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SPECIAL MEETING
OF THE STATE LANDS COMMISSION

STATE CAPITOL
ROOM 447
SACRAMENTO, CALIFORNIA

ORIGINAL

TUESDAY, NOVEMBER 16, 1982

1:10 P.M.

Cathleen Slocum, C.S.R.
License No. 2822

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MEMBERS PRESENT

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

MEMBERS ABSENT

Susanne Morgan, representing Mary Ann Graves, Director of Finance

STAFF PRESENT

Claire Dedrick, Executive Officer
James Trout, Assistant Executive Officer
Robert Hight, Chief Counsel
Jack Rump, Assistant Chief Counsel
Jane Smith, Secretary

ALSO PRESENT

Greg Taylor, Assistant Attorney General

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5	(Assignor); Kwok Hung Szeto and Nikki Szeto (Assignee);	
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PROCEEDINGS

--600--

CHAIRPERSON CORY: Okay. We'll call the meeting to order except we're supposed to proceed without Susie. She's en route and will be here.

The first item on the agenda is the Anza Shareholders' Liquidating Trust, and you want to change the name.

MR. TROUT: Yes, Mr. Chairman. They've formed an association and in lieu of Szeto, we would like the calendar approval to be to Burlingame Bay Associates. In finding Number 2, on page 5 of the calendar, we would like it to read in the first couple of sentences: "Authorize approval of the assignment of lease PRC 4687 (sic.) from Anza Shareholders' Liquidating Trust to Burlingame-Bay Associates, effective November 23rd," --

EXECUTIVE OFFICER DEDRICK: 23rd or 28th?

MR. TROUT: "...23, 1982, subject to receipt and approval, by the Executive Officer, of evidence of the assignee's ability to perform under the terms of said lease, and" the balance remaining the same.

CHAIRPERSON CORY: And you read "4687" and it's .1 or is it --

MR. TROUT: Yes, .1. I'm sorry. That's correct.

CHAIRPERSON CORY: So we've got the number correct,

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1 we change the name and it's the 28th, not the 23rd, and
2 it's subject to the --

3 MR. TROUT: I believe it is the 23rd.

4 CHAIRPERSON CORY: The reason I'm questioning
5 it, the document I have here with my glasses on, seems to
6 say the 28th.

7 EXECUTIVE OFFICER DEDRICK: Yes. I think that
8 was the change.

9 MR. TROUT: It was from October 28th to November
10 23rd.

11 CHAIRPERSON CORY: Okay. All right. I wanted
12 to make sure we knew what we were approving as opposed to
13 what we do normally.

14 Anybody in the audience who has questions on this
15 item?

16 Questions from Commissioners?

17 Without objection, the proposed authorization
18 as amended will be granted.

19 Item Number 2 is Anza Shareholders' Liquidating
20 Trust and the Chamber of Commerce of the United States.
21 That's an august group. This is an endorsement of a
22 five-year sublease for an Earth Station.

23 MR. TROUT: Yes, Mr. Chairman. This is --

24 CHAIRPERSON CORY: Next to your restaurant?

25 MR. TROUT: It's a very small area. You'll never

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1 notice that you're being fried.

2 EXECUTIVE OFFICER DEDRICK: Only the little kids.

3 CHAIRPERSON CORY: It's an Earth Station; right?

4 MR. TROUT: Yes. It's a satellite for receiving
5 wavelengths from a satellite, and the problem with it is
6 that the Chamber of Commerce is in a building that on the
7 site that they lease is in the shadow of the satellite.
8 So they have to get around on the other side of the building
9 which means it would have to be on their property. Claire
10 has tried several ways to figure out an alternative and
11 it just doesn't work. So we're back.

12 CHAIRPERSON CORY: Anybody in the audience on
13 Item 2?

14 Without objection, approval of Trout's Earth Station
15 will be approved.

16 [Laughter.]

17 CHAIRPERSON CORY: Okay. Item 3, report by staff
18 on hearing investigating the number of moorings at Santa
19 Catalina Island.

20 EXECUTIVE OFFICER DEDRICK: Yes. Commissioners,
21 you recall the last time we discussed Catalina, the issue
22 of how many moorings were actually in use or available for
23 lease came up rather strenuously, and the Commission directed
24 us to investigate the charges and report back to the
25 Commission. The staff has held 30-odd hours of hearings

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1 under oath and are satisfied they've investigated adequately
2 I think --

3 CHAIRPERSON CORY: Is that under oath or after
4 oath? Go ahead.

5 EXECUTIVE OFFICER DEDRICK: A little of both.
6 Anyway, so Jack is prepared to report to you today
7 on their findings. With your permission, I'll leave Jack
8 to do the dirty work, the hard work.

9 MR. RUMP: All right. I think you have in front
10 of you and have had a chance to review the report of the
11 staff. It's a fairly lengthy report followed by quite a
12 few attachments at the back.

13 As the Executive Officer has stated, we had
14 hearings in Los Angeles on October 25, 26, 28, November
15 1st and 2nd. During the course of the hearings a number
16 of witnesses were called.

17 First of all, Jon Hardy, a diver for CATMAR;
18 Joseph Steele of B.O.A.T.; Doug Bombard of the Island
19 Company/Conservancy; Randy Bombard also and Michael LeVac,
20 a diver for the Island Company/Conservancy; and then Lynn
21 Stokes, who presented a count on behalf of Island Navigation
22 Company.

23 The report in front of you lays out I think with
24 references to the various transcripts many of the topics
25 which were discussed. I think one of the points as the

1 hearings progressed is that it is very difficult to get
2 the same count if you do it on a different day or if you're
3 counting on different objects in the water.

4 Basically three primary counts or surveys were
5 done on the lease premises. The first one by Jon Hardy,
6 the CATMAR diver. His report and declaration are attached
7 to the report as Appendix E. He made approximately 63 dives
8 in all coves outside the City of Avalon from approximately
9 January to April, 1982.

10 The second count or inventory done on the premises
11 was done by Doug Bombard Enterprises, essentially upon areas
12 which were indicated on the area photographs submitted to
13 the Commission by CATMAR. Their report and dive slips are
14 attached to this report as Appendix F.

15 Also then, and finally, the third count was done
16 by Lynn Stokes on behalf of Island Navigation, I believe,
17 on June 19th, 1982, which is the same date as of a computer
18 list of all sublessees under the lease that was submitted
19 to the Commission.

20 Additionally, the hearings centered on some other
21 topics that had to do with the lease operation, particularly
22 focusing on stringlines as well, particularly those at the
23 Isthmus and the use of waiting lists for the assignment of
24 vacant moorings. Additionally, on November 10th, subsequent
25 to the hearings, some of our auditing staff flew to Catalina

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1 to check some of the books and records of the present lessee
2 to see if they could check on certain items that came up
3 during the hearings. Their report is also attached to this
4 as, let's see, Exhibit H.

5 I think the best way to focus on the results of
6 the hearing are to see what differences there potentially
7 were in the count. The conclusions which start at page 19,
8 talk about the determination of the number of moorings on
9 the lease premises. The present lessee testified under oath
10 that in their count there was 720 revenue producing moorings
11 on the lease premises. If one takes that information and
12 combines that with the count or survey by Mr. Stokes by Island
13 Navigation, and one focuses on the number of camp-type
14 moorings I believe is his terminology, that count closely
15 approximates the Island Company's count.

16 The diver of CATMAR testified that there were
17 surface moorings of a tally of 741 plus or minus two. I
18 believe it boils down to he felt that there were 25 extra
19 buoys and 71 extra weights. Additionally, it was found out
20 that due to some inaccuracy of the placement of the orange
21 triangles or rectangles --

22 COMMISSIONER ACKERMAN: You need to pull the
23 microphone closer to you.

24 MR. RUMP: All right. Sorry. Is that a little
25 bit better?

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The two diving surveys of the Island Company and Conservancy and of CATMAR were found to be at possibly different locations because it was eventually discovered that the placement of the orange rectangles were not necessarily in the same locations in which weights were found. So I think we've got some figures in here which give you an idea of the -- CATMAR's diver estimated that approximately 90 percent of the weights that he found could be used.

