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MEETING
STATE LANDS COMMISSION
STATE OF CALIFORNIA

915 I STREET
CITY HALL COUNCIL CHAMBERS
SACRAMENTO, CALIFORNIA

ORIGINAL

THURSDAY, AUGUST 26, 1982
10:30 A.M.

EVELYN J. DUGGAN
Shorthand Reporter

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COMMISSIONERS PRESENT

Kenneth Cory, State Controller, Chairperson
David Ackerman, representing Mike Curb,
Lieutenant Governor

Susanne Morgan, representing Mary Ann Graves,
Director of Finance

COMMISSIONERS ABSENT

None

STAFF PRESENT

Claire Dedrick, Executive Officer

Robert Trout, Assistant Executive Officer

Robert Hight, Esq., Commission Counsel

Greg Taylor, Esq., Assistant Attorney General

Jack Rump

Jane Mochon

Wilber Thompson

Don Everitts

Al Willard

Robert Faber, Esq., Staff Counsel

OTHERS PRESENT

Thomas McLaughlin, River Bank Holding Co.

Thomas P. Nitopi, River Bank Holding Co.

Brad Veek, Chairman, Research Vessel Operators' Council,
Associate Director IMSC, University of Southern California

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 TELEPHONE (916) 972-5158

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CHAIRPERSON CORY: We'll call the meeting to order.

Are there any corrections or additions to the minutes of the prior meeting? Without objection, the minutes of the prior meeting will be confirmed.

The first item is the Report of the Executive Officer.

EXECUTIVE OFFICER DEDRICK: Yes, Mr. Chairman. You have the report before you.

The only item that I would request action on relates to the Elk Hills audit, for which we've requested \$550,000 which has been approved by the Legislature. We would like permission to go ahead and assign a contract some time in the next few weeks.

CHAIRPERSON CORY: That's the consultant for the evaluation?

EXECUTIVE OFFICER DEDRICK: That is correct.

CHAIRPERSON CORY: For the exchange. The money has been appropriated.

Has the Governor signed the bill yet? Don't sign the contract until he signs the bill.

EXECUTIVE OFFICER DEDRICK: It's a deal.

This is the 20 million if we get the transfer of

1 the lands. It'll be \$20 million in this fiscal year if we
2 get it on January 1st.

3 COMMISSIONER ACKERMAN: Are we still talking
4 about the same lands we were before the tradeoff?

5 EXECUTIVE OFFICER DEDRICK: That's correct. The
6 Federal Government owes us the value of two sections in
7 Elk Hills. What we will do with this contract is evaluate
8 the value of those two sections and the value of their
9 other leases in California onshore. These are school
10 lands we're talking about now. And we will try to work
11 out an exchange based as close to that value as we can.

12 The money will go to the General Fund, not to
13 Tidelands Revenue Fund, because these are revenues from
14 school lands.

15 COMMISSIONER ACKERMAN: Aren't the lands that
16 were taken from us producing lands?

17 EXECUTIVE OFFICER DEDRICK: That's correct.

18 CHAIRPERSON CORY: That's what the consultant is
19 for, to help make that evaluation.

20 With that understanding, we'll approve the
21 Executive Officer Report, including the request to proceed
22 with acquisition of the appropriate consultant.

23 EXECUTIVE OFFICER DEDRICK: Thank you.

24 There is no Coastal Commission Report today.

25 CHAIRPERSON CORY: All right.

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1 You have another item you want to bring to our
2 attention on somebody who wants to make some kind of
3 presentation to us?

4 EXECUTIVE OFFICER DEDRICK: Yes, Mr. Chairman.
5 This is not a noticed item; therefore, you cannot make a
6 decision on it. But if you choose to hear it, the River Bank
7 Associates would like you to hear their case for terminating
8 the lease of the Vigin Sturgeon on the Sacramento River.

9 CHAIRPERSON CORY: They have a request?

10 EXECUTIVE OFFICER DEDRICK: They have asked by
11 letter, requested, to be heard by the Commission on this
12 subject.

13 CHAIRPERSON CORY: Well, I'm willing to listen,
14 but it's an intriguing concept of asking us to terminate
15 a lease. I'll give it a few moments.

16 EXECUTIVE OFFICER DEDRICK: I should have apprised
17 you that the lessee is not in violation of the lease in the
18 staff opinion. We have investigated the site. The rent is
19 paid up.

20 The original lease required that the lessee have
21 the permission of the upland owner, which at the time the
22 lease was granted the lessee did have. Subsequently, this
23 two-thirds of the upland has been taken over by this
24 corporation, who has not given permission to the lessee.
25 These people maintain that that constitutes a violation of

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1 the lease. General Counsel advises us that that is not true.

2 CHAIRPERSON CORY: Mr. Nitopi, you want to
3 speak on this matter?

4 MR. McLAUGHLIN: I'm Tom McLaughlin. I'd like to
5 start first.

6 CHAIRPERSON CORY: Make it quiet. You've got a
7 hell of a hill to climb.

8 COMMISSIONER ACKERMAN: Claire, has a formal
9 letter been filed petitioning the Commission to take some
10 action, or is this kind of an informational item only?

11 MR. HIGHT: Mr. Ackerman, the letter received by
12 the Commission was not in time to go on the calendar, but
13 we thought perhaps some input to the Commission at this
14 time would be appropriate.

15 MR. McLAUGHLIN: Mr. Chairman, Members of the
16 Commission, staff, first of all, thank you for allowing us
17 to speak to the issue, and we will make our comments brief.

18 I am Tom McLaughlin, Project Manager for River
19 Bank Holding Company which has purchased the land, five
20 acres on Garden Highway, which generally runs from Crawdads
21 to the Virgin Sturgeon barge.

22 I have provided a handout. Page 1 of the handout
23 shows the general land with red borders on either side.

24 We're asking you to consider the termination of
25 that portion of the State Lands lease now held with the

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1 Virgin Sturgeon which adjoins lands owned by River Bank
2 Holding. That is, we're asking you to consider only that
3 portion of the lease that adjoins our property.

4 The lease, the overall lease runs from the
5 Air Force Base loading dock, again on the photograph,
6 generally to the east for about 590 feet. It actually
7 encompasses two properties: The first being approximately
8 140 feet of shoreline owned by another person; the vast
9 majority, and that is about 75 percent of the shoreline
10 involved with the State Lands lease, is owned by River
11 Bank Holding Company, and that's 450 lineal feet, roughly.

12 The portion adjoining River Bank Holding is almost
13 exclusive the dockage owned by Virgin Sturgeon, the barge
14 itself, where the old restaurant was, on the adjoining
15 property.

16 The property was purchased from Sacramento Savings
17 in December, 1980. At that time, the property was taken
18 subject to a month-to-month tenancy held by the Virgin
19 Sturgeon. They have held that tenancy since prior to
20 December of 1977. Again, it was a month-to-month tenancy.

21 We notified the Virgin Sturgeon that there would
22 be an increase in the rent effective July 1, 1981. We felt
23 the increase was justified because of the multitude of
24 uses allowed in their lease, the Virgin Sturgeon's lease
25 with River Bank Holding, and the amount of property

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1 encumbered by that lease, approximately 50,000 square feet.

2 On October 5th, the Virgin Sturgeon people gave
3 us a 30-day cancellation letter. In other words, they
4 notified us they were terminating the lease and gave us
5 30 days' notice.

6 In December, '81, we were notified they had
7 vacated the property.

8 Prior to the cancellation letter of October 5,
9 and subsequent to the December letter, and even up to this
10 April, we have tried to come to some terms with the Virgin
11 Sturgeon people, either us purchasing the dock, they wanted
12 to buy some land, or come to some common point. We have not
13 been able to come to a common point with them even to today.

14 It is our understanding that a severance of the
15 leasehold interest from the lateral lands can be grounds
16 for a termination of the lease. That is the issue we're
17 bringing before you today.

18 The Virgin Sturgeon no longer has an interest in
19 approximately 75 percent of the land adjoining the State
20 Lands lease, the uplands. They no longer have vehicular
21 access to their dockage or, for that matter, their barge,
22 and they have lost a major portion of their parking.

23 In addition to the loss of the lease that they
24 cancelled, we are also proposing and processing a substantial
25 project on the five acres. It is now going through the

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1 development process. It envisions restaurants, shops, a
2 major marina, about 175 berths is what we would like, and
3 we feel this would be a definite benefit to the public and
4 the recreational needs.

5 The particular portion of land that the Virgin
6 Sturgeon dockage adjoins is involved in this project and
7 is a very important aspect of it.

8 I said the project was in process. The draft
9 EIR has been completed and is undergoing the review process.
10 We are looking at late December for the City of Sacramento
11 Planning Commission and City Council hearings, and with
12 all things being go, we should be able to break ground
13 sometime in early summer, 1983.

14 We think it's going to be a fun project, an
15 exciting project, and something definitely that the public
16 can enjoy on the river.

17 Mr. Nitopi, one of our partners, is going to make
18 a couple other comments and wrap up our presentation.

19 CHAIRPERSON CORY: All right.

20 MR. NITOPI: My name is Thomas Paul Nitopi, and
21 I'm a partner in the River Bank Holding Company. And I
22 will be short in my presentation.

23 Just three points that we want to discuss here.
24 One is, as of June 1st, Mrs. Patching gave notice to her
25 tenant on the marina that she was no longer going to operate

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1 the marina. We don't know who is operating the marina.
 2 There's a lot of problems there. There's some
 3 electrical that is on our property; there is vehicles that
 4 are still being used; they're still using our property as
 5 parking; there's a dead man that supports one of her
 6 pylons for her marina, and we're real confused at this
 7 matter because our main point is that there's a lot of
 8 liability here, specifically with faulty electrical and
 9 with parking use, and with possible whatever other things
 10 that might occur considering that the marina's in disrepair.

11 We would like to have a decision by this Board
 12 as to who is responsible. We own the land, but yet we
 13 don't have the right to the marina or the right to do anything
 14 about these problems. That's why we want to be heard in
 15 front of this Board and have this on record as one of the
 16 major problems.

17 We have tried to work this out. As that handout
 18 that you have in front of you, the property line falls
 19 almost exactly where her barge is and then where the slips
 20 of the marina begins.

21 We don't necessarily want the marina. It's in
 22 too far disrepair for us.

23 We really -- all we're trying to do is figure out
 24 who is held responsible for this. And we would obviously
 25 like the water rights at the time when we do our new project

1 and put in new marinas, like the River View Marina, which
2 is upstream from our project.

3 We would really like to see this sent back to
4 staff and let staff work this out between our party, the
5 River Bank holding Company, and Lorraine Patching, or whoever,
6 if there's a sublease on the marina, whoever has the sublease.

7 That's all I have to say. Thank you.

8 CHAIRPERSON CORY: I'm not sure why we took the
9 Commission's time if that's what you want.

10 I will comment from what you've shown me here. If
11 this is close to anything like scale, you've got a real
12 problem with me about your proposed marina. You're not
13 going to get a lease that I'm going to vote for that looks
14 anything like this. You ought to know that.

15 It looks to me like you're taking up close to
16 50 percent of the breadth of the river with your marina,
17 and I don't think the river in that place can afford that
18 kind of restriction.

19 That's just for your information. It's not
20 relevant now. When you go ahead you ought to know. I
21 don't want to blind side you by not having told you that.

22 But as far as I'm concerned, there is a lease.
23 The land owner granted permission at the time the lease was
24 entered into, the conditions are met. If the staff can
25 be of assistance intalking with Patching and yourselves

1 I think that's a worthwhile thing that I think staff can
2 do. I've got no problems with that.

3 Ms. Patching, do you have (anything you wish to
4 say?

5 MS. PATCHING: I just wanted to be here and
6 express my interest, and I have a valid lease with the State,
7 pay my rent, and I've been operating a business there
8 for six years.

9 CHAIRPERSON CORY: That's fine.

10 If the staff wants to sit down and question the
11 terms of who has liability, I would guess that you're going
12 to have to have your own lawyers do your lawyering for you.
13 I don't think our lawyers can do that for you. I don't
14 think we can find liability. I don't think that is the
15 purpose of the Commission.

16 I think your lawyers can advise you what's likely
17 to happen, but the only person that can impose the liability
18 is the court.

19 COMMISSIONER MORGAN: The only reason I can see
20 the staff getting involved is to see if the terms of the
21 lease are being met, and that's the extent of it, frankly.

22 EXECUTIVE OFFICER DEDRICK: I think that we have
23 done that. We would be glad to take another look.

24 COMMISSIONER MORGAN: Well, the allegations of
25 disrepair and potential liability, I think, need looking

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1 info. I'd appreciate it if you could do that.

2 CHAIRPERSON CORY: All right. The next items we
3 have on the agenda are the Consent Calendar items, which
4 are items with a prefix of the letter C, C1 through 16.

5 Are there any exclusions on the Consent Calendar?

6 MR. HIGHT: None.

7 CHAIRPERSON CORY: They will be taken up in a
8 single motion, unless somebody in the audience has objection
9 to the proposed staff recommendation.

10 Without objection, the Consent Calendar will be
11 approved as presented.

12 Item 17, this is a proposed boundary line agreement
13 between the State and Marshland Development on Guadalupe
14 Slough, Guadalupe River, in Santa Clara County.

15 Anybody in the audience on this item? Questions
16 from the Commissioners?

17 Without objection, Item 17 is approved as
18 presented.

19 Item 18 is a boundary line agreement and
20 exchange between the State Lands Commission and American
21 Canyon Sanitary Landfill. This is in Napa County.

22 Is there anybody in the audience on this item?
23 Questions from Commissioners?

24 Without objection, Item 18 is approved as
25 presented.

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1 Item 19, this is termination of a Right-of-Way
2 lease for electrical right-of-ways for PG&E, terminating
3 a multiplicity of leases and establishing one master lease.
4 It's basically mechanical and technical in nature. The
5 terms and conditions are basically the same in the overall
6 effect?

7 EXECUTIVE OFFICER DEDRICK: That's correct.

8 CHAIRPERSON CORY: Anybody in the audience on this
9 item? Questions from Commissioners?

10 Without objection, Item 19 is approved as
11 presented.

12 Item 20, this is approving the issuance of a
13 patent to Mr. C. M. Dowling, who somehow should have had
14 a patent issued in 1908.

15 MR. HIGHT: Correct, Mr. Chairman.

16 CHAIRPERSON CORY: We're a little slow in our
17 clerical work.

18 EXECUTIVE OFFICER DEDRICK: We're understaffed.

19 (Laughter.)

20 CHAIRPERSON CORY: Prop. 13 caused it, right?

21 Anybody in the audience on this item?

22 Without objection, Item 20 will be approved as
23 presented.

24 Item 21, this is a request to deny two applica-
25 tions on permits in the Delta.

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1 MR. HIGHT: Yes, Mr. Chairman. They do not meet
2 the Delta Master Recreation Plan, and the Corps of Engineers
3 has denied them.

4 In the event that the applicants could comply with
5 those provisions, the Commission staff would be happy to place
6 it back on the calendar.

7 CHAIRPERSON CORY: You wish to delete in the
8 printed version of the agenda the words "with prejudice"
9 from the denial?

10 EXECUTIVE OFFICER DEDRICK: Correct.

11 CHAIRPERSON CORY: Those words are being deleted.
12 Anybody in the audience on this item?
13 Questions from Commissioners?

14 Without objection, Item 21 is approved as
15 presented.

16 Item 22, this is a negotiated oil and gas lease.

17 EXECUTIVE OFFICER DEDRICK: That one's been pulled.

18 CHAIRPERSON CORY: All right, 22 is off calendar.

19 Item 23 is a negotiated negotiated oil and gas
20 lease in the bed of the Sacramento River north of Princeton
21 in Glenn and Colusa Counties. There is no drill site
22 available.

23 MR. HIGHT: Correct, Mr. Chairman.

24 CHAIRPERSON CORY: And they are the surrounding.
25 Is there anybody in the audience on this item?

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1 Questions from Commissioners?

2 Without objection, Item 23 is approved as
3 presented.

4 Item 24 is a compensatory oil and gas lease,
5 again south of Princeton in Glenn County, and this is --

6 MR. HIGHT: This has the potential for draining
7 the State if, in fact, it is not drilling so we will enter
8 into a compensatory agreement with the State.

9 CHAIRPERSON CORY: Anybody in the audience on
10 this item?

11 Questions from Commissioners?

12 Item 24 is approved without objection.

13 Item 25, award of royalty bid on selloff of oil.

14 We have a high bidder?

15 EXECUTIVE OFFICER DEDRICK: Yes, the high bid was
16 91 cents.

17 MR. TROUT: Crysen Training and Marketing was
18 91 cents.

19 EXECUTIVE OFFICER DEDRICK: This is the bid we had
20 a 10-cent minimum on. We had discussed at that time a
21 50-cent minimum, and the range of bids range from a little
22 over 15 cents to 91 cents. Somewhat more than half of those
23 bids are under 50 cents.

24 I don't know whether that means that they wouldn't
25 have bid, or whether anybody would have bid higher, or all

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1 come out just the same. Anyway, it's a better deal.

2 CHAIRPERSON CORY: If we approve this, you will
3 make sure that we've got sufficient financial security?

4 EXECUTIVE OFFICER DEDRICK: Yes, we would.

5 CHAIRPERSON CORY: In the contract.

6 EXECUTIVE OFFICER DEDRICK: Correct. We'd like
7 you to authorize it subject to a financial security agreement.
8 In this case, we're talking about a letter of credit.

9 MR. HIGHT: Yes, Mr. Chairman, subject to our
10 approval of a letter of credit.

11 CHAIRPERSON CORY: We had one of the bidders that
12 got into some trouble on another matter, so make sure you
13 redouble the efforts to make sure the State's interest is
14 protected, and the billing terms and all are in a very timely
15 manner. I'm not concerned about this one, but the prior
16 experience that we had.

17 COMMISSIONER ACKERMAN: If for some reason we have
18 a financial problem with successful bidder, does it automa-
19 tically go to number two in line, or do you have to rebid?

20 MR. HIGHT: No, it doesn't.

21 COMMISSIONER ACKERMAN: Doesn't go to number two?

22 MR. HIGHT: Correct.

23 COMMISSIONER ACKERMAN: We have to rebid then?

24 CHAIRPERSON CORY: It depends upon when something
25 goes wrong. If it goes wrong before the award, then we can

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1 award to the second.

2 MR. HIGHT: It's in the Commission's discretion.

3 CHAIRPERSON CORY: If something goes wrong after
4 the award of the contract, then we'd have to rebid it.
5 Is ~~that~~ a valid statement?

6 MR. HIGHT: Correct.

7 CHAIRPERSON CORY: Any other questions?

8 Without objection, subject to those caveats,
9 we will approve the award to the high bidder in Item 25.

10 Item 26, this is approval of public hearing on
11 -- oh, this is the geophysical, and where are they
12 located?

13 MR. HIGHT: This is a permit that would allow the
14 applicants to do the survey anyplace within the waters of
15 the State. They would notify the State in advance, and
16 we would notify the fishermen, and it's an 18-month permit.

17 CHAIRPERSON CORY: It's an 18-month permit, and
18 the burden, then, is on the person wanting to do the
19 geophysical work, that they have to go settle up with all
20 the local folk, the fishermen, and the people they might
21 be getting in the way with, and if they can't, they can't
22 proceed. They've got to come here.

23 MR. HIGHT: Correct, Mr. Chairman.

24 CHAIRPERSON CORY: Anybody in the audience on this
25 item?

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1 Yes, sir.

2 MR. VEEK: Mr. Cory, Members of the Commission,
3 my name is Brad Veek. I'm the Associate Director for
4 Facilities at the University of Southern California
5 Institute for Marine and Coastal Studies.

6 As such, I have the responsibility for ship
7 scheduling for our fleet of two or two dozen oceanographic
8 research vessels, depending on the definition, of which the
9 well known research vessel, Valero 4, is the largest.

10 In all, we conduct about 40 to 50 formal cruises
11 per year which perform geological or geophysical activities.

12 Additionally, I am the National Chairman of the
13 Research Vessel Operators' Council, an operational and
14 technical support element and committee of the University
15 National Oceanographic Laboratory System, UNOLS.

16 UNOLS and RVOC is comprised of about 19 member
17 universities and about 30 associate member universities
18 throughout the nation. The primary federal sponsor for
19 UNOLS is the National Science Foundation; in the State of
20 California, Scripps Institute of Oceanography, the
21 University of Southern California, and Moss Landing are
22 full members of UNOLS. To the north, Oregon State
23 University and University of Washington, and University
24 of Alaska are members; as well as to the west, University
25 of Hawaii.

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1
2 There are scientists at universities and colleges
3 throughout the nation who utilize the oceanographic research
4 vessels of the aforementioned institutions, including
5 ourselves, who may be adversely affected by the terms,
6 definitions, conditions now specified in the draft proposed
7 Geological-Geophysical Survey Permit form.

8 I wish to register an objection on behalf of the
9 RVOC and on behalf of USC's Institute of Marine Coastal
10 Studies to the form and substance of the proposed permit,
11 and to recommend alternative actions to protect the rights
12 of concerned parties and yet will ease the burden on the
13 conduct of oceanography by the fleet of oceanographic
14 research vessels in the academic fleet.

15 We should be sure ~~that~~ a rifle is used instead
16 of a shotgun when drafting regulations. The aim is better,
17 and less damage is done to those on the periphery, as we
18 find ourselves.

19 I assume that the target in this case is conflict
20 between mutually exclusive uses and users of the same
21 ocean space, with the resultant risk and damage to the
22 environment and/or equipment, such as crab pots, fishing nets,
23 pipelines, and so forth.

24 We share those concerns, but we disagree on the
25 proposed solution because the permit as written will
interfere unduly with basic oceanographic research.

