

MEETING
STATE OF CALIFORNIA
STATE LANDS COMMISSION

ORIGINAL

STATE CAPITOL
ROOM 447
SACRAMENTO, CALIFORNIA

WEDNESDAY, SEPTEMBER 23, 1992

10:00 A. M.

Ronald J. Peters
Certified Shorthand Reporter
License Number 2780

A P P E A R A N C E SCOMMISSIONERS:

MR. GRAY DAVIS, State Controller, represented by
MS. CLEATTA SIMPSON

HONORABLE LEO T. McCARTHY, Lieutenant Governor

MR. THOMAS W. HAYES, Director of Finance, represented
by MS. SUSANNE BURTON

STAFF:

MR. CHARLES WARREN, Executive Officer
MR. JAMES TROUT, Assistant Executive Officer
MR. ROBERT C. HIGHT, Chief Counsel
MS. PATSY TOMASELLO, Commission Executive Secretary

ALSO PRESENT:

MR. JAN STEVENS, Deputy Attorney General

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P R O C E E D I N G S

1
2 ACTING CHAIRMAN McCARTHY: Good morning, ladies
3 and gentlemen. This is a meeting of the State Lands
4 Commission. My name is Leo McCarthy. On my left we have
5 Susanne Burton representing the Department of Finance, and
6 on my right we have Cleatta Simpson representing the State
7 Controller's Office.

8 I have a request from Mr. Robert Madox to speak on
9 Consent Item Number 33, so we will pull that from the
10 Consent Calendar along with the following Consent Items,
11 2(B), 7, 9, 24, 27, 38, 39, 59 and 60.

12 Are there any other items, Mr. Warren, that should
13 have been pulled from the Consent Calendar?

14 EXECUTIVE OFFICER WARREN: Yes.

15 ACTING CHAIRMAN McCARTHY: Pardon me. We are
16 putting 33 on the Regular Calendar for hearing.

17 EXECUTIVE OFFICER WARREN: In as much as there are
18 other Consent items on the Consent Calendar that are related
19 to Item 33, I suggest that they, too, be removed from the
20 Consent Calendar.

21 ACTING CHAIRMAN McCARTHY: That would be 10, 12
22 and 32.

23 EXECUTIVE OFFICER WARREN: Thirty-two, yes, Mr.
24 Chairman.

25 ACTING CHAIRMAN McCARTHY: All right. We will

1 take 10, 12 and 32 and put those on the Regular Calendar as
2 well.

3 EXECUTIVE OFFICER WARREN: And I would suggest,
4 Mr. Chairman, that we will take those four items as a group.

5 ACTING CHAIRMAN MCCARTHY: That's fine.

6 EXECUTIVE OFFICER WARREN: There is one other item
7 on the Consent Calendar which I have received a request to
8 remove, and that is Item 45, having to do with the Gaviota
9 Interim Marine Terminal and a hold-over period --

10 ACTING CHAIRMAN MCCARTHY: And put it on the
11 Regular Calendar?

12 EXECUTIVE OFFICER WARREN: Put it on the Regular
13 Calendar, yes.

14 ACTING CHAIRMAN MCCARTHY: Consent Item Number 45
15 will be pulled from Consent and placed on the Regular
16 Calendar so it may be addressed by any members of the public
17 who desire.

18 So just to review, now, in addition to the Consent
19 items that I mentioned earlier, we have now taken 10, 12, 32
20 and 33 from the Consent Calendar and put them on the Regular
21 Calendar and they will be taken as a group.

22 We have also taken 45, which was not on my consent
23 list --

24 EXECUTIVE OFFICER WARREN: I am sorry?

25 ACTING CHAIRMAN MCCARTHY: Forty-five was not on

1 my Consent list.

2 ASSISTANT EXECUTIVE OFFICER TROUT: It wasn't
3 pulled, it was just moved over.

4 ACTING CHAIRMAN McCARTHY: It wasn't pulled. I
5 thought I heard you just say that it was to be pulled from
6 the Consent Calendar.

7 EXECUTIVE OFFICER WARREN: And put on the Regular
8 Calendar.

9 ACTING CHAIRMAN McCARTHY: Okay. We will put it
10 on the Regular Calendar.

11 All right. Without objection, the minutes of the
12 last Commission meeting are approved.

13 Mr. Warren, would you please begin the Regular
14 Calendar.

15 EXECUTIVE OFFICER WARREN: Mr. Chairman, it is my
16 recommendation that the Commission proceed as follows, that
17 first you take up the Consent Calendar items, the remaining
18 Consent Calendar items.

19 ACTING CHAIRMAN McCARTHY: All right. Without
20 objection, the Consent Calendar, as it now stands -- yes.

21 CHIEF COUNSEL HIGHT: With one possible exception,
22 Mr. Chairman.

23 Item 35 is a recreational pier permit at Lake
24 Tahoe. It includes three mooring buoys. We would like to
25 remove the authorization for the three mooring buoys because

1 they may be in a fish habitat area and we will come back to
2 you next month with that.

3 But that is what we would like, just to remove the
4 authorization for the three buoys.

5 ACTING CHAIRMAN McCARTHY: Any objection to that?

6 ACTING COMMISSIONER SIMPSON: No.

7 ACTING COMMISSIONER BURTON: No.

8 ACTING CHAIRMAN McCARTHY: All right. Without
9 objection, that will be done.

10 Let's get started.

11 The Consent Calendar is adopted unanimously and we
12 will start on the regular agenda.

13 EXECUTIVE OFFICER WARREN: All right.

14 With the Commission's permission, I recommend that
15 we proceed with the Regular Calendar as it appears in your
16 binder to be followed by Item 45 and then Items 33, 32, 12
17 and 10 as they appear in your Consent Calendar.

18 Will that be all right?

19 ACTING CHAIRMAN McCARTHY: Yes, that's fine.

20 EXECUTIVE OFFICER WARREN: All right.

21 To take you to, first, the Regular Calendar, the
22 first item is number 75, which will be presented by Jane
23 Sekelsky, who is the Chief of our Land Management Division.

24 She will also present to you subsequent items for
25 which her division is responsible.

1 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Okay.
2 Item 75 considers the approval of a general lease to the
3 C & H Sugar Company for a parcel of tide and submerged land
4 located in the Carquinez Straits near Crockett in Contra
5 Costa County.

6 C & H has at this point in time four Chapter
7 leases which were granted by the Legislature back in the
8 1920's and 1930's. And they are about to expire within the
9 next few years.

10 C & H would like to have a lease to go on from
11 this point in time and we have negotiated a lease with them
12 for a 30-year term. The rental will be \$328,375 a year.
13 This will replace the four Chapter leases under which they
14 have been operating thus far.

15 As a matter of interest to you, and this is not on
16 your calendar item today, there is a proposal now before the
17 State Energy Commission to construct a co-generation plant
18 at the C & H facility. That is not before you at this
19 point in time and it is not a project for which C & H is a
20 proponent. It is a separate entity that is proposing that
21 project.

22 If that project is to go through, the lease to
23 C & H would require an amendment, and we are not asking you
24 in any way to authorize that at this time. And the lease
25 expressly says that this does not constitute an

1 authorization of that project.

2 ACTING CHAIRMAN MCCARTHY: Questions by Members of
3 the Commission?

4 Questions from the audience on this item? We are
5 on 75.

6 The recommendation is approved.

7 Next item.

8 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Item 76
9 is asking authorization for a general permit for an
10 industrial outfall. The outfall will release salt water
11 into deep water in the Carquinez Straits. The Rhone-Poulenc
12 Chemical Company, which has operated the outfall in the
13 past, has had an outfall going into shallow waters in Peyton
14 Slough. The Regional Water Quality Control Board has been
15 concerned about the impact of that release and has ordered
16 them to construct a new outfall.

17 We are here to ask authorization for that at this
18 point in time.

19 ACTING CHAIRMAN MCCARTHY: Any questions from the
20 Commission?

21 Any questions from the audience on Item 76?

22 The recommendation is approved.

23 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Item 77
24 is requesting authorization for a revision in rent pursuant
25 to the normal five-year rent review provision with regard to

1 the River View Marina. It is a marina up here in the
2 Sacramento River in Sacramento. The terms of the proposed
3 rent are on Page 2 of the calendar item.

4 ACTING CHAIRMAN McCARTHY: Questions from the
5 Members of the Commission?

6 ACTING COMMISSIONER BURTON: No.

7 ACTING CHAIRMAN McCARTHY: Anyone in the audience
8 wish to address this item?

9 Mr. Ed Coyne.

10 MR. COYNE: Yes, sir.

11 ACTING CHAIRMAN McCARTHY: Yes, Mr. Coyne, I do
12 have your slip here. Why don't you please have a seat and
13 let us hear your testimony.

14 MR. COYNE: Thank you.

15 My name is Ed Coyne. I am a partner in River View
16 Marina. I am also a representative of the Marina and
17 Recreation Association, which is a state-wide organization
18 of small businesses involved in the marine industry.