Further testimony centered on the fact that it would take additional tackle to make them useful. Primarily what was found was the concrete weight and a short length of chain. The moorings at Catalina are hooked up with two weights and in-between tackle. So estimates were given that it would take approximately two hours to put that into operation.

The testimony by, I think, Mr. Steele indicated that it was probably just as easy to throw in the additional tackle and moorings and weights from off a barge or onshore. That trying to retrieve these underwater would be a little more difficult to use than actually trying to place them from the surface.

Maybe if we can turn to the recommendations, trying to boil this down because it's quite a bit of material.

EXECUTIVE OFFICER DEDRICK: What page?

MR. RUMP: This would be page 22.

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COMMISSIONER ACKERMAN: Starting with 22.

MR. RUMP: 22 is the recommendations and then we have some proposed findings.

The first subject being the Mooring Identification and Number. I think staff is convinced from the testimony that to eliminate the problem of the confusion of what is on the surface and what constitutes a revenue mooring, that we would recommend the Commission to either remove from this lease all camp moorings or to somehow identify them in such a fashion that they would be known immediately. I think our preference would be I think, to separate confusion, to remove any nonrevenue moorings from the lease.

The second suggestion I think that we would make is that there was testimony that the charts that had been submitted to the Commission were out of date by about two years and that some of the locations were not entirely accurate. We would recommend adding to the lease provision a requirement that the lessee submit annually accurate charts showing the locations of all moorings on the lease premises. The present lessee has begun to eventually number all of the present revenue moorings, and that exhibit is shown as Appendix I, which is attached.

The third recommendation we would have in the area of moorings would be to expressly require the lessee to patrol and inspect the lease premises and to send to the

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1 Commission quarterly and during high season monthly, reports
2 on what surface floats are in use in the coves. This I think
3 would eliminate some confusion that is incurred with regard
4 to testimony regarding lobster pots or whatever. If you
5 know what else is floating in the water in the cove, then
6 we have something to compare it against.

7 The fourth final area of number of moorings has
8 to do with whether or not to hook up any of the weights
9 which were found on the ocean floor. Staff would recommend
10 that since testimony was that none were shown during the
11 course of the hearing can actually be hooked up and used
12 as revenue moorings, that the Commission use the 7250 figure.
13 It's an identifiable one, I think. It's demonstrated by
14 the charts of Appendix I attached plus the computer printout.

15 We would also include in the lease as authorized
16 improvements, two stringlines at the Isthmus, either side
17 of the Isthmus pier. There is some confusion, apparently,
18 with the present lessee as to whether or not that's a mooring,
19 but I think it's definitely in place. They're deriving
20 revenue from it. So specifically the lease should be cleaned
21 up to specify two stringlines as authorized structures.

22 There was some discussion concerning assigned
23 ties or rafting during the meeting. There already is an
24 informational letter attached to the bid package as Exhibit
25 D, which talks about the policy of charging on that.

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1 Then finally in the area of recommendations would
2 be that of Waiting Lists. During the course of the hearing
3 it was found that there are public lists maintained per cove
4 and per length. In addition, there are 13 Moorings which
5 are called Addendum Moorings, in which there are waiting
6 lists exclusively for yacht club members. Staff feels that
7 to eliminate any potential discrimination, that these two
8 lists would be merged so that there would only be one list
9 for each cove and length of the boat, and we would recommend
10 that that be done by chronological order.

11 So then on page 26, we've incorporated those
12 suggestions into specific findings. There are one or two
13 items that I would like to point out. Say, for instance,
14 on page 27, (3)(a), is a recommendation that the revenue
15 moorings we marked with individual serial number and must
16 be painted with a color which distinguishes them from non-
17 revenue moorings. The color suggestion might not be entirely
18 accomplished depending on what the Coast Guard regulations
19 are. It might be that the Coast Guard would require that
20 the surface top of the buoy be painted white, but it could
21 be color coding in the numbering that is placed on them
22 that would identify them as distinct from camp moorings.

23 I think that's basically all we have in terms of
24 our presentation at this time.

25 CHAIRPERSON CORY: Okay. Any questions?

1 COMMISSIONER ACKERMAN: Not at this point.

2 CHAIRPERSON CORY: Is there anybody in the
3 audience who wish to comment on the staff recommendations?

4 Oh, you do want to comment. Go ahead.

5 MR. HERTZBERG: I'll be very brief.

6 EXECUTIVE OFFICER DEDRICK: Please identify
7 yourself.

8 MR. HERTZBERG: Yes. Harrison W. Hertzberg for
9 CATMAR.

10 I wasn't brief during the hearings, but I'll be
11 brief now.

12 [Laughter.]

13 MR. HERTZBERG: We are asked to bid competitively
14 against a company that has had the benefit of the experience
15 since 1950. I found out, if I didn't find out anything during
16 these hearings, I found out one thing. That side tying is
17 a big business. On a busy weekend there's more than one
18 boat on a mooring. I would say percentagewise, I think
19 during the hearings it came out something like in excess
20 of 50 or 60 percent or 75 percent side ties.

21 MR. RUMP: I thought that figure had to do with
22 the nonuse by the sublessee of the mooring.

23 MR. HERTZBERG: All right. Nonuse by the sublessee.
24 But it's a big factor. There is no way that any bidder other
25 than the existing lessee knows the extent of side tying and

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1 can intelligently bid because they've got the figures, we
2 don't. It is for that reason, gentlemen, that I urge you
3 in order to try to even out the competition here, to have
4 the bidding on a percentage against a guaranteed minimum
5 which we have urged when we filed the petition herein
6 originally. That was part of our original petition. It's
7 the only way that we can competitively come into this thing.

8 Now, on the alternative recommendation I would
9 urge the Commission -- our diver testified, and he's an
10 independent diver. We use an independent company. Our
11 competitor used their own employees to do the diving. There
12 were 844 above the water or below the water mooring weights
13 or buoys in total. Now, that included the camp moorings
14 that he thought were camp moorings. In his opinion there
15 were 57 moorings that belonged to the camp which left 787
16 as opposed to 720 rentable, moneymaking moorings. That
17 includes weights under the water which are ready to be hooked
18 up.

19 Incidentally, he said it would take between an
20 hour and two hours to do the hooking up.

21 MR. RUMP: That's correct.

22 MR. HERTZBERG: I suggest that since it does not
23 affect the environment, that the bid be for 787 and that
24 they be hooked up. Whoever wins will have that many more
25 to rent.

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1 Additionally, the only other comment I have to
2 make is on page 27, paragraph 4, the alternative bid
3 conclusions, says that: "No additional charge shall be
4 imposed where such multiple use is made by actual named
5 sublessees and registered vessels for the particular mooring
6 in question."

7 In other words, if more than one person owns a
8 mooring, two, three, or four, the proposal is that the two
9 or the three or the four of them can hook up to that one
10 mooring without paying the additional charge. I don't think
11 it's fair. I think they should pay like anybody else. If
12 you got four people that own a mooring and you permit the
13 four people to hook up to that one mooring, each owning 25
14 percent, that's equivalent to four moorings and I think the
15 three of them should pay the same as if the lessee doesn't
16 appear and you rent it out and then somebody else side ties.
17 I cannot stress too strenuously the factor of the percentage
18 bid against a fixed amount as the only way that we can
19 sincerely and competitively and honestly bid in this
20 proceeding.

21 Thank you, gentlemen.

22 CHAIRPERSON CORY: Questions?

23 Anybody in the audience? Anybody else?

24 MR. HERTZBERG: Miss Woodlock is with us and she
25 wants to comment on the evidence to some extent.

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1 MS. WOODLOCK: My name is Rosemary Woodlock. I'm
2 representing Catalina Marine Services.