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T2
1 As one of those that will necessarily have to assure compli-
2 ance locally and specifically deal with the provisions at our
3 institution, I find these conditions expensive in terms of
4 time and money. It's tedious and it's unnecessarily
5 burdensome in its demands for access essentially to every-
6 thing at no cost to the State, but at a cost to the
7 institution. It requires us to produce reports and
8 documents that we probably would not otherwise produce
9 except to meet the requirements of the permit. We feel
10 it's inappropriate for basic research.

11 There are some specific items which I have
12 discussed by phone with Dr. Gaal down in Long Beach, and I
13 will give them these in a long letter specifying them, but
14 they are in essence these:

15 On the notice item, my recommendation is that
16 the permittee notify the State Lands Commission, but the
17 burden on the State Lands Commission to send out all the
18 letters, forms, notices, postings and so forth. Roughly
19 sketching out, based on past geological-geophysical research,
20 we would require about 220 mailings per year. The files,
21 the forms, the postage, the time, et cetera, would eat up
22 something on the order of 100 man hours per year. Not a
23 lot, but that's 100 of my man hours, that's two and a half
24 weeks of my personal man hours, just to operate the
25 Valero 4. Similar problems are put on other universities.

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1 Equipments, the draft regulations or permit
2 calls for, quote,

3 "Any activity or method not expressly
4 stated above is prohibited."

5 Unquote. It names some things, some equipments and so
6 forth, none of which are used by the Valero #, but all of
7 which are used for geophysical and/or geological research.
8 And yet it says anything not named is expressly prohibited.

9 I don't think that was the intent of the
10 regulation. I talked to Dr. Gaal again. He said, well,
11 we didn't mean it to be that way. We means like drilling
12 operations, that sort of thing.

13 But what has to happen is the regulations or
14 provisions have to be rewritten. We recommend --

15 CHAIRPERSON CORY: What happens if they're not
16 rewritten?

17 MR. VEEK: Then essentially, legally, technically,
18 we couldn't conduct oceanographic research operations using
19 a box core, a fiber core, a piston core, a vibra core,
20 a Van Deen grab, grab sampler, and so forth.

21 CHAIRPERSON CORY: Under these regulations?

22 MR. VEEK: Yes, sir.

23 CHAIRPERSON CORY: You can do it under other
24 permits.

25 MR. VEEK: No, sir. There are no other permits

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1 to do it.

2 CHAIRPERSON CORY: Staff?

3 MR. VEEK: I've got eight or ten specifics like
4 that.

5 CHAIRPERSON CORY: Let's try to understand whether
6 or not as you perceive them you are correct, or there is
7 another solution, because I'm not sure, from what I've
8 read, that that is the thing.

9 MR. FABER: My name is Robert Faber. I'm staff
10 counsel for the Commission.

11 The way the permit is structured, if an individual
12 applicant wants to use other than the specific types of
13 things which are in the draft permit that we have outlined
14 here, they can apply for additional things, and so long as
15 they fall within certain parameters, the staff was
16 particularly wanting to exclude the use of explosives,
17 and that's the reason why we listed specific activities and
18 said all others were omitted. If they want to conduct other
19 activities, they can put that on their application and
20 this permit will cover that, as far as that particular
21 question's concerned.

22 MR. VEEK: We're talking about on the order
23 of 40 to 50 times a year to specifically detail out really
24 inconsequential equipment, and I recommend that the
25 regulations be redrafted to mention all the tools of the

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1 oceanographers, such as box cores, vibra cores, and so
2 forth, and say that if they're not mentioned or -- correction
3 mention the ones that you don't want them to use without
4 permit, and if it's not mentioned, then it's all right to
5 use it.

6 CHAIRPERSON CORY: Currently are you getting
7 permits?

8 MR. VEEK: No, sir. We've had no permit. This
9 is a new requirement laid upon us.

10 MR. TRAVEN: I think we have to distinguish between
11 regulations and permits.

12 The regulation was considered by the Commission
13 back in February. These are the actual implementing permits.

14 If they put it in the permit one time, they
15 don't have to make renote of it every time they use it,
16 just one time.

17 COMMISSIONER MORGAN: Well, it's not clear to me.

18 Have the concerns that you're raising here been
19 raised to the staff previously?

20 MR. VEEK: Yes, I raised them by phone, and I
21 was assured, well, it's a nonproblem.

22 CHAIRPERSON CORY: When?

23 MR. VEEK: Yesterday.

24 MR. WILLARD: We've been working on this.

25 CHAIRPERSON CORY: What happens if we do not

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1 adopt these today?

2 MR. TRAVER: I think what can be done very
3 easily here is all of the people that are happy with the
4 permit the way it reads, those can all be issued and we can
5 work out something with them independently and come back
6 later.

7 MR. HIGHT: The regulations have been adopted,
8 and what we're doing is adopting the permit for the named
9 individuals in the calendar.

10 I think we can work out this gentleman's problems.

11 CHAIRPERSON CORY: But the item before us --

12 MR. HIGHT: Is the adoption of the permit.

13 MR. VEEK: I have seven additionally equally
14 serious items.

15 CHAIRPERSON CORY: What is before us is a permit
16 for a specific list of people?

17 MR. HIGHT: Correct.

18 CHAIRPERSON CORY: Have you applied for a permit?

19 MR. VEEK: Yes, sir, we have.

20 CHAIRPERSON CORY: And they are on the list and
21 that permit will not do you any good?

22 MR. VEEK: Not the way this is written.

23 CHAIRPERSON CORY: If you are excluded from that
24 permit, are you in any kind of time problem if you don't
25 get a permit today?

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1 MR. VEEK: Yes, sir.

2 CHAIRPERSON CORY: What is your problem?

3 MR. VEEK: The problem is we're doing oceanographic
4 research weekly, and we have a lot of research to do. And
5 the next time permits can be or will be considered, I've
6 been informed, is not until January, possibly February.

7 CHAIRPERSON CORY: That's not true. Whoever
8 informed you of that, we can solve that problem.

9 MR. VEEK: We literally are having this kind of
10 activity, that is geological-geophysical research, done on
11 a weekly basis.

12 CHAIRPERSON CORY: As I understand the pressure
13 from the other permittees, they have very specific
14 commercial things that they need to get on with.

15 MR. HIGHT: That's correct, Mr. Chairman.

16 MR. CORY: So if we exclude his permit, get
17 together at the staff level immediately and get that
18 calendared for the next week or the next --

19 MR. HIGHT: Next Commission meeting.

20 CHAIRPERSON CORY: We can see that you have your
21 permit.

22 MR. VEEK: Can we be blessed to do our oceano-
23 graphy without being illegal?

24 CHAIRPERSON CORY: No, I cannot do that. I don't
25 think the Commission has the power to do that. I don't

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1 know what the enforcement provisions and mechanisms are,
2 but I don't think -- I'm not sure we can, in fact, carte
3 blanche, approve, not knowing what it is. Our enforcement
4 staff is small, and I'd be surprised if you had any
5 difficulty between now and the next meeting, but I can't
6 assure you of that.

7 MR. HIGHT: Mr. Chairman, can I suggest that the
8 permit be approved conditionally on the fact that the staff
9 can work out the permit form and then --

10 CHAIRPERSON CORY: Well, he's got a whole lot of
11 technical points, and I'm not so sure that the Commission
12 is the place to work out those technical problems.

13 MR. HIGHT: Well, my point was, the staff would
14 work it out and then seek your approval.

15 MR. VIEK: We would rather have the permit and
16 work out the details with the staff on the ins and outs of
17 it.

18 It was my understanding that this hearing was to
19 discuss the terms of the permit in general, not just --

20 MR. HIGHT: We can come back next month with an
21 amendment to the permit.

22 MR. TRAVER: Right, that would be far better than
23 waiting, trying to issue a separate permit.

24 COMMISSIONER ACKERMAN: Is there a term that could
25 be inserted to take care of this problem for 30 days?

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1 MR. WILLARD: I think the terms are broad enough
2 that the majority of his problems are already solved.
3 I think he should get his permit.

4 MR. VEEK: Well, I'm not sure that's true.
5 I think the problems are much broader than USC. I think
6 they address the entire academic research fleet, including
7 instate and out-of-state research oceanographic institutions.

8 COMMISSIONER MORGAN: Well, the purpose of the
9 permit is not to close down your research operation,
10 number one.

11 Number two, you have to share the ocean with
12 other folks, and just because I think what you're doing is
13 good doesn't mean that everybody else thinks so.

14 So, you're going to have to talk to the staff, I
15 believe.

16 MR. VEEK: I have some recommendations that will
17 be most beneficial to the staff and I think to the State
18 as well.

19 COMMISSIONER MORGAN: I'll be happy to go along
20 with the conditional permit, and if there are any problems
21 you want to raise that are specific, I think the staff
22 needs an opportunity to look at those and talk to you about
23 them.

24 MR. VEEK: How can I get the provisions changed?
25 Can the staff change the provisions of the permit, or do we

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1 come back here again?

2 CHAIRPERSON CORY: It will have to come back
3 because it'll have to take some staff work to get it ready
4 to come back. What I want to do is give some instruction
5 to get that thing out.

6 The staff is instructed to go ahead and approve
7 this one, with the understanding that you bring those
8 necessary changes back to us. And if necessary changes
9 are needed in the regulations to accommodate what I am
10 shocked and dismayed that the act of omission on the end
11 hasn't solved this problem before it got here --

12 MR. VEEK: I'm sorry, but I got the notification
13 late, as did Scripps, as did Moss Landing, and I'm speaking
14 on their behalf as well as mine.

15 CHAIRPERSON CORY: Our prior Executive Officer
16 I would have expected this of. The current one, I'm
17 surprised.

18 (Laughter.)

19 CHAIRPERSON CORY: We have just converted from
20 an oil thug to an academician.

21 MR. VEEK: That being the case, will we get a
22 permit today and work out the details with the staff?
23 I may be back.

24 CHAIRPERSON CORY: That's fine. That's what we're
25 here for, but I think it's not productive to try to negotiate

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1 things. We have to be educated in these technical details
2 so we can talk to you about it.

3 Without objection, then, we will go ahead and
4 approve Item 26, unless there are other comments in the
5 audience or questions from Commissioners,

6 We will go ahead and approve it with the under-
7 standing that the staff will work out the details, and
8 if changes are necessary, they will be brought back at the
9 next Commission meeting.

10 MR. HIGHT: In addition, Mr. Chairman, we'd like
11 to thank all the fishermen who have spent a lot of time in
12 workshops working on the terms of the permit. We'd like to
13 thank Bob Kaneen, Vicki Cook, and Lee Bafalon of WOGA.

14 CHAIRPERSON CORY: You solved the problems of
15 the fishermen, the oil industry, and academia hates it.

16 Item 27 is a request for exemption of the oil and
17 gas lease from competitive bidding. This is a land-locked
18 park in Colusa County.

19 Anybody in the audience on this item? Any
20 questions from the Commissioners?

21 Without objection, Item 27 is approved as
22 presented.

23 Let's see, PG&E wants an extension to dredge
24 material from the Oakland Inner Harbor from electric
25 cable crossings.

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1 Any questions? Anybody in the audience?

2 All right, that's fine.

3 Item 29 is off calendar.

4 Item 30, notification of intent by the City of
5 Long Beach to expend \$414,000 on roads in the vicinity of
6 the Entertainment Center.

7 EXECUTIVE OFFICER DEDRICK: Correct.

8 CHAIRPERSON CORY: That's a lot of roads for
9 video games.

10 Anybody in the audience on this item?

11 Questions from Commissioners?

12 Without objection Item 30 is approved as presented.

13 Second modification of the budget is basically
14 title changes to conform titles for worn out shot putters.

15 (Laughter.)

16 CHAIRPERSON CORY: Questions from Commissioners?

17 Anybody in the audience on this great item?

18 Without objection, Item 31 is approved as
19 presented.

20 Item 32, you're going to tell us that Long Beach
21 is not sinking but it's rising?

22 EXECUTIVE OFFICER DEDRICK: And part subsidence.

23 CHAIRPERSON CORY: There are flat spots in Long
24 Beach and part of it is rising.

25 EXECUTIVE OFFICER DEDRICK: Nothing bad's happening.

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1 CHAIRPERSON CORY: Anybody in the audience on this
2 item? Questions from Commissioners?

3 It's nice we care so much about that one city.
4 There's no other city in the State that is so well monitored.

5 COMMISSIONER ACKERMAN: Whatever goes up must come
6 down.

7 CHAIRPERSON CORY: All right, we've received the
8 information in Item 32.

9 Item 33, this is a request to settle the appeal
10 of the assessment with the County of Los Angeles on the
11 Long Beach Unit for 1977. This is \$333,000 we're getting
12 back on taxes.

13 Anybody in the audience on this item? Questions
14 of Commissioners?

15 Without objection, Item 33 is approved as
16 presented.

17 Item 34, since we did so well in '77, you want
18 to appeal the assessment of '82.

19 Anybody in the audience on this item? Questions
20 of Commissioners?

21 COMMISSIONER ACKERMAN: One question on the
22 appeals.

23 Are the appeals from '78 through '82 still out-
24 standing, or are we kind of working our way back out?

25 MR. THOMPSON: We didn't appeal for those

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1 particular years.

2 COMMISSIONER ACKERMAN: We still have a '78 appeal
3 out, don't we? Isn't that the last pre-Prop. 13 appeal on
4 the assessment?

5 MR. THOMPSON: I thought this was the last pre-
6 13, '77. After that, they're all post-Prop. 13. I don't
7 think the first year we didn't appeal. This would be the
8 third appeal.

9 COMMISSIONER ACKERMAN: All right.

10 CHAIRPERSON CORY: Any other questions?

11 MR. THOMPSON: The question of how to treat the
12 tax still hasn't gone through the Court of Appeals yet.

13 CHAIRPERSON CORY: Without objection, Item 34
14 is approved as presented.

15 Item 35 is off calendar.

16 Item 36 is approval of the extension of the dead-
17 line for executing the boundary line agreement and
18 settlement in Morro Bay. That was a technical problem of
19 signatures.

20 MR. HIGHT: Correct, Mr. Chairman.

21 CHAIRPERSON CORY: Anybody in the audience on this
22 item? Questions from Commissioners?

23 Without objection, Item 36 is approved as
24 presented.

25 Item 37, 1000 STEPS, is off calendar.

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1 Item 38, this is a request to approve the report
2 covering the actual revenue and revenue estimates.

3 Where are we on revenue estimates?

4 MR. TROUT: Mr. Chairman, the actual revenues
5 estimated are shown on page 225A. It shows that unfor-
6 tunately for Suzy, 370 million estimated for '82-83;
7 350 in '83-84; and 320 in '84-85. Those revenues subject
8 to the distribution of tideland oil revenues.

9 On the advice of Mr. Thompson and Mr. Everette
10 and the staff down there, we have done this estimate based
11 on holding the price per barrel steady at around 24.50
12 composite.

13 MR. THOMPSON: You can see that particular price
14 per barrel, how long it's gone flat for the last five
15 or six months. We see no indication that it will go up in
16 the short term.

17 CHAIRPERSON CORY: Any indication it'll go down?

18 MR. THOMPSON: Possibly.

19 COMMISSIONER ACKERMAN: Are these the same
20 estimates that were given in the May revision?

21 EXECUTIVE OFFICER DEDRICK: Yes.

22 MR. TROUT: Except for '84-85, that's correct.

23 THOMPSON: There haven't been any further
24 drop in price on that. There have been some drops last
25 month on the summer crudes, Santa Maria, and some of the

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1 others dropped 59 cents. The market is not real firm. You
2 can see from some of the selloffs, small amounts of crude.

3 COMMISSIONER MORGAN: When do we do our next
4 full-blown estimate? Is it November?

5 MR. THOMPSON: This is the full-blown estimate.
6 We're now giving you through '84-85.

7 COMMISSIONER MORGAN: Right.

8 MR. TROUT: Ms. Morgan, the next scheduled one
9 would be in February or early March, just before the
10 Commission's budget hearings. However, we usually do an
11 informal one for the Department of Finance and the Governor
12 just before the budget goes to stone.

13 CHAIRPERSON CORY: That's not what the budget
14 normally turns to.

15 (Laughter.)

16 COMMISSIONER MORGAN: I understand these
17 technical terms. Thanks.

18 CHAIRPERSON CORY: Any other questions?

19 All right, we will approve the report in Item 38.

20 Item 39, this is approval of the subventions to
21 cities and counties for the year '82-83 Fiscal Year.

22 Is there anyone in the audience on this item?

23 Questions from Commissioners?

24 Without objection, Item 39 will be approved as
25 presented.

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1 Item 40 is a request to grant authority to execute
2 a contract for moving services for the State Lands Commission
3 office in Long Beach.

4 You're moving out of the building to the State
5 Building?

6 EXECUTIVE OFFICER DEDRICK: That's correct.

7 CHAIRPERSON CORY: And there's some problems
8 as to whether or not the Miller building south is going
9 to allow you to move on time?

10 EXECUTIVE OFFICER DEDRICK: There is your
11 question, as to whether we'll be able to move on time.

12 CHAIRPERSON CORY: What happens if you can't
13 move?

14 EXECUTIVE OFFICER DEDRICK: Then we pay an extra
15 \$24,000 a month in rent to remain in the building we're in.
16 Our lease was terminated by General Services as of September
17 8th, upcoming, in anticipation of our moving that week,
18 Labor Day week, to the new State building.

19 If we can't move on September 8th, therefore, in
20 the meantime, the landlord raised the rent on the place
21 we're in, and so somewhere we're going to have to find
22 \$24,000 a month or move out in the street.

23 CHAIRPERSON CORY: But you know you will not be
24 able to move on the 8th?

25 MR. TROUT: We will not know that until next

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1 Tuesday.

2 EXECUTIVE OFFICER DEDRICK: We're told that it's
3 unlikely in the extreme. We would like authority to get
4 a mover in case something breaks right.

5 CHAIRPERSON CORY: The problem deals with making
6 sure the building's safe to move into; is that correct?

7 EXECUTIVE OFFICER DEDRICK: The Department of
8 General Services wanted the building to be tested in advance
9 of people moving in in order to be sure there was nothing
10 wrong with it. Whether that is still what's holding us up
11 or not, I cannot answer. We were told that there's something
12 else that's a problem, and we don't know what that something
13 else is, and won't know.

14 CHAIRPERSON CORY: Legionnaires' Disease.

15 COMMISSIONER MORGAN: You're going to have to do
16 a month-to-month lease?

17 EXECUTIVE OFFICER DEDRICK: We have no choice at
18 the moment.

19 CHAIRPERSON CORY: Will the current landlord let
20 you stay there, or has he leased the space out to someone
21 else?

22 MR. TROUT: We understand that he had the space
23 leased to another tenant and was expecting us to be out.
24 Us being in a holdover capacity prompted him to come up with
25 a higher figure. In fact, almost triple rent for the

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1 period following September 8th. We've talked to the
2 Department of General Services about their picking up the
3 tab, since this is beyond the capacity of our budget to
4 handle, especially on a protracted extension. It may be
5 that several other State agencies are in the same predicament
6 if the delay is significant and that General Services and
7 the agencies will have to go to the Legislature
8 for a deficiency.

9 CHAIRPERSON CORY: It's easy enough for you to
10 just look at the fiscal implications, not being housed in
11 Long Beach, in terms of what the alternatives may be.

12 MR. TROUT: There's some very good alternatives,
13 which so far have been unavailable to us, in spite of the
14 Chairman's pleas to the General Services.

15 CHAIRPERSON CORY: All right, that's where we are.
16 The sooner we move you, the better, I guess. Might as
17 well get you next to that toxicity,

18 EXECUTIVE OFFICER DEDRICK: Those oil men are
19 tough.

20 CHAIRPERSON CORY: Without objection, authority
21 will be granted as requested in the item.

22 (The last agenda item, Item 41, has
23 previously been submitted in a
24 prior transcript.)

25 --oOo--

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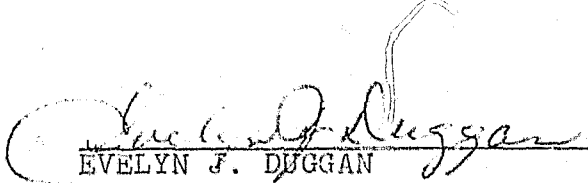
CERTIFICATE OF SHORTHAND REPORTER

1
2
3 I, EVELYN J. DUGGAN, a Shorthand Reporter of
4 the State of California, do hereby certify:

5 That I am a disinterested person herein; that
6 the foregoing meeting of the State Lands Commission was
7 reported in shorthand by me, Evelyn J. Duggan, and there-
8 after transcribed into typewriting.

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

12 IN WITNESS WHEREOF, I have hereunto set my hand
13 this 23rd day of September, 1982.

14
15
16 
17 EVELYN J. DUGGAN
18 Shorthand Reporter
19
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23
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25

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MEETING
STATE OF CALIFORNIA
STATE LANDS COMMISSION

CITY HALL
915 I STREET
SACRAMENTO, CALIFORNIA

EXCERPT OF PROCEEDINGS

ORIGINAL

THURSDAY, AUGUST 26, 1932

EVELYN J. DUGGAN
Shorthand Reporter

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COMMISSIONERS PRESENT

1
2 Kenneth Cory, State Controller, Chairperson
3 Susan Morgan, Representing Mary Ann Graves,
4 Director of Finance
5 David Ackerman, Representing Mike Curb,
6 Lt. Governor

COMMISSIONERS ABSENT

7
8 None

STAFF PRESENT

9
10
11 Claire Dedrick, Executive Officer
12 Robert Trout, Assistant Executive Officer
13 Robert Hight, Esq., Commission Counsel
14 Greg Taylor, Assistant Attorney General
15 Jack Rump
16 Diane Jones
17 Jane Smith

ALSO PRESENT

18
19
20 Henry Snyder, Private Citizen, Los Angeles
21 Joseph R. Steele, President, Boat Owners
22 Associated Together (B.O.A.T.)
23 Gilbert R. Saldana, Mayor, City of Avalon
24 Charles E. Greenberg, Esq., Catalina Conservancy and
25 Santa Catalina Island Co.