19 The first thing I would like to ask is for a
20 clarification of the Commission's goals in setting rental
21 rates. The issue before you has to do with setting the
22 rental rates for River View Marina.

23 According to Title 2, Article 2 of the California
24 State Administrative Code regarding this question, rental
25 rates should be set to achieve a nine percent return on the

1 value of the property owned by the State or a percentage of
2 gross income based on similar uses in the market. Our
3 feeling, both as an owner of River View Marina, and also as
4 a member of the Marina Recreation Association is that
5 whichever method is utilized should yield approximately the
6 same rental payment to the State.

7 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Would
8 you like us to respond to these questions as you raise them?

9 ACTING CHAIRMAN MCCARTHY: What is your feeling,
10 Mr. Coyne? We don't want to interrupt your statement.
11 Would you like a response to that point by point?

12 MR. COYNE: That would be fine. We have a letter
13 of response to that particular -- not to that particular
14 question but to some specifics that we have laid out in a
15 letter. What we believe we got back was identification of
16 some rents that exist in the market that are as high or
17 higher than this particular marina's rates.

18 But our feeling is that the fair market rent
19 should be what is prevalent in the market or what is typical
20 in the market or what gives a fair return to the small
21 business owner, and not necessarily the highest identifiable
22 rate which we would equate with rent gouging.

23 ACTING CHAIRMAN MCCARTHY: How does the statute
24 read?

25 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: The

1 statute -- What he's referring to is in our regulations, and
2 the regulations provide that the Commission will set rents
3 based on either/or or a combination thereof of the following
4 factors. One is the nine percent of the appraised value,
5 and then the other is the percentage of gross receipts.

6 Typically in a situation as in a commercial marina
7 as Mr. Coyne is operating, we combine those factors. We
8 charge a percentage of gross receipts against an annual
9 minimum rent which is based to some degree on the value of
10 the property.

11 The State's responsibility obviously is to ensure
12 a fair return to the State. Otherwise we run into problems
13 with the gift laws.

14 ACTING CHAIRMAN McCARTHY: Are there any cases
15 that suggest the statute requires that the lower of those
16 two options be utilized, if there is a lower?

17 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Not that
18 I am aware of.

19 CHIEF COUNSEL HIGHT: No, sir.

20 ACTING CHAIRMAN McCARTHY: You have examined the
21 leases provided by private landowners that you consider
22 comparable?

23 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: We have
24 examined the market in the Sacramento area which we consider
25 to be applicable to Mr. Coyne's situation. We have another

1 lease that is next door to Mr. Coyne, to the Riverbank
2 Marina, and we have examined that relative to his concern as
3 well.

4 ACTING CHAIRMAN McCARTHY: Is that a fair
5 comparison, Mr. Coyne?

6 MR. COYNE: I think there is significant
7 unfairness in the situation at the Riverbank Marina. We
8 have hired an appraiser. That is, the Marina Recreation
9 Association has hired an appraiser to evaluate the value of
10 the property that the State owns underlying the marinas, and
11 also some of the restaurants that are floating on the water.

12 It's an extreme example, but in the case of the
13 Crawdad's Marina, our appraiser has identified that the per-
14 acre value, if the rents would be fair, of the approximately
15 5,000 square feet of land owned by the State underlying
16 Crawdad's, that that property would be worth approximately
17 three and a half million dollars per acre. This seems
18 outrageous to us. It seems outrageous to our appraiser.
19 And we don't think that there has been adequate effort made
20 to identify the fair market rents based on the land that the
21 State owns under that property.

22 ACTING CHAIRMAN McCARTHY: Any questions by
23 Commissioners?

24 Would you like to respond to that?

25 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Mr.

1 Coyne is raising several issues here that, in fact, have
2 been under discussion with the Association, the Marina
3 Recreation Association that he represents, with both Mr.
4 Coyne and some of the other representatives of the
5 Association.

6 We have examined the issues that he has raised.
7 We last met with this group in July and sent a letter on
8 August 19th explaining our concerns and our belief in our
9 position, and substantiating that the Marina Recreation
10 Association agreed at the meeting in July to send us a
11 report from their appraiser indicating why they feel that
12 our methods are not appropriate and not consistent with the
13 market and not fair. And we have not yet received that from
14 them.

15 MR. COYNE: True, we have not yet responded to
16 that letter of the August 19th. We intend to as a group.

17 River View Marina's issue is before you today at
18 staff's request. Perhaps this particular item should be
19 delayed until there is some resolution of the rent-setting
20 issue.

21 EXECUTIVE OFFICER WARREN: On that point, Mr.
22 Chairman, I would just like to point out that Mr. Coyne is
23 presently two years in arrears on his rent under the present
24 lease and that in my numerous meetings with the Marina
25 Recreation Association little has come -- which have taken

1 place over a matter of months, if not years -- little has
2 come from what appears from time to time to be some general
3 agreement. We search for a response from these folks and
4 they can never get them. They all have different individual
5 objectives and they are just not able to reach any consensus
6 among themselves.

7 One formula favors one group and another formula
8 favors another group and another formula favors another
9 group. And what we are trying to do here is we are trying
10 to bring some order to this entire marina rental structure
11 and which is fair to the State and would prevent us from
12 being charged for giving what would be a gift of the public
13 property.

14 We think that what we have here is fair and is
15 consistent with the market rate in the area and in the
16 region itself. We think we would vigorously oppose any
17 delay in establishing a new rent structure and that we just
18 have no idea how long that might be, given precedence. It
19 could be -- Well, I don't know how long it could be.

20 ACTING CHAIRMAN MCCARTHY: Questions from
21 Commissioners?

22 ACTING COMMISSIONER BURTON: I have a question.

23 ACTING CHAIRMAN MCCARTHY: Commissioner Burton.

24 ACTING COMMISSIONER BURTON: Have we in the past
25 employed any intermediary third-party reviewer when we have

1 had rent disputes? Do we have a process for doing that?

2 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: No.

3 ACTING COMMISSIONER BURTON: Or do we usually rely
4 on the give and take of our own staff working with the
5 leaseholder to come up with a solution?

6 CHIEF COUNSEL HIGHT: Yes.

7 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Yes.

8 EXECUTIVE OFFICER WARREN: Is that to me,
9 Commissioner Burton?

10 ACTING COMMISSIONER BURTON: To whomever.

11 EXECUTIVE OFFICER WARREN: It is my understanding
12 that in the past it has essentially been a matter of
13 negotiation between the staff and the applicant who seeks a
14 lease of State property from us. And as a consequence we
15 find that these leases have been of a variant form. What we
16 are trying to do now is, within the extent permissible, to
17 establish some categories of general applications to like
18 marinas, to like marinas in the same area, in order to
19 eliminate some of the disparities among the current leases.

20 We are not unsympathetic with the argument that
21 the marina owners are offering, that each of them has to
22 face a different set of circumstances, and what the staff is
23 now doing is trying to bring some order into that condition.

24 ACTING COMMISSIONER BURTON: What is the change?

25 EXECUTIVE OFFICER WARREN: But we still haven't

1 been able to obtain any response from the Association itself
2 because they don't really know what to advise us, frankly.
3 So what we fall back on or what we are falling back on now
4 is kind of establishing a general approach which is
5 applicable to commercial marinas of like nature in a general
6 area.

7 ACTING COMMISSIONER BURTON: What is the rate
8 going from and to? Any idea of what that means in dollars?

9 EXECUTIVE OFFICER WARREN: The increase is about
10 from \$7,000 a year, I believe, to \$8,000, so that the change
11 would result in -- I am sorry.

12 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: That is
13 the minimum annual rent. There are two factors here. The
14 minimum annual rent is going from \$7,000 to \$8,000. The
15 percentage of gross is broken down in this lease according
16 to category of use. They are going from, I believe, five
17 percent to five and one half percent of the gross income
18 derived from the rental boats and docks, and they are being
19 asked in their current lease, in their lease prior to this
20 rental adjustment, they would be paying one percent of all
21 other revenue derived from the leased premises.

22 In this case we have broken it down further in the
23 proposed rent. One is to take three percent of the gross
24 income generated on the lease premises for the snack bar and
25 deli operations, one percent of the gross income derived

1 from the yacht sales, and it is my understanding that they
2 have never had yacht sales on this property, nor is there
3 any anticipated at this time.

4 MR. COYNE: No. We have a yacht broker on the
5 property.

6 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Oh, do
7 you?

8 MR. COYNE: Yes.

9 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: And ten
10 percent of all other gross income generated from the leased
11 premises with a minimum annual rental, again, of \$8,000.

12 ACTING COMMISSIONER BURTON: That's the new lease?

13 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: That's
14 the proposed lease, yes.

15 MR. COYNE: May I comment on that, please?

16 ACTING CHAIRMAN MCCARTHY: Yes.

17 ACTING COMMISSIONER BURTON: I am not sure I
18 understand what that means in terms of dollars going from
19 the old lease to the new lease.