3 I have just two points I'd like to make. One is
4 that there be a definition of "camp." I'm still not clear
5 as to whether yacht clubs are included in camps or not.
6 We did find evidence that there were several moorings, one
7 in White's Landing, where Mr. Hardy found a weight and that
8 was hooked up in the summer, and then secondly a stringline
9 in Fourth of July Cove, which is used by Fourth of July
10 Yacht Club which were previously not discussed or acknowledged.
11 Mr. Bombard states that they are not revenue producing;
12 however, Mr. Bombard is only the agent of the lessees and
13 there's no evidence whatsoever as to whether the lessees
14 are charging a factor in their land lease to take into account
15 water use. I don't think that anyone else could feel
16 comfortable competing on that issue unless it's clear that
17 such yacht club usage is either in or outside of the lease.

18 Traditionally, the Commission has defined "camp"
19 as the youth educational oriented institutions there. We
20 would like to have it clear that that is what camp means
21 and that the private and discriminatory yacht clubs are not
22 to be included in this and the moorings that they have
23 installed either should be removed totally or they should
24 be permitted a negotiated rental by any subsequent lessee.

25 Secondly, --

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1 COMMISSIONER ACKERMAN: Maybe we could have a
2 response from Jack?

3 MR. RUMP: Perhaps one point to clarify. In
4 general our recommendation, we recognize the problem of
5 defining what a camp is and what clubs are. As you know,
6 we're in the process of individually handling each of the
7 leases for the upland campsites or the clubs for their piers
8 as it's appropriate. A recommendation tied to 720 moorings
9 to those which are shown in Appendix I which are specifically
10 revenue moorings. So I recognize that there would be
11 uncertainty unless we got down to it very specifically which
12 moorings we're talking about. So I think that problem has
13 been solved.

14 CHAIRPERSON CORY: She raised the question about
15 in two coves.

16 MS. WOODLOCK: Well, in two coves there is
17 evidence that there are existing operations with --

18 CHAIRPERSON CORY: How is that resolved in
19 Appendix I?

20 MR. RUMP: It is not by Appendix I because the
21 only thing which is really before the Commission today is
22 the lease up for the revenue moorings. I think I agree from
23 what we've heard. Staff would like to do further study in
24 terms of I think we might have a potential trespass. I believe
25 during the course of the hearings there is apparently an

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1 unpermitted buoy by the Balboa Yacht Club, for example, but
2 I think those are separate and apart from the leasing of
3 the revenue moorings under this lease here. That's
4 something extra and outside.

5
6 There was not during the course of the hearing
7 any connection between this lease operation and those buoys.

8 EXECUTIVE OFFICER DEDRICK: You recall that in
9 the master lease, the proposed bid lease, the nonrevenue
10 uses by the onshore user are not currently under lease to
11 the company and are not contemplated to be under lease by
12 this bidding system.

13 CHAIRPERSON CORY: And the definition of the 720
14 that are for lease, does that deal with the question that
15 she raises as to whether they are or are not part of the
16 lease?

17 MR. RUMP: I don't believe that any of the ones
18 which she has mentioned would be in the 720 which are --

19 [Thereupon a short recess was taken.]

20 MS. WOODLOCK: Yes, I agree that that is the case.
21 The point I'm trying to make is that if they are going to
22 be permitted on future leases negotiated with the upland
23 sublessees, that that does put the lessees at a bargaining
24 advantage that other bidders do not have. That permitting
25 a yacht club -- and it's my understanding that none of the
yacht clubs have asked for separately negotiated leases --

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1 is that correct? -- or was not true during the hearings.

2 MR. RUMP: I think certain yacht clubs have piers
3 which have been applied for. I think there might be the
4 question of why there's stringlines, for instance, at the
5 Fourth of July cove and why there might be two buoys out
6 there. But we will bring each one of those particular clubs
7 or camps or whatever before the Commission so that you can
8 see exactly what you're permitting and what sorts of uses
9 would be made of those sorts of facilities.

10 MS. WOODLOCK: The current lease does permit the
11 lessee to negotiate with the upland lessees on certain
12 moorings that sometimes are referred to as camp and sometimes
13 are not. Again, that is somewhat of an advantage in terms
14 of looking at a potential bidder as subsidizing an operation
15 from other revenue sources.

16 CHAIRPERSON CORY: In any event, that sublessee
17 camp owner, if you will, would have to comply with a lease
18 with us --

19 MR. RUMP: Exactly.

20 CHAIRPERSON CORY: -- as an independent,
21 unilateral or bilateral between them and us, without any other
22 lessee being involved.

23 MR. RUMP: Yes.

24 EXECUTIVE OFFICER DEDRICK: That's correct.

25 CHAIRPERSON CORY: So if they're paying somebody

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1 else to boot, they're at risk, whether or not they can afford
2 the final transaction by the time you see the paper.

3 MS. WOODLOCK: What we're asking for is, we're
4 trying to decide if we can afford the final transaction,
5 is that we have certainty on this point.

6 CHAIRPERSON CORY: The certainty we can give you
7 is that we're leasing 720 moorings that are specified in
8 Appendix I.

9 MS. WOODLOCK: Would it be possible for the
10 Commission to define "camp" as --

11 CHAIRPERSON CORY: Well, the camp doesn't have
12 anything to do with the leases, as I understand it.

13 MR. RUMP: Right. The focus of the lease is on
14 the revenue moorings and regardless of what upland facility
15 of operation is, it's a separate issue from this lease. So
16 we've defined only the revenue moorings.

17 CHAIRPERSON CORY: So these other moorings are
18 going to be dealt with by the Lands Commission and those
19 people, by lateral agreement in the future, and I do not
20 know that the definition would protect you from the fear
21 that the upland lease could help subsidize the operation
22 because that could go on anyway.

23 But the actual nonrevenue moorings will be dealt
24 with by standards adopted in the general sense as to their
25 public purpose as to what fee they're going to be paying.

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1 If they are nonpublic in the definition of the Commission
2 and nonuniversally available, they're likely to pay a
3 penalty. If somebody wants to run the biggest boat club,
4 they're going to pay dearly for it. I would guess the
5 implication of one of your comments is to try and put the
6 questions on the table. I guess that's about where we're
7 headed, but I don't think we can protect you. It's one of
8 the givens and one of the inequities in that there are upland
9 owners who have rights.

10 COMMISSIONER ACKERMAN: I understand that the
11 Chairman's comments really to say that nothing is going to
12 be done in any of the coves without a lease from the
13 Commission, whether it be revenue or nonrevenue or any kind
14 of activity, be it a separate lease or whatever. So I think
15 the insurance is that, no, nothing else is going to be allowed.
16 That's why it's trying to be written as tight as it is.

17 MS. WOODLOCK: Well, on the issue of the biggest
18 boat club or something like that, apparently the Coastal
19 Commission is concerned about the public access through these
20 particular coves where yacht clubs are located. So it is
21 more than just a theoretical problem.

22 The second point is somewhat related to this, and
23 that's whether a waiting list is needed at all right now.
24 Mr. Bombard testified that everyone on the waiting list had
25 been offered a mooring this year and that there were in fact

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1 several moorings at Catalina Harbor that have never been
2 leased in addition to the 12 public moorings set aside.
3 We questioned whether any bidder should be burdened with
4 this waiting list at all and whether it might not be in the
5 better interest of the public just simply to try to expand
6 this beyond the rather small group of people who have had
7 access to this area and access to a waiting list prior to
8 this subsequent issuing of the lease.

9 I think that should be seriously considered as
10 to just disregard the waiting list and possibly take names
11 on a totally new basis in the future.

12 CHAIRPERSON CORY: Jack, can you respond to the
13 concept, if there is inherent in the concept of a waiting
14 list, that there is something that people are waiting for?
15 If there is a list which people have been offered that which
16 they are waiting for and they decline, why is there a waiting
17 list?

18 MR. RUMP: That's a reasonable question. As best --
19 as came out during the hearing -- is that within the certain
20 coves some of the moorings are more desirable than others
21 due to weather conditions, due to access to shore or what
22 have you. So apparently there have been a process of going
23 down the waiting list and offering it to the parties in
24 number on the list. I guess the Commission could require
25 that they take the next available mooring or, if you add

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1 on additional people to the end of the waiting list,
2 eventually somebody will take the available mooring, it seems
3 to me.