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- 1 James Radcliffe, Esq., Island Navigation Company, Inc.
- 2 Harrison W. Hertzberg, Esq., Catalina Marine Services, Inc.
- 3 Rose Mary Woodlock, Catalina Marine Services, Inc.
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P R O C E E D I N G S

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(Excerpt of Proceedings)

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CHAIRPERSON CORY: Item #1 is consideration of comments concerning the bid package on Catalina.

We are up against some problems at the tail end of the session, so part of this is likely to have somewhat of a floating quorum in and out. To accommodate those breaches of things that have to be done on a legislative schedule, I am likely to get called away from here shortly.

COMMISSIONER MORGAN: I'm leaving in 15 minutes.

CHAIRPERSON CORY: She will be here for 15 more minutes.

We will appoint David as Hearing Officer so that we can keep some things going as we go along. If somebody has to leave, we can proceed in that regard.

The other question, I guess, is the order of appearances.

I guess I'll try to have those people representing the possible bidders go last. The general public will comment first, then have the bidders respond and proceed that way.

I will try to go through the notes. Do we have all of the requests of people who wish to speak in? Have they been turned in?

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1 Do we have Mr. Henry Snyder?

2 MR. SNYDER: Mr. Chairman, Members of the
3 Commission, I hate to be first.

4 I speak on my own behalf as a boat owner, as one
5 of the mooring owners, and as a member of the B.O.A.T.
6 Committee that sent in Admiral Steele's report.

7 We all recognize that there has been -- this
8 has been a very difficult problem for the Commission and
9 for the staff, and that the Commission has gone a long
10 way toward resolving most of the problems. We thank the
11 Commission for the consideration that we, as mooring
12 owners, have had, and we hope that we can continue to
13 cooperate.

14 Our position has been to try to retain the
15 status quo. We want to retain Catalina Island in the form
16 that we've known it for many years.

17 We would prefer that the administration of the
18 Island remain in the hands of a proven operator, whom we
19 know, rather than some faceless identity whose only motivation
20 has to be financial gain.

21 In this hearing, we for the most part agree with
22 the comments made by Admiral Steele on behalf of B.O.A.T.
23 We, as mooring owners, are perhaps more experienced users
24 of the moorings. We're not quite sure that all of the
25 special services, save for the safety and repair, are

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1 required or necessary. But I think that time will probably
2 determine that a little better.

3 Most of the services we've come to expect are
4 related to emergencies and that sort of thing, whereas
5 many of the things that are in the agreement are ongoing and
6 perhaps add to the costs that we, as mooring users, have
7 to pay.

8 We would prefer, however, that in this hearing,
9 in this process, that the Commission consider the aspect
10 of continued retention of Catalina as a valuable recreational
11 facility be the most important consideration, rather than
12 the dollars and cents that are involved in the rental.

13 I estimate that the revenue from moorings is perhaps
14 in the neighborhood of a million dollars a year, and the
15 revenue that the State can gain from this cannot be that
16 great that this great and valuable facility becomes a
17 commercial venture.

18 This year, primarily because of the increased
19 rent to the State, mooring fees to all users increased
20 in the range of 35 to 40 percent. As a result, mooring
21 use is down substantially from previous years, and at the
22 same time there are many more boats anchoring in the waters
23 surrounding the island.

24 The Catalina waters are not suited to large-scale
25 anchoring because we have, like most of the California

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1 coast, a narrow shelf that is available for boats anchoring
2 and mooring. Because of the high daily mooring fees,
3 many inexperienced and, perhaps, reckless users choose
4 to anchor.

5 Last week I spent at Cherry Cove, and the moorings
6 were not filled until Saturday night. There were people
7 anchoring long distances offshore and in dangerous conditions.
8 I spoke to several people who were unanchored, and they told
9 me they spent the night fending off boats that were
10 slipping their anchors. This was on a quiet and normal
11 weekend. If we had a storm, or a Santa Ana, then it's
12 very likely that there would be some serious dangers.

13 The mooring owners and mooring lessees pay,
14 we estimate, about half of the total revenue that comes
15 from use of the moorings. We would recommend that those
16 -- that all the fees, and primarily the daily fees, be
17 reduced so that the use of moorings is encouraged.
18 This would, I think, create greater mooring utilization,
19 create a larger revenue, and we hope eliminate some of the
20 danger factors.

21 COMMISSIONER ACKERMAN: How much should they be
22 reduced?

23 MR. SNYDER: I would think in the range of 15 to
24 20 percent.

25 Since we pay a large share of the money that's

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1 involved, we suggest that there should be some provision
 2 for our involvement in decisions on rules and proceedings
 3 for the use of the meetings. I'm talking particularly
 4 with reference to some of the addendum to the proposal that
 5 we received relating to correspondence between the
 6 Commission and the operator. Those are items that we're
 7 very much involved in. We think we'd like to be heard if
 8 there are changes that affect those things.

9 Thank you again for your consideration and for
 10 what you've heard so far.

11 CHAIRPERSON CORY: If I could ask you about your
 12 comments on one item.

13 One of the things, as I looked at the lease,
 14 that sort of presents a problem is that I would guess that
 15 a proposed bidder or lessee, because of the services, safety,
 16 convenience, so forth, to the boating community there
 17 required by the lease, would necessarily have to make
 18 financial adjustments, because he has to provide those
 19 services.

20 I'm concerned as to how we could make sure that
 21 those services are, in fact, continued to be rendered, that
 22 we don't end up at this point, you know, proceeding on a
 23 lease and on day one something happens, and in the future
 24 they end up with not looking after the service components,
 25 since we, as the lessor, are not the recipient of the services

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1 and can't, perhaps, directly monitor.

2 If we had some sort of a forgiveness of the leased
3 fee, so there was an economic incentive for the people to
4 provide that, or, putting it another way, that there would
5 be economic disincentive if they didn't provide those
6 services, would this tend to give you the protection that
7 you need in terms of the safety and convenience mechanisms
8 that are contemplated in that lease?

9 MR. SNYDER: Safety and convenience are important
10 factors, and I think they have to be considered in relation
11 to what the government has to do anyway. I'm talking about
12 the Coast Guard requirements, and the county lifeguard,
13 and safety procedures.

14 I think that perhaps to require the operator
15 to maintain or duplicate those same services could be
16 expensive.

17 CHAIRPERSON CORY: I'm talking about the ones
18 that are listed currently in the proposed contract.

19 MR. SNYDER: Other services, such as the harbor
20 patrol, fuel and water, those are essential.

21 CHAIRPERSON CORY: Those are the types of things
22 I'm talking about. Those are specifically listed in the
23 lease.

24 If we, in essence, provide financial incentive,
25 say, in the reduction of the lease payment if they provide

1 those services, and if they don't they have to pay the
2 State a greater amount --

3 MR. SNYDER: I think that would be a very, very
4 good thing. I think it's essential.

5 One of the problems that we see is that you
6 could grant a lease to somebody who does not have these
7 facilities. Not only they don't have them, we're sitting
8 out there with nothing at all. That's very important.

9 Of course, those provisions in the lease about
10 the 60-days cancellation, there would be a hiatus with no
11 lease.

12 CHAIRPERSON CORY: That's one that the staff
13 is aware of, and we'll try to deal with that.

14 Thank you, Mr. Snyder.

15 Mr. Steele.

16 MR. STEELE: Mr. Chairman, Commissioners,
17 I'm Joe Steele, President of the Boat Owners Associated
18 Together, an organization of some 35,000 boat owners in
19 the State of California.

20 We have already submitted detailed comments on the
21 draft. I won't repeat them here.

22 I assume that you've read them, but I'd like to
23 emphasize the fact that you're dealing with a recreational
24 asset. The State of California spends millions of dollars
25 developing items such as forests, parks, lakes, beaches,

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1 trails, camp sites, lodging ramps, none of which pay their
2 own way. On the other hand, the Santa Catalina submerged
3 lands have not had a penny of State money spent on them.

4 We boaters do not ask for the preferential
5 treatment given to hikers, campers, swimmers, fishermen
6 and the like, but we do hope that you will not make us pay
7 too dearly for these moorings which cost the taxpayers
8 nothing.

9 As Mr. Snyder pointed out, the moorings are not
10 being used this year like they were in the past. I think
11 we made this point in our letter to you.

12 I'd like to comment on a few of the comments
13 which have been submitted by other parties.

14 Mr. Hertzberg doesn't indicate in his letter
15 just who he represents. I'd just like to make it clear
16 he does not represent the boating public.

17 He makes quite an issue about the Local Coastal
18 Plan for Catalina. This Local Coastal Plan has survived
19 public meetings in the County of Los Angeles, has been
20 approved by the County Board of Supervisors, is now before
21 the Coastal Commission, where there will be many more
22 hearings before it's over. It seems to us that this is not
23 the forum to cover the Local Coastal Plan at all, and it
24 shouldn't have anything to do with them.

25 Another item Mr. Hertzberg mentions is, he

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1 implies that fees should be charged for anchoring at
 2 Catalina. Now, the Federal Government preempted the field
 3 of anchor regulation over 100 years ago. Should any
 4 attempt be made to charge fees for anchoring in the
 5 territorial seas, I'm sure it would be strongly opposed,
 6 not only by the boaters, but by all maritime interests.

7 The County of Los Angeles made a pitch to you for
 8 money from the boaters for services which they provide at
 9 Catalina on some half-million dollars a year. You might
 10 note that in 1981, the County of Los Angeles collected
 11 \$3.49 million in boat taxes, which is many times what they
 12 have spent to boating services. So, their fees have been
 13 well paid by the boaters in the past.

14 Mr. Chairman, you asked Mr. Snyder about a means
 15 of assuring that some of the services were actually
 16 provided over there. We have made one suggestion of which
 17 we think will help in that. That is, that the entire
 18 bid proposal of the successful bidder be made a part of the
 19 lease.

20 As we understand it right now, there is really
 21 nothing in the lease that does require those services,
 22 and your current draft bid proposal asks that the bidders
 23 describe what they've proposed to do, but we don't see
 24 anything there that shows that this will be actually a part
 25 of the lease, so if they fail to do it, they will be in

1 violation of the lease.

2 COMMISSIONER ACKERMAN: As I understood the
3 Chairman's comment just a minute ago, if I heard him right,
4 he suggested, I think, to do just that. Even go one step
5 further, not just making it a part of the lease, but also
6 providing some economic incentives that those provisions
7 be upheld.

8 MR. STEELE: We recommended in our letter that
9 performance bonds be required. As a matter of fact, we
10 gave a lot of thought to just how much would be a fair
11 and reasonable bond.

12 Our recommendation was that it be a bond large
13 enough to allow the State to hire on short notice another
14 operator to operate for a year and a half.

15 Now, that would be a rather large bond, but
16 as it stands right now, we're very much afraid that
17 the operator might walk out on us and leave us with nothing.
18 A performance bond, we think, would pretty much guarantee
19 that the operator complied with the lease.

20 If you put the terms in the lease for the services,
21 and then you have a performance bond, well the bonding
22 company will make sure that he complies with the bond.

23 CHAIRPERSON CORY: What order of magnitude do you
24 think that should be, \$10, \$100,000, or \$1,000,000?

25 MR. STEELE: I'm not sure what it will cost to

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1 get somebody into running those leases. It would be on
2 the order of millions, not \$500,000.

3 I don't claim to be an expert on that, but a lot
4 of equipment is required. Certainly you ought to be able
5 to get someone in that would take care of it until you can
6 get another permanent operator.

7 That's what we have in mind. Thank you very much.

8 CHAIRPERSON CORY: Thank you, sir.

9 I've got cards from Mr. Larry Fisher.

10 MR. FISHER: I'm not going to testify.

11 CHAIRPERSON CORY: All right. Is there anyone
12 else, any other people representing prospective bidders
13 that wish to make a comment at this time?

14 All right, Mr. Greenberg.

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

16 I also will not repeat. My name is Charles
17 Greenberg. I represent the present lessees, the
18 Conservancy on Catalina and Santa Catalina Island Company.

19 I would also not repeat the comments that I made
20 in writing in response to your bid solicitation.

21 I would like to make some comments on the bid,
22 on the other comments that were made on your bid solicitation
23 by other parties, particularly the ones made by the Pioneer
24 Chicken Company, because I think they raise an issue that
25 I don't believe either ourselves or --

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1 CHAIRPERSON CORY: When you say Pioneer, is that
2 the same as Catalina Marine Services?

3 MR. GREENBERG: I'm not sure what you call your
4 subsidiary company, but probably so. It's Pioneer Takeout,
5 Mr. Hertzberg?

6 MR. HERTZBERG: We sell chicken. It's Catalina
7 Marine Services.

8 CHAIRPERSON CORY: Fine, I was trying to keep
9 track of where we are here. Thank you.

10 MR. GREENBERG: The comment I would like to make
11 is with respect to the comments made by Mr. Hertzberg --
12 let's call it Mr. Hertzberg -- and those comments' effect
13 on this Commission's move forward with the bid solicitation
14 with performing an Environmental Impact Report in the
15 process.

16 It has always been our position, and I think
17 our response is clear, that if at the end of the process
18 the Commission awarded the lease to some other bidder than
19 ourselves, it seemed rather clear to us, seemed darn clear
20 to us, that an Environmental Impact Report would be
21 required, and that it simply is not possible to move
22 forward under a categorical exemption.

23 Mr. Hertzberg's comments raised the specter of
24 whether or not it would be possible for the Commission to
25 move forward without an Environmental Impact Report, even

1 if it ultimately awarded the new lease, or the lease
2 supplement, to its present lessees.

3 In going through Mr. Hertzberg's comments, I think
4 you'll see why. Mr. Hertzberg first questions whether or
5 not free anchorages cause greater damage to marine life by
6 the anchors being dragged along the bottom than setting up
7 permanent mooring docks. The text says, "does", but I
8 assume it's docks.

9 That's a very sophisticated environmental question.
10 He then requests this Commission to consider
11 building of more dockage rather than free anchorages in
12 some of the coves in Catalina. I think that's a good
13 question.

14 Now, for social reasons, we would urge the
15 Commission not to do that because we believe free
16 anchorages are a very important part of the total recreation-
17 al complex in Catalina. But I think the question bears
18 serious environmental study.

19 Mr. Hertzberg, when discussing the problem of
20 trash pickup, asks the question: What impact -- he asks
21 whether we pick up trash from all of the boaters who use
22 the facilities, whether that is an additional burden on us,
23 and he asks what impact has the initial trash pickup
24 service had on the limited dump facilities on the Island.

25 Again, I think that's a very good question.

1 It's an environmental question, and Catalina is, shall we
2 say, garbage sensitive environmentally. I would think --

3 CHAIRPERSON CORY: Trouble about gum wrappers,
4 right.

5 MR. GREENBERG: Mr. Hertzberg also points out that
6 the Local Coastal Plan estimates that up to 800 boats
7 can be accommodated in anchorage areas. He assumes that
8 means 800 new moorings, and I think the Local Coastal Plan
9 really is talking about the combination of free anchorages
10 and existing moorings, but I'm not sure. The language
11 is somewhat ambiguous. In either case, the effects of that
12 kind of increase of use certainly should be environmentally
13 studied.

14 Mr. Hertzberg asks the question of whether for
15 the purpose of this lease would the necessary substitution
16 of an equal facility to the existing gasoline facility
17 at the pier be categorically exempted as a replacement on
18 the same site or is construction of less than 3,000 feet
19 of floating dock.

20 Again, that is a very good question, and the
21 answer to it depends a lot on the specific way that
22 activities would be carried out on that particular dock.
23 But nevertheless, it seems clear that it is worthy of serious
24 study.

25 Mr. Hertzberg urges the State Lands Commission to

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Reconsider the question of fuel sales by the lessee in order to ensure the boating public an uninterrupted source of fuel. That has economic consequences, and that also has environmental consequences, that decision, one way or the other, and that should be studied.

Mr. Hertzberg asks - states that the development of the Two Harbors areas, I suppose under the LCP concept, would require removal or disuse of many mooring and shore services.

Now, in this comment and in many others, frankly, we believe that Mr. Hertzberg has completely mischaracterized, doesn't understand, what the Local Coastal Plan effort is. I'm sure you do. It is a guideline produced by government after input from everybody, produced by LA County and the Coastal Commission as a guideline to the future of Catalina. The particular developments he's talking about may never be built, and before being built would have extensive environmental studies and permit review.

We have constantly said we anticipate perhaps seven to ten years before the first of any development in Two Harbors would be built. The Local Coastal Plan clearly calls for 99 percent of the presently undeveloped area of Catalina to stay that way. And the Local Coastal Plan then calls for the addition of certain recreation-type improvements in the Two Harbors area.

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1 Mr. Hertzberg's unhappy with that and believes
2 those developments may very well adversely affect the
3 leasing of mooring spaces, or the operation of the mooring
4 spaces.

5 "I don't think he's right. In fact, I'm pretty
6 sure he's not right, but it is a question which you should
7 address at this point in determining what should be the
8 terms and conditions of the operation of the leasehold that
9 you are concerned with.

10 I'll just take one more, because we could go
11 through many of those other comments.

12 To illustrate the point, Mr. Hertzberg asks how
13 have the harbor patrol persons been selected; how many
14 have completed first aid training, how many have completed
15 CPR training; how are the reserve harbor patrol persons
16 selected; what training have they had for this position.

17 All of those kinds of questions are probably
18 pretty good ones. There's a question of what should be
19 the standards, if any, set forth in your lease for this
20 type of personnel for the protection of public safety and
21 the environment. I would suggest that whoever your lessee
22 is, that kind of matter probably should be studied.

23 He also suggests that because of the -- and quotes
24 from the proposed Local Coastal Plan, that if construction
25 ever starts on the land, that measures be taken to assure

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1 that it will not impact the bidders' ability to use the
2 leased spaces.

3 I'm not sure if that should be studied here or
4 in an EIR if you're going to do the development on land,
5 but certainly it probably ought to be looked into.

6 I have about ten other comments of a similar
7 nature, but I think I've illustrated the point well enough.

8 CHAIRPERSON CORY: Have you made all ten of those
9 in writing?

10 MR. GREENBERG: No, I have not, because, as the
11 other bidders, we have just recently received the comments
12 from other participants. We would anticipate -- I don't
13 know if it'll do the Commission any good, but we anticipate
14 making comments in writing within the next few days.

15 CHAIRPERSON CORY: That'll be fine.

16 MR. GREENBERG: I think the point is, circling
17 all around back to the original point, that although we
18 really don't share a lot of concerns that Mr. Hertzberg has
19 expressed, we really feel that a lot of the textural
20 material he has given you will fall by the wayside, as the
21 other loose calls and accusations against present practices
22 have fallen by the wayside over the last year when they've
23 been investigated, and really upon investigation, none of
24 them have turned out to be factually so.

25 Nevertheless, he has made some points which require

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1 under CEQA, environmental study and discussion pursuant
2 to CEQA rules of the possible alternatives in the
3 alternatives section under CEQA to the way the present lease
4 contemplates being carried out.

5 I'd also like to respond to Chairman Cory's
6 thought, which I thought was a very good one, as to how
7 the State Lands Commission can make sure that services
8 are being carried out.

9 First, I'd like to say that in our judgment
10 we do not believe that enough of the services required by
11 the bidders are specifically set forth in your bid package.
12 Some care should be taken to better define that quantum of
13 services which you believe your lessee should carry out
14 towards the boaters.

15 Some of the other comments made in response to your
16 bid package talk in those terms, such things as restrooms
17 and laundry services, that kind of thing. And other kinds
18 of services that the boaters rather obviously need.

19 When the question arises, how do you make sure
20 that those services will be faithfully carried out once you
21 put them in? I share the Chairperson's concern, perhaps
22 from a similar background.

23 This bald spot on the back of my head arose when
24 I represented the City of Long Beach, attempting to tie down
25 in paper rights the commercial lessee, Specialty Restaurants,

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1 on the Queen Mary. And I want to assure you, I tried
 2 Specialty Restaurants six ways to Sunday and gave the
 3 City all the paper rights in the world to deal with
 4 performance problems that occurred during that lease. And
 5 yet, the City found itself, as a practical matter, in a
 6 position where it would be most unfortunate and counter-
 7 productive to attempt to foreclose Specialty Restaurants'
 8 interests on the commercial portion of the Queen Mary,
 9 because what are you going to do? Have the whole thing
 10 fall apart for a number of years while you argue about these
 11 things in the courts?

12 I think that is a valid concern on the Commission's
 13 part, to make sure that a bidder doesn't go in, the whole
 14 thing prove unprofitable or untenable, or some other
 15 reason, and walk off and leave the State and boaters,
 16 and us, as adjoining land owners, with a big mess.

17 COMMISSIONER ACKERMAN: Mr. Steele recommended
 18 or made comment on a performance bond.

19 Have you given any thought to that as the hook,
 20 so to speak?

21 MR. GREENBERG: Yes, sir. I have made a mental
 22 note that the next time I'm in a drafting position, I think
 23 that's what I would do.

24 The problem, as already indicated by the
 25 Chairman, is how to define the quantum of the performance

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1 bond. I think I would define it in terms of the capital
2 involvement required for each bidder to be prepared to
3 perform the services to put the equipment in, and to carry
4 out those activities on an ongoing basis. That you would
5 have to determine from the bids that come in, as to how
6 each bidder purports to do that.

