festivities. He would only like
24 some indication that the Commission would like to get
25 involved with this to the point of, say, filing an Amicus

1 brief, or something along those lines.

2 MR. TAYLOR: I think the Commission told
3 Mr. Heist last time that if he wanted to sue us, that that
4 was his privilege. So, that part he can make up his mind
5 about. We'd certainly have to respond to any lawsuit that
6 he would bring.

7 Perhaps the best course at this point would be to
8 have the staff investigate the title situation a little bit
9 more, talk more to Fish and Game and Waterways, and other
10 people, and come back to you in another 30 days.

11 COMMISSIONER ACKERMAN: Maybe do that, and maybe
12 the Resources Agency themselves is a more appropriate body
13 to initiate matters on behalf of the State, because more
14 than one State body is interested.

15 MR. KILEY: I think we may be able to get more
16 than one State agency interested. I think the Commission
17 might be the only other State agency that might have an
18 actual property interest, and its property interest would
19 be limited to the bed of a waterway.

20 COMMISSIONER MORGAN: Are you having trouble
21 getting information?

22 MR. KILEY: No, just haven't had time to get it
23 out.

24 COMMISSIONER MORGAN: So you don't need a letter
25 from the Commission asking for information?

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1 MR. KILEY: No.

2 CHAIRPERSON CORY: Just go ahead with the staff
3 work, keep us informed. You might check out the resource
4 agencies, since there are other departments and resources
5 that have some interests as how they wish to proceed.

6 COMMISSIONER MORGAN: Charley Fullerton might be
7 interested in this.

8 MR. KILEY: He expressed some interest in this,
9 yes. I talked to him about it.

10 CHAIRPERSON CORY: All right, Item 40.

11 EXECUTIVE OFFICER NORTHROP: Item 40 is off
12 calendar, Mr. Chairman.

13 CHAIRPERSON CORY: Item 41 is the execution of
14 an agreement with the Richmond Redevelopment Agency for an
15 undivided 6.2 percent interest in land grant.

16 MR. NIGHT: Correct, Mr. Chairman.

17 CHAIRPERSON CORY: Anybody in the audience on
18 this item? Any questions from commissioners?

19 Without objection, Item 41 is approved as
20 presented.

21 Item 42, this is modification to the Commission's
22 regulations concerning the meeting notice on the sessions
23 on retrocessions. The Office of Administrative Law has
24 requested this?

25 EXECUTIVE OFFICER NORTHROP: Right.

CHAIRPERSON CORY: Is there anybody in the audience
2 on this item? Any questions from the commissioners?

3 Without objection, Item 42 is approved as
4 presented.

5 I would like the staff to keep a record of how
6 much the Office of Administrative Law is costing t.
7 taxpayers of California --

8 EXECUTIVE OFFICER NORTHROP: Yes, sir.

9 CHAIRPERSON CORY: -- with that kind of stuff,
10 because I think it's time that the people know what kind of
11 nonsense of having one bureaucrat watch another is costing
12 us. It's just beyond belief, that plus the legislators
13 can't enact laws without them causing difficulty.

14 Go ahead, we're at 43.

15 EXECUTIVE OFFICER NORTHROP: Same problem.

16 CHAIRPERSON CORY: Same problem, nice group.

17 Anybody in the audience on this item?

18 Any questions from the commissioners?

19 Without objection, Item 43, we are making an
20 addition to the application lists and criteria for projects
21 requiring Commission approval.

22 EXECUTIVE OFFICER NORTHROP: That's right.

23 CHAIRPERSON CORY: All right.

24 Item 44, this is a consultant contract for
25 drilling on Santa Barbara County leases.

1 EXECUTIVE OFFICER NORTHROP: That's right. It
2 allows us to have the money and pay it back. We may have
3 some legislative problems, but we'll get the Commission
4 out of the way.

5 CHAIRPERSON CORY: Any questions?

6 COMMISSIONER ACKERMAN: Bill, what's your time
7 frame?

8 EXECUTIVE OFFICER NORTHROP: Dwight Sanders will
9 respond to that because he's been working on it.

10 MR. SANDERS: Mr. Ackerman, a general time period
11 between the EIR in this area could run from seven to nine
12 months for the actual preparation and review period and so
13 forth. We could possibly shorten that time period because
14 of other existing environmental impact reports that have
15 occurred in and around the area, but that would be the extent.

16 COMMISSIONER ACKERMAN: So about a year from now
17 this might be before the Commission?

18 MR. SANDERS: Before that time.

19 EXECUTIVE OFFICER NORTHROP: I would think within
20 about a year, Mr. Ackerman, we'll be coming at you for some
21 kind of a program to work on leasing.

22 CHAIRPERSON CORY: All right, any questions from
23 anybody in the audience on this matter?

24 Without objection, the item is approved as
25 presented.

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(Thereupon the Commission returned to
Item 19, the transcript of which has
previously been submitted.)

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I, EVELYN J. DUGGAN, a shorthand reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing State Lands Commission meeting was reported in shorthand by me, Evelyn J. Duggan, and thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of January, 1982.


EVELYN J. DUGGAN
Shorthand Reporter