4 CHAIRPERSON CORY: But is the question that which
5 they were offered was not sufficient, the third tier at the
6 opera wasn't good enough given the quality of the eyes of
7 the recipient, that they wanted orchestra or nothing?

8 [Laughter.]

9 MR. RUMP: That would be a fair --

10 EXECUTIVE OFFICER DEDRIK: That's pretty common
11 practice in boating marinas or anywhere else. There are
12 more desirable berths than others and you'll take any berth
13 to get a boat in and then you immediately get on a list for
14 the berth that you really want. I think that's the common --

15 COMMISSIONER ACKERMAN: Do I take that to mean
16 that a significant number on the waiting list currently have
17 moorings at Catalina and they want to get a better spot?

18 MR. RUMP: I don't necessarily think that it means
19 that they already have moorings.

20 CHAIRPERSON CORY: They have not yet found a mooring
21 that is worth the price that they have to pay.

22 MR. RUMP: That might be a quite true statement.

23 COMMISSIONER ACKERMAN: Is there any problem with
24 still having a waiting list and just go in after the public
25 once you've exhausted the waiting list?

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1 EXECUTIVE OFFICER DEDRICK: I don't see any.

2 COMMISSIONER ACKERMAN: Isn't that what's really
3 being done now?

4 MR. RUMP: Correct. During the course of the
5 hearings it was brought out, that since several of the coves
6 were having difficulty filling the vacancies, they actually
7 advertised in the papers and tried to solicit takers in that
8 fashion.

9 CHAIRPERSON CORY: See what happens, Dave? When
10 we started this thing there wasn't Reaganomics and people
11 had lots of money and they didn't have places to park their
12 yachts.

13 COMMISSIONER ACKERMAN: Next year we won't have
14 any problem.

15 [Laughter.]

16 CHAIRPERSON CORY: Okay.

17 MS. WOODLOCK: That's all, thank you.

18 CHAIRPERSON CORY: Okay. Is there anyone else?

19 MR. RADCLIFFE: Jim Radcliffe is my name. I
20 represent Island Navigation Company and Seaway Company of
21 Catalina. We will be joint bidders for the lease premises.

22 I might add at the outset that regardless of the
23 outcome of the investigative hearing, the staff report or
24 the proceedings today, Island Navigation Company and Seaway
25 Company of Catalina propose to tender a bid.

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1 In the investigative hearing that we have heard
2 so much about we were neither the petitioner nor the
3 respondent, but participated as a bidder in attempting to
4 ferret out certain facts which we felt were necessary in
5 the bidding process. The hearing was rather remarkable in
6 character, I thought, and if there is any conclusion that
7 I could draw from it, it is that we ended up defining what
8 we do not know more than what we found out during the hearing.

9 CHAIRPERSON CORY: Does that mean that progress
10 was made?

11 MR. RADCLIFFE: Progress was made. As a matter
12 of fact, like the Panama Canal, we seem to be proceeding
13 westerly in an easterly direction insofar as what we know
14 about the bidding process in this matter.

15 The one thing we did find out is that over the
16 course of the last year it has been difficult, if not
17 impossible, for two of the three bidders to figure out how
18 many moorings we're talking about. Within the coves,
19 individually or the total number of moorings, the change
20 over the last year was in the total number probably as many
21 as 35. In one individual cove we started out in October,
22 1981, with information provided by the Commission indicating
23 33 moorings. It went to 34. It went to 35 and as of the
24 hearing process which we just went through, it's now 39.
25 I'm satisfied, however, on behalf of the company that I

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1 represent, that if the Commission determines that 720 moorings
2 is what we're talking about, then 720 moorings we'll bid
3 on. That's not the problem.

4 The things we do not know are really the problem.
5 For example, we do not know who owns the moorings and who
6 does not own the moorings. Now, there was allowed during
7 the period or during this investigative hearing, some
8 evidence to be introduced or some questions to be asked as
9 to, first of all, how many moorings were owned by
10 individuals, how many moorings were claimed to be owned by
11 the present lessee. However, we were reminded from time
12 to time and justifiably so, I think, that the constraints
13 imposed by the Commission on that investigation was to
14 determine the number of revenue producing moorings.
15 However, from a bidder's point of view, it's important, first
16 of all, to know what claim of ownership anybody has to the
17 moorings that rest on the submerged lands on the lease
18 premises.

19 Curiously enough, the testimony at the hearing
20 was that nobody or at least the president of the present
21 managing agency did not have any document in his possession,
22 nor has he had since 1964, which indicates to him either
23 that the Catalina Island Company, the Conservancy or the
24 so-called individual owners actually own those moorings.
25 So consequently, as I sit here right now, I don't know,

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1 I don't know whether the State Lands Commission knows, but
2 it's important to a bidder. Another thing we do not know --
3 it's paragraph 13, I think, in the present lease, which gives
4 to the State the option to retain any of the facilities on
5 the lease premises. Now, after recessing and the president
6 of the Catalina Cove and Camp Company checking with his office,
7 it was determined that their figures at least indicate, even
8 though they have no basis for claiming it, that there are
9 299 owned moorings by individual owners. There are 421
10 leased moorings presumably owned by the present lessee, even
11 though neither ownership is documented in his office nor
12 has it ever been.

13 However, paragraph 13 of the present lease gives
14 the State of California the option of retaining any and all
15 facilities on the lease premises at the termination of his
16 lease and of preceding leases. I think it's important for
17 each bidder to know does the State of California intend to
18 retain those moorings or does it not? We were not allowed
19 any testimony in the investigative hearing as to the cost
20 of installing a mooring, but in previous hearings in this
21 Commission, I think all parties have represented that at
22 least the 40-foot and deeper water moorings run about \$400
23 to be installed.

24 Now, if we're talking about a new bidder to
25 install 400 moorings at \$1500, we're talking \$600,000. If

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1 the State of California is going to exercise its option upon
2 termination of the present lease, then presumably the bidder
3 will not have that expense or at least some other expense.

4 We do not know that.

5 The only bidder who sits in a position to be able
6 to say with any clarity or with any definity what the cost
7 of the moorings is going to be is the present lessee who
8 claims that they own them, if they do, and who has been
9 operating for a number of years with these moorings. But
10 I think the Commission will certainly see that it makes a
11 world of difference to either of the other two whether or
12 not the State intends to exercise its option or whether it
13 doesn't.

14 I think the idea of the camp moorings has been
15 discussed by those who have preceded me. But during the
16 investigative hearing; the testimony varied from zero to
17 16 to 111 possible camp moorings. That has been pointed
18 out that the present lease provides that the successful
19 bidder and successful lessee will have the opportunity to
20 enter into an arrangement with those parties who have the
21 so-called camp moorings.

22 In the investigative process there was testimony
23 to the fact that certain moorings have since this bidding
24 process began been transferred from the Santa Catalina Island
25 Company, if they own them, to the Conservancy. We do not

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1 know what, if any, have been transferred by whom and for
2 how much. That is tied in I think with the exercise of the
3 State if the State intends to do so of its options to retain
4 these moorings. One of the other areas that we do not know
5 as a result of this hearing or otherwise is whether the
6 individually negotiated camp leases, the State intends to
7 provide that these camp lessees may not in fact, must not
8 compete in a commercial basis with the subject lease
9 premises as far as renting on a daily basis or otherwise
10 There is nothing I know of presently which prohibits the
11 camp lessee or sublessee as the case may go from renting
12 out there mooring in direct competition to one of the
13 successful bidders here. If we're talking about a 111 choice
14 moorings, that could make a substantial difference in the
15 bidding process and in the kind of mathematics that it takes
16 to come up with a successful bid, but a reasonable and
17 practical, presumably profitable bid of the bidder.

18 The question of course is who knows the answer
19 to these things? Well, I think it's clear that two out of
20 three of the bidders do not know, and insofar as the questions
21 of the State and what the State's intentions are, perhaps
22 all three bidders do not know. I would suggest that to the
23 Commission that these questions, particularly those raised
24 about what are the State's intentions, are crucially important
25 to a successful bid. I do not personally understand how

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1 any bidder could underbid without knowing the answer to
2 those three questions and particularly the one involving
3 the moorings and \$600,000 worth of expenses.