20 MR. COYNE: Yes. I can give you that fairly
21 precisely. I think we have been in business for about 11,
22 going on 12 years at that site. We constructed the marina
23 and completed it in 1981 or 1982. The first year of our
24 operation, I believe our rents were approximately \$6,000.
25 We were paying a percentage of the gross and I believe at

1 that time we had the highest rates that were set anywhere in
2 these market areas. We were the leader in terms of setting
3 what the market is.

4 Over the course of ten years, our rates to the
5 State have doubled. In other words, they went from about
6 \$6,000 to \$12,000, an increase of ten percent a year, far in
7 excess of inflation.

8 Now, with the current increase in front of us, we
9 are looking at, I think, approximately \$18,000 per year in
10 rent. So we have gone over the course of ten or eleven
11 years from \$6,000 to \$18,000. That is a 300 percent
12 increase.

13 This has occurred during a time when the marina
14 has not been operating profitably. Over that entire ten-
15 year period, the marina has yet to get a return on the
16 investment. It is carrying a cumulative loss of about
17 \$70,000.

18 We have also paid to the State so far about
19 \$85,000 in rent and the fact that we are behind in the rent
20 is directly attributable to the lack of profitability.

21 And also my point on this specific example is that
22 it's not the right time to be raising our rents by what I
23 think is roughly 50 percent at this point and 300 percent
24 over the ten-year time frame.

25 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: One

1 point, just to make sure that it is understood here that the
2 staff has established the percentages in the proposed rent
3 according to what the market rates are in this area.

4 Mr. Coyne is in arrears on the rent and has in
5 various stages since 1987, I believe, been delinquent in his
6 rent. At this point in time he is approximately \$25,000
7 behind in his rent, and penalties and interest would take
8 that up to about \$38,000.

9 MR. COYNE: We have come to an agreement with the
10 staff and I thought that it was complete, that we have
11 worked out a payment schedule to pay that off over the next
12 16 months.

13 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: That is
14 correct.

15 MR. COYNE: So we may have been in arrears, but I
16 believe that we have come to an agreement on getting that
17 paid as quickly as we can.

18 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: That is
19 correct and that is not before you today.

20 ACTING CHAIRMAN MCCARTHY: Mr. Warren, are we
21 having problems with other lessees of this nature that are
22 significant?

23 EXECUTIVE OFFICER WARREN: Not individually, as I
24 can recall. We have had discussions with representatives of
25 this marina owners association. Some of them, as Mr. Coyne,

1 would prefer to have a flat fee like a nine percent of the
2 appraised value. But there are others who say that this is
3 undesirable because it is unrelated to their commercial
4 activity. So when times get tough, they are stuck there
5 with a flat rental fee.

6 So they have been encouraging us to go to a more
7 or less percentage of the gross basis so that when times are
8 good, our revenues would increase, and when times are bad,
9 our revenues would go down.

10 So we have been kind of moving toward kind of a
11 middle position where we have a minimum flat fee, but then
12 with a percentage of the gross which gives them, we think,
13 gives all the operators some flexibility and they can
14 continue in business when times are bad, but when times are
15 good, then we would benefit. And that's where we are going.

16 Now, Mr. Coyne, and I don't understand his
17 personal business, would have the Commission go with the
18 flat fee that would benefit him. But while it does benefit
19 him, it would not benefit other marina owners with whom we
20 have been discussing.

21 In our efforts to bring some rational approach to
22 this entire marina leasing operation of the agency, this is
23 what we are doing. We are trying to keep it within
24 acceptable commercial levels. We check with appraisers. We
25 check with the commercial rates. We look at lessee

1 operations on adjacent property to see if they have been
2 successful. And it's a kind of a judgement call, influenced
3 by negotiations with the lessee, with the applicant, as to
4 how it works out. And it's a process which is incapable of
5 being precisely defined, I have found, but we are trying to
6 improve it so as to bring some certainty at least to the
7 approach taken by the staff to these matters.

8 MR. COYNE: I am sorry, but at the risk of
9 contradicting Mr. Warren, as a representative of the Marina
10 Recreation Association, I can speak for them, and in fact
11 wrote a series of letters that specifically stated what the
12 Association's position is regarding the rents. We are not
13 looking for a flat rent per se, but a rent based upon nine
14 percent of the State's appraised value of its underlying
15 property for whatever the use is, whether it is a marina use
16 or it is a restaurant use or whatever. And I think that
17 there is unanimity among our members or at least among the
18 representatives of our organization that that is our
19 position and that's what we are looking for.

20 Again, I am sorry to take so much time with this.
21 I feel like it's a very detailed issue and it needs some
22 additional work outside of this forum. But I'd like to see
23 this issue delayed.

24 ACTING CHAIRMAN MCCARTHY: Our staff is telling us
25 that a number of such meetings to try to resolve this have

1 been taking place, Mr. Coyne.

2 MR. COYNE: Yes. I have attended every one of the
3 meetings that has taken place in the last year. I have met
4 with usually a group of three or four or even five members
5 of the State Lands staff. At one of those meetings Mr.
6 Warren attended, and I think he took a position that was
7 different than the direction that we had been going in the
8 course of a year.

9 And I understand the constraints with the State
10 budget that it's not reasonable to expect that rents should
11 come down at this time. Our group feels, though, that the
12 budget is not going to be balanced on the rents collected
13 from these small businesses.

14 ACTING CHAIRMAN McCARTHY: I don't think anybody
15 intends that.

16 MR. COYNE: I know, but we think fair market rents
17 should be objectively determined and I think that to have a
18 dispute resolution process as suggested would be very
19 valuable to everybody because what we find is we just get
20 into a standoff, and it happens often, where the marina
21 owners disagree with the rents that are being set. And
22 there is no method for determining what the rent would be
23 except to take it or leave it from what we get from staff.

24 ACTING CHAIRMAN McCARTHY: Any further comments?

25 ACTING COMMISSIONER BURTON: Well, I didn't mean

1 to suggest that we needed a dispute resolution process. I
2 was trying to find out whether we had one because I don't
3 think that this body, the Commission Members, are any of us
4 experts in the area, but we expect our staff to be and we
5 expect them also to be able to come to a resolution on these
6 matters.

7 The part that bothers me is two things. I support
8 our effort to try to change the lease provisions so that we
9 are getting fair market rent. It seems to me that we need
10 to do that to protect the interests of the State and to not
11 give away to leaseholders anything that we should be
12 protecting on behalf of the citizens.

13 But I also am concerned that during the midst of a
14 recession, when businesses are being very hard hit, we are
15 implementing something that amounts to a 50 percent increase
16 in the cost of doing business as it relates to our leases
17 with a business such as this. And it would seem to me that
18 that would make sense if their business were flourishing and
19 that we were getting some percentage of that, but to have a
20 50 percent increase in basically what amounts to a declining
21 environment for activities that might generate those
22 revenues doesn't make sense to me.

23 So I don't know how to resolve this but I
24 certainly don't think we want to turn into a hearing body on
25 what the appropriate rent levels are, but what we have our

1 staff presenting for us and this gentleman disputing --

2 EXECUTIVE OFFICER WARREN: If I may respond,
3 Commissioner, I can only point out that staff is trying to,
4 in an approach to these matters, has been trying to be
5 equitable and fair within what it understands to be the
6 legal requirements here. Any favoritism shown Mr. Coyne
7 would have, it seems to me, an adverse effect on his
8 competitors. This is a competitive industry. There is a
9 marina facility adjacent to him which presently is paying
10 very similar to that which we are imposing on Mr. Coyne.

11 Mr. Coyne has not suggested that we are doing
12 anything that lacks equity or parity among marina operators.
13 He's asking for some favoritism, it seems to me. And, you
14 know, if he is allowed this, this puts his competitors at a
15 disadvantage. And what we are trying to do is maintain
16 parity and equity.

17 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: I would
18 like to add something to that as well.

19 Mr. Coyne has suggested that the rent that he has
20 had to pay us or that he has owed us over the last several
21 years has increased, but notice that the percentages of the
22 gross revenue that he has been asked to pay have not
23 increased. So if the rent that he had been owing us has
24 increased, it is because his gross revenues have increased.

25 Now, at this point in time, we are proposing an

1 increase in the percentages only up to a market rate that is
2 common in the area, and while I grant you that that will
3 certainly result in an increase, assuming his gross stays
4 the same or goes up, in what he owes us, it does not seem as
5 though it would increase it to the extent that he is
6 speaking of unless, of course, his gross is going up at the
7 same time.

8 And on the overall issue that is before us with
9 the MRA, we have been more than willing to discuss it with
10 them. We have asked them to provide an appraiser's response
11 to our appraiser's explanation, the basis for our studies
12 and for our establishment of rent. And we have not yet
13 received it.

14 And so I want to make sure that we are not
15 confusing the overall issues which we are continuing to work
16 with the MRA on, with Mr. Coyne's situation.

17 ACTING CHAIRMAN McCARTHY: Mr. Warren, did I
18 understand you to say that you are moving, if the Commission
19 adopts this, you would be moving Mr. Coyne's rent up to what
20 a competitor in the approximate area is already paying?