7 COMMISSIONER ACKERMAN: You would suggest then,
8 a different bond amount from each bidder based on financial
9 evaluation?

10 MR. GREENBERG: Yes, probably a different dollar
11 total. And the reason for that, obviously, is the
12 advantage my client, because we've already -- you know that
13 we can at least have the equipment in being to carry out
14 those obligations. You don't know that we will, in fact,
15 be able to carry them out or will carry them out over the
16 next few years, and you're entitled to protection from us
17 on that.

18 What you face from other bidders is, when they
19 face the economic reality of what it's going to cost to
20 purchase and put into effect all of the equipment necessary
21 to administer the lease, you don't even have any guarantee
22 that's going to be done.

23 CHAIRPERSON CORY: As opposed to the performance
24 bond, which really, just having been in the insurance
25 business, gives you the ability to argue with an insurance

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1 company that has a deep pocket that, if you win, you can
2 get paid, but it also has perhaps more lawyers, if not
3 better lawyers, in terms of litigation.

4 What about if we instead changed the rental rate,
5 and then gave the lessee a credit for each day that he
6 performed, so that the net rental amount and required
7 say that portion of it to be handled by a letter of credit?

8 MR. GREENBERG: Let me respond to both parts of
9 what you've asked.

10 As to the first part, it's been my experience
11 as a lawyer that a bonding company is not an irresponsible
12 entity, and it's been burned lots of times. Before it will
13 issue a performance bond, it will require that it has a
14 hammer on the person who is being bonded, so that it can
15 be rationally assured that that person will perform. What
16 it gives the government is the opportunity, when there is
17 nonperformance, to call that bonding company, who then
18 can call the bidder or lessee and say, "You perform or
19 I'm going to foreclose on the security that I've got that
20 you've put up for this bond." In my experience, that's
21 generally been a very effective way to go.

22 Second, as to the concept of reducing rental
23 to the State if the services are faithfully performed,
24 conceptually, as a practical matter, I'd like to think about
25 how to make that work. I don't think I'm prepared to say

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1 today how that works.

2 Conceptually, I think there is one problem you
3 should consider, with one respect to it. I think the
4 services we're talking about are not those services which
5 are optional to protect the interests of the public.

6 CHAIRPERSON CORY: I'm talking about the reduction
7 would be a real pain. It would be cheaper to provide them
8 than not. Each day.

9 The problem I have is, to foreclose on a surety
10 instrument, you have to have gross violations, and an
11 accumulation of small nicks in nonperformance gets overlooked,
12 to the adverse position of the boater:

13 And to assure that somebody, if they aren't
14 going to perform, if it were a meaningful nick, it takes
15 care of these little things that become, over the course of
16 a year, a major annoyance that would be very hard to get
17 a surety company, say, yeah, we're going to move on our
18 security. It's hard to prove the case, and this would
19 sort of say, "You're in violation. You didn't perform these
20 services, so it costs you \$500 today. You didn't make your
21 garbage pickup."

22 MR. GREENBERG: It's an interesting concept.

23 I wonder if the Commission would perhaps consider
24 going the other way, set a base rate and automatic
25 penalty should there not be performance of services?

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1 CHAIRPERSON CORY: We're talking about the same
2 general area.

3 MR. GREENBERG: I have not had a real chance to
4 think through as to how to make that work, and would
5 appreciate the opportunity to do so.

6 I have two final comments that I would like to
7 make. The first comment is this: Perhaps it is my
8 professional cynicism. Again, having represented the
9 City of Long Beach and its dealings with subsidiary
10 corporations, I don't mean anything personal with that
11 particular subsidiary corporation that is involved here,
12 but that again proved to be one of those difficult problems
13 we had in leasing on the Queen Mary, is that every corporation
14 wanted to come in with a subsidiary to try this brand new
15 thing out. And no matter what paper guarantees that we
16 tried to draft and take the obligation back to the parent
17 corporation, we had a great deal of difficulty with that
18 concept in making it work in the real world.

19 Some of those difficulties we sketched out in our
20 response to bid comments. I would think that, at a minimum,
21 you would need a complete guarantee of the obligation by
22 the parent, so I would think serious consideration should
23 be given to requiring that you just deal directly with
24 the parent.

25 And the last comment I would like to make is, I

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have not been in this arena of this particular lease for a very long time, as others have been. I've only been involved since October and November, and I know there was a lot of water under the bridge before that time.

CHAIRPERSON CORY: Let me apologize. The Director of Finance needs to talk to me rather urgently.

David is going to continue this thing. I will be returning shortly.

This will be in the record and I will look at this portion of it, the portion I miss, I assure you. I'm sorry.

MR. GREENBERG: I know there was a lot of water under the bridge before I became involved, and before I really became acquainted with the Island of Catalina in the way that I have since that time.

I'm from Long Beach, so I've been over there a few times, but I really didn't quite understand the uniqueness of that asset to the people of California before I became involved and had a chance to spend a lot of time over there.

I'm not a boater, so I had to experience, down at Two Harbors, the kind of operations that are done down there for the boaters.

Also, I would say that it would be just a terrible thing, just a terrible thing if this Commission did anything

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in its deliberations which would change or lead towards a change in the basic character of recreational activities down at that end of the Island.

Government being government, and I was in it for a long time, once you start regulating and putting things in pigeon holes, putting things in categories, and rules and regulations, the free-flow kind of association that's down there probably will dry up, and probably will be subject to an awful lot of regulation, which makes sense in general, but has a million exceptions, and then the government's got to umpire every exception and you end up with a big mess. I think that comment is true no matter who you end up with as your bidder.

I would ask this Commission to take real care, that your lessee take real care, in attempting to avoid it, because there's something unique and special that I haven't seen anywhere else in California. It's the nearest thing we have to a Greek island, I think, and to the way things operate down there.

The other thing that I've learned is, it seems as though we have a Charge-of-the-Month Club operating here, and it works both ways. I don't think my client's been guilty of it, but I think probably Pioneer Chicken has suffered from this as much as us. There is a Charge-of-the-Month that goes on. And the

1 rumors sweep through the Capitol that this or that or
2 the other thing has happened; and your staff has got to
3 spend hours and hours investigating the particular charge,
4 and it's always turned out those charges are false, every
5 time. Because we are the existing operator, I suppose
6 we've had the brunt of it simply because --

7 COMMISSIONER ACKERMAN: You haven't shared all
8 of it.

9 MR. GREENBERG: That's true. But I would think,
10 perhaps, the Commission would start thinking about the fact
11 that every single time one of those kinds of charges has
12 been made, they have been investigated, and they've turned
13 out not to be true. This is worse than the Army latrine
14 rumor, I think. And it is somewhat McCarthyistic, and I
15 was somewhat upset to see in Mr. Hertzberg's comments a
16 continuation of this kind of approach.

17 I would really urge everybody involved to deal
18 with the merits and the issues that are serious enough,
19 rather than go through that kind of a process, where the
20 motives, intent, deep dark secret six levels down, whatever,
21 of the various parties involved, and that's been true
22 whether they're boaters, Pioneer or my client, are brought
23 forth as some kind of overriding issue. We've had enough of
24 that. I'm sick and tired of it, and I suspect everybody
25 else is sick of it. I hope we don't have anymore of it.

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1 That's about all I would have to say at this time.
2 COMMISSIONER ACKERMAN: One question on clarification.
3

4 Earlier you mentioned that you would like to see
5 specifically the services outlined, even more detailed than
6 they are.

7 MR. GREENBERG: That's correct.

8 COMMISSIONER ACKERMAN: You said just a second
9 ago that overregulation tends to be counterproductive.

10 I wonder, do you still say that we can be more
11 specific on services and back off on specifics somewhere
12 else?

13 MR. GREENBERG: Certainly I think you can say,
14 for instance, you've got to have laundry facilities; you've
15 got to have restrooms; you've got to have this or that.

16 You don't have to say how they're to be done,
17 nor do you have to measure out a latrine and do that sort
18 of thing.

19 COMMISSIONER ACKERMAN: You feel just the general
20 words are too vague in the lease?

21 MR. GREENBERG: I think so. And I think the
22 storm warning system is not specifically set forth. There's
23 some other aspects that are not specifically set forth, and
24 I think some of them are mentioned in the comments.

25 If it would be of help to the Commission, I would

1 be very happy to sit down in the next day or two and
2 attempt to deal with that problem.

3 COMMISSIONER ACKERMAN: Have you had a chance to
4 review Mr. Snyder's comments that were written?

5 MR. GREENBERG: Mr. Snyder's comments that were
6 written? No, I don't believe so.

7 COMMISSIONER ACKERMAN: He went in very detailed
8 length to specific points as far as services, types of
9 services and the same concerns. You might want to take a look
10 at his comments as well.

11 MR. GREENBERG: Sure.

12 COMMISSIONER ACKERMAN: Any questions?

13 EXECUTIVE OFFICER DEDRICK: I just want to ask
14 for clarification.

15 I don't see why you need laundry facilities, things
16 like that, for destination. You know, we don't have them
17 in the delta. And you just don't expect to have to do
18 laundry and so forth.

19 How do you relate that to a necessary service to
20 boaters? I don't see that at all.

21 MR. GREENBERG: I suppose it depends on the length
22 of stay as a destination.

23 All I can say is that those services are now
24 provided and are heavily used. If you'd like, we'd be
25 glad to give you information on how heavily used and try

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1 to figure out by whom.

2 It seems to me people come to Catalina, some of
3 them come overnight, and they're not going to use them.
4 Some come for a weekend, and they may or may not use them.
5 Some come for a week or two, and they need the services.

6 EXECUTIVE OFFICER DEDRICK: But those services
7 would be more for the benefit of the permanent mooring
8 owner, the owner who spends a longer period there, rather
9 than a service for the general public that come over for
10 two or three days.

11 MR. GREENBERG: Yes, except my friends who do that,
12 if they can, come over for a week or two vacation there.
13 And some of the time they're going to be moored on our
14 joint moorings; other times they're going to be circling
15 through the coves, so forth, and they use Two Harbors
16 as a base of their operations for the extended vacation.

17 EXECUTIVE OFFICER DEDRICK: What one normally
18 does in the rest of the world when sailing, you find a
19 public dock, and you take your dirty laundry up to the
20 local laundromat, and then start sticking quarters in.

21 MR. GREENBERG: That's correct. But we don't
22 have that situation here.

23 EXECUTIVE OFFICER DEDRICK: I don't mean to
24 pursue that.

25 MR. TAYLOR: Mr. Ackerman, there are a couple of

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1 things I'd like to clarify that came up during Mr. Greenberg's
2 testimony.

3 One is with reference to the pier at Isthmus Cove.
4 The pier at Isthmus Cove consists of a permanent structure
5 together with a series of attached floats, and it has
6 been the interpretation of the staff that all of that
7 constitutes pier, as much as the permanent portion is
8 too high to the water to be used.

9 I have some photographs that I have here which
10 I'd like to have included in the administrative record.
11 It's seen that it is integrated with the structure, and
12 therefore that the gasoline facilities and water facilities
13 there, and the ability to get on and off of boats is
14 dependent upon all the facilities provided in that. There-
15 fore, they are excluded from the current lease.

16 These photographs show that it is an integrated
17 facility, and that that facility has historically existed
18 since approximately 1970.

19 During the winter months, certain of the floats
20 are removed for safety purposes, since the Isthmus Cove
21 is subject to Santa Ana winds attacks.

22 Therefore, the comments of Mr. Hertzberg with
23 regard to whether or not the floats which are attached to the
24 permanent portion of the pier structure are in the lease,
25 the answer is they are not in the lease. They are excluded

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1 from the lease and are a matter of separate negotiation
2 with the Island Company.

3 Anyway, there are a total of ten photographs
4 that should be in the administrative record showing that
5 the pier is an integrated structure, permanent and
6 temporary, depending upon the seasons for use.

7 COMMISSIONER ACKERMAN: Those will be part of the
8 record.

9 MR. TAYLOR: The second problem is with regard
10 to the ability of a lessee to charge for freight going to
11 and from the shore.

12 This Commission, by its prior action, has excluded
13 from the lease any interference with reasonable access to
14 the shore.

15 There are two outstanding matters, one with regard
16 to the Island Company with the piers, and second with
17 regard to Mr. Finnie with regard to his wharfage or his
18 drayage concession from the company. They are excluded
19 and handled separately. Therefore, under the existing
20 lease, there is no ability for the lessee to charge for
21 freight coming across the lease premises through the fairways
22 or areas allowed for access to the upland.

23 COMMISSIONER ACKERMAN: We'll take a five-minute
24 break.

25 (Thereupon a brief recess was taken.)

1 CHAIRPERSON CORY: We're ready to reconvene.
2 The recess having concluded, the next person on
3 the cards --

4 MR. GREENBERG: I'm sorry, Mr. Chairman, one
5 last comment.

6 Now that I've had three minutes to give thought
7 to the Commission's --

8 COMMISSIONER ACKERMAN: Maybe we shouldn't
9 have recessed.

10 MR. GREENBERG: -- Idea of attempting to secure
11 the services by some sort of bonus provision, should they
12 be faithfully performed, or penalty provisions should they
13 not be faithfully performed, it sounds to me that that
14 would be an excellent methodology, the kinds of small
15 failures that would produce services that was expressed
16 by Commissioner Ackerman when we were discussing it.

17 That leaves, I think, unsettled what the Commission
18 does in terms of the very, very major kind of failures or
19 breaches should an operator find that the lease is very
20 unprofitable, or they don't want to go forward with it.
21 There's really a major glitch in what happens.

22 We would suggest in that regard you can probably
23 combine and make more reasonable both kinds of requirements;
24 that is, either a faithful performance bond, or something
25 of that nature, which is limited to major kinds of detail

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1 which would be easier to administer, and then take care of
2 the smaller failures to perform services in the method that
3 you have previously discussed.

4 The final comment I'd like to make, I'd like
5 to make it for the record and make it absolutely clear.
6 We simply cannot see any way that the Commission can move
7 forward with this process without doing an Environmental
8 Impact Report if for no other reason than the very
9 substantial public controversy that has surrounded this
10 matter from the beginning to the present day.

11 We would like to point out in the advance sheet
12 that just came down a brand new case, which we've already
13 mentioned to the Attorney General's Office, Brentwood
14 Associated for No Drilling, Inc., the City of Los Angeles,
15 where Chevron wanted to drill a test well on a golf
16 course. Certainly wouldn't seem as though a test well
17 would call for that kind of thing. But it was very, very
18 controversial.

19 The court held, by the way, even on its facts,
20 that an Environmental Impact Report was required. But then,
21 it carefully went out of its way to say that because there
22 was substantial controversy in the matter, an Environmental
23 Impact Report should be prepared, and referred to Section
24 15081 of the Resources Agency Code, which indicates, and
25 I'll quote one sentence:

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"There may be a difference of opinion on whether a particular effect should be considered adverse or beneficial, but where there is or anticipated to be a substantial body of opinion that considers or will consider the effect to be adverse, the lead agency should prepare an EIR to explore the environmental effects involved."

That's irrespective of whether or not there are, in your judgment, truly significant environmental effects. Just the existence of that kind of public controversy requires the preparation of an Environmental Impact Report. We want to make sure our position on that is clear for the record.

That will be the end of our comments.

Thank you.

CHAIRPERSON CORY: Okay, thank you.

The next person is Mr. James Radcliffe, representing the Island Navigation Company.

MR. RADCLIFFE: Thank you, Mr. Chairman, Mr. Ackerman, and staff.

My name is Jim Radcliffe, and I'm here representing Island Navigation Company, one of the three original bidders.

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1 I would say at the outset, my primary reason
2 for being here is to evidence to the Commission the
3 continuing interests of Island Navigation Company in
4 bidding.

5 I also do not intend to rehash matters that
6 have been presented either to the Commission staff or by
7 way of response to the proposed solicitation to bid.

8 However, I would like to indicate to the Commission
9 that as far as Island Navigation Company is concerned, we
10 feel two things. We felt at the outset, under the original
11 bid, and understood that the terms of the original
12 solicitation to bid were that there would be no environmental
13 impact, and we bid it on that basis. It is our feeling
14 now, and I assume that it is the staff's feeling, that in
15 response to this solicitation to bid, that it is also
16 possible.

17 We are prepared, as I mentioned in my letter
18 which appears in the comments to the solicitation to bid
19 package that was given out today and mailed to the
20 bidders, that Island Navigation Company is prepared to make
21 its bid based on the bid package as is or as the
22 Commission may subsequently modify it.

23 There are, however, three points that we felt
24 deserve some consideration. One is, which is presently,
25 and it was brought up by way of staff a moment ago, that

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1 excluded from the bid package or the lease premises are
2 the pier facilities, as it were, at the Isthmus.

3 One of the requirements of the solicitation
4 to bid is providing of shore boat services in the Isthmus
5 area as well as in the other lease permit areas. Presently,
6 there is a charge by the Santa Catalina Island Company
7 for a 28-foot shore boat of \$42 to dock at that pier at
8 the Isthmus.

9 One of the points made in our letter to the
10 Commission in response to Ms. Dedrick's letter was that
11 some consideration should be given to either equalize
12 or at least determine what charges are going to be made,
13 so that the bidders can make their proposals for shore boat
14 rates based upon the charges that are going to be made simply
15 to tie up at that pier, if that is the pier that is going
16 to be used.

17 There is a subsequent charge, as mentioned in
18 my letter, once patrons are on the dock to get ashore.
19 That has nothing to do with us. That is a charge directly
20 to the customer.

21 We also indicated in our letter, and I'd like
22 to reemphasize it today, that Island Navigation Company
23 accepts the standards of services as provided in the
24 current operations in the proposed bid package, even though
25 some of these stated services historically have never been

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1 given and, in fact, aren't being given today.

2 The other major point that I would like to mention
3 is that we feel, and we propose to make a bid based upon
4 our feeling, that there is not a sufficient disparity of
5 charges to the mooring owner who owns his mooring hardware
6 and the mooring owner who doesn't. The fees that are
7 presently being charged, there's only a \$70 difference to the
8 mooring owner who owns his mooring, pays \$70 less than the
9 mooring sublessee who does not own the mooring hardware.

10 Now, all of the bidders have agreed, I think, that
11 the mooring hardware involves an investment of about \$1500.
12 The maintenance of it varies, but I think all of the bidders
13 would concur the annual maintenance runs somewhere between
14 \$200 and \$400 annually.

15 The net result is, under the present fee structure,
16 the mooring owner who owns his hardware is subsidizing,
17 apparently, the mooring owner who does not.

18 I would feel and I'll suggest to the Commission
19 that some consideration should be given in the fee structure
20 to take some of that burden off the mooring owner and place
21 it where it presumably belongs, to the mooring sublessee
22 who does not own the mooring gear.

23 There was a great deal of talk about turning
24 the Island into a commercial venture. Island Navigation
25 Company has no intention to get involved in, and I raise

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1 this only because it seems to me there's a lot of pouring
2 over of what are mainland services being provided and
3 what are mooring services to be provided. I think the
4 Commission should give some real consideration to whether,
5 and the subject came up, but whether a laundry, for example,
6 is a function of an administrator of tidelands and submerged
7 land leases. There are a number of those fringe or pouring
8 over kinds of services that we feel are not part of the
9 administration of the tidelands and submerged lands of the
10 state.

11 CHAIRPERSON CORY: Have you given a specific
12 list of what you think constitutes the pouring over type of
13 services to the staff?

14 MR. RADCLIFFE: Yes, I will be happy to do that,
15 and I was also going to suggest that there are some things
16 that have come up today, and I know Mr. Greenberg indicated
17 that they would follow it up with a letter, and if it's
18 satisfactory to the Commission, I'd like to do the same in
19 that specific area.

20 The one other thing that I would mention, and
21 intend to keep my comments brief, is that in reviewing
22 what has come to be called the Pioneer Chicken application,
23 or the comments, rather, to the proposed bid, we would join
24 with them and join with them, I think, strenuously that
25 there should be some provision in this lease maintaining a

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1 minimum amount of moorings -- if it's 720 -- that at least
2 that amount would continue to be available to the public
3 during the lease term.

4 There's a lot of talk, and has been a lot of talk,
5 about what the maximum is, or how many moorings there are,
6 but I don't think there's sufficient safeguards in the
7 present lease to assure that the boating public and yachtsmen,
8 and those who use these moorings and recreational moorings,
9 these are the moorings I'm referring to, that these will be
10 maintained, minimum, over the period of the lease.
11 Those are the things that I think the Commission could
12 address itself to.

13 I appreciate the opportunity to be here and to
14 talk to the Commission. But as I say, my primary reason
15 for being here is not to rehash what has gone over and
16 has been touched upon by the other bidders, but to evidence
17 our continuing interest in the bid process.

18 Thank you very much.

19 CHARIPERSON CORY: Thank you very much.

20 The next person is Mr. Hertzberg.

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

22 In analyzing all the comments made by our
23 primary adversary, the Island Company, I draw one basic
24 conclusion. That is, that they would prefer to have
25 you draw specifications for those who wish to bid

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1 that only they could meet and nobody else could meet.

2 Everybody I've seen come up here as a boater --
3 I'm a boater. I get over there as much as, if not more
4 than anybody, and I've probably got as fine a fishing
5 machine as anybody on the coast.

6 Talk about the status quo. They want the status
7 quo. What is the status quo?

8 For 35 years, you want to go back to \$19,000 a
9 year that they were paying. Status quo is this, gentlemen:
10 There's 736 moorings they admit; about 705, or thereabouts,
11 are either allegedly owned by somebody or leased to
12 somebody on a sublease basis. There are 12 moorings for
13 the public of the State of California in a public park,
14 and there are 42,300 slips, starting from Santa Barbara
15 to San Diego, that have access to the Catalina Island.