4 In a way, and it's perhaps an inaccurate analysis,
5 but I've always been amused that a professional or any kind
6 of a football game where the referee throws a ball
7 indiscriminately for three downs and on the fourth down with
8 caliber like precision they get down and examine whether
9 there has been a first down. There are rumors around, and
10 I would hope the Commission would resist the urge, to hurry
11 to a decision in this matter without having determined all
12 of the issues that have to be determined so that a successful
13 bid can be made by any of the three parties. One that
14 is understood so that the State and the successful bidder
15 both know where they stand. In that regard, and I would
16 suggest to the Commission and join with Catalina Marine
17 Services, that it seems to me that a fixed dollar bid is
18 singularly inappropriate at this kind of an operation.
19 Personally on behalf of the people I represent, I felt that
20 the minimum 125,000 in percentage of the growth was an ideal
21 way to handle it. With the unknowns and with the variables
22 that are bid into this bidding process, I do not see how
23 a fair bidding procedure can be obtained on a fixed basis.
24 So I would strenuously urge the Commission to advise one
25 way or another the bidders before the bidding process is

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1 concluded as to what the State of California intends to do
2 in these three areas that I mentioned.

3 I'd like at this time to thank this Commission
4 and particularly the staff with the Attorney General's
5 Office and the State Lands Commission for their patience
6 during what started out as a one-day hearing and ended up
7 at least five. It seemed like seven.

8 Thank you very much.

9 COMMISSIONER ACKERMAN: Question to the staff.
10 Is there any prohibition in the lease or inherent in other
11 State law that would prohibit a camp who's nonlicensed or
12 does not have a lease for revenue producing purposes to lease
13 a mooring buoy for a charge?

14 MR. RUMP: I think the answer to that might be
15 relatively simple. We're dealing with the lease of the
16 revenue moorings. The lease is for the individual upland
17 camps or whatever could specify the uses or purposes of that
18 lease.

19 CHAIRPERSON CORY: So is it appropriate for us
20 to warrant in this bid package that those future leases
21 will so limit? I think that is the comfort --

22 COMMISSIONER ACKERMAN: They're asking for
23 protection.

24 MR. RUMP: Some sort of protection. I guess it
25 can be done, although you don't have before you at this

1 very moment those leases. So --

2 MR. HIGHT: It's a matter which would be within
3 your discretion.

4 MR. RUMP: The lease applications that we have
5 in front of us are not for any competitive activity but
6 related to the activities within the camp or the club.

7 COMMISSIONER ACKERMAN: Are any camps operating
8 revenue producing mopings at this point?

9 EXECUTIVE OFFICER DEDRICK: No.

10 MR. RUMP: Not that we know of.

11 COMMISSIONER ACKERMAN: Then there's no problem
12 in specifically prohibiting that, is there?

13 CHAIRPERSON CORY: That was the impression from
14 all the various people who testified that the camps, part
15 of their hue and cry as I recall it, was, we're just standing
16 here not in any business and that's the purpose of excluding
17 them, but I wanted to make sure that we could in essence
18 make that representation, that it was legally proper for
19 us to do so. Because if it is, I am inclined to include
20 such representation. So they will know that they are not
21 going to be having competitors.

22 MR. RUMP: I think there's only one thing. I don't
23 think it changes --

24 CHAIRPERSON CORY: The nature of that warranty
25 I would guess is something the lawyers ought to look at,

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1 but some stipulation to let them out of the thing if we're
2 going to demand a payment, and then them not have the only
3 game in town.

4 MR. RUMP: There's only one point of clarification
5 in terms of lease applicants we have for the camps. I
6 believe one is technically ~~not~~ a nonprofit institution, but
7 their use in producing revenue I don't think would be
8 competitive as a mooring service, but it would be related
9 to the operation of the camp. I don't think that changes
10 our warranty, but that's just for information.

11 CHAIRPERSON CORY: Okay. You would like that --

12 COMMISSIONER ACKERMAN: You would like that --

13 CHAIRPERSON CORY: There's two of us --

14 COMMISSIONER ACKERMAN: -- part of our direction.

15 CHAIRPERSON CORY: -- that would like that included.

16 COMMISSIONER ACKERMAN: When negotiating the other
17 leases with the camps.

18 CHAIRPERSON CORY: Is there anybody else who wants
19 to say something?

20 MR. GREENBERG: Charles Greenberg representing
21 your present lessees. We would just like to say that we'll
22 be very happy to bid whatever decisions the Commission makes
23 on what are the proper conditions or the proper parameters
24 under which that bidding should take place. It might be
25 helpful to the Commission if we did just for information

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1 purposes discuss a couple of the things that have been brought
2 forth today.

3 Mr. Radcliffe's concern that when he indicates
4 that neither we nor anyone else apparently know who owns
5 the marinas and who doesn't own them and, as a result, there's
6 some sort of a problem as he perceives it in bidding refers
7 to the fact that the owned moorings on Catalina were put
8 in the twenties and thirties and forties and fifties before
9 my clients really administered the submerged lands
10 activities there. A fellow just came over with some mooring
11 equipment and he dropped it in the sea and he had a mooring.
12 It was before the State of California had established that
13 it owned the submerged lands out there.

14 When we took over the direction of the premises,
15 we did not like the policy implications of having owned
16 moorings. We preferred the policy, because we did want
17 to make the moorings as available to the public as possible.
18 So what we did is that we certainly didn't try to kick any
19 of these old guys off the premises. But from that point
20 on, when new moorings went in, we put them in and we leased
21 the moorings rather than have owned moorings.

22 Now, I think it is true that, as Mr. Radcliffe
23 was able to establish in the hearings, that we can't go back
24 to 1920, '30, '40, or '50 and have a document, a deed,
25 something from the Title Insurance Company that says that

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1 the fellow who's been out there with his boat all that time
2 or is a successor-in-title, paid money to get out there
3 somewhere during that time is a person who actually owns
4 the mooring, but we have treated him that way. It should
5 be clear to the two other bidders which are the so-called
6 "owned moorings" and which are the leased moorings because
7 they have available to them the computer printouts that we
8 have been furnishing the Commission of each of the 720
9 revenue moorings. On those computer printouts --

10 CHAIRPERSON CORY: Question.

11 MR. GREENBERG: Yes.

12 COMMISSIONER ACKERMAN: Is it true that there are
13 299 owned moorings and 429 leased?

14 MR. GREENBERG: That's my -- Yes, it is. That's
15 right.

16 MR. RUMP: That was the testimony at the hearing
17 under oath.

18 COMMISSIONER ACKERMAN: And everyone agrees to
19 that?

20 MR. GREENBERG: Yes. And there are computer
21 printouts available to the two bidders which will show them
22 which 299 moorings are owned and which are not, which are
23 the leased moorings.

24 COMMISSIONER ACKERMAN: The question is not your
25 ability to indicate but the ability to prove documentation.

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1 MR. GREENBERG: That's the question. Can we go
2 prove documentation that we perhaps in our commercial
3 ineptitude have been allowing bargain rates to people
4 for umpteen years without demanding proof they really own
5 the mooring. I think that's the issue.

6 CHAIRPERSON CORY: - But the mooring is personalty,
7 is the hardware, the tackle?

8 MR. GREENBERG: That's correct.

9 CHAIRPERSON CORY: In the general sense there is
10 not proof of ownership of water tanks filled with concrete
11 anyway.

12 MR. GREENBERG: That's our view, yes.

13 COMMISSIONER ACKERMAN: My point of asking
14 the question is we've always talked about a differentiated
15 fee schedule between leased and owned moorings. So it's
16 important to have a definitive number so that the bidders
17 know whether they're dealing with a certain number of leased
18 moorings or owned moorings.

19 CHAIRPERSON CORY: But it is not only definitive
20 as to number but it is definitive as to which they are.

21 MR. GREENBERG: That's correct.

22 MR. RUMP: That's right. The computer printout
23 does specify and adjacent to each mooring whether it's leased
24 or owned.