21 EXECUTIVE OFFICER WARREN: Yes.

22 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: That is
23 correct.

24 ACTING CHAIRMAN McCARTHY: Do you dispute that,
25 Mr. Coyne?

1 MR. COYNE: I don't really dispute that, no. I
2 think the distinction, though, is that there is a large
3 increase that would go into the operation where we have the
4 Jammin' Salmon Restaurant on the property, and that tenant
5 was liable for one percent payment of his gross. And now
6 that is going to three percent, so it's a 300 percent
7 increase on him in particular on his situation, and I think
8 his business would be jeopardized as a result of that.

9 ACTING CHAIRMAN MCCARTHY: Would you be paying
10 more rent if the Commission approved this than your
11 competitors are paying?

12 MR. COYNE: I think that these, as I understand
13 it, these rents are being established based upon a study, a
14 draft study that has been prepared by the staff, and it's
15 different for different marinas.

16 I think that that study is flawed and that is what
17 our appraiser should be responding to. I think that when
18 the State Lands Commission is setting the rents in the
19 market place, what happens is they continually ratchet up.
20 And that's what is happening to us, whether we are getting a
21 return on our investment or not.

22 I would say that it's -- that the rents that are
23 being set for the berthage is equivalent roughly to what is
24 happening in the market now, and also with the restaurant,
25 but I think that they are way too high.

1 ACTING CHAIRMAN McCARTHY: Any other questions by
2 Commissioners?

3 Does anybody else in the audience have anything to
4 say about this?

5 Do I have a motion?

6 I will make a motion that we accept the
7 recommendation of the staff on this issue.

8 Are you ready for a vote?

9 ACTING COMMISSIONER SIMPSON: Second.

10 ACTING CHAIRMAN McCARTHY: All right. How do you
11 vote?

12 ACTING COMMISSIONER BURTON: I will vote aye.

13 ACTING CHAIRMAN McCARTHY: All right. The
14 Commission unanimously accepts the recommendation of the
15 staff.

16 The next item on the agenda, Item 78.

17 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Item 78
18 deals with a request by the Sacramento Yacht Club to
19 reconstruct and expand their yacht club facilities and add a
20 debris diverter and a few other facilities, including two
21 pump out stations.

22 This is a situation where the yacht club has
23 worked cooperatively with staff to design the project to
24 avoid impacts to shoreline vegetation, and has agreed to
25 grant to the State a conservation easement over their own

1 uplands to provide permanent protection for riparian
2 habitat. We see this as a really good example of how we can
3 work together with private industry to establish protection
4 for riparian resources.

5 Because they are proposing to give us a grant deed
6 for the conservation easement, I would like to read into the
7 record an additional recommended finding which authorizes
8 acceptance of that grant of easement that is not in your
9 findings now, and that would read: "Authorize the Executive
10 Officer to execute a certificate of acceptance and consent
11 to recording of a grant deed of conservation easement from
12 the Sacramento Yacht Club to the State of California acting
13 by and through the State Lands Commission."

14 ACTING CHAIRMAN McCARTHY: Any questions by
15 Members of the Commission?

16 Any questions from the audience?

17 All right. The recommendation is approved.

18 Next item.

19 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Item 79
20 is requesting an amendment of an industrial lease to Chevron
21 for their El Segundo facility. You will recall in March,
22 1991, a vessel traveling through the terminal area dragged
23 its anchor and tore up one of the underground lines. The
24 Chevron folks have provided for reconfiguration of the
25 terminal to eliminate one of their terminal berths which

1 should improve the safety of the operation of the terminal.

2 ACTING CHAIRMAN McCARTHY: Questions by Members of
3 the Commission?

4 Anyone in the audience?

5 ACTING COMMISSIONER BURTON: I notice the
6 statement that the amount is in dispute --

7 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: That is
8 correct.

9 ACTING COMMISSIONER BURTON: -- in our
10 information. What does that mean?

11 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: That is
12 correct. As of October 1st of 1987, there was a rent
13 review, a rent revision provision in their lease. We never
14 resolved that with them.

15 We have proposed to them that that be adjusted as
16 of that date by the CPI. We have not got agreement on that
17 at this point in time.

18 ACTING CHAIRMAN McCARTHY: I want to acknowledge
19 the presence of Mr. Rod Spackman of Chevron, who is here and
20 available to answer any questions if we have any. Thank you
21 for your presence, Mr. Spackman.

22 Anyone else on this issue?

23 Thank you.

24 Anyone else on this issue?

25 Ready for action?

1 All right.

2 ACTING COMMISSIONER BURTON: So moved.

3 ACTING CHAIRMAN MCCARTHY: All right. It has been
4 moved and unanimously accepted. It was moved by Ms. Burton
5 for the authorization.

6 Next item.

7 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Item 80
8 is asking authorization for Arcata Ready-Mix to extract
9 gravel from the Eel River in the County of Humboldt, an
10 annual extraction of a maximum of a hundred fifty thousand
11 cubic yards for commercial sale.

12 ACTING CHAIRMAN MCCARTHY: Any questions by any of
13 the Commission?

14 ACTING COMMISSIONER BURTON: No.

15 ACTING CHAIRMAN MCCARTHY: Any questions from the
16 audience?

17 The recommendation is adopted.

18 Next.

19 EXECUTIVE OFFICER WARREN: Well, Item 81, I will
20 take, Mr. Chairman.

21 Essentially this is acceptance by the Commission
22 of the offer of dedication of lateral public access
23 easements to coastal properties. These dedications were
24 obtained by the Coastal Commission. It is a lateral access
25 and not a vertical access.

1 And since what we do is take these easements and
2 add them to the sovereign interests of the State along the
3 coast, this is by an agreement that we reached this among
4 the various state agencies. And this will formalize the
5 dedication of the acceptance for these specific easements
6 designated.

7 I ask for approval.

8 ACTING CHAIRMAN MCCARTHY: Any questions by
9 Members?

10 Any questions by members of the audience?

11 If not, it is approved unanimously.

12 EXECUTIVE OFFICER WARREN: Item 82, Mr. Chairman
13 and Commissioners, concerns the marine oil terminal
14 regulations which have been drafted and promulgated by our
15 Division of Marine Facilities, and the Division Chief is
16 Gary Gregory who will present the item to you.

17 ACTING CHAIRMAN MCCARTHY: Question by Members of
18 the Commission?

19 EXECUTIVE OFFICER WARREN: Maybe a word from Mr.
20 Gregory would be in order here.

21 ACTING CHAIRMAN MCCARTHY: Absolutely.

22 MR. GREGORY: Yes, sir, Mr. Chairman. These are
23 regulations based upon the Lempert-Keene-Seastrand Oil Spill
24 Prevention and Response Act to provide the best achievable
25 protection standard given our current level of knowledge as

1 required by the Act. It will impact the marine oil
2 terminals, both onshore and offshore terminals, in the State
3 of California and will provide comprehensive regulations for
4 the operation and maintenance of these terminals.

5 ACTING CHAIRMAN McCARTHY: All right.

6 I am impressed with the work developed in these
7 regs.

8 Does anyone have any questions from the
9 Commission?

10 ACTING COMMISSIONER BURTON: Just one. Have we
11 resolved all of the outstanding issues that were raised, all
12 the issues that were raised during the public hearing
13 process?

14 ACTING CHAIRMAN McCARTHY: Well, anybody in the
15 audience wish to address any point in these proposed
16 regulations?

17 EXECUTIVE OFFICER WARREN: To our knowledge, all
18 concerns have been addressed satisfactorily.

19 ACTING COMMISSIONER BURTON: Okay.

20 ACTING CHAIRMAN McCARTHY: All right.

21 Thank you, Mr. Gregory.

22 The Commission unanimously adopts the
23 recommendations.

24 EXECUTIVE OFFICER WARREN: Mr. Chairman, the next
25 item I suggest we take would be Item C33 which concerns a

1 recreational pier lease.

2 ACTING CHAIRMAN McCARTHY: Before we proceed on
3 that item, I have acknowledged the presence on Item 79 of
4 Mr. Rod Spackman. I should also announce the presence of
5 Mr. Louis Dye, also with Chevron, USA Products. If he still
6 is here, fine.

7 Thank you.

8 All right. Now we are on Item 33.

9 EXECUTIVE OFFICER WARREN: I'd like to have that
10 item presented by Jane Sekelsky and also I'll ask Peter
11 Pelkofer to join her. Mr. Pelkofer is Senior Attorney in
12 our legal division.

13 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Item
14 Number 33 is to request the termination of a recreational
15 pier permit and issuance of a general pier permit to
16 Chinquapin Homeowners Association, a facility in Lake Tahoe.

17 I believe there is a representative of Chinquapin
18 who is here on an issue that is common to this permit as
19 well as to three others. I think they were Items C10, 12
20 and 32.

21 ACTING CHAIRMAN McCARTHY: Mr. Robert Madox has
22 signed in. He will want to give testimony in just a moment
23 on Item 33, so we are addressing 32 and 33 together here,
24 and we say that items 10 and 12 are also related to this
25 issue.