16 The status quo -- you represent the people of this
17 State. This is a public park and the status quo is that
18 they have left 12 moorings for that public. That does
19 not include probably an equal number of boat owners who
20 trail their boats.

21 Yet you heard testimony here when this first
22 started that people were paying 40, 50 and \$60,000 for
23 mooring. Look at the list of lessees. You'll see that
24 they're all -- half of them are probably yacht clubs.

25 How does the regular Joe get a mooring in

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1 Catalina. He calls up. We call up, first come first serve,
2 and there's 12 of them. Sometimes there's more because
3 people don't show.

4 Now, it's even gone further in the lease.

5 If a fella owns a mooring, he can now designate who else
6 is going to use it if he doesn't go. That's in the lease
7 that's presently executed. So, you have now eliminated
8 those moorings for public use.

9 I submit that's the status quo that people are
10 talking about, and that's the hiatus that has been created
11 because the same company, without competition, has had a
12 monopoly for in excess of 35 years.

13 And they talk about us in selling chicken. We're
14 not interested in selling chicken. We've got a place
15 to sell it in Avalon, just bought it.

16 I think additionally, we are not a subsidiary of
17 Pioneer Chicken. We're a subsidiary of Trans Pacific
18 Enterprises, Incorporated, which Pioneer Chicken is also
19 a subsidiary.

20 There's been talk about a performance bond.
21 If that's what the Commission wants, fine.

22 I think that the Commission should really
23 consider not to try to bond anybody out of this deal.
24 Don't make it so rough that nobody else can get involved
25 in it. Don't make it so onerous that nobody else can bid

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1 or meet the bid. Be reasonable.

2 Gentlemen, I have here a document which was
3 delivered to the County of Los Angeles, called Two Harbors,
4 Santa Catalina Island Resort Recreation Community Concept
5 Plan. This calls for a \$500 million development at the
6 Isthmus by the Santa Catalina Island Company.

7 Pursuant to that, the County of Los Angeles
8 issued a Local Coastal Plan which is proposed for the
9 Catalina Island. It proposes the building of 150 residential
10 units, 2,000 resort residential units, a lodge calling for
11 400 to 600 -- that's a hotel -- rooms, a commercial develop-
12 ment of 80,000 square feet, and other housing, a total
13 development of 1,045 acres, and schools, et cetera, a whole
14 city of approximately 5,000 people.

15 Now, I submit to you that the Island Company is
16 in a position, if they have this lease for 15 years, who
17 are they going to favor in treatment to those moorings,
18 and the submerged lands; and the use of the submerged lands?
19 They're going to favor their own economic interests, their
20 own \$500 million development. And this is all proposed,
21 I would submit and offer it as an exhibit together with the
22 Local Coastal Plan. It is a built-in, absolutely positive
23 conflict of interest.

24 The plan itself calls for pigeon holing of
25 boats in three separate sites. What's a pigeon hole? Those

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1 are those structures where you lift them up in the air
2 and shove them in.

3 We have proposed in our comments that the bid
4 package be not one figure, but a percentage to the State
5 with a minimum figure.

6 The basic conflict between the Island Company's
7 giving the maximum rent to the State and utilizing their
8 pigeon holes, which they intend to construct, is diametrically
9 opposed to seeing the State get its maximum dollar.

10 In addition to that, they have proposed to build
11 freight barges, launching ramps, new piers, provision
12 for construction of barge ramps, a staging area for
13 arriving boats similar to what you'll find in Avalon,
14 the glass-bottom boats. A total expenditure of \$1,400,000
15 for piers and ramps, also provision for sea plane facilities.

16 Now, what's that going to do to the boater?
17 It's all in the same water. Who are they going to prefer?
18 Are they going to prefer the people or their investment
19 of \$500 million, or they're going to prefer the boater
20 to get \$13 a night.

21 I would like to submit to the Commission my
22 copy of the Two Harbors concept plan, and also my copy of
23 the Local Coastal Plan in support thereof.

24 COMMISSIONER ACKERMAN: Mr. Hertzberg, are you
25 trying to leave the impression with the Commission that

1 because of the development that will take place on the
2 Island, or alleged development that will take place, that
3 moorings will be removed from the Two Harbors area to
4 accommodate that development?

5 MR. HERTZBERG: Yes, I think they will have to be
6 removed to accommodate the development.

7 COMMISSIONER ACKERMAN: Mr. Radcliffe suggested
8 the Commission could take care of that by specifying a
9 minimum number of moors that have to be maintained. Could
10 that take care of the problem?

11 MR. HERTZBERG: Well, you have to understand, you
12 can only put those buoys in certain places. There's only
13 so much room out there. If you're going to crowd them,
14 then you've got a dangerous condition. From what I've seen
15 out there right now, the way they're placed, it's fairly
16 safe. But if you're going to build larger fairways to get
17 larger boats in and out, to service a tremendous commercial
18 complex in and of itself, you're going to have to crowd
19 them into a smaller area.

20 I don't think that this Commission can sit here
21 and look into a crystal ball and say we can cover everything
22 that could possibly come up. I think the Commission has to
23 take a hard look at the concept plan and see if there are
24 conflict of interests. If it is, then the Commission has
25 to do whatever it has to do.

1 COMMISSIONER ACKERMAN: Just a question for staff.

2 Does the current lease allow for either minimum
3 or maximum number of moorings?

4 MR. RUMP: The maximum number of moorings is
5 specified in the lease, as well as the introductory pages
6 of the lease state that the purpose of the lease is for
7 the maintenance of 736 moorings. To any uncertainty, an
8 additional provision could be added to the proposal.

9 COMMISSIONER ACKERMAN: So there's no provision
10 in the lease that requires that number of moorings be
11 maintained?

12 MR. RUMP: Not in terms of positive language; that's
13 correct.

14 MR. HERTZBERG: I'd just like to comment on services
15 briefly.

16 I get over to Cat Harbor very often. I have
17 never had my trash picked up in Catalina Harbor until I
18 believe it was just recently. I've never seen a patrol
19 boat in any harbor other than the Isthmus, or sometimes
20 in Cat Harbor. But, now, in the last week or two, I've
21 seen them. These services just seemed to come about a week
22 or two before this meeting.

23 All I ask is that we'll meet any reasonable
24 condition; that the Commission give us a fair shot and
25 draw the specifications so that somebody who is interested

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1 in running this business and doing a good job can meet it?

2 All I've heard from my adversaries is that
3 conditions being placed such that there's no way, ~~and~~ if
4 you carry something to Avalon, you can't meet the conditions.
5 I submit that that's all we request?

6 Mary Jane Woodlock, who helped us work on a part
7 of this, is here, and I would like to have her answer
8 some of the detailed questions.

9 MR. WOODECK: My name is Rose Mary Woodlock; I'm
10 an attorney representing Catalina Marine Services.

11 I would like to speak specifically on the
12 Environmental Impact Report issue. That is that we believe
13 we can assume or match the services provided by the Island
14 Company within the constraints of categoric exemptions,
15 that that's no problem at all.

16 We raised other questions of environmental impact
17 in one case with respect to the mooring, where we were
18 talking about environmental mitigation, which I don't believe
19 would require an Environmental Impact Report necessarily.
20 But according to the figures given in the Island Company's
21 Development Plan, which they submitted to the County, they
22 state that about 4,000 boats can be seen at the height of
23 week use during the summer on Catalina Island. Of that
24 number, 30 percent is in Avalon Harbor, and the rest would
25 mostly be in the leased lands.

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1 This seems to be about 25 to 2800 that are located
2 on leased lands. If there are 736 moorings and 800
3 anchorage spaces, according to the County, there is about
4 1200 other boats that are being put somewhere over there.

5 And the question is, these are their own figures,
6 just where are these boats going, and how are they being
7 assessed, and the State getting revenue for them?

8 A statement, again one of the few public pieces
9 of information that one can get about the facilities at
10 Catalina, is the Chart Guide. There's a new one that's
11 dated December 28th, 1981. And there's a statement:

12 "There are no transient slips

13 Reservations are not accepted except at
14 Avalon Boat Stands,"

15 and that's for Avalon Harbor. At Parsons, Howland's,
16 Little Geiger, Buttonshell, and except in the summer
17 Hen Rock, White and Moonstone, boaters may pick up any
18 available mooring without charge, but must vacate upon
19 request of the mooring owner, lessee, or their agent.

20 What does this mean to the way the lease is
21 being run on behalf of the people of the State of California?
22 Where, this year more than ever, the revenue is important
23 to them?

24 Again, it's an interesting experience going over
25 to Catalina. I had that experience for the first time in

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1 my entire life last Sunday, and the conditions were unusual
2 there, praying that it's an ill wind that blows no one good.
3 Several remarks you heard today about increased
4 moorings last weekend were explained to me by three boaters
5 on the boat that took me around to the various coves on the
6 leased land were explained by an unusual Baja surge from
7 the storm created in Baja, California. They pointed out
8 rows of moorings that were empty, and an equal number of
9 boats that had been moved to the back of the cove for the
10 purpose of open anchors so that there would be less damage
11 up front.

12 There are no small boats anchored. They are
13 the biggest, and I'm not a boater, but they're the biggest
14 things I've ever seen in my life. They're not outboard
15 motors that go putting across the channel at all.

16 Another point I would like to make that struck
17 me again, as a member of the public who's ignorant of the
18 ways of yachters, in almost every cove there are signs,
19 from small signs on the Boy Scout Pier stating this was a
20 private pier, to a very large sign that you could see from
21 several hundred yards back in Moonstone Cove stating:
22 "Newport Harbor Yacht Club, Moonstone Cove, Members and
23 Guests Only." And over and over, there were signs throughout
24 that stated that these were private coves.

25 I, as an ignorant public member, represent that

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1 a cove includes water.

2 COMMISSIONER ACKERMAN: Question on that point.

3 Several times that I've been to Catalina, I observed
4 the same signs. If I recall right, and whoever can answer
5 the question may do so, I believe those signs -- my question
6 at the time, too, referred to upland holdings of the yacht
7 clubs on the Island that were leased on the Island, and
8 were not in reference to the water.

9 I don't know who can answer that, but I had the
10 same concern. I mean, they've got shacks and stuff up on
11 the hillside, and that's what they're talking about, members
12 only. So, I had the same concern, how could it say members
13 only.

14 MS. WOODLOCK: I would submit, and we did take
15 slides of them, when you're in a boat looking ~~on~~ to the
16 beach, this is all you see.

17 FROM THE AUDIENCE: Those signs do refer to the
18 uplands.

19 CHAIRPERSON CORY: To belabor that point, they
20 are located physically on the uplands, or are they mounted
21 out in the water?

22 FROM THE AUDIENCE: They are on the upland
23 property.

24 CHAIRPERSON CORY: Is that your recollection?

25 MS. WOODLOCK: In some cases they seemed to be

1 above the tide line, and in some cases they did not.

2 And that would be high tide, which I believe is your legal
3 definition.

4 However, at the same time, some of the signs
5 said that it was a private facility, which I think makes it
6 very clear that this is the shore.

7 On the other hand, when a statement like Moonstone
8 cove members and guests only, I think does raise specifically
9 -- especially when you can see it from the water, you
10 did not have to go on shore to look closely at it, is an
11 important point.

12 We raise the issue of the harbor patrol simply
13 to find out what the existing services are and what we
14 would be required to match. I don't believe that an
15 Environmental Impact Report is necessary. That merely
16 goes to state the standards.

17 Finally, the statement about the freight, we
18 were concerned more about the relocation or interruption
19 of mooring use during that period, since obviously the
20 fairways are not large enough to accommodate the amount of
21 construction materials and other transportation that would
22 be necessary, that that should be included some way into the
23 lease so that the State of California does receive some
24 benefit from the development and diminution of its own lands.

25 CHAIRPERSON CORY: Thank you.

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1 MR. GREENBERG: Mr. Chairman, can I respond?

2 CHAIRPERSON CORY: We have one other person who
3 wishes to speak.

4 The Mayor of the City of Avalon, Gil Saldana.

5 MR. SALDANA: Good afternoon. Thank you very much.

6 The City of Avalon discussed the tideland lease
7 around Santa Catalina Island at their June 24th meeting,
8 prior to the initial hearing you people had.

9 Though the lease does not encompass the City of
10 Avalon and their granted tidelands, the City itself decided
11 to go ahead, after discussion, to support the
12 Santa Catalina Island and Santa Catalina Conservancy in the
13 continuation of the lease of the tidelands. The Council,
14 shortly thereafter, adopted a resolution expressing that
15 support for the tidelands.

16 I wish to present that in a few minutes, but there
17 are two points that I think should be brought up to the
18 Commission that should be taken in consideration in awarding
19 a lease or taking a lease out to bid.

20 The first one has to deal with trash disposal.
21 It makes mention in the lease packet of use of Avalon
22 Municipal site, or used it as an example. The current
23 life span is estimated from five to eight years at that
24 dump site. It is anticipated that if excess dumping is
25 forced upon that dump site, then the life span would soon

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1 shorten to less than five years. This would create an
2 awful burden on the City, and it would put the City in
3 such a position where we would have to push the efforts
4 quicker in replacing or finding a new dump site.

5 Currently, the lessee has a dump site of its
6 own and does not have to concern itself with using the
7 City's. So, it's a factor that the Commission should take
8 into account in awarding a lease.

9 CHAIRPERSON CORY: How large a dump site does
10 the City have? How many acres?

11 MR. SALDANA: Exactly, I don't know. I'd have
12 to refer to the Island Company. They own the land on it.

13 Could you respond to that?

14 MR. GREENBERG: Five acres.

15 CHAIRPERSON CORY: So, in five years, you're
16 going to be needing another?

17 MR. SALDANA: Very shortly, yes.

18 CHAIRPERSON CORY: We've got about seven acres
19 we might be willing to lease you. Come back and see us
20 at that point if the price is right.

21 COMMISSIONER ACKERMAN: Does the City have
22 permanent authority to grant the use of your dump site, or
23 is it first come first serve?

24 MR. SALDANA: The City currently apparently --
25 well, the City does have authority to do that.

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1 COMMISSIONER ACKERMAN: You can exclude people
2 from using it?

3 MR. SALDANA: Not necessarily. The Santa
4 Catalina Island Company is the owner of the land, and they
5 are --

6 COMMISSIONER ACKERMAN: You have a lease with
7 them?

8 MR. SALDANA: We had a lease. The current
9 operator now has a direct lease. The operator is now in
10 negotiations with the City for an exclusive franchise in
11 the operations of dumping in the City and trash pickup in
12 the City.

13 COMMISSIONER ACKERMAN: Any future arrangements
14 would be between the franchisee in that case?

15 MR. SALDANA: Uh-huh.

16 The second point --

17 CHAIRPERSON CORY: Is the dump itself within the
18 City limits?

19 MR. SALDANA: No, it is not.

20 CHAIRPERSON CORY: So that the franchise that
21 you would be granting would be limited to the geographical
22 area, I presume, of your City for the right to pick up --

23 MR. SALDANA: Uh-huh.

24 CHAIRPERSON CORY: And the question of what he
25 does with it is his problem vis-a-vis his lease?

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1 MR. SALDANA: Right.

2 The other point has to deal with housing. Currently
3 the lessees provide their employees with housing.

4 If a different lessee were to come in, they would
5 obviously have to find some location for housing. As it
6 stands now, housing is very scarce in Avalon, and it
7 would create an additional burden of housing, to provide
8 additional employees for the tideland lease areas if they
9 were to come into Avalon.

10 This factor should be a major consideration if
11 a new lessee is selected. They're going to have to provide
12 some sort of housing, or should have the option of providing
13 some sort of housing and not create such a burden on the
14 City itself.

15 CHAIRPERSON CORY: Lots of people want to buy our
16 seven acres.

17 MR. SALDANA: Now what I'd like to do is formally
18 read into the record the resolution that the City has
19 adopted. It's Resolution No. 82-5:

20 "RESOLUTION OF THE CITY COUNCIL
21 OF THE CITY OF AVALON SUPPORTING THE
22 LEASE OF CERTAIN TIDE AND SUBMERGED
23 LANDS TO THE SANTA CATALINA ISLAND
24 COMPANY AND SANTA CATALINA ISLAND
25 CONSERVENCY.

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"The City of Avalon is aware of the lease between the State Lands Commission and the Santa Catalina Island Company and Santa Catalina Conservancy, dated January 1, 1982, for 21 parcels of submerged lands located at Santa Catalina Island as described in said lease for the purpose of providing and maintaining recreational moorings to the boating public. The City of Avalon recognizes the leases on submerged lands in this area have historically been granted to the literal land owner.

"And the City of Avalon acknowledges the past and ongoing efforts of the Santa Catalina Company and Santa Catalina Conservancy in preserving and protecting the environment of the Island, and recognizes that the Island's submerged lands and mooring areas are an important gateway to the Island and must be managed in concert with onshore services and facilities and in the public interest.

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1 "At an adjourned regular meeting,
2 held June 24, 1982, the Avalon City
3 Council unanimously adopted a motion
4 by Council Member Rapson and seconded
5 by Council Member Olsen to support the
6 current lease with conditions.

7 "Now therefore be it resolved
8 that the City Council of the City of
9 Avalon supports the current lease of
10 tide and submerged lands to the Santa
11 Catalina Island Company and the Santa
12 Catalina Island Conservancy, and that
13 the State Lands Commission continue
14 to exclude for the present time, from
15 a lease those tide and submerged lands
16 from the City grant boundary on the
17 City's east boundary to the easterly
18 end of the Island, as well as those
19 tide and submerged lands west of the
20 City's grant boundary in Hamilton
21 Cove to present westerly City boundary."
22 This was adopted the 24th of June, 1982, and
23 I'll submit it to the Commission.

24 CHAIRPERSON CORY: What's that last part about?

25 MR. SALDANA: It references the area that's

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1 already excluded from the tideland lease.

2 CHAIRPERSON CORY: Question: The City has a
3 grant from the State?

4 MR. SALDANA: Right.

5 CHAIRPERSON CORY: For the water in front of the
6 City?

7 MR. SALDANA: Uh-huh.

8 CHAIRPERSON CORY: Do you give preferential
9 treatment to the literal owners in your leasing?

10 MR. SALDANA: No, we do not.

11 CHAIRPERSON CORY: Thank you.

12 MR. SALDANA: Another point is that though the
13 lease is not involved in the Avalon tideland areas, the
14 City of Avalon and the Santa Catalina Island Company
15 and Santa Catalina Conservancy all have the interests of
16 the Island at heart. We all take that into consideration
17 in our operations and in our past records of preservation.
18 Therefore, we feel that in the best interests of the
19 recreational boater and of the Island for the City of
20 Avalon to support the current leases, and for the
21 Commission to withdraw the offer to receive bids.

22 CHAIRPERSON CORY: I have trouble with your
23 position in all of this. You have, in essence, assumed
24 the position of the State in saying we should give
25 preference to the literal owner. You don't give preferential

1 treatment to the literal owner in your handling of it.
2 And in fact, you have gone a step further, that you're
3 operating the lease yourself rather than having a lessee.

4 Yet with all of that, you come in and say, no,
5 you should not do as we do; you should do as we say.

6 Can you help me with that? I'm prepared to
7 basically discount everything you've said because of that
8 position.

9 MR. SALDANA: What you should take into account
10 is the fact that you've got the Island Company, which has
11 been continually running the tidelands. You've got
12 the Conservency, which has taken it over since their
13 beginning. And they have the interests of the Island at
14 heart. It's been a proven factor that they have done this.
15 Specifically when they put 86 percent of the Island into a
16 Conservency for preservation of these kinds of things,
17 so that because they are the literal land owner, they do
18 have a specific interest in the Island.

19 Therefore, we feel it better to have an individual
20 involved in the Island specifically such as the literal land
21 owner, than to have outside interests.

22 CHAIRPERSON CORY: You don't apply that same
23 standard to your own actions?

24 MR. SALDANA: No, we don't. I really don't
25 think it's necessary.

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1 We're the governing body, and we should continue
2 to control the City, and that's one way of keeping the
3 control.

4 CHAIRPERSON CORY: But that would advocate, it
5 seems to me, that concept, philosophically, would say that
6 we, the State Lands Commission, should start operating
7 the lease ourselves, since we're the controlling body,
8 and not have a lessee.

9 MR. SALDANA: But if you allow that in the City,
10 it'll be utter chaos. There's many different literal
11 land owners right along the beach. I'm sure the State
12 wouldn't want um, teen different operators of the
13 tidelands.

14 COMMISSIONER ACKERMAN: What the Chairman is
15 saying, why don't you let the Santa Catalina Island Company
16 manage your mooring operations?

17 MR. SALDANA: Because they're not the literal
18 land owner in a lot of the cases.

19 COMMISSIONER ACKERMAN: I think that was the
20 point.

21 CHAIRPERSON CORY: You see the trouble I'm
22 having. And I'm really wondering, and it also raises another
23 question in my mind, whether or not the question of the
24 grant should be looked at.

25 Is that a statutory grant?

1 MR. SALDANA: Yes, it is.

2 CHAIRPERSON CORY: Intriguing. We could spend
3 full time on Catalina.

4 (Laughter.)

5 CHAIRPERSON CORY: We could keep going forever.
6 Lots of great possibilities with this.

7 (Laughter.)

8 CHAIRPERSON CORY: Any other comments?

9 COMMISSIONER ACKERMAN: One question I have.

10 It was in the resolution, I didn't get the language
11 right, but it said that the moorings or tidelands should
12 be managed in concert with landside operations.