25 MR. GREENBERG: The final aspect of this as

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1 mentioned by Mr. Radcliffe is the question of the relevancy
2 of whether or not this Commission wishes to exercise its
3 right at the end of the lease period to acquire the
4 personalty, so to speak, the attached personalty of the
5 mooring systems. I fail to see the relevance of that
6 question since the lease which you've entered into, no matter
7 who is your successful bidder, will stay in existence for
8 another 13 years or so. We're not talking about bringing
9 the old lease to an end. As I understand it, the question
10 is whether you wish to exercise your right that you preserved
11 under the present lease of about 14 years' duration that's
12 left on it to at the end of that period exercise your right
13 to acquire the owned, so-called owned moorings.

14 So I don't see how that affects how much money
15 a bidder will bid because he's just going -- if he obtains
16 the bid, he steps into our shoes and he is going to have
17 to certainly I would suspect replace the moorings that are
18 our property, that are the lease property. I don't think
19 the State has any right under the existing leasehold to take
20 that property until the end of the lease period.

21 CHAIRPERSON CORY: You were suggesting that the
22 prior lease did not have that, when that expired and you
23 chose to leave the personalty there, you no longer had title
24 to it?

25 MR. GREENBERG: That we no longer had title to

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1 it? No. I don't believe that's right.

2 CHAIRPERSON CORY: I'm asking you.

3 MR. GREENBERG: I don't believe that's right.

4 First, I don't think the prior lease ever expired. I think
5 it was superseded by a new lease which was entered into before
6 the prior lease came to an end. But I think that Mr.
7 Radcliffe was addressing himself to an option that this
8 Commission and the State of California has at the end of
9 the lease period if it wishes to exercise it, similar to
10 any landlord lease, to take the personalty. My point is
11 only that I don't see how that affects a potential bidder
12 attempting to figure out what he's going to bid.

13 CHAIRPERSON CORY: I think the fact that you have
14 placed on the record what your view of those facts would
15 be should be helpful to the other bidders without us commenting
16 on what we believe the law and the facts to be. I think
17 that should be useful --

18 MR. GREENBERG: Commissioner Cory, that's one of
19 the most lawyer-like statements I've ever heard.

20 [Laughter.]

21 CHAIRPERSON CORY: Is that okay, Greg?

22 [Laughter.]

23 MR. GREENBERG: Finally, I'd just like to say this.

24 MR. HIGHT: You got him off the hook, great.

25 MR. GREENBERG: I think we, too, are very grateful

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1 that this investigation took place. I'm a little surprised
2 by the turn it took in today's hearing, but I think it's
3 a useful turn. The original investigation took place because
4 there was a very serious allegation made that there were
5 850 potential revenue producing moorings on the lease
6 premises, and I don't think anybody believes that any more.
7 I think the evidence was clear and convincing in the hearing
8 that we have not reached our lease obligations to you and
9 there are 720 revenue producing moorings. You might argue
10 about a stray mooring here or there as to what it means,
11 but pretty clearly that's so. What we are talking about
12 today is not any of those original motivations that started
13 the hearing process. What we are talking about today is
14 further education, so to speak, for the benefit of the
15 bidders, of facts that were uncovered in the hearings which
16 now the other bidders want to know more about before they
17 bid.

18 I think that's legitimate, too, that they should
19 know enough to bid about. I think it's important to point
20 out that those facts have nothing to do with the original
21 reason the hearing was called. As I've listened to Mr.
22 Radcliffe, I really don't believe that there are any facts
23 that are germane, that he needs to know now before he can
24 make an intelligent bid or his client can make an intelligent
25 bid. We would like to go forward with the bidding process

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1 and we would like to do it under any terms and conditions
2 that this Commission sees fit.

3 Thank you.

4 CHAIRPERSON CORY: Questions?

5 COMMISSIONER ACKERMAN: None.

6 CHAIRPERSON CORY: Okay. Staff, do you want to --

7 MR. TAYLOR: I have a comment with regard to Mr.
8 Gröenberg's last statement and also to the question of Mr.
9 Radcliffe in regard to what is the State's intent about the
10 improvements.

11 You have to look at the history of the preceding
12 lease and this lease, and one of the issues that was addressed
13 the last time was the ownership of the improvements. Under
14 the previous lease there was a specific provision that all
15 of the improvements were retained by the lessee. That
16 provision was stricken from the previous lease and we have
17 the standards for paragraph 13 which I need strong glasses
18 on a magnifying --

19 CHAIRPERSON CORY: When you talk about "previous
20 lease," could you give us some time frame?

21 MR. TAYLOR: The previous lease was the lease which
22 the Island Company had immediately preceding the one which
23 is currently in existence.

24 MR. RUMP: Started January 1st of this year.

25 MR. TAYLOR: In other words, the one that was

1 prior to January 1 of this year had a provision in it that
2 provided that the improvements remain the property of the
3 lessee and that they could remove them. The State had no
4 interest in them. There was some discussion on that in the
5 course of the hearings that we held last year on that point,
6 and it was decided to change the lease to go to the standard
7 provision which allows the Commission to elect whether to
8 keep improvements on the property. These are anchored to
9 the property.

10 It would seem that the issue with regard to the
11 owned moorings which the staff has treated as those designated
12 as owned on the computer printout, would be somewhat moot
13 because those people will hang on through the period of time
14 until the end of this lease under whatever operator there
15 is. So the question remains as to the status of the
16 equipment owned by the current lessee.

17 Under paragraph 13 the Commission would have the
18 option of ordering the existing lessee in the event of
19 termination to leave the improvements there. I think
20 there will be a difference of opinion if the Island Company
21 and Conservancy are not the winning bidder as to termination,
22 but it would appear that termination as far as the current
23 lessee, the Island Company and Conservancy is concerned,
24 means when they're terminated out and not at the end of the
25 lease. However, I think that, Mr. Chairman, your remark

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1 was that Mr. Greenberg had stated his position and the
2 Commission has stated its.

3 CHAIRPERSON CORY: We did not state one.

4 MR. TAYLOR: That's very judicious.

5 CHAIRPERSON CORY: I'd like to leave all the
6 doors open as possible. But I think the bidders should be
7 aware of a potential conflict or argument about what the
8 facts are. I don't think we can candy-coat that. I think
9 we might come to our decision, but what I'm concerned about
10 making a conclusion -- I know where David is. But I would
11 not want to attempt to candy-coat saying that we were
12 warranting in any way the outcome of that question given
13 what Mr. Greenberg has chosen to carve out as his position.
14 That's my only concern that there is some implied warranty
15 to that effect. I wouldn't be surprised if you're not right
16 in the eventual position. But in terms of a business person
17 wanting to enter into a bid, I think they've got to go into
18 a wide open --

19 MR. HIGHT: Understanding --

20 CHAIRPERSON CORY: -- understanding what the issues
21 are and making their best business judgment as to what they
22 want to do with those facts. I do not want to make that
23 business judgment for them or imply that in some way I can
24 or will make them whole when I cannot. I mean, that's sort
25 of where I come down. If you think we can make them whole

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1 or should warranty, I'm willing to listen to that argument.

2 COMMISSIONER ACKERMAN: I have no comments.

3 MR. TAYLOR: There is a provision in here in the
4 bid package which I don't seem to have which talks about
5 the fact that there's possibility of litigation and that
6 the possibility of litigation will not entitle the party
7 to the recovery of any damages from the State and I don't
8 know where that is in the bid package. But I think we can
9 read it into the record just so you can be clear on it.

10 CHAIRPERSON CORY: Okay. That would be sort of --

11 MR. TAYLOR: It's on an unnumbered page, but it's
12 Section 2, Special Provisions of the Proposed Amended
13 Lease Form, and under paragraph one, Terms, subparagraph
14 B, Time of Possession of the Lease Premises by Substituted
15 Lessee.

16 "The substituted lessee shall take possession of
17 the lease premises on January 1 following the year during
18 which the substituted lessee has notified lessor that it
19 has obtained all permits and equipment that may be required
20 to fulfill its obligations under this lease and that it
21 is ready and able to take possession of the lease premises.
22 The substituted lessee shall notify lessor of its ability
23 to take possession by September 30th of the year prior to
24 the year it expects to take actual possession."