1 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Only as
2 to this one particular issue. The other items, 10, 12 and
3 32, involve other permitting issues, but there is one issue
4 in common to all.

5 ACTING CHAIRMAN MCCARTHY: All right. And that's
6 the issue we will address now.

7 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: That is
8 correct.

9 The issue is with regard to the amount of rent
10 that will be charged for this permit. In the past, and
11 Peter may want to go into this, -- In fact, Peter, why don't
12 you go ahead and discuss the issue?

13 SENIOR COUNSEL PELKOFER: Peter Pelkofer, Senior
14 Counsel, State Lands Commission.

15 The issue is an issue of the eligibility of a
16 homeowner's association to receive rent free or some form of
17 pro rata rent under the statute which provides for rent-free
18 permits for littoral land owners.

19 In this particular case, Chinquapin has been
20 privileged over the last number of years to have a rent-free
21 status based on a review of their status and a number of
22 other associations who are in that type of position, and in
23 a legal opinion which I drafted at the request of senior
24 staff, they are no longer or never were, quite frankly,
25 entitled to that status. And because they are up for rent

1 review at this time, they are raising the question of
2 whether or not they should maintain the rent-free
3 eligibility or whether they should be required to pay rent.

4 And I think Mr. Madox can more properly present
5 his perspective than I can. And I'd be happy to respond to
6 it or to any questions that the Commission might have.

7 ACTING CHAIRMAN McCARTHY: Thank you.

8 EXECUTIVE OFFICER WARREN: I would only like to
9 add to Mr. Pelkofer's statement that the statute exempts
10 from the rent obligations natural persons who are owners of
11 littoral property within a certain distance from the
12 shoreline. We have found that some of the leases, where
13 this exemption has been applied, include unnatural persons,
14 so the question, when this issue was visited, Chinquapin was
15 found to be composed of natural and unnatural persons and
16 therefore determined by staff to have the exemption
17 legislatively crafted not apply.

18 I think Chinquapin perhaps wants to make the case
19 of -- Well, I don't know what their case is. I will leave
20 it to them.

21 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: I would
22 like to add also that the other three items that are before
23 you that are part of this issue in common, in none of those
24 cases has the applicant objected. They have all agreed to
25 the rent as the staff has set it in accordance with the

1 legal advice we have and there has been no issue raised by
2 those parties.

3 ACTING CHAIRMAN MCCARTHY: All right. Let's
4 please give Mr. Madox a seat.

5 Mr. Madox, would you like to step forward?

6 Welcome and let us hear what you would like to
7 say.

8 MR. MADOX: Thank you, Mr. Chairman and Members of
9 the Commission.

10 I am starting to feel a little uncomfortable that
11 I am being accused of representing someone unnatural --

12 (Laughter.)

13 MR. MADOX: -- but I think I can deal with that.

14 As the name of my client indicates, Chinguapin
15 Homeowners Association is a homeowners' association whose
16 members are the owners of the 172 homes at Chinguapin. Each
17 home is zoned as a single family residence. Each member is
18 entitled to use the pier which is the subject of this
19 application and each residence is located within one mile of
20 the pier.

21 The statute that we are discussing today is Public
22 Resources Code Section 6503.5, which states in pertinent
23 part that no rent shall be charged for any private
24 recreational pier constructed on state lands for the use of
25 a littoral landowner. Littoral landowner is defined to

1 include among other things any association of or any
2 nonprofit corporation consisting of natural persons who own
3 parcels of land, each of which is zoned or used solely for a
4 single family dwelling.

5 Out of the hundred and seventy-four homes at
6 Chinquapin, apparently three or four are owned by
7 corporations. I believe that they are all closely held
8 corporations and I think and I do know that in one instance
9 it is a San Francisco law firm, which is a professional
10 corporation, which owns that particular town house.

11 The issue before you, then, is because three or
12 four residences are owned by corporations, do all homeowners
13 at Chinquapin lose the benefits of Public Resources Code
14 Section 6503?

15 There are two legal arguments that we think
16 strongly support our position that there should be an
17 allocation or an apportionment of the usual rent based upon
18 the number of corporations as a percentage of the total
19 number of residences at Chinquapin, and those two legal
20 bases are first, the legislative history of Public Resources
21 Code Section 6503.5, and secondly, the equal protection
22 clause of the 14th Amendment of the United States
23 Constitution.

24 First, regarding the legislative history, I'd like
25 to quote from something that a legislative intent service

1 has provided me, and that is the statement that in applying
2 the rules of statutory construction, the courts of
3 California, as well as those of most other jurisdictions,
4 have routinely held that the cardinal principle of statutory
5 construction is that the court must choose the
6 interpretation which most nearly effectuates the purpose of
7 the Legislature.

8 Since 1955, the State Lands Commission has been
9 required by law, formerly the PRC 6503, to grant rent-free
10 leases on state lands for private recreational piers owned
11 by littoral landowners. Eligibility under that law has been
12 limited to natural persons who owned individual parcels of
13 land bordering on state lands.

14 In 1975, the California Attorney General issued a
15 formal opinion that rent-free recreational piers constituted
16 gifts of public property. The opinion inferred that such
17 permits were gifts, absent specific legislative findings of
18 public benefits stemming from the issuance of rent-free
19 recreational pier permits.

20 And Senator John Nejedly addressed the legislative
21 intent question with SB 349, in 1977, which provided the
22 findings that were required and simply repeated the former
23 law that owners of single family residences were entitled to
24 the rent-free pier. And the question arose after that
25 enactment in 1977 as to what about homeowners associations?

1 So at least prior to the statute that we are now
2 relying on, that is in 1977, owners of single family
3 residences, who are natural persons, were entitled to the
4 rent-free provisions for a pier on state lands and
5 corporations were not.

6 In 1978, then Senator Nejedly sponsored another
7 bill, SB 1937, which recognized that the rent-free
8 provisions of Public Resources Code Section 6503.5 had been
9 applied by the State Lands Commissions only to individual
10 persons, and the purpose of SB 1937 in 1978 was to place
11 homeowners associations in the same position as individual
12 littoral landowners. The State Lands Commission opposed the
13 bill, but the bill was passed nonetheless.

14 In opposing the bill, the State Lands Commission
15 made no reference at all to the issue of natural persons.
16 That was simply -- it really wasn't dealt with.

17 In the letter to the Governor regarding the bill,
18 Senator Nejedly stated that "accordingly this bill would
19 redefine littoral landowner to make certain neighborhood
20 homeowners associations eligible for a rent-free lease of
21 state lands for a recreational pier on the same basis that
22 individual owners are eligible."

23 And that type of statement is repeated throughout
24 the legislative history. The purpose of that bill, the
25 current Public Resources Code 6503.5, was to put homeowners

1 associations on the same standing as individuals.

2 Apparently, prior to the current year, 1992, staff
3 of the State Lands Commission has dealt with this issue by
4 apportioning the total rent that would be due and applying a
5 ratio where the numerator is the number of unnatural
6 persons, I believe that would include trusts as well as
7 corporations, as a percentage of the total. We know that
8 that interpretation has been applied to a number of other
9 homeowners associations at Lake Tahoe, and it is only this
10 year that there is an attempt made to change that.

11 We think that the apportionment approach is
12 entirely consistent with the legislative purpose of Public
13 Resources Code 6503, and in fact the statute itself, and
14 that to now change the law or to change the way that the law
15 is being dealt with by the State Lands Commission flies in
16 the face of the legislative purpose of the statute. And
17 also, because of the prior interpretation and putting
18 Chinquapin in a different position than others in the past,
19 there's a letter that I have written, and I don't know if
20 you have seen that, but I have relied on the equal
21 protection clause of the Constitution as you can treat one
22 group or a group of people differently from the way that you
23 have treated others in the past.

24 So that's the position that we take and I'd be
25 happy to answer any questions.

1 ACTING CHAIRMAN McCARTHY: Any questions at this
2 point?

3 ACTING COMMISSIONER BURTON: No.

4 ACTING COMMISSIONER SIMPSON: No.

5 ACTING CHAIRMAN McCARTHY: All right. Would the
6 Commission staff like to respond?

7 EXECUTIVE OFFICER WARREN: Well, I would like to
8 comment on the latter point of equal protection of the law.
9 While it is admitted that in other instances presently
10 before you that action that the staff recommends varies from
11 what staff has recommended to you in similar cases in the
12 past, staff's recommendation is based upon a legal position
13 which has been thoroughly briefed and which is convincing
14 that staff action in the past is not warranted by the
15 statute, that it is contrary to what the Legislature has
16 provided.

17 Staff felt that it had no recourse but to correct
18 action, its actions, which are clearly contrary to its
19 statutory authority. In doing so staff intends not to apply
20 it retroactively, however. We are not going back to current
21 leases and revising these leases.

22 We will apply the statute to the leases as they
23 come up for renewal. There are four leases up before you
24 today for renewal. All four of them are being treated the
25 same way.