13 I believe there is a provision in the lease that
14 prohibits any connection between landside operations and
15 the moorings.

16 Does that mean that the City also, or the City
17 concurs with the provision we put in this lease? Or the
18 City would oppose that provision of tying mooring operations
19 in this landside development?

20 This was a position that I might point out
21 was one of the first issues that was raised by the boating
22 public in general. We included that in the lease, I think
23 at the early outset.

24 MR. SALDANA: Right.

25 We feel that it is appropriate in this particular

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1 instance for the Island Company and Conservancy, being that
2 they are --

3 COMMISSIONER ACKERMAN: You have a similar provision
4 with the City?

5 MR. SALDANA: In our grant? No, we do not.

6 CHAIRPERSON CORY: Thank you.

7 Is the staff prepared to comment?

8 MR. GREENBERG: I would like to correct just a
9 few facts. Should not take long.

10 CHAIRPERSON CORY: Can you do that in writing?

11 The problem is, if you correct, I'm sure they would want to
12 correct. We would be here forever with everybody correcting
13 everyone's statement.

14 MR. GREENBERG: I suppose that depends on whether
15 or not the Commission takes any action today.

16 So, I think there are certain facts that deserve
17 to be corrected. I'll bow to your judgment.

18 CHAIRPERSON CORY: Take your shot.

19 MR. GREENBERG: It shouldn't take longer than
20 a minute and a half.

21 First, I would just like to address myself to
22 the statements made by Pioneer Chicken which, once again,

23 I don't believe went to the facts of the matter.

24 First, pigeon hole are dry boat storage.

25 That's a landside plan. They should know, it deals with

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1 smaller boats that you take out of the water and you have
2 dry boat storage on. It's the number one priority of
3 the Coastal Commission, the Coastal Act, and everything else.
4 It is not the kind of thing that competes with the moorings
5 that are now in existence, and it is an additional service
6 to the boating public which the Coastal Act mandates
7 and which we are happy to perform.

8 Second, this question of favoring landside users.
9 Mr. Ackerman is not exactly correct. It was not the boating
10 public that insisted on strengthening the language of
11 your subsection J, which prohibits the tie in between
12 the boater and the landside. It was us, in our comments
13 to your first bid solicitation, who insisted on strengthening
14 the existing language that was open so it would be a total
15 prohibition. And there will be no tie in between the use
16 of the moorings by the mooring people and those who have
17 units, if they're ever built landside.

18 However, the City's position is well taken, that
19 the administration of the landside and seaside portions
20 to ensure that there is no such conflict, one of our primary
21 goals, is a valid reason for us continuing to have this
22 lease.

23 Third, for a year we've been hearing things like
24 there's no harbor patrol out there. I mean, throw these
25 in. If you go out there, you don't see any harbor patrol.

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Every time I've been out there, you can't enter a cove, even if there's no boats moored in a cove, without that harbor patrol put-putting out there. Your own staff's been out there a number of times.

I'm sick and tired of this kind of innuendo, time and time again. Ask your staff, because they can answer that question.

Next, numerous boats, no fee -- I don't know what my note means on that.

I'm sorry I got a little upset. It's just that I'd hoped we would not get back to the innuendos.

The signs, the signs on the land. How long have you heard that? There are signs on the land. I'm not saying we like those signs or we don't like those signs on the land. They're there. They are on the land, and they may be even on a private pier that says it's a private pier. If people misunderstand them, they misunderstand them.

The fact is that the Conservancy has guaranteed open access to the Island, has facilities for the public to come on to it at no charge in the coves around the Island, and it is the goal of the Local Coastal Plan which they will carry out to maximize public access to this Island.

I won't respond to anymore, except maybe I will

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1 in writing. I won't take the Commission's time, but it is
2 most upsetting, at this late time in these hearings, to
3 once again have to face the kind of innuendos that were
4 set forth today.

5 Thank you.

6 CHAIRPERSON CORY: Pardon me, before you leave,
7 there's one specific question that you sort of touched on
8 at the end that I was going to ask the staff, and maybe
9 somebody from the Island Company could answer it better.

10 There was reference made to a \$42 fee for docking.

11 MR. GREENBERG: Yes, the facts on that were
12 screwed up too.

13 CHAIRPERSON CORY: Could somebody clarify what
14 that is?

15 MR. GREENBERG: Mr. Bombard can clarify.

16 MR. BOMBARD: I have no idea where they would get
17 a fee like that. We do have a dockage fee at the pier.

18 CHAIRPERSON CORY: What is that?

19 MR. BOMBARD: It wouldn't equate to \$42 for a
20 28-foot boat, though.

21 CHAIRPERSON CORY: What is the fee?

22 MR. BOMBARD: I'm not sure what it is right
23 now, to tell you the truth. It isn't anything like that.

24 CHAIRPERSON CORY: It seems necessary to find out
25 what that fee is.

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1 MR. BOMBARD: I will let you know.

2 CHAIRPERSON CORY: Make sure that everybody knows
3 how that interrelates with the question that Mr. Greenberg's
4 just raised of providing access.

5 MR. BOMBARD: Commercial boats are charged a
6 dockage fee.

7 CHAIRPERSON CORY: The question of providing
8 the shore boat service.

9 MR. BOMBARD: That wasn't a shore boat. That
10 would be a boat that would go between the mainland and
11 Two Harbors or Avalon and Two Harbors. That wouldn't be
12 a shore boat that goes from a short distance from a boat
13 to a dock.

14 CHAIRPERSON CORY: In terms of mutuality of knowing
15 what they're getting into, somebody should render to writing
16 and bidders should know what fees they're going to have to
17 have in operating the shore service that everybody agrees
18 needs to be there.

19 If there is an appropriate fee, that's fine.
20 I'm not going to particularly quarrel with that unless it's
21 exclusionary.

22 MR. BOMBARD: I think you'll find it's an appro-
23 priate fee.

24 CHAIRPERSON CORY: As long as everybody knows
25 what that is, and that's specified. And whatever you charge

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1 to let people on, it's more or less your business,
2 commensurate with the Conservancy's concept of access to the
3 Island. I presume that you will deal with your tenants
4 or sublessees appropriately to make sure that access is
5 available.

6 MR. RADCLIFFE: Mr. Chairman, since I was the
7 one that raised the \$42 fee, I have here a bill, dated
8 October 14th, 1981, to Avalon Shore Boat 576 dockage fee,
9 28 feet at \$1.50 a foot, \$42.00.

10 It's on the invoice of Doug Bombard Enterprises.

11 Just so the innuendos are not unjustified, may
12 I make this part of the record.

13 MR. GREENBERG: That's a dockage fee from Avalon
14 for a boat coming from Avalon down to Two Harbors.
15 If that was the intent, I don't know if we have a problem
16 with that.

17 CHAIRPERSON CORY: But the concept is that there
18 is not going to be that kind of fee charged because,
19 as I envision the concept -- just so everyone understands
20 where I'm coming from as one individual -- the pier is
21 something we excluded from the Master lease. And we assumed
22 that if there is some appropriate fee for the pro rata use
23 of it, but if that becomes exclusionary, I'm going to have
24 a problem with that sublessee. The lessee can't be using
25 the existence of that to exclude people from the Island.

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I don't think that that was intended. There is a distinction in terms of the type of transaction that that was. It's good to get it out on the table as to what it is and is not, and nobody is contemplating charging exclusionary fees for shore boats that are servicing that.

MR. GREENBERG: That's certainly not our intent

And we also concur with all the other bidders that there should be a minimum requirement for the maintenance of a minimum number of moorings, as well as a maximum.

MR. TAYLOR: Mr. Chairman, it should be noted that the pier is located essentially on State property. And they have been excluded from the Master lease, but those leases are now in a holdover status and that they have to be renegotiated. That's been deferred until the conclusion of this matter.

CHAIRPERSON CORY: But the understanding, so that everybody knows, and Mr. Bombard was nodding and I think he's in agreement, and I believe the Island Company is, is that lease was done to accommodate the upland owner, with the understanding that it would not be used as an exclusionary mechanism to other bidders. I wanted to make that very clear and explicit, that it is in the holdover status, and you have your property right for your upland, and I'm not trying to interfere with that.

But that lease cannot be used to hammer somebody.

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1 I'm glad the record is clear as to the distinction that that
2 was a commuting docking fee as opposed to commercial boat
3 coming from Avalon to there, as opposed to the shore boat
4 service.

5 We would like the staff now to comment on the
6 various issues that have been raised with the concept
7 of trying to move somewhat quickly through the policy
8 options that you need direction from the Commission on so
9 that you can then try to get it rendered to writing and out
10 to the people.

11 MR. RUMP: First of all for the record,
12 we should note that you have received letters subsequent
13 to your last meeting, the June meeting.

14 We also have in front of you the comments on the
15 bid package. We received approximately 15 comments.

16 We also received a resolution from the California
17 Marine Parks Harbors Association this morning, which is also
18 there.

19 Perhaps the best way to deal with the issues,
20 staff has prepared a compilation of comments as they
21 relate to the bid package. So, if we can go over those
22 briefly, not to be redundant on the testimony that has
23 been given and the letters that have been received.

24 The first item is relative to a statement of
25 the history of the matter before us. It's an introductory

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1 section of the staff's response to that, that the
2 bidders all know what the history has been. We don't see
3 the necessity for the modification.

4 CHAIRPERSON CORY: Proceed without including
5 the detailed history.

6 MR. RUMP: All right.

7 The second comment relates to the distinction
8 between the 720 moorings and other moorings that are used
9 as camp moorings.

10 The staff would recommend that the package
11 reflect the amount of revenue-producing status of those
12 moorings, together with the identification of them as they
13 are.

14 COMMISSIONER ACKERMAN: Clarification, that
15 preserves the Boy Scout and the Girl Scout?

16 CHAIRPERSON CORY: Yes, it makes it explicitly
17 clear that those are not revenue-producing items for
18 the potential bidders.

19 MR. RUMP: The third comment relates to CEQA.
20 Actually, it's an inquiry concerning the number of buoys
21 at Two Harbors. The distinction between the 800 mentioned
22 in the Local Coastal Plan, and the 389 permitted under the
23 lease.

24 The staff response is that the lease only allows
25 the 389. The comment of the LCP either refers to future

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use -- we have no evidence of any additional moorings in these areas.

CHAIRPERSON CORY: That would take an amendment to the lease.

MR. RUMP: To place any further.

CHAIRPERSON CORY: Fine.

MR. RUMP: The fourth area of comment is one from B.O.A.T. that says they support the categorical exemption. They felt certain portions in the bid solicitation would weaken that, though we'll deal with those further. And we agreed that a categorical exemption is appropriate, and we will handle them as they bring them up later.

Five is a comment by Henry Snyder concerning the fact that the activities should be exempt from (E)CA. This is consistent with the Commission's expressed intent.

Comment number six has to do with the definition of the term "project". Staff's position is that the project is used in its common meaning, clarifying the language that it's not used as a term of qualifying in the package.

Mention is made of the disposal procedure, on page 23. Staff would suggest that bidders be requested to state the nature of the disposal and how it would be categorically exempt.

CHAIRPERSON CORY: Okay.

1 MR. RUMP: Comment number seven is an inquiry
 2 of whether or not the proposal would permit the original
 3 bidders to joint venture or enter into partnership. Staff's
 4 response is that this would be at the discretion of the
 5 Commission to allow it.

6 If you decide to do so, we would recommend
 7 full disclosure of all participants and adequate security
 8 for performance.

9 CHAIRPERSON CORY: It seems to me that the
 10 mechanism that people choose to do business should not be
 11 dictated by our need, but by the same token, our security
 12 and our economic interests should not be jeopardized by
 13 their choice for tax purposes or business purposes.

14 And the net bottom line of that is, you can be a nonprofit
 15 foundation, S4 corporations, or whatever, but the ultimate
 16 entity, I think, needs to be a signatory of the deal.

17 MR. TAYLOR: I think that the question --

18 CHAIRPERSON CORY: I'm trying to look at the
 19 bidders so that they understand, you know, if you want
 20 the subsidiary to handle this, fine, but wherever you get
 21 your assets, we want them on the hook, too, if you're
 22 going to play.

23 MR. TAYLOR: I think there's a further aspect
 24 to this question.

25 Can one of the bidders -- it was my understanding

1 at a prior meeting of the Commission that it was decided
2 it would only allow the people who bid previously to
3 bid at this time. Isn't that correct?

4 CHAIRPERSON CORY: Uh-huh.

5 MR. TAYLOR: If that is correct, then the question
6 is, can one of the previous bidders now join with somebody
7 else, not just setting up another shell, can he go out and
8 get another business partner and go into the situation with
9 him. That was the form of the question in the thing.

10 I think that should be made clear at the beginning.

11 CHAIRPERSON CORY: That appears to be a private
12 entrepreneurial decision, as long as everybody participating
13 is swallowing the whole hook.

14 MR. TAYLOR: The question is, is it open?

15 CHAIRPERSON CORY: To me, I'm not offended about
16 who it is. The real question, because subsequently
17 somebody could enter into a subsequent transaction that
18 would, in essence, give the same effect as a partner in the
19 deal. When you change banks, you change partners. So I
20 don't think -- as long as we've got the ultimate assets
21 of the people that we knew that were there at that time.

22 MR. TAYLOR: The important question that I think
23 that all three of the prospective bidders should know is
24 that they are free to bring in other partners into the
25 transaction at this time.

1 CHAIRPERSON CORY: Disclose what they're doing.
2 And if there are people in there, we want all the principals
3 to belly up to the bar and acknowledge what they're doing.
4 If in some implication in the mechanism of that
5 somebody thinks that they can give the appearance of financial
6 substance and solvency and that person not be on the hook,
7 that is not contemplated.

8 That seems to me to be entrepreneurial convenience,
9 and I don't think government should interfere in that as
10 long as we've got them where we want to have them ~~in terms~~
11 of the contract.

12 MR. RUMP: We'll prepare language to that effect.

13 MR. NIGHT: Just to super clarify it, any parent
14 corporation would have to ultimately guarantee all liability
15 and any agents, subcontractor, would have to be disclosed,
16 okay?

17 MR. RUMP: The eighth item is on the amount of
18 the deposit. One of the bidders suggested that \$10,000 be
19 the amount of deposit with the bid. Last time the amount
20 was \$25,000. You have discretion to charge what amount
21 you think is appropriate.

22 CHAIRPERSON CORY: What is the purpose of the
23 deposit?

24 MR. RUMP: The deposit initially was to secure
25 good faith bids. To that degree, you have a known quantity

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1 with the bidders.

2 If there is a provision in the lease, or in the
3 package that would require them to execute the lease and
4 leave their solicitation open, the amount does not need
5 to be significant.

6 COMMISSIONER ACKERMAN: Since we are already
7 putting some limitations on who may bid, I don't have any
8 objections to reducing the deposit amount.

9 Since we're dealing with known amounts, are those
10 refundable?

11 CHAIRPERSON CORY: They're refundable if they
12 perform, but if somebody bids successfully and backs out,
13 they lose the dough. That's the purpose.

14 COMMISSIONER ACKERMAN: I have no problem with
15 reducing the amount.

16 MR. RUMP: We would like to have language in the
17 bid package that would require them to execute the lease
18 if they're successful in the lease.

19 CHAIRPERSON CORY: If not, they would lose the
20 deposit.

21 MR. RUMP: Would 10,000 be appropriate?

22 COMMISSIONER ACKERMAN: Fine.

23 CHAIRPERSON CORY: Fine.

24 MR. RUMP: The next area is discussing the
25 continuation of operations. There's a question as to

1 whether or not the solicitation package appropriately
2 uses the word "continued" as it would only apply to the
3 Island. The staff's response to this comment is that
4 regardless of the terminology, the intent of the Commission
5 is quite clear. I think from the testimony that we've had
6 today, bidders are aware of that. Therefore, we don't
7 see the necessity of changing the terminology.

8 CHAIRPERSON CORY: I don't understand the issue?

9 MR. RUMP: Essentially they say you should change
10 the word "continue" to "match". In other words, you're
11 asking people to match rather than continue.

12 CHAIRPERSON CORY: It would seem to me that we
13 should specify, particularly if we're going to move towards
14 some sort of bonus or penalty mechanism. We should have
15 some list of specificity of what people are to provide,
16 and that should obviate the distinction of whether someone
17 is continuing or matching. We should have as close a
18 finite lease of what services are to be performed,
19 particularly in what I would call the boaters' rights
20 section. Those should be specified so prospective bidders
21 know, with a reasonable degree of certainty, what is expected
22 of them, what performance will be. Then, the people can
23 take that into account and adjust their bids accordingly.

24 The reason for giving them a bonus for performing,
25 or something, it would seem to me that the entrepreneur is

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1 taking that into account, and if he takes that into account,
2 everybody is doing that, and they bid and then they don't
3 perform the service, they are getting an unjust enrichment
4 by the nonperformance, and the order of magnitude of
5 the reduction in the annual fee, or the penalty -- I would
6 think I would prefer, for some other reasons, the reduction
7 to the annual fee -- that should be significant so they
8 can feel their nonperformance in a very concrete way.

9 That would tend to obviate that issue, I think,
10 whether it's match or performance if you know that this
11 is what it is with a reasonable degree.

12 COMMISSIONER ACKERMAN: Is there a legal need
13 to change the wording here to more correctly imply what
14 we mean?

15 MR. CAMP: I don't believe so in light of your
16 comments.

17 The tenth category has to do with whether or not
18 the bid package should specifically have the categorical
19 exemption as a factor in the award of the bid.

20 The staff recommendation is that it would be
21 clearer as to the Commission's intent and would recommend
22 its inclusion.

23 CHAIRPERSON CORY: It's my understanding, from
24 what the staff has informed us, that to achieve the
25 categorical exemption, the bidders will be required to

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1 mirror the existing operation, or it would not qualify
2 for categorical exemption.

3 MR. RUMP: Yes, the package is set up for that
4 kind of comparison.

5 CHAIRPERSON CORY: That was contemplated from
6 day one to avoid, -- if people have all sorts of new ideas
7 and things, that takes an entirely different time frame.
8 To work in this time frame, they have to, in essence,
9 mirror the existing.

10 MR. RUMP: The eleventh area has to do with the
11 definition of what are existing operations.

12 I think Greg has comments in that area.

13 MR. TAYLOR: Mr. Chairman, as developed by the
14 discussions this morning, I think the staff comments here
15 should be modified to reflect that the definition of
16 existing operations will be those operations set forth
17 in Exhibit A of the proposed bid package, or what becomes
18 the bid package, with any corrections that any of the
19 parties now wish to offer or have been offered in the course
20 of the comments.

21 There's only one comment that we received so far
22 and that is that with regard to the definition of existing
23 operations, there are now five boats instead of one equipped
24 with fire equipment. So for the purposes of preparing a
25 bid package, all the bidders should understand that existing

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1 operations are those operations as described in Exhibit A
2 with the addition of the fact that five boats instead of
3 one are equipped with fire fighting equipment. That will
4 be the standard against which all future decisions will be
5 made with regard to categorical exemptions.

6 It means that they must be substantially the same.
7 By substantially, there will be variations, but it will
8 have to meet that criteria in order to be categorically
9 exempt.

10 COMMISSIONER ACKERMAN: It's fine with me, even
11 though Mr. Greenberg had suggested that we even further
12 detail the services required. I think that the way it's
13 outlined in the bid package is satisfactory. We'll just
14 keep getting more specific all the time. You've got to
15 draw the line somewhere.

16 MR. RUMP: The next comment is by Mr. Greenberg
17 and relates to difficulties of converting, if they are
18 the successful bidder under this solicitation, and
19 conditions which they have already made up under the
20 existing lease.

21 Staff would recommend the addition of provisions
22 that would allow for the smooth conversion in the event
23 that they would be the successful bidder.

24 COMMISSIONER ACKERMAN: All right.

25 CHAIRPERSON CORY: Go ahead.

1 MR. RUMP: The next comment has to do with
2 performance security. Obviously you heard a lot of
3 comments on that today.

4 The staff recommends that this assurance is
5 needed. We need to devise solutions, as has been
6 suggested.

7 We also recommend that, for the further security,
8 that the 60-day notice of termination provision in the
9 lease be eliminated from the bid packages. That'll allow
10 for greater protection to make sure that the lease is
11 operated for a longer period.

12 COMMISSIONER ACKERMAN: Do we have to be specific
13 about the way we're going to assess a performance bond, or
14 something like that?

15 MR. RUMP: We can draft language and bring it
16 back to you.

17 CHAIRPERSON CORY: I think that and some of these
18 other things, what we probably need to do is have the
19 staff draft it and circulate to make sure that everybody
20 signs off, that it accomplishes what the intent is, and
21 try to do that. If there is a problem, we could convene
22 a special meeting to iron out those distinctions, or we
23 could adjourn this one to a time certain to give you enough
24 time to have that done. If everybody's happy, then we can
25 cancel that meeting and you can go ahead, get the bid

1 package out, so everybody gets a chance to look at it.

2 MR. TAYLOR: On the 60-day cancellation clause,
3 that would be removing that paragraph from the standard form
4 of the State Lands lease.

5 CHAIRPERSON CORY: That's fine.

6 MR. RUMP: The fourteenth comment is a suggestion
7 that there be a paragraph added to prohibit no additional
8 moorings, pilings, breakwaters, to be installed on the
9 premises. It's difficult to tell whether or not all
10 facilities would be prohibited or not categorically exempt.

11 We recommend that the bidders be required to
12 indicate in any fashion for the construction of a facility
13 in what way that would be categorically exempt. We can
14 add that to the bid.

15 CHAIRPERSON CORY: It is my belief, to achieve
16 the categorical exemption, you're again mirroring the
17 existing operation, and nobody should be contemplating
18 building anything new and different.