25 And then it goes on. That isn't quite it; is it?

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1 No, that isn't it. That isn't the paragraph. That's the
2 one with regard to the substituted lessee's rights. But
3 there's another one, there's another paragraph we talk in --

4 EXECUTIVE OFFICER, DEDRICK: Would you like to recess
5 for just a second?

6 CHAIRPERSON CORY: Why don't we, rather than have
7 you read that into the record and her fingers are getting
8 tired, why don't we just sit in place while you try to locate
9 that before we come back.

10 [Thereupon a recess was taken.]

11 CHAIRPERSON CORY: Let's get back to work.

12 Mr. Taylor.

13 MR. TAYLOR: All right, Mr. Chairman. In the bid
14 package it is the Supplemental Agreement to PRC Number 3639.1
15 in the bid package and it is the second page which has
16 Section 1, Basic Provisions. And under paragraph one,
17 Authorized Improvements, it inserts a new paragraph to the
18 standard form of authorized improvements which states:

19 "Authorized Improvements: Improvements described
20 in Section 2, paragraph 4 of the lease 3639.1 as hereby
21 amended are authorized. Lessee shall accept any improvement
22 on the leased premises in their existing condition. No
23 representation or warranty express or implied has been made
24 by or on behalf of lessor as to such condition or their
25 availability to the substitute lessee. In the event that

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1 any authorized improvements have been removed, replacement
2 of those improvements is authorized."

3 CHAIRPERSON CORY: So that seems to define what
4 the State's role in that matter is and leaves to the bidders
5 the business judgment of how they wish to factor it.

6 MR. TAYLOR: The other paragraph -- that's correct.
7 The other paragraph that I was referring to talks about if
8 we cannot deliver possession of the premises at the time
9 specified in the lease, the lease shall not be voided, nor
10 shall the lessor be liable to lessee for any damage resulting
11 therefrom. But in that event, lessee shall not be liable
12 for rent until such time as lessor can deliver possession.
13 The term of the lease shall not be extended by reason of
14 any such delay in the delivery of possession. There I'm
15 reading from paragraph 10 in the same Supplemental Agreement
16 to the Lease.

17 I think that that makes the State's position clear
18 as to the risk being assumed by any bidder in this proceeding.

19 CHAIRPERSON CORY: Okay. Go ahead with the other
20 point you wanted to make, Greg.

21 MR. TAYLOR: I think that was it.

22 CHAIRPERSON CORY: Okay. Does anybody else wish
23 to comment?

24 Yes, sir.

25 MR. STEELE: Mr. Chairman, Mr. Ackerman, I'm Joe

1 Steele, President of Boat Owners Associated Together.

2 I'd like to comment on three items that were brought
3 up today that as far as I know were not addressed very much
4 in the past. One of the potential bidders urged you to
5 increase the number of moorings to something in the order
6 of 780 in effect to allow the successful bidder to attach
7 the remainder of moorings to a number of weights that are
8 on the bottom. There's been argument forever over the number
9 of moorings. But I think that there has been no proof that
10 more than 720 or approximately 720 have ever been used as
11 revenue producing moorings. Consequently, the public has
12 not had an opportunity to discuss the matter of increasing
13 the number of moorings. I would urge you to accept the staff's
14 recommendation and define the number of moorings as 720 and
15 you already have what I think is sufficient in the way of
16 performance bond in the lease to ensure that the successful
17 lessee holds it to 720. I assure you that if you do this,
18 and if he increases it to 780 or something of that sort,
19 you'll hear many screams from the boaters because we really
20 don't want any more.

21 CHAIRPERSON CORY: I tend to agree with you, but
22 I think it's a fascinating concept that in our society every
23 ten years we can go around and count 200 million plus people
24 and every 15 years we can't count 720.

25 [Laughter.]

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1 CHAIRPERSON CORY: There's something bizarre about
2 our capabilities. But go ahead with what you have to say.

3 MR. STEELE: But if we had the staff that the bidders
4 have, I guess we'd be out there counting them too, but I've
5 got better things to do.

6 EXECUTIVE OFFICER DEDRICK: I'm so glad to hear
7 that. We'd of had another number.

8 MR. STEELE: Yes, I'm sure we'd have had another
9 number.

10 CHAIRPERSON CORY: Go ahead with the important
11 points.

12 MR. STEELE: The next issue is a matter of waiting
13 lists. I think you should realize that there really isn't
14 one waiting list. There may be 20 or 30 waiting lists because
15 there are a number of coves and there are waiting lists for
16 each cove, and in almost each of these coves there are
17 different sized moorings. So it's as if you had parking
18 lots all over the city with parking places for ten-ton trucks
19 and Volkswagens and the man who comes up top on the list
20 might not have the right size vehicle to be in the right
21 place. I would certainly hope that you would not abolish
22 the waiting list. The public has had plenty of opportunity
23 to get on the waiting list. I think you'll find people on
24 that waiting list that have been on there for years, and
25 it would be basically unfair to throw them off.

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1 Another matter that was brought up has to do with
2 the payment by the contractor to the State, and the State
3 had established sometime back a fixed payment. That was what
4 was in the bid package that was published. There has been
5 adequate time for comment on that. It was our understanding
6 this meeting was to establish the number of moorings. I
7 think to make any change there would simply not be quite
8 fair to many other people who might wish to testify. It's
9 our feeling that that eventually is going to have an effect
10 on the cost to the boaters of the moorings. I'm not quite
11 sure whether I want to argue for or against it on such short
12 notice.

13 Thank you very much.

14 CHAIRPERSON CORY: You can tell me the answer to
15 that. It would make my vote a lot easier, whether I'm going
16 to get more money or less money.

17 COMMISSIONER ACKERMAN: Joe, as a former admiral,
18 could you comment on the markings of the buoys, what the
19 Coast Guard's position might be on that?

20 MR. STEELE: The standard buoy marking system
21 requires the mooring buoys be white with a blue line around
22 them. I believe the Coast Guard some years ago permitted
23 the Island Company to put the blue line around the buoys
24 on the perimeter of a mooring area rather than each buoy
25 because they're rather small buoys and that's been the

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1 pattern in the past. I think the Coast Guard would object
2 very much, and I believe you would be in violation of
3 federal regulations if you should decide to paint them purple
4 or green or red or some other color. I think you're stuck
5 with white now.

6 CHAIRPERSON CORY: I was thinking puce myself.
7 Sort of reminds me of all the hearings we've had.

8 MR. STEELE: You could put that color bottom paint
9 on them. There's a lot of different colors of bottom paint
10 which you can see on those buoys.

11 COMMISSIONER ACKERMAN: But we have to come up
12 with one marking system that would work.

13 MR. STEELE: I think so and I think if you want
14 to identify them, you've got them identified by numbers now
15 and you could identify them by some sort of letter. I believe
16 that issue has been settled with the Coast Guard. Generally
17 speaking, mooring buoys do not carry numbers, but I don't
18 think there's any problem on that.

19 Thank you.

20 COMMISSIONER ACKERMAN: Thanks.

21 CHAIRPERSON CORY: Is there anybody else in the
22 audience who wishes to say something? Okay. Staff.

23 MR. RUMP: Maybe just on that last comment I
24 think Mr. Taylor might have a modification of some language
25 that would solve the color coding problem.

1 CHAIRPERSON CORY: You're talking about (3)(A).

2 MR. TAYLOR: (3)(A), strike, in the second line
3 of (3)(A), "Must be painted with" and in the next line
4 "a color" and insert after the word "and" back up on the
5 second line "and in a manner" and then it flows from there.
6 So it would now read: "All revenue producing moorings must
7 be marked with an individual serial number, and in a manner
8 which distinguishes them from nonrevenue moorings."

9 CHAIRPERSON CORY: Can you tell us what that just
10 cost?

11 [Laughter.]

12 CHAIRPERSON CORY: Ever watchful of the current
13 budget crisis. Go ahead. I'm sorry.

14 EXECUTIVE OFFICER DEDRICK: That's it.

15 MR. TAYLOR: I think you need, if you're going
16 to accept the staff's recommendation, you need to strike
17 the lines on page 26, the last two lines, and on page 27,
18 the other -- the first two lines.