1 Three of them, three of the applicants, have found
2 staff's interpretation of the statute to be correct and have
3 indicated their willingness to comply with the new lease
4 provisions. Chinguapin feels that staff's interpretation is
5 incorrect for the reasons which have been stated.

6 It is our intention, depending upon Commission
7 concurrence, to apply this to all the leases as they come
8 before us in the future. So there should be no equal
9 protection of the laws issue before you.

10 On the other point, we have, in your information
11 presented to you, a rather detailed chronology of the
12 development of the Resources Code Section 6503.5, including
13 letters, legislative staff memoranda, which clearly set
14 forth a record indicating that staff's interpretation of the
15 statute in the past has been incorrect.

16 In as much as this statute is one which carves out
17 an exemption from existing law, that is that there should be
18 no gift of public property, in as much as this is a
19 legislative exemption from that Constitutional provision, we
20 felt it has to be interpreted strictly, and that's what we
21 are doing.

22 If we are wrong, then we think that it is to the
23 Legislature that Chinguapin and others should turn for
24 legislative correction.

25 So we continue to urge the Commission to concur

1 with staff recommendations in this instance.

2 ACTING CHAIRMAN McCARTHY: Mr. Madox, you
3 represent the homeowners association as you appear here?

4 MR. MADOX: Yes, sir.

5 ACTING CHAIRMAN McCARTHY: You don't represent any
6 of the individual members of the association?

7 MR. MADOX: Not separately from being the attorney
8 for the association.

9 ACTING CHAIRMAN McCARTHY: Do you have an interest
10 in, or do you belong to a group that has an interest in one
11 of the members of the association that would be affected by
12 this individually?

13 MR. MADOX: No, sir.

14 ACTING CHAIRMAN McCARTHY: So your interest
15 appearing here is to represent the homeowners association?

16 MR. MADOX: Yes, sir.

17 ACTING CHAIRMAN McCARTHY: Is the homeowners
18 association a voluntary group?

19 MR. MADOX: No.

20 ACTING CHAIRMAN McCARTHY: Are they bound
21 together? Do the single family dwellings that are members
22 of the homeowners association have the ability to exclude
23 corporate members in the association?

24 MR. MADOX: No. The Declaration of Covenants,
25 Conditions and Restrictions, commonly known as CC and R's

1 spells out that each person who owns a unit at Chinguapin is
2 thereby a member of the association, no matter what the form
3 of ownership.

4 ACTING CHAIRMAN McCARTHY: So if we have a
5 situation where there are a hundred seventy-four homes and a
6 hundred seventy-three of them are owned by corporations or
7 trusts, as I understood your presentation, we would then be
8 required to exempt the entire homeowners association.

9 MR. MADOX: No, sir, no.

10 ACTING CHAIRMAN McCARTHY: What is your position?

11 MR. MADOX: I am suggesting that the legislative
12 purpose would be followed by applying the analysis
13 previously applied by your staff --

14 ACTING CHAIRMAN McCARTHY: Apportionment.

15 MR. MADOX: -- which is the apportionment, yes,
16 sir.

17 ACTING CHAIRMAN McCARTHY: All right. But the
18 staff is now telling us that that statute was incorrectly
19 applied and they are trying to correctly apply the law.
20 They think case law suggests that they are not authorized to
21 apportion this.

22 MR. MADOX: I strongly feel, and I have taken a
23 good hard look at this, that the prior interpretation of
24 staff was the correct one because the purpose of the bill in
25 1978 was to put homeowners associations on the same basis as

1 individuals, so the apportionment follows that just
2 perfectly. If you had a hundred seventy-two homes there,
3 all lakefront, one was owned by a corporation, and every one
4 of them had a pier, which would be a terrible situation,
5 this state would be entitled to collect the full rent on one
6 pier but not on the others.

7 So the apportionment approach was the right
8 approach. It follows the statute. And that's the position
9 that we take, that that should simply be carried forward in
10 1992 as it has been for 13 years prior.

11 ACTING CHAIRMAN McCARTHY: Mr. Madox, let's assume
12 for the moment that our staff's interpretation that they
13 cannot apportion or prorate is the correct one. How would
14 you suggest that we carry out the plain meaning of the law
15 and make sure that corporations or trusts that own these
16 properties are taxed and not exempt?

17 MR. MADOX: Well, you present me with a hypothesis
18 that I, of course, disagree with, as you know.

19 ACTING CHAIRMAN McCARTHY: I understand that.

20 MR. MADOX: If indeed the statute were clear, we
21 would have to abide by that, you would have to abide by
22 that, and as Mr. Warren has stated, our only remedy would be
23 to go back to the Legislature. But I don't think that's the
24 situation.

25 ACTING CHAIRMAN McCARTHY: Any questions?

1 Mr. Warren, do you have anything else?

2 EXECUTIVE OFFICER WARREN: I just once again call
3 the Commissioners' attention to Mr. Pelkofer's brief, a copy
4 of which has been supplied to you, and on the last page
5 there, the statute, 6503.5, is set forth, and the exemption
6 from payment applies only to littoral landowners. And the
7 statute goes on to define littoral landowners very
8 precisely. And among the acceptable definitions of littoral
9 landowners is that of an association which is composed in
10 whole of natural persons. The Chinquapin association does
11 not meet that statutory definition.

12 MR. MADOX: Mr. Chairman.

13 ACTING CHAIRMAN McCARTHY: Mr. Madox.

14 Incidentally, where I said taxes before, I delete
15 that. I meant rates.

16 MR. MADOX: I understand that. May I read the
17 wording of the statute because I think that -- By the way, I
18 have not been afforded the opportunity to review Mr.
19 Pelkofer's brief, so I don't know what it says, but the
20 statute says "littoral landowner means," and I will go down
21 to (b), which is the --

22 ACTING CHAIRMAN McCARTHY: Go ahead and read (a),
23 too.

24 MR. MADOX: All right. I will read (a). "Any
25 natural person or persons who own littoral land improved

1 with and used solely for a single family dwelling, or (b),
2 any association of or any nonprofit corporation consisting
3 of natural persons who own parcels of land, each of which is
4 zoned or used solely for a single family dwelling, et
5 cetera."

6 So it doesn't say that it consists entirely of --

7 EXECUTIVE OFFICER WARREN: No, but the et cetera
8 is important, though.

9 I'm sorry. The et cetera is important.

10 MR. MADOX: Okay. Then I should read the rest of
11 it. "Any association of or any nonprofit corporation
12 consisting of natural persons who own parcels of land, each
13 of which is zoned or used solely for a single family
14 dwelling and who are entitled to the use of a private
15 recreational pier on littoral land that is owned by the
16 association or nonprofit corporation and is not more than
17 one mile from any such parcel owned by a member thereof."

18 All of those last items, as I introduced in the
19 beginning of my comments, the Chinquapin homeowners
20 association are satisfied. The issue is what does it mean
21 when it says "an association consisting of natural persons
22 who own parcels of land."

23 It doesn't say solely or entirely of natural
24 persons, it simply says "consisting of."

25 The Legislature just simply didn't deal with the

1 specific issue back in 1978, but their purpose, as was
2 stated, was to put associations on the same basis as
3 individuals. So if an association is made up of a hundred
4 seventy-two members, four of whom are corporations, the
5 apportionment fits precisely with what the law would have
6 been if we weren't dealing with associations.

7 ACTING CHAIRMAN McCARTHY: Mr. Warren.

8 EXECUTIVE OFFICER WARREN: I am not saying that
9 the Legislature could not do what counsel suggests. I am
10 just saying that the Legislature has not done so yet. And
11 until it does so, it seems to me, because this does carve
12 out an exemption, we are bound to apply this law strictly as
13 it is written in order to be consistent with legislative
14 direction. That's what we are doing. Others agree with our
15 interpretation.

16 And now the question is would we oppose a
17 legislative effort to further modify lease terms? I don't
18 know. That would be up to the Commission at that time.

19 ACTING CHAIRMAN McCARTHY: Commissioner Simpson.

20 ACTING COMMISSIONER SIMPSON: Thank you. I am
21 bothered by both sides of this argument, frankly. I am not
22 sure, not being an attorney, exactly where it lies.

23 I would like to see staff, if it is appropriate,
24 approach the Legislature and find out what legislative
25 intent is on this. It's been a while since the issue was

1 visited by them and perhaps it is appropriate now to seek
2 out a different interpretation for this statute to find out
3 where they were coming from and what they actually intended.

4 EXECUTIVE OFFICER WARREN: Well, if I may respond
5 to that, Commissioner, it is clear what the Legislature
6 meant by the present language because, as Mr. Pelkofer's
7 legal memorandum sets forth, time after time it was clear
8 that this exemption would not apply to corporations or
9 associations composed of a corporation.

10 Remember, in reference to a memo by Mr. Willoughby
11 in 1978, who was then staff to the Resources, Land Use and
12 Energy Committee, which at one time I had the privilege of
13 chairing, that this exemption applied only to natural
14 persons, not the corporations.