19 Are you not in trouble if you start building
20 new and different things?

21 MR. RUMP: Until we really know what it is,
22 that's the only uncertainty that we have.

23 You are correct. You can prohibit that if you
24 desire, but not knowing what the proposal is, it's difficult
25 to understand.

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1 CHAIRPERSON CORY: For the bidders who are here,
2 as I understand the law, maintaining the categorical exemption
3 requires that it, in essence, be the same critter.

4 MR. HIGHT: It's conceivable, Mr. Chairman.
5 That's why the language is drafted the way it is.

6 CHAIRPERSON CORY: I just hope that the bidders
7 don't create a problem for themselves, and I will be
8 relatively conservative in my interpretation of how much
9 flexibility is in there because I think achieving the
10 categorical exemption is necessary to stay on that time frame.

11 MR. HIGHT: That's correct.

12 MR. RUMP: The next series of comments have to do
13 with the housing question which has been raised and
14 discussed today. I would like to correct the staff comments
15 on page 24. Though it says that the staff would not agree
16 to the evaluation of housing availability of employees
17 is necessary, obviously we would agree that we should
18 evaluate the housing on the premises. We think that
19 housing off the premises is too speculative for consideration.

20 Likewise, some of the oil spill operations un-
21 related to the lease area are not really ascertainable for
22 analysis. Therefore, of the comments that are there, we
23 would recommend that bidders be asked to address emergency
24 responses, which is another section or component in there.

25 CHAIRPERSON CORY: Okay.

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1 MR. RUMP: The next comment, sixteen, has to do
2 with the request by both Mr. Greenberg and B.O.A.T. that
3 there be evidence of the right to use the facility by either
4 the owner or the chief executive officer.

5 Staff's response is that it may be helpful to
6 demonstrate bidder ability to perform, but you can
7 specify whatever you think is necessary to ascertain that.

8 CHAIRPERSON CORY: I don't understand what you're
9 saying?

10 MR. RUMP: I think it came up from a question
11 of whether or not someone had a right to use the
12 construction yard or something. And this is what they are
13 saying, if you're using some other property or facility,
14 provide written evidence that you have a right to do so
15 either in the lease or a letter from the owner that says,
16 yes, we're going to use this. It might have to do with
17 possible location, say, in Avalon for a serviceyard.

18 CHAIRPERSON CORY: That seems to be opening up
19 a strange can of worms that, you know, do we need to ascertain
20 whether or not the home of the chief executive officer
21 or the principal corporation, he really has permission to
22 use that? I'm not sure how that's related to this lease.

23 If somebody is stealing somebody's property
24 elsewhere, why is it relevant to our lease? It seems to
25 be their problem.

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1 Am I missing the point?

2 MR. RUMP: No, we're just bringing to your atten-
3 tion that we got two comments on it. It is extra, if you
4 really think it's necessary.

5 COMMISSIONER ACKERMAN: I think the intent here
6 is that if a general statement is made in a bid, that is
7 to prove that it can be backed up. I think that's what
8 the intent is.

9 Joe was one who made the comment.

10 MR. STEELE: Mr. Chairman, I made one of those
11 comments, and mine had to do specifically with the use of
12 the garbage dump at Avalon. It seemed to us that if one
13 of the bidders is going to dump garbage at Avalon, he should
14 attach a letter from the City of Avalon or the manager
15 of the dump, or some such thing, saying that he can, in
16 fact, dump this garbage in Avalon. That is an issue that
17 we are not sure of, if Avalon would permit it.

18 CHAIRPERSON CORY: The problem I have with
19 getting into that, frankly, is that there are a multiplicity
20 of evidentiary things that could be asked of all prospective
21 bidders, ad nauseum.

22 I mean, submission of proof of that, they either
23 can comply with the law and the property rights of this
24 state and nation, or they can't. And if the performance
25 bond is adequate, if the bid deposit is adequate, then

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1 it's up to them to perform.

2 I can't recall of any other lease, whether it's
3 been Chevron or any of our other lessess in the Delta
4 of us requiring to make sure that they have permission of
5 the dump operator that they can use the dump.

6 I understand what you're saying, but I think we may
7 have solved the problem, from my standpoint, by the
8 performance. They're going to say financially they've got
9 the capacity. If they don't have the financial capacity,
10 we're going to throw the bid out to begin with. If they've
11 got the financial capacity and they're doing something
12 stupid, they're going to pay through the nose and we're
13 going to have adequate money to protect the boating public.

14 To start down the trail of each subsidiary, or
15 each second and third wave of services is --

16 MR. RUMP: All right.

17 The next comment is by the City of Avalon, stating
18 the status of the dump site. We feel that this information
19 should be added to the bid package for the bidders.

20 CHAIRPERSON CORY: Okay.

21 COMMISSIONER ACKERMAN: Fine.

22 MR. RUMP: The next comments are questions
23 concerning harbor patrol services, their training, how
24 they are patrolling the areas. Other comments regarding
25 the services include perhaps suggestions to reduce the

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1 24-hour patrol basis.

2 Staff response is that if the Commission desires
3 we can ask details in the package and on the forms of what
4 are the training for the harbor personnel staff.

5 Likewise, the 24-hour patrol basis could be
6 modified, although we would recommend it also at least
7 for Memorial Day, Washington's Birthday, that it remain
8 on a 24-hour basis.

9 CHAIRPERSON CORY: Who's raising those questions?

10 MR. RUMP: The comments on this point, the questions
11 concerning the training of the harbor patrol personnel is
12 Mr. Hertzberg. The reduction of the hours of service are
13 from B.O.A.T. and James K. Spear.

14 CHAIRPERSON CORY: I thought part of the reason
15 that only the existing operator could function was that
16 they were providing these services to the boaters.
17 I'm confused.

18 Yes, I would like your comment on that.

19 MR. STEELE: Mr. Chairman, they are providing
20 services, but we feel like they're providing more services
21 than we really need in the wintertime. We know who's paying
22 the bill, the boaters. I believe they've increased their
23 services since the lease went into effect. We don't believe
24 that this harbor patrol, 24-hour harbor patrol, is required
25 during the seasons when there are very few people there,

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1 particularly since you can reach them on the radio, and they
2 do have the ability to muster people in storms, and hopefully
3 other bidders would do that.

4 It's simply a case of one case of overservicing.
5 We would not like to eliminate the harbor patrol
6 all together.

7 COMMISSIONER ACKERMAN: If we require too much,
8 we probably ought to cut back, if we require something
9 that's not necessary.

10 CHAIRPERSON CORY: Does staff have a recommenda-
11 tion?

12 MR. RUMP: I guess the greatest indication of
13 whether or not that would be appropriate is from the
14 boaters themselves. Although we would suggest that we add
15 Memorial Day and Washington's Birthday to a 24-hour basis.
16 The comment of B.O.A.T. is 24-hour basis from June 15
17 to September 15, and then from September 15 to June 14,
18 Thanksgiving, New Year's, and other holidays, be a 24-hour
19 basis, otherwise it's 8:00 a.m. to 5:00 p.m.

20 EXECUTIVE OFFICER DEDRICK: Mr. Chairman, perhaps
21 we should ask the boaters if that change in hours would be
22 worth it if there were no change in the fees that they
23 were paying for from moorings, when they seem to be hooked
24 together in their comments.

25 CHAIRPERSON CORY: Interesting economic comment

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1 from an academic.

2 Do the people of B.O.A.T. have a comment?

3 MR. STEELE: Well, we would hope that any reduction
4 in operations costs would somewhat or other result in
5 reduced fees to the boaters.

6 EXECUTIVE OFFICER DEDRICK: It may not be
7 possible to guarantee that.

8 What I'm asking you is, is your general evaluation
9 of the usefulness of a 24-hour boat service in the winter --

10 MR. STEELE: We don't think it's very useful.

11 EXECUTIVE OFFICER DEDRICK: If it's not useful,
12 there's no point in doing it. If it is useful to you, and
13 you're saying some sacrifice is worth the dollar or so
14 reduction --

15 MR. STEELE: I don't believe it's an economic
16 analysis. It's simply that there are not enough boats
17 over there to justify this service during the winter.

18 It does cost, whoever the lessee is, it costs
19 him a considerable amount of money just to keep these
20 people there.

21 COMMISSIONER ACKERMAN: Joe, what if we took your
22 recommendation and the staff's comment on Memorial Day
23 and Washington's Birthday along with that?

24 MR. STEELE: Oh, sure.

25 COMMISSIONER ACKERMAN: Sounds okay?

1 MR. STEELE: If those are the busy holidays;
2 certainly.

3 COMMISSIONER ACKERMAN: This is a minimum level of
4 service. If it's required that more are necessary, fine,
5 but let's specify a minimum.

6 MR. STEELE: Oh, yes. We're agreed entirely with
7 the staff on all of this.

8 CHAIRPERSON CORY: Staff has direction on that
9 one.

10 MR. RUMP: The next area of comments concern
11 whether or not greater specificity needs to be given in the
12 bid package, diesel mechanics, marine electricians, riggers,
13 divers, outboard motor repair, spare parts, hours of
14 service, particularly under adverse weather conditions.

15 The staff response is that mechanic and towing
16 services are required services under the lease, and they
17 have to be provided at reasonable rates.

18 I'm not sure how much more definition you want.
19 Again, it's a question of how much you need to be in
20 detail.

21 CHAIRPERSON CORY: Somebody made the comment about
22 the slopover to the land services. I think specifying the
23 training of the mechanics, or who the mechanic is -- the
24 various mechanics I deal with are obviously ill-trained,
25 except at writing bills, whether they be boat or automobile

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1 mechanics. I don't think we're going to solve that consumer
2 fraud problem that exists in our society.

3 But if somebody has to have the capacity, if you're
4 going to be in that business, to take care of the emergency
5 things of getting somebody towed to where they can lash the
6 thing down and weather out the storm. I think that is my
7 understanding, and I would think that is what the boaters
8 -- a boater has that concern.

9 MR. SPYDER: May I make one comment?

10 I think that the economic reality will determine
11 that. If there's enough demand for it, it will be there.
12 If there's not demand, it's not necessary to put it in.

13 MR. RUMP: The next area of comment concerns the
14 supply of water. We have discussed, first of all, whether
15 or not the Isthmus pier was included or excluded from the
16 lease.

17 B.O.A.T. has requested that we request the
18 bidders to discuss potability, availability, how it's
19 transported and stored, where and what hours it's available,
20 and limit on the quantity and how would responsibility be
21 ensured. This would help clarify the supply of water.

22 CHAIRPERSON CORY: I think you should try to
23 specify, put it in some of the minimum standards, and that
24 should be one of the items that if there's nonperformance
25 on, they're paying the higher rental on those days that

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1 they blow it. That's the kind of thing, it seems to me,
2 that the forgiveness of those days deals with that problem,
3 that they've got to come through and perform for the boater.

4 If a guy doesn't have water one day, you aren't
5 going to get a court to abnegate the lease. That's not
6 going to happen.

7 So, I think that some enforcement mechanism, so
8 long as you tie that down with some specificity. I don't
9 know what those terms are. You should talk to the bidders
10 and the boat people to make sure.

11 Having moved around the state somewhat, the
12 standards of potable water vary somewhat substantially.
13 Signal Hill had some rather questionable water at one point.

14 MR. RUMP: Apparently West Sacramento did, too.

15 The next comment, shore boats which are required
16 to be supplied are discussed. The comment is from B.O.A.T.,
17 and they are concerned that perhaps in order to meet the
18 bid, shore boats would be diverted from other activities.

19 The staff response is that the bidder is required
20 to describe the equipment it intends to use, and thus we
21 can handle that analysis. It would be obvious if that does
22 occur. No additional language to the bid package would
23 be necessarily recommended.

24 CHAIRPERSON CORY: Your concept is that you would
25 request from each bidder how he's going to meet that thing,

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1 and that that can be debated on the awarding of the bid,
2 whether or not they have qualified?

3 MR. RUMP: Right, and the problems with it.

4 CHAIRPERSON CORY: So that if somebody comes in
5 with three dugout canoes and a paddle apiece, the boaters
6 can complain, and we can reject that bid for not having
7 complied to meet the shore boating. Okay.

8 MR. RUMP: The next area has to do with fees,
9 comment twenty-two has to do with fees, by Mr. Hertzberg,
10 suggesting that a three-day minimum for holidays be
11 eliminated. Also that a reservation system be instituted,
12 and the question as to what fees are charged under a letter
13 from the Executive Officer, Mr. Bombard.

14 The staff response is that the three-days minimum
15 is discretionary. The lease does not prohibit a reservation
16 system; however, if there are going to be commercial fees,
17 that should be added to the fee schedule so that everyone
18 will know what they are going to be, if any fees are charged
19 under the letter from the Executive Officer. None are
20 presently, but if they were charged, that would be part
21 of gross income.

22 CHAIRPERSON CORY: That allows for the lessee
23 then --

24 MR. RUMP: Pardon me?

25 CHAIRPERSON CORY: You're saying that it is

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1 discretionary as to whether or not the three-day --

2 MR. RUMP: Those were a situation where a mooring
3 sublessee was using a different mooring, when multiple
4 mooring owners would side tie, and that sort of situation.

5 We felt in the response that the fees were
6 discretionary in the lease operation.

7 COMMISSIONER ACKERMAN: Also if there were any
8 fees charged along the lines of the June 6th letter, those
9 have to be disclosed as well.

10 MR. RUMP: Right.

11 Is there any desire to change the three-day
12 minimum?

13 CHAIRPERSON CORY: It's discretionary on the part
14 of the lessee, so I don't see where we need to mess with it.

15 MR. RUMP: All right.

16 The next area of comment concerns whether or not
17 additional moorings should be allowed in open anchorage
18 coves. The question there is whether there's trash
19 collection in those coves.

20 The staff response is that presently the lease
21 obviously prohibits placing moors in those coves, and the
22 lease requires trash collection in all of the coves under
23 lease.

24 CHAIRPERSON CORY: Fine.

25 MR. RUMP: The next comment is one in dealing with

1 a subsidiary corporation. I think your remarks earlier have
2 given staff direction that the parent needs to be involved.

3 The next comment has to do with the rental charge.
4 The proposal in the present bid solicitation is for
5 80 percent of the CPI in a five-year adjustment of a flat
6 bid rate. The inquiry from Mr. Greenberg is whether or not
7 the Commission would, instead, adjust annually with a 10
8 percent cap.

9 The Commission's standard practice is to have a
10 five-year rent review so you've got those alternatives.

11 COMMISSIONER ACKERMAN: As I stated at the last
12 meeting, my personal preference on this is to have a five-
13 year set fee with a rent review at five-year intervals.

14 CHAIRPERSON CORY: With or without? It's
15 not an automatic tie to CPI then.

16 MR. RUMP: It's discretionary as to what you'd
17 like to do. The present proposal does tie it to a CPI.

18 CHAIRPERSON CORY: As I recall --

19 COMMISSIONER ACKERMAN: Again, this is preference,
20 but I don't think we should tie ourselves into a predetermined
21 increase, because we have no idea if adjustments should be
22 made, or whatever else down the line. We learned that
23 over the period.

24 You may want to have a cap. You may have a cap
25 on it, or something else, like Mr. Greenberg suggested,

1 but not an automatic increase. I don't want anything that
2 says we have to go up to a certain level regardless of the
3 economics of the situation. That doesn't seem fair to
4 anybody.

5 EXECUTIVE OFFICER DEDRICK: You don't have
6 restrictions on your discretion on your rent review on other
7 leases, except as they fit the general regulations.

8 COMMISSIONER ACKERMAN: In our other leases, is
9 there a precedent for establishing a certain CBI, or
10 anything else like that for rent review, or do you just go
11 in, lay everything on the table, and negotiate?

12 MR. HIGHT: That's the general rule, the latter.

13 COMMISSIONER ACKERMAN: I think I prefer to do the
14 latter, straight negotiation.

15 CHAIRPERSON CORY: Leave it the way we have it
16 in the other.

17 MR. RUMP: Number twenty-six also repeats the
18 question of whether or not there should be placement of
19 moorings in anchorage areas. You've already dealt with
20 that in your response to the other questions.

21 Comment twenty-seven has to do with the termina-
22 tion clause and provision in the lease and transitions.
23 This comment is by Mr. Snyder.

24 The Commission obviously has to consider the
25 effects of a transfer should the present operator not be

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1 the successful bidder, and also, as we said earlier, to help
2 us assure prior termination, the removal of that 60-days
3 cancellation provision from the lease.

4 CHAIRPERSON CORY: We've already told you to go
5 ahead with that.

6 MR. RUMP: Right.

7 Comment twenty-eight has to do with the comment
8 of Mr. Snyder. He says should there be any change in the
9 present utilization of water facilities, there would have
10 to be public hearings. We interpret what is being said
11 here to mean facilities, improvements, which are in place
12 and, of course, that would require public hearing for
13 modification of the lease. I don't believe he was addressing
14 the supply of water here.

15 CHAIRPERSON CORY: Okay.

16 MR. RUMP: Comment twenty-nine concerns a question
17 of whether or not garbage pickup is provided boatside
18 at Cat Harbor and all these coves, and what impact
19 additional trash pickup services have.

20 Staff's response is that the present lease
21 requires it, and once adjusted, all pickups in all coves.
22 And pickups would not cause any greater amount of garbage
23 unless there's also increased usage. I don't think there's
24 anything additional unless you have to be --

25 CHAIRPERSON CORY: The garbage pickup concept

1 should be part of those boaters' rights section.

2 MR. RUMP: Economic incentive, all right.

3 The next area is on fees. You've heard from
4 Mr. Snyder. His written comment suggested that fee
5 schedules were 15-20 percent too high. Also, the comment
6 of B.O.A.T. indicates that.

7 Mr. Radcliffe indicated also that they saw a
8 \$70 distinction between the mooring sublessees who owned
9 and those who lease it.

10 Staff has contacted with regard to the question
11 of fees various marina facilities in the area. I think
12 you have in front of you a chart schedule of extras here,
13 if you need it, and that will give you a comparison of
14 what the rates are.

15 I guess we have a question of, one, whether or
16 not you desired to fix the fees.

17 CHAIRPERSON CORY: If we're talking about bidding
18 on a gross amount, a dollar amount as opposed to percentages
19 of gross, then we have these as maximum fees that could be
20 charges. We need not necessarily concern ourselves with
21 as much of the detail, only the question of whether or not
22 the maximum fee is exorbitant for the benefit to the
23 consuming public.

24 MR. RUMP: That would be correct.

25 CHAIRPERSON CORY: If we go back to the concept

1 of a percentage of gross, then you've got to start worrying
2 about those other kinds of details, and then the audit
3 problem.

4 MR. RUMP: On the list of schedules here, there's
5 obviously a distinction in the services available
6 at each one of the marinas, but it gives as example what
7 are the charges in the Southern California area.

8 COMMISSIONER ACKERMAN: One thing, I am sensitive
9 to the comment, I believe, of Mr. Snyder and Mr. Steele
10 earlier, that the level of charges may have had an impact
11 on the use of the facilities.

12 CHAIRPERSON CORY: I'm sure it wasn't Reganomics.
13 (Laughter.)

14 CHAIRPERSON CORY: Go ahead with your point. I'm
15 sorry, Dave. It's so seldom that I get a chance to do that
16 to you.

17 COMMISSIONER ACKERMAN: The supply sidlers are at
18 work out there.

19 CHAIRPERSON CORY: You've made it so good for the
20 private sector, everybody's out working, making all that
21 money.

22 (Laughter.)

23 COMMISSIONER ACKERMAN: I don't know how you
24 put the finger on it, but there seems to be an impact
25 with the level of these and how the use has happened

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1 so far this year at Catalina. Everybody I've talked to
2 seems to indicate that that's a fact.

3 That would seem to make a case that if our intent
4 is maximized public accessibility and public usage, that
5 this fee is a disincentive at the current level to encourage
6 that public use. That's contrary, a little bit, to Mr.
7 Hertzberg's comments earlier, where he said that since
8 only 12 moorings are not privately leased, they're not
9 used. Obviously a lot are going unused over there on a
10 seven-day-a-week basis, except maybe over the 4th of July,
11 Memorial Day weekends, such as that.

12 I think fees are having somewhat of a negative
13 impact. How much you bring ~~them~~ down, whether you should
14 I really don't know. Maybe a 15 percent reduction. The
15 fees have gone up 30, I believe, or approximately 30.
16 That's stated in one of the letters.

17 MR. RUMP: Right.

18 COMMISSIONER ACKERMAN: If you cut that in half,
19 is that where the point should be? Do you leave them where
20 they are?

21 CHAIRPERSON CORY: My problem with that in terms

22 COMMISSIONER ACKERMAN: It impacts the rental
23 rate that you could expect from someone as well, depending
24 on how you phrase that.

25 MR. TAYLOR: I think that was one of your

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1 comments that the Commission has made to staff, that these
2 fees for sublessees were going to be fixed for the same
3 period as basic rent. So in other words, the fee that's
4 in now would be good for five years. I don't know just
5 how those things run together with regard to other costs.

6 COMMISSIONER WICKERMAN: Maybe that's a tradeoff,
7 but it's a five-year protection that they don't increase.
8 Plus, I think what we're looking at, too, looking at
9 these comparisons, the annual fee looks somewhat in line
10 with about half or third with what's charged at marinas
11 and slips, but the day use fee pretty closely approximates
12 what you would experience for day use at any of the marinas
13 along the coast. Maybe the day use are a touch high, but
14 the annual are pretty much on the button.

15 Again, your point, Ken, if your day use remains
16 the same all those five years, well then five years from
17 now they'll be getting a pretty good bargain.