19 CHAIRPERSON CORY: Okay.

20 MR. TAYLOR: "Or, in the alternative," you need
21 to strike the first part of the paragraph.

22 CHAIRPERSON CORY: I have had trouble with
23 paragraph (2) just following it through in terms of the
24 syntax of that sentence. Has somebody checked to make sure
25 it is accurate or correct?

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1 MR. RUMP: The numbers are accurate. The English
2 might not be the best in the world.

3 CHAIRPERSON CORY: Does the Commission find or
4 does the Commission finds. There's a whole lot of other
5 dependent clauses, and I'm not sure.

6 EXECUTIVE OFFICER DEDRICK: The Commission is a
7 singular noun. Therefore, the verb should agree with that
8 noun. It should be the Commission finds.

9 CHAIRPERSON CORY: That's what my mind seems to
10 be saying, but I --

11 EXECUTIVE OFFICER DEDRICK: You were correct, sir.

12 CHAIRPERSON CORY: Now, that shows how nit-picky
13 we've been on this project.

14 [Laughter.]

15 EXECUTIVE OFFICER DEDRICK: It also shows how
16 proofreading is not up to the standard that I would like.

17 CHAIRPERSON CORY: Being an old patent agent you
18 pick up little things like that.

19 I would like to thank the staff for enduring what
20 the Commission has inflicted upon them in this process. You've
21 done an admirable job under difficult circumstances. So
22 what we do with it from here you know is what we do and you
23 should not be offended as we destroy your baby.

24 [Laughter.]

25 MR. RUMP: Maybe if I can help in that, let me

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1 note in paragraph (1) one option that has been recommended
2 that we really have to clarify. At the end of that paragraph
3 it says that Toyon and Gallagher's beach will be removed
4 from the lease premises. You would have if you desire an
5 option to leave them remaining in the lease but prohibiting
6 any revenue buoys in there. There are only camp or nonrevenue
7 buoys.

8 CHAIRPERSON CORY: It seems like it is simpler
9 to remove from the lease and follow that suggestion. If
10 there are nonrevenue, let's try to simplify the variables
11 for the lessees, the bidders, that they can exclude that
12 from their mind rather than worrying about definitions. I
13 think it is more consistent to tidy up and limit the universe
14 as much as possible is sort of my thinking.

15 COMMISSIONER ACKERMAN: That's fine.

16 CHAIRPERSON CORY: All right. I am prepared to
17 go along with the staff recommendations as outlined on page
18 26, 27 and 28 with those changes. Are you, David?

19 COMMISSIONER ACKERMAN: Yes.

20 CHAIRPERSON CORY: Okay. The question would be
21 do we proceed at that point, what length of time and how
22 do we proceed?

23 MR. HIGHT: I think, Mr. Chairman, at that point
24 we would need an instruction on whether or not we would go
25 back and renew the bidding process and what time frame the

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1 bids should be received back to us.

2 CHAIRPERSON CORY: I would like for you to do

3 that and do it as soon as possible. I don't know how much

4 more time since it is, as I see those changes, not a great

5 substantive change. I realize that there are other ways

6 that this could be bid, but given the length of time, the

7 variables and the interest of the media in the gross terms

8 of this, what is happening, I think not making it any more

9 complex than possible so that everybody can see there is

10 an amount that is the variable in the bid. The thing that

11 we attempted to do with percentages, you get into terrible

12 problems with percentages of what elements and then guessing

13 how many bubble gum packages are going to be sold versus

14 something else. This puts it clear enough so that everybody

15 can discern what in fact is happening and that's why I

16 prefer to go ahead with this and do it as quickly as the

17 staff and the bidders can reasonably do it and get it done.

18 Now, I don't know whether that is a week, ten days, or what.

19 EXECUTIVE OFFICER DEDRICK: Commissioner, the

20 staff tells me that they could get these corrections out

21 tomorrow. They would then be received by the bidders on

22 the 18th. One week from that day is Thanksgiving. So I

23 would think, there is one working day between Thanksgiving

24 and the weekend, and if they were received by the 26th --

25 CHAIRPERSON CORY: Glad to know you're going to

1 be working that day. Go ahead.

2 EXECUTIVE OFFICER DEDRICK: Well, we've got a
3 Commission meeting on the 29th. So I think I will be.

4 CHAIRPERSON CORY: Be Monday.

5 EXECUTIVE OFFICER DEDRICK: The 26th I think,
6 is the time they should be returned.

7 CHAIRPERSON CORY: The 26th is what day?

8 EXECUTIVE OFFICER DEDRICK: That's a Friday.
9 Today is the 16th.

10 MR. HIGHT: Okay. Yes.

11 EXECUTIVE OFFICER DEDRICK: So the staff needs
12 a day to get them ready. They'll get them out by Express
13 Mail tomorrow afternoon. They'll be received by the bidders
14 on the 18th which is Thursday. So the 26th then gives eight
15 days which ought to be enough, I would think.

16 CHAIRPERSON CORY: Fine with me.

17 EXECUTIVE OFFICER DEDRICK: It's not a substantial
18 change.

19 CHAIRPERSON CORY: Somebody is moving forward in
20 their seat.

21 MR. RADCLIFFE: Mr. Chairman, I'd like to invite
22 the Commission's attention that within that eight days is
23 one weekend and a Thanksgiving holiday. I'm inclined to
24 speed up as much as possible. It seems to me the following
25 Monday would be rather than come in and sandwich it

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1 in that period.

2 CHAIRPERSON CORY: The following Monday. The
3 following Monday --

4 EXECUTIVE OFFICER DEDRICK: The 29th then --

5 MR. TAYLOR: It will be opened following the
6 Commission meeting then?

7 CHAIRPERSON CORY: Open them --

8 MR. GREENBERG: Just one technical question, Mr.
9 Chairman. The present wording of the bidding package calls
10 for financials to be brought up to date I think within 90
11 days of the bid or something like that.

12 CHAIRPERSON CORY: I would be willing to amend
13 that to the prior cutoff date. I don't think that is
14 necessary, unless the staff thinks otherwise, but whatever
15 the financial was in the bid that had been prepared
16 previously, that should be the cutoff. Can the staff make
17 that change in the solicitation?

18 MR. RUMP: Okay. Plus staff will have that
19 warranty of noncompetition by the camp leases as well that
20 you mentioned.

21 EXECUTIVE OFFICER DEDRICK: And we will then
22 receive and open the bids on the 29th.

23 CHAIRPERSON CORY: What time of day and what time
24 of day is the Commission meeting?

25 MR. HIGHT: The Commission meeting is at 10:00

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1 o'clock.

2 MR. RUMP: 10:00 o'clock. The previous bid
3 opening was scheduled for 2:00 o'clock in the offices of
4 the Commission.

5 CHAIRPERSON CORY: You want it at 2:00 or at 9:00?

6 MR. RUMP: 2:00, I would think.

7 EXECUTIVE OFFICER DEDRICK: Oh, 2:00, I think.
8 Some people have to travel.

9 MR. RUMP: This time of year --

10 CHAIRPERSON CORY: And there is a December meeting?

11 MR. RUMP: Yes.

12 EXECUTIVE OFFICER DEDRICK: There is one scheduled
13 and you always have the option of ten days' notice for
14 anything.

15 Okay. If there's no further business, we will
16 stand adjourned.

17 [Thereupon the State Lands Commission
18 Meeting was adjourned at 5:40 p.m.]

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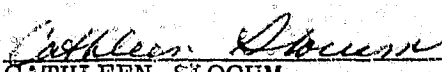
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3 I, CATHLEEN SLOCUM, a Certified Shorthand
4 Reporter of the State of California, do hereby certify:

5 That I am a disinterested person herein; that
6 the foregoing State Lands Commission meeting was reported
7 in shorthand by me, Cathleen Slocum, and thereafter
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9 I further certify that I am not of counsel or
10 attorney for any of the parties to said meeting, nor in any
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