15 So we know what the legislative intention was at
16 the time this statute was passed. What we don't know is,
17 given the fact that some associations presently include
18 corporations, whether the Legislature would want to extend
19 it to such associations.

20 Now, this may be a change of circumstances. We
21 don't know if in 1978, homeowner associations consisted of
22 corporations. We do know that they do now, and whether or
23 not the Legislature wants to extend the exemption to such
24 associations is a matter that should be visited by the
25 Legislature.

1 However --

2 ACTING CHAIRMAN MCCARTHY: Do we have examples of
3 other homeowners associations around the State that include
4 corporate members?

5 Beside this single, does the staff have examples
6 of other homeowners associations around California that
7 would present this kind of problem to us?

8 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: I
9 believe that the concentration of homeowners associations
10 attempting to qualify under 6503.5 will be in the Tahoe-
11 Donner area. However, we do have some homeowners
12 associations in the Bay Area, one of which is on the Consent
13 Calendar today. They consist entirely of natural persons
14 and have elected not to allow any corporate members.

15 There may also be some situations in Southern
16 California where there are homeowners associations that have
17 or have not corporate members. I can't confirm that for you
18 right now.

19 ACTING CHAIRMAN MCCARTHY: Yes.

20 ACTING COMMISSIONER BURTON: I'd like to propose
21 something. And I'm not sure I entirely understand exactly
22 what generated this issue, but it seems to me having a
23 longstanding practice of applying the statutes and
24 interpreting the statutes in a certain way, that we should
25 continue that practice absent any subsequent legislation

1 that would tell us to alter that practice. And that's kind
2 of where I am coming from now.

3 SENIOR COUNSEL PELKOFER: Mr. Chairman, may I
4 comment on that just briefly?

5 ACTING CHAIRMAN MCCARTHY: Go ahead.

6 SENIOR COUNSEL PELKOFER: While that has been the
7 practice apparently, and in my research I attempted to
8 determine how frequently the Commission had prorated and
9 when it had not, Chinguapin itself as an example that would
10 have fit under the proration but where no proration
11 occurred, so I don't think there was a consistent policy.
12 And to say that we should continue the policy because it had
13 been applied on a regular basis, I think, is inappropriate.
14 It had not been consistently applied. It had been applied.
15 There are other examples of where it had been applied on
16 other prorations, but for that very reason the issue was
17 raised with me to make a determination or render an opinion
18 as to what was the proper course to follow.

19 And while I agree with almost everything Mr. Madox
20 says, I disagree with his conclusion. And I agree that the
21 issue is, what does "consist of natural persons" mean? And
22 my conclusion is the opposite of his, and that is that the
23 Commission has no discretion and that the statute requires
24 the Commission to interpret it in this fashion, and that if
25 Mr. Madox has a problem with that, his solution is with the

1 Legislature.

2 MR. MADOX: Mr. Chairman.

3 ACTING CHAIRMAN MCCARTHY: Mr. Madox.

4 MR. MADOX: I believe that it's clear that prior
5 to this year the policy of staff was not to charge full rent
6 where even one member of an association was a corporation or
7 a trust. They may not have applied any rent at all in some
8 situations, but they never before this year attempted to
9 apply the full rent provisions where one out of a hundred or
10 out of two hundred was a corporation or something like that.

11 And I believe that there are a number of
12 associations at Lake Tahoe where the rent has been
13 apportioned. I believe the Tahoe Park Association, Rubicon
14 Properties Owners Association and the Tahoe Tavern
15 Homeowners Association have all been treated on an
16 apportioned basis in a similar situation.

17 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Yes,
18 that is correct. There are some. I can't confirm that
19 those three have, but there are some that have been prorated
20 since 1987.

21 As Mr. Warren has pointed out, we are working now
22 with legal advice that tells us that we have no choice, that
23 that was inappropriate, and that as those come up for rent
24 review or for amendment to the lease, renewal of lease,
25 whatever, we will be applying the statute as we are advised

1 by legal to do.

2 EXECUTIVE OFFICER WARREN: Unless, of course,
3 otherwise directed by the Commission.

4 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Yes, of
5 course.

6 (Laughter.)

7 ACTING CHAIRMAN McCARTHY: Any further pearls of
8 wisdom from anyone on the Commission?

9 I am going to ask that this be put over until the
10 next meeting for a vote on the issue.

11 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: May I
12 make one point on that?

13 ACTING CHAIRMAN McCARTHY: Yes.

14 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: In the
15 case of Chinquapin, we are about to run out the time clock
16 on the Permit Streamlining Act. Therefore, if we are to put
17 this over, the next meeting will not be before that deadline
18 runs and we would like to ask that they withdraw and reapply
19 without prejudice for that purpose in order to avoid that
20 problem.

21 MR. MADOX: May I ask a question?

22 ACTING CHAIRMAN McCARTHY: Go ahead.

23 MR. MADOX: What would that involve?

24 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Simply a
25 letter to us stating that you are willing to withdraw and

1 reapply.

2 CHIEF COUNSEL HIGHT: Don't they have some
3 construction?

4 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: I don't
5 know if we would have a problem with that.

6 MR. MADOX: I am not all together sure that -- I'm
7 sorry.

8 CHIEF COUNSEL HIGHT: I thought we had some
9 construction on one of the four.

10 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: That may
11 be correct.

12 SENIOR COUNSEL PELKOFER: Some of the other items,
13 as has been pointed out, involve other issues, and in one
14 case, even though the issue is involved, the rental wouldn't
15 have changed. They are not objecting for that reason so I
16 am not sure you want to take the same action on the non-
17 objecting entities if you want to continue this one.

18 Clearly, if your determination were the opposite,
19 we could go back and change anything that might affect them
20 in a subsequent hearing.

21 EXECUTIVE OFFICER WARREN: All right. In carrying
22 out the Chairman's wishes, I suggest on Item 33 that subject
23 to the agreement by the applicant to waive 884 requirements,
24 that would be put over for further consideration of the
25 Commission.

1 ACTING CHAIRMAN McCARTHY: I don't think this
2 prejudices your case, Mr. Madox.

3 EXECUTIVE OFFICER WARREN: No.

4 On the other three items, then, I suggest that
5 they be approved to enable the applicants to proceed with
6 any construction deadlines that they have subject to the
7 understanding that in the event the Commission later alters
8 staff recommendations, that those leases will be modified to
9 reflect the Commission's directions.

10 ACTING CHAIRMAN McCARTHY: The other three leases
11 also deal with proration.

12 EXECUTIVE OFFICER WARREN: Yes.

13 SENIOR COUNSEL PELKOFER: Yes.

14 LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Correct.

15 ACTING CHAIRMAN McCARTHY: At this moment.

16 EXECUTIVE OFFICER WARREN: Correct.

17 ACTING CHAIRMAN McCARTHY: If we vote on them
18 today, that terminates the proration approach.

19 EXECUTIVE OFFICER WARREN: Yes.

20 SENIOR COUNSEL PELKOFER: Not if you change it,
21 Mr. Chairman.

22 EXECUTIVE OFFICER WARREN: Well, subject to being
23 changed, but then to reflect the action that you
24 subsequently take on 33.

25 ACTING CHAIRMAN McCARTHY: Well, how clear is it

1 that there is a problem about any construction?

2 SENIOR COUNSEL PELKOFER: It is clear.

3 ASSISTANT EXECUTIVE OFFICER TROUT: Just one, I
4 think.

5 MR. AGAN: I am Kevin Agan of Vail Engineering
6 representing the applicants of the remaining items here.

7 We are tied to an October 1st construction
8 deadline, so it will be imperative to have these approved.
9 I believe we have posted the necessary fees to have this
10 project approved.

11 CHIEF COUNSEL HIGHT: Is Chinquapin an item which
12 is under construction?

13 MR. AGAN: I would defer that to Mr. Madox.

14 EXECUTIVE OFFICER WARREN: He just represents the
15 other three.

16 SENIOR COUNSEL PELKOFER: Mr. Agan is also the
17 engineering consultant at Chinquapin and I thought he would
18 know better than I. I am sorry. I don't know.

19 ASSISTANT EXECUTIVE OFFICER TROUT: It doesn't
20 mention any construction.

21 MR. AGAN: For this project to proceed it would
22 have to be approved today to be able to meet the
23 construction deadline. It does have a construction deadline
24 of October 1st also as set forth by the Tahoe Regional
25 Planning Commission.

1 ACTING CHAIRMAN McCARTHY: Chinquapin has a
2 construction deadline. Is that what you just said?

3 MR. AGAN: Yes.

4 ASSISTANT EXECUTIVE OFFICER TROUT: It appears
5 that way.

6 SENIOR COUNSEL PELKOFER: Mr. Chairman, may I
7 offer a suggestion?

8 ACTING CHAIRMAN McCARTHY: Yes.

9 SENIOR COUNSEL PELKOFER: Could the matter be
10 approved to proceed and then the issue of the rent, if you
11 wish, be deferred to another date and I'd be happy to
12 provide a further briefing if necessary?