18 Mr. Snyder?

19 MR. SNYDER: Mr. Chairman, I think for comparison
20 you can't look at a marina because the level of service
21 is entirely different. I think if you look, perhaps, at
22 Avalon, you might get a better comparison.

23 CHAIRPERSON CORY: We're under Avalon's rate on
24 the transient use.

25 MR. SNYDER: Higher on the mooring lessees.

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1 CHAIRPERSON CORY: That's why on the marketplace,
2 if you have a sublease, you pay more at Avalon than you
3 do for ours.

4 What I'm concerned about is, if these are maximums,
5 if the market is there, we aren't taking a percentage of
6 the gross, the lessee has the capacity to lower his rate
7 to entice more in, but we are protecting a level of service
8 in the lease, and that they can't exceed this for five
9 years.

10 I'm not sure how far we can reach for you without
11 getting it to a closer rental review.

12 COMMISSIONER ACKERMAN: Looking at it here, for
13 a 60-foot boat, which as the lady mentioned earlier, these
14 are big, the difference between Avalon and the current is
15 \$33 a year. Now, \$33 a year, two people can't even go out
16 to dinner for that. I don't see that difference as
17 excessive in deterring someone from assuming an annual lease.

18 MR. STEELE: Mr. Chairman, I'd like to say a word
19 for the daily renters rather than the annual.

20 If you'll notice, the fees are higher on Saturday
21 than Avalon. Saturday is the main day.

22 When you take that Saturday and add two more days
23 to it for a minimum of three days, which you've already said
24 is discretionary now with the boater but with the lessee,
25 and you can figure that as long as he can possibly get it,

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1 he's going to get those three days, then it gets to be quite
2 substantial.

3 Avalon does not have a three-day limit. You can
4 go into Avalon and stay one day.

5 So we recognize that if you fix the fees for
6 five years, that we have probably an advantage, but the
7 three-day business bothers us more than anything else.

8 CHAIRPERSON CORY: Doug, would you be willing to
9 make some comment? In trying to look at the chart, some of
10 your rates are lower than Avalon's, and some are higher,
11 depending on the size of the boat.

12 It seems to me that it's about as close as
13 government can approximate it's interface with the private
14 sector, and that we probably ought to not mess around with
15 it much more. I don't see any glaring things. I see that
16 if I have a 10 to 30-foot boat, I can save a buck by being
17 in Avalon as opposed to what I would call the Bombard
18 Saturday rate, but if I have a 71-foot boat, I save a
19 buck by being with you.

20 I mean, is there something I'm missing, or
21 some reason why you chose a different skew?

22 MR. BOMBARD: The reason that we chose the
23 higher rate originally on Saturdays and holidays is, it
24 was the only day we were full.

25 Avalon has the distinction of being full for like

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1 three or four months out of the entire season, the other
2 harbor in Avalon.

3 And our use has come up through the years. Every
4 year we have more use.

5 But the day that we had the chance to bring home
6 the bacon was on Saturday, really, and it still is.

7 However, I think when you raise everything one-
8 third, that the holiday rate became a little more biting,
9 and the weekend rate became a little more biting than the
10 daily rate became.

11 I think probably if we have comments from the
12 people, it's more directed toward that three-day minimum on
13 holidays.

14 CHAIRPERSON CORY: But the economic reality is that
15 you've got to pay your overhead seven days a week, and
16 Avalon has the capacity of spreading it.

17 MR. BOMBARD: Right.

18 CHAIRPERSON CORY: I'm sort of inclined to leave
19 it.

20 MR. BOMBARD: I think what the customers have
21 suggested in many cases is that you cut the three-day
22 minimum to a two-day minimum, because once in a while
23 you have somebody saying something like that, and if it's
24 discretionary, --

25 CHAIRPERSON CORY: I think you can probably deal

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1 with that based upon the economy, the number of people that
2 are showing up, and that better than we can try to look into a
3 five-year period.

4 MR. BOMBARD: Last year we were on a percentage
5 basis. I got the feeling that, well, it's definite.

6 CHAIRPERSON CORY: We have an incentive in worrying
7 about that.

8 MR. BOMBARD: We charged everything we said we
9 would in the bid package.

10 CHAIRPERSON CORY: I'm sort of inclined to leave
11 it, and these are maximums that can be charged. And there
12 should be flexibility on the bidders with their public.
13 It's not caveat emptor, it's --

14 MR. GREENBERG: Mr. Chairman, what bothers me about
15 that is that if the bidders are going to bid, and there's
16 going to be a high flat sum paid to the sum, they have to
17 protect themselves, they're going to have to bid based on
18 the assumption that they are going to charge the maximums
19 allowed. And in the one particular instance --

20 CHAIRPERSON CORY: But once they've made that
21 bid, and they have the contract, at that point they have
22 some capital, and that's where the marketplace forces
23 of demand would start to come into play. If the demand
24 isn't there, and there's crowding out because prices are
25 too high, and they, in their economic interests, could get

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1 more volume by lessening the rate, they should do that.

2 That's the private sector leaving the government out of it.

3 Otherwise, we're going to be in a whole lot of
4 other details.

5 Okay, we're going to leave it the way it is.

6 COMMISSIONER ACKERMAN: But it's a five-year
7 set.

8 CHAIRPERSON CORY: Five-year set, and those are
9 maximums.

10 MR. RUMP: There is one additional fee that Joe
11 Steel asked to be added, and that's the charge for what
12 it would cost to unwrap a prop. Apparently that is a
13 problem out there. That's \$25 for a half-hour to unsnag
14 the line from a prop.

15 Joe, you were saying, I think, that that's a very
16 common problem?

17 MR. STEELE: Well, there's a long list of fees
18 that Mr. Bombard has put in there for various and sundry
19 services.

20 What I talked about to Jack this morning, as we
21 went over the fees, I said, well, one thing I know over
22 there that happens quite frequently is that the prop
23 wraps, and it seems to me that if you're going to put all
24 those other miscellaneous fees in, that you probably ought
25 to put that one, since it's so common.

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1 CHAIRPERSON CORY: Isn't that like trying to put
2 a fee in for repairing a fender? Are all prop wraps the
3 same, the size of rope, the tensile strength?

4 MR. STEELE: Well, it's one of those things where
5 you're absolutely at the mercy of the lessee when you get
6 into this spot, you know.

7 If you're going to try to protect the boaters on
8 some of the others, then perhaps you should protect the
9 boaters on this.

10 MR. BOMBARD: We have a regular fee. It could
11 be listed there. It goes on an hourly basis.

12 In most cases, our minimum is based on a half-hour
13 and in most cases it'll take care of it. However, there are
14 situations where you get a real bad wrap job, and you
15 actually have to go under there and saw the line out. And
16 sometimes you will even break it. You'll have a broken
17 strut that you would have to fix, so you do get things like
18 that.

19 CHAIRPERSON CORY: But it's an hourly?

20 MR. BOMBARD: Based on hourly fee, with a
21 minimum, I believe, of a half-hour.

22 CHAIRPERSON CORY: Okay.

23 MR. RUMP: The next comments have to do with a
24 suggestion of making the discretionary fees mandatory
25 no charges.

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1 What you've just said is that you would intend that
2 the fees be discretionary. This has to do with a letter
3 from the Executive Officer to Mr. Bombard, about the use of
4 a different mooring by a sublessee, or whatever.

5 Staff's response is that these are really --
6 they were left discretionary for operational flexibility.
7 The provisions could be mandatory if you think it's absolutely
8 necessary.

9 COMMISSIONER ACKERMAN: I think it works, doesn't
10 it?

11 EXECUTIVE OFFICER DEDRICK: Yes, as far as we know.
12 We have had virtually no complaints since the understanding
13 was reached as to what the level staff felt was really
14 discretionary on the operator's part.

15 COMMISSIONER ACKERMAN: Some things you have to
16 leave discretionary as well.

17 MR. RUMP: Okay.

18 The next comment has to do with the 60-days
19 cancellation provision. We've already dealt with that.

20 There's a question whether or not we ought to have
21 a provision in the lease to reduce rates for special events.
22 Again, that would be discretionary with the operator.

23 COMMISSIONER ACKERMAN: That would be discretionary
24 as well.

25 EXECUTIVE OFFICER DEDRICK: Since you're setting

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1 a maximum, there's no reason.

2 COMMISSIONER ACKERMAN: The main problem with this,
3 if I recall right before the interpretation, was that the
4 lessee was precluded from any discretion, and we have given
5 it.

6 CHAIRPERSON CORY: If we were in on a percentage
7 of the gross, then you've got to protect the State from
8 people waiving our money, but if we go on a fee, then we
9 avoid that whole problem.

10 MR. RUMP: Another portion of the comment has
11 to do with a suggestion that there's a clause that there
12 be no modifications to the lease increasing the number of
13 moorings.

14 That's already provided for. You would have
15 to have a public hearing and approval before any modifica-
16 tions of the lease.

17 Then finally, a suggestion that bidders be
18 required in the lease to perform as bid. We also concur
19 with that.

20 CHAIRPERSON CORY: All right.
21 You're prepared to go to work and get that
22 drafted. How long will it take you?

23 MR. RUMP: With just one other clarification,
24 maybe.

25 Would the Commission desire a specification of

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1 the minimum number of moorings as well be added specifically
2 to it? I think it would be adviseable from the testimony
3 we've had today.

4 CHAIRPERSON CORY: Yes.

5 MR. RUMP: Greg, do you have something?

6 MR. TAYLOR: I have a couple, one with respect
7 to Mr. Greenberg's remarks in his letter about whether
8 or not -- what their status was if there was substitution.
9 We would disagree with his interpretation. Once
10 a substitution occurs, there are no further rights of the
11 existing lessee. At that time, you're free in entering
12 into another agreement with another lessee to modify the
13 lease.

14 So, there would be a two-step, simultaneously
15 occurring process, where we would make a substitution and
16 modification to reflect those changes.

17 So as that occurs, there would not be any right
18 with regard to the existing lessee to worry about the fact
19 that you have to have mutual agreement to amend any of
20 the existing provisions.

21 It's my understanding from our conversations in
22 the hearing today that all of the statements with regard
23 to services that would be provided and equipment that is
24 going to be used in the case of a substitution would be
25 incorporated into the lease and would be a material

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1 representation which, if it didn't occur, would be
2 grounds for terminating the lease. And that also the
3 failure to provide the services would be specifically
4 provided to be a breach. I think that may have already been
5 covered, but I wanted to make sure that that is covered.

6 Mr. Chairman, you've indicated that the record --
7 one other comment with regard to the environmental impact
8 case that Mr. Greenberg recited.

9 It's our position that there cannot be any
10 environmental review of these proposals until they are
11 received. Therefore, since it's a condition to determine
12 whether it's categorically exempt, that finding will have
13 to be made by the Commission at the time, just before any
14 awards might be made.

15 Mr. Chairman, at the beginning of this meeting,
16 you indicated to Mr. Greenberg that the record would be open
17 for additional comments. I think that a time for any
18 additional comments -- you asked him to address certain
19 things by letter. I guess that would also apply to the
20 other parties.

21 CHAIRPERSON CORY: All right. How quickly can
22 you people get those in, because we'd like to get them
23 so the staff can be reflecting on it as they're proceeding
24 with the drafting.

25 Nobody's going to get anything done today with

1 the transportation. Tomorrow's Friday. Can you get them
2 out by Monday or Tuesday?

3 Is that too close a time squeeze for you?

4 MR. HERTZBERG: How about a week from Friday?

5 CHAIRPERSON CORY: No, much too long. You're
6 probably going to have a bid package a week from Friday.

7 If I don't do that, you're going to get jammed up at the
8 other end. That's why --

9 MR. SNYDER: Could I make a suggestion? Postpone
10 the date to next Wednesday. That would give you three working
11 days between now and then.

12 MR. RUMP: Well, depending on what time you'd
13 like the solicitation to be sent out, that might be
14 appropriate, although depending on how broad the remarks
15 are going to be, if they're very broad, that could cause
16 quite a bit of additional --

17 CHAIRPERSON CORY: Because somebody makes remarks
18 doesn't mean we have to deal with it. I think we have
19 had significant amounts of hearings on this subject.

20 I don't want to preclude issues that have been
21 discussed where we are, but I don't think this thing has to
22 go on forever. We should be down to really specific
23 things. You've won some, lost some.

24 I would think that people should respond on
25 Thursday morning. The staff would call the people who have

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1 spoken here and talk by phone to find out what is enroute
2 to you by mail.

3 MR. HIGHT: Monday morning?

4 CHAIRPERSON CORY: No, my impression was that if
5 you had three working days, that would give you Friday,
6 Monday and Tuesday, so it would be postmarked by Tuesday.
7 Then on Wednesday, you would make the phone call; you would
8 know whether or not you've got a missile that you've got
9 to at least be aware of. I don't want to have the burden
10 on the staff to get the other people to respond.

11 MR. GREENBERG: We would be glad to have it in
12 the mail, one-day guaranteed delivery, at the close of
13 business Tuesday.

14 EXECUTIVE OFFICER DEDRICK: I was just thinking
15 Mr. Chairman, a great deal of comment has come in. It's
16 all been dealt with substantively.

17 Would you consider wanting to limit this to not
18 opening new issues? Or should we just operate discretionarily?

19 CHAIRPERSON CORY: Is somebody discovers that
20 we have --

21 EXECUTIVE OFFICER DEDRICK: Done something real
22 dumb.

23 CHAIRPERSON CORY: Yes, I mean, if you've
24 authorized people to engage in oil leases and mineral
25 extraction in one portion of it, I'd like to know that

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1 before we proceed.

2 EXECUTIVE OFFICER DEDRICK: I promise.

3 CHAIRPERSON CORY: That's why I'm limiting it.

4 But I think we're down. We're making the effort. The
5 record should be clear that we're reaching out to the
6 public to accommodate them, but it's time now to move
7 with some speed as to what those specific comments are.

8 I'm not soliciting new information, but if
9 somebody discovers America in reading over what we've
10 done, we have been known to make mistakes before, I'd as
11 soon have that pointed out before we go any further.

12 EXECUTIVE OFFICER DEDRICK: That was a clarifica-
13 tion. Thank you.

14 MR. RUMP: Staff would suggest that any comments
15 be received by next Wednesday at the latest, actually
16 received, because if you set it as a postmark date it's
17 likely to be longer.

18 CHAIRPERSON CORY: That's why I'm saying it'll
19 be postmarked. I would appreciate if they would do the
20 next-day delivery on the mail, but I would like the staff
21 to call those known interested parties that have been here
22 today and have spoken.

23 MR. RUMP: To the parties here today.

24 CHAIRPERSON CORY: And call on them and say,
25 "Are you sending something, because I have yet to have

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1 next-day delivery mail delivered the next day. I have
2 paid for it, and every time I've gotten my refund. It is
3 the cheapest way. I'm going to do an entire district-wide,
4 state-wide mailer, next-day delivery, and it'll be free.

5 (Laughter.)

6 CHAIRPERSON CORY: I mean, it's the greatest
7 thing going in politics. I hate to spring this on the
8 world early, but we're going a state-wide mailer. It
9 a loan at the bank, but after that we get all the money
10 back because there's no way they can deliver all those
11 pieces of mail the next day, even at nine bucks apiece.
12 It's a hell of a program.

13 So, that's why you guys have got to make the
14 calls. And I would think that these people, except for
15 rare instances, appear to be reasonable, and they would
16 tell you if they've got some complaints, and you know the
17 area where it's in.

18 MR. RUMP: Okay.

19 CHAIRPERSON CORY: What else do we need to deal
20 with?

21 MR. RUMP: There's the time which you would,
22 based upon the receipt of comments, what we talked about
23 today, when you would make a solicitation package available.
24 Given the receipt of that, perhaps -- although there are
25 holidays -- September 8th, say, approximately.

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CHAIRPERSON CORY: Do you think you would have
it prepared to circulate to the Commissioners?

MR. RUMP: It would be available for circulation
prior to that.

CHAIRPERSON CORY: You're talking about adjourning
this meeting to what date?

MR. RUMP: If you want to go until the 10th,
that would be the Friday half-morning.

CHAIRPERSON CORY: So we will adjourn this meeting
until the 10th, with the contemplation that we will hopefully
have dealt with all the substantive issues and, in fact,
that meeting is likely to be cancelled and we will get the
bid packages out.

MR. TAYLOR: Mr. Chairman, I presume that there
has, in effect, been a resolution of this Commission to
instruct the staff to prepare a bid package for the
substitution of a lessee.

CHAIRPERSON CORY: That is my understanding of
where there are at least two Commissioners, that is the
position.

MR. RUMP: The bid package also has a return date
on it, so we might as well discuss that at this point.

Due to the detail, I think we'd need at least
three weeks, four weeks to prepare the package.

MR. TAYLOR: You've got to go backwards. You need

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1 four weeks for staff to review.

2 EXECUTIVE OFFICER DEDRICK: October 1st.

3 MR. HIGHT: For receipt. Well, we could make it
4 October 1st or 4th.

5 EXECUTIVE OFFICER DEDRICK: The first is a Friday.

6 MR. HIGHT: If we wanted to give them the weekend,
7 as long as we had it at 8:00 o'clock on the Monday. This
8 would give the staff, then, three --

9 CHAIRPERSON CORY: How about the bidder? How much
10 time does he have to get his act together to submit it?
11 Let's talk about that.

12 MR. RUMP: That is when they have to be returned,
13 September to the 4th of October.

14 MR. HERTZBERG: That's 24 days.

15 There's a difference between bidders here.
16 One bidder has already got his package practically
17 ready.

18 CHAIRPERSON CORY: I'm inclined to think it
19 needs a 30-day period. I think you've got to give the
20 bidders ample time. He's going to be at significant
21 risk to sharpen the pencils, go over those numbers, and
22 get the various financing together.

23 MR. TAYLOR: Are you willing to go into November
24 and consider it, to give the staff 30 days?

25 CHAIRPERSON CORY: I'm willing to push the staff

1 harder than I am the bidder.

2 MR. TAYLOR: I was afraid of that.

3 CHAIRPERSON CORY: You can start building up some
4 CTO.

5 EXECUTIVE OFFICER DEDRICK: There's a chance
6 that we might be able to get the bid package out before the
7 10th. Why don't we say 30 days from the time at which
8 it goes out, and that'll be noticed on the bid package.

9 CHAIRPERSON CORY: Yes, and then from that, we
10 will give them 30 days to come in, and then we'll go from
11 that whenever that happens to fall.

12 MR. RUMP: I presume, then, --

13 CHAIRPERSON CORY: When you get the bid packages
14 back you can start calendaring a meeting to deal with it
15 on the award.

16 MR. RUMP: The soonest opportunity, then, would
17 be at the regular October meeting.

18 EXECUTIVE OFFICER DEDRICK: That's fine.

19 CHAIRPERSON CORY: Now, there's one other
20 item which has been made reference to here that I want to
21 make sure that everybody understands that we're in some way
22 going to deal with the question of the various people who
23 wish to bid on this, what their options are or are not in
24 terms of what serious remedies they have and don't have.

25 MR. RUMP: Obviously in some of the correspondence

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1 that we received, there were statements that there might
2 be litigation following.

3 I guess one possible remedy there is that if people
4 participate in a bidding process, part of the participation
5 and awarding of the lease should include that a clause
6 which states that that is their choice of remedies. They
7 waive their rights to sue under that lease if they have
8 been awarded the lease. There's enough litigation involved
9 here potentially.

10 COMMISSIONER ACKERMAN: I'll be real careful in
11 my question: Does that mean they waive their right to sue
12 if they've been awarded their lease, and if they've submitted
13 and bid?

14 MR. TAYLOR: It would be awarded.

15 COMMISSIONER ACKERMAN: Only awarded the lease.

16 CHAIRPERSON CORY: I think it's the only thing
17 you can bind them to.

18 MR. TAYLOR: We haven't got a deal with them
19 otherwise.

20 MR. HIGHT: In addition, it's a possibility of
21 adding that the bids would be good until rejected for a
22 time certain, and we haven't discussed that.

23 CHAIRPERSON CORY: We will deal with it before that.
24 If we don't, we probably won't live that long.

25 Any other questions?

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1 COMMISSIONER ACKERMAN: Is this meeting continued?

2 CHAIRPERSON CORY: Does anybody in the audience
3 have some other questions?

4 MR. SNYDER: I wanted to express my own
5 ratification at the patience that the Board has exhibited
6 in handling this, a lot of detail. I think most of us feel
7 we're getting better coverage.

8 CHAIRPERSON CORY: Thank you.

9 Any other things?

10 MR. HIGHT: We are recessing?

11 CHAIRPERSON CORY: We are recessing this until
12 September 10th.

13 MR. TAYLOR: On the understanding that if the
14 Commission can't agree individually --

15 CHAIRPERSON CORY: If the Commissioners don't
16 sign off on the report, we will have a meeting. If we
17 agree, then the subsequent portion of the meeting will be
18 cancelled.

19 MR. RUMP: If there is a meeting, I guess a
20 notice can be posted outside the door here as to its
21 location.

22 CHAIRPERSON CORY: We're recessed.

23 (Thereupon this meeting before the
24 State Lands Commission was recessed
25 at approximately 2:20 p.m.)

--oOo--

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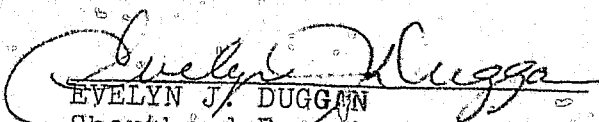
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5 I am a disinterested person herein; that the
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8 Duggan, and thereafter transcribed into typewriting.

9 I further certify that I am not of counsel or
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12 IN WITNESS WHEREOF, I have hereunto set my hand
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