13 ACTING CHAIRMAN McCARTHY: The answer to that is
14 yes.

15 SENIOR COUNSEL PELKOFER: Thank you.

16 ACTING CHAIRMAN McCARTHY: That will be the action
17 of the Commission.

18 EXECUTIVE OFFICER WARREN: Fine.

19 ACTING COMMISSIONER BURTON: Could I ask a
20 question, too?

21 In terms of noticing this for the next meeting,
22 could it be noticed as an item to review the rent practice,
23 because on the calendar that we all received, which I assume
24 is the public calendar, there is no specific mention of the
25 memorandum, which I assume is also public, that has been

1 circulated -- but apparently has not been --

2 SENIOR COUNSEL PELKOFER: I have not received
3 that.

4 ACTING COMMISSIONER BURTON: -- which provides the
5 basis for this. So it seems to me that we should somehow
6 get the issue itself here. It is not just the individual
7 leases.

8 EXECUTIVE OFFICER WARREN: Okay.

9 ACTING CHAIRMAN MCCARTHY: Yes.

10 EXECUTIVE OFFICER WARREN: We will be so directed.

11 ACTING CHAIRMAN MCCARTHY: All right.

12 Now, the action that we just took pertains to all
13 four items we are discussing here as a group, 10, 12, 32 and
14 33.

15 EXECUTIVE OFFICER WARREN: Yes.

16 ACTING CHAIRMAN MCCARTHY: All right. They are
17 all approved with that exception, the rental policy.

18 EXECUTIVE OFFICER WARREN: That will be fine.
19 That will be fine.

20 ACTING CHAIRMAN MCCARTHY: Anything else?

21 All right. Thank you.

22 EXECUTIVE OFFICER WARREN: Thank you very much.
23 And we will special order that issue at the next meeting.

24 ACTING CHAIRMAN MCCARTHY: Anything else to come
25 before the Commission?

1 EXECUTIVE OFFICER WARREN: Yes, one other item,
2 and that is Item C45 which was removed from the Consent
3 Calendar and put on the Regular Calendar.

4 There are not persons present to testify on the
5 item but nevertheless it is of sufficient significance that
6 a few words of explanation might be of interest to the
7 Commission.

8 ACTING CHAIRMAN MCCARTHY: Proceed.

9 EXECUTIVE OFFICER WARREN: The item concerns
10 extending the hold-over period of a lease covering the
11 Gaviota Marine Terminal. This lease had an expiration date
12 of March, 1991 with a one-year hold-over period to March of
13 1992.

14 The lease is for a marine terminal which has been
15 constructed. It will be used, if at all, for the tankering
16 Santa Ynez produced crude, produced in federal offshore
17 waters. As the Commissioners may recall, several Chevron,
18 Exxon and other companies are involved in the development of
19 oil in the federal waters from several platforms which have
20 been constructed.

21 Production has been held up, however, because of a
22 dispute as to how such oil will be processed and
23 transported. The County of Santa Barbara and others are
24 insisting that the oil be transported to refineries in other
25 facilities by pipeline. No such pipeline presently exists.

1 The oil companies have been seeking an alternative
2 transportation means, that is tankering, until such time as
3 the pipeline has been constructed and is available.

4 The terminal which is the subject of this lease
5 was constructed for the purpose of facilitating
6 transportation of the crude by tanker. Because of the
7 dispute, all production has been suspended. The
8 Administration recently developed a conciliation process
9 which involved representatives of the County of Santa
10 Barbara, third-party interest groups and State agencies and
11 others to develop a process for resolving this dispute.

12 Steps in furtherance of the general agreement
13 negotiated by the Administration are under way. The County
14 of Santa Barbara has issued a conditional permit for the
15 transport of Santa Ynez crude oil, but the conditions
16 imposed have been found unacceptable by at least one of the
17 oil producing companies, and that company has appealed the
18 matter to the Coastal Commission for determination.

19 That appeal will be heard by the Coastal
20 Commission at its next meeting believed to be in October.
21 The Coastal Commission has a rule that it will not, and I am
22 paraphrasing here, it will not process an item unless the
23 applicant can show that it has an interest in the land
24 involved.

25 The terminal is one -- The lease is such an

1 interest. In order not to disrupt this facilitation process
2 and the resolution of the issues involved, it is staff's
3 position that we should continue status quo the past lease
4 at least until March of 1993. The hold-over provisions that
5 we are recommending do not permit the use of the terminal,
6 however. If the terminal is to be used at all, such use
7 will have to come back to the Commission for determination.

8 It is hoped that at an appropriate time in the
9 future that the parties, that is the County, the Coastal
10 Commission, the oil industry and the Administration, will
11 have resolved all disputes so that clearly the use of the
12 lease will be by general agreement.

13 We are receiving \$15,000 a month but the lessee
14 can't use it. Don't ask me to explain that.

15 So what we are asking you here is to extend the
16 status quo as it has existed for the past several months,
17 and as we see no policy implications, we are policy neutral
18 in so far as the issues before other agencies.

19 It is staff's recommendation that this is the
20 prudent path for the Commission and it strongly urges the
21 recommended action.

22 ACTING CHAIRMAN MCCARTHY: Questions by
23 Commissioners?

24 Questions from anyone in the audience?

25 Do you have a question?

1 ACTING COMMISSIONER SIMPSON: Yes.

2 Very late yesterday I received a communication
3 expressing concerns with the action that was being proposed
4 by staff on this item. It did come in so late I did not
5 have a chance to fully explore those with the party that is
6 raising those concerns.

7 There is no way to put this item over for another
8 month, legally to put it over to look at that?

9 EXECUTIVE OFFICER WARREN: Well, of course, we can
10 do so, but we cannot do so without causing considerable
11 mischief. The mischief would be that the Coastal Commission
12 could then argue that there is no substantive issue before
13 it because the appellants could show no property interest as
14 the Coastal Commission's rule requires.

15 ACTING CHAIRMAN McCARTHY: What is the date of the
16 Coastal Commission's hearing?

17 EXECUTIVE OFFICER WARREN: Pardon me?

18 ACTING CHAIRMAN McCARTHY: What is the date of the
19 Coastal Commissions's hearing on this matter?

20 MR. SANDERS: My name is Dwight Sanders, Mr.
21 Chairman, staff, and I represent the Chairman of the
22 Commission on the Coastal Commission.

23 The Commission's meeting is currently scheduled
24 during the second week of October. To my knowledge the
25 specific date of the item has not been set, but the meeting

1 begins, I believe, on the 13th and extends for four days.

2 ACTING CHAIRMAN McCARTHY: So this matter may be
3 on that calendar?

4 MR. SANDERS: It will be on that calendar, Mr.
5 Chairman.

6 EXECUTIVE OFFICER WARREN: In further response to
7 Commissioner Simpson's comments, staff has communicated with
8 the authors of the correspondence to which she has
9 referenced. We have talked with them yesterday afternoon.
10 It is our impression -- It is my impression, at the least,
11 that there is a misunderstanding by the communicant. They
12 apparently believe that there are some policy implications
13 involved here by the proposed action.

14 We tried to assure them that this was policy
15 neutral and would not affect one way or another the decision
16 by the Coastal Commission or any of the issues which are
17 admittedly very complex and significant and need further to
18 be resolved.

19 ACTING CHAIRMAN McCARTHY: What do you think?

20 ACTING COMMISSIONER SIMPSON: Well, I don't know
21 if it might affect the Coastal Commission.

22 ACTING COMMISSIONER BURTON: I don't have any idea
23 of what issues have been raised. No one has raised any
24 issues to me.

25 I will go along with the wishes of the Commission,

1 but it seems to me, based on the staff's representations
2 here, that we need to proceed in order to allow the Coastal
3 Commission to take their actions.

4 ACTING COMMISSIONER SIMPSON: Okay, if we have to
5 proceed.

6 ACTING CHAIRMAN McCARTHY: All right. The
7 Commission accepts the recommendations.

8 EXECUTIVE OFFICER WARREN: Thank you.

9 ACTING CHAIRMAN McCARTHY: Anything else to come
10 before the Commission?

11 EXECUTIVE OFFICER WARREN: That concludes the
12 agenda.

13 ACTING CHAIRMAN McCARTHY: Thank you, ladies and
14 gentlemen.

15 We are adjourned.

16 (Thereupon the September 23rd, 1992, meeting
17 of the State Lands Commission was concluded
18 at 11:35 a.m.)

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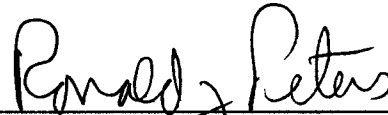
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CERTIFICATE OF SHORTHAND REPORTER

I, RONALD J. PETERS, a Certified Shorthand Reporter of the State of California, do hereby certify that I am a disinterested person herein; that I reported the foregoing State Lands Commission Meeting in shorthand and thereafter caused my shorthand writing to be transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of October, 1992.



Ronald J. Peters
Certified Shorthand Reporter
License Number 2780