MEETING
STATE LANDS COMMISSION

CITY HALL
CITY COUNCIL CHAMBERS
915 I STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, APRIL 29, 1981
9:30 A.M.

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TELEPHONE (916) 303-2601
MEMBERS PRESENT

Kenneth Cory, Chairperson, State Controller
Susanne Morgan, representing Mary Ann Graves, Director of Finance, Commissioner
David Ackerman, representing Mike Curb, Lieutenant Governor, Commissioner

STAFF PRESENT

William Northrop, Executive Officer
James Trout
Mr. Thompson
Mr. Rump
Kent Dedrick
Carl D'Agostino
Diane Jones, Secretary
Harley Pinson

ALSO PRESENT

N. Gregory Taylor
Sue Wylie, Deputy Attorney General
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CHAIRPERSON CORY: I call the meeting to order to deal with the technicalities of the world. The official meeting will start in 35 minutes, at 10:00 o'clock as noticed. We will start certain informational and discussion items prior to that, but no official action of this body is contemplated until 10:00 o'clock. That is the officially noticed time. Because of some of the controversial items on the agenda, we may not be able to meet our time schedule if we wait until 10:00 o'clock to commence, so we cannot deal with the events, but we can have a report from the Executive Officer.

EXECUTIVE OFFICER NORTHROP: Thank you very kindly.

Pacific Gas and Electric Company has requested permission from the Commission to install a 12 kilovolt powerline across Whiskey Slough in San Joaquin County to serve an irrigation pump on McDonald Island. The powerline is needed immediately in order to avoid a potential crop loss in this location. Pacific Gas and Electric requests a letter of permission in order to install this powerline. The company will, as quickly as possible, apply for a standard right-of-way lease for this facility. Staff requests the Commission's authorization to issue
a letter of permission for the temporary installation of
this powerline pending application by PG&E for a formal
lease.

The second item, Mr. Chairman and Members, is
a letter of permission from Crowley --

COMMISSIONER ACKERMAN: Is there any opposition
to this?

EXECUTIVE OFFICER NORTHROP: No inconvenience
to the farmers in the area.

CHAIRPERSON CORY: Go ahead.

EXECUTIVE OFFICER NORTHROP: The Growler Maritime
Corporation has requested permission to construct and
maintain a temporary mooring facility in the Sacramento
River in Yolo County. Possibly Mr. Trout should have
raised this point. The facility is to be used in conjunc-
tion with the opening of the Old Sacramento Railroad
Museum.

In response to the Applicant's design to have
the facility in place by next week, I have issued a letter
of permit authorizing the construction and maintenance
of the facility, or I would have lost my Assistant Executive
Officer.

The Applicant has agreed to obtain a general
lease-commercial use as soon as possible in accordance
with Commission rules and regulations. They have already
obtained a letter of permission from the U.S. Army Corps of Engineers, and staff assures me that the Department of Fish and Game has no concerns.

If that's in keeping with your wishes, we'll proceed.

CHAIRPERSON CORY: All right.

EXECUTIVE OFFICER NORTHROP: That concludes my report. There is no report from the Coastal Commission, Mr. Chairman.

CHAIRPERSON CORY: The Consent Calendar items will be taken up shortly after 10:00 o'clock. They're on the calendar designated by the letter "C" numbering from numbers 1 through 15.

I would like to commence a discussion of Item 16, consideration of a settlement proposal from representatives of the Jonathon Club, and I believe we have a Mr. Shiner?

MR. SHINER: That's correct.

CHAIRPERSON CORY: Would you come forth and tell us what you have in mind?

MR. SHINER: Thank you.

Mr. Chairman, Members of the Commission, my name's John Shiner. I'm representing the Jonathon Club. With me in the hearing room this morning as well is Mr. Taft, President of the Club, and Mr. Cross who serves on
our Board of Directors.

I will dispense, if I may, with the preliminaries. I understand Mr. Cory's on a tight schedule this morning. I will simply get into our proposal.

We have studied at some lengths the recommendations of the staff with whom we've been working at some length over the last several months in an effort to try to accommodate the concerns and interests of all sides to this litigation. We have a counterproposal which we would like to share with you this morning. We have indeed shared this proposal with the staff earlier this morning.

I think probably the best way to proceed, if I may, is to refer to the calendar item itself, and I don't know if your numbers coincide with mine, but my page number is page 4, and it begins "The last settlement proposal --"

CHAIRPERSON CORY: Page 70.

MR. SHINER: Thank you.

MR. TROUT: The staff recommendation is on 73.

MR. SHINER: There appear four items at that point. I would propose to simply comment briefly with respect to each item.

Item No. 1 appears to be acceptable to the club.

Item No. 2 as well is acceptable to the club.

Item 3 is acceptable to the club.
Item 4, the main part of Number 4 is acceptable with this suggested modification. We would request, in addition to 50 feet of exclusive use, an additional 25 feet for exclusive use, leaving a balance of 20 feet between the 75 and 95 for the non-exclusive use. Of course, the non-exclusive use is conditioned only on the possibility that the bike path may intrude into that apron.

We would like the ability to build a parking facility, if approved by the applicable agencies, to that 95-foot area on the condition that we would pull back if, indeed, the bike path intruded into that area.

This yellow portion of the map here purports to represent, as I understand it, 95 feet, seaward of the 1921 line. Again, what we are proposing is a modification in Number 4, an additional 25 feet of exclusive use, and the balance would be 20 feet of non-exclusive use on the conditions set forth by the staff.

The staff has suggested that the lease term, an initial lease term, of 25 years. We would suggest that a lease term of an additional 10, or 35 years, would be appropriate under the circumstances of the case.

With respect to Paragraph 4(a), that is acceptable to the club with the exception that we would ask for an additional five years at nominal rent. Instead of 10 years, it would be a total of 15 years at nominal rent.
Paragraph 4(b) is likewise acceptable to the club, with this concern on our part. During our discussions this morning, we were unsure how the staff characterized fair market rental value. We had some discussions this morning to try to ascertain a common ground for the purposes of describing that particular term. Our thought was that, indeed, at the conclusion, if you will, of the original lease term, 15 years, certainly the club would have to pay more rent. We'll be willing to do so. How that rent is to be characterized, how it is to be computed, is a matter of some concern to us. I think, rather than waiting until the conclusion of the 10 or 15 years initially, we would like a formula, or a cap, or some kind of an agreement set forth in a lease at the front end so we know what kind of dollars we're looking at at the conclusion of the lease.

Hypothetically, of course, what could occur if that were not the case at the conclusion of the 10 or 15-year initial lease, it would be possible to come back with a figure that nobody could agree upon, and of course then we would be out of the premises at that particular point.

I believe that covers our counterproposal. Again, in fairness to the staff who has worked very hard on this particular issue, we've had many meetings with them in
the past over the last 5 or 6 months. This counterproposal was conveyed to them only this morning. I'm sure that they may have a comment or two on it.

If you have any questions, I would be delighted to entertain them at this point.

EXECUTIVE OFFICER NORTHRUP: Mr. Chairman, Sue Wylie from the Attorney General's Office and Les Grimes from our staff have worked a lot on this.

CHAIRPERSON CORY: Tell us where we are this morning.

MS. WYLIE: Mr. Commissioner, I think the club has come very close to what we have proposed. Would the Commission like for us to briefly run through our proposal?

CHAIRPERSON CORY: Just comparing and contrasting, or something, so we can make sure all issues are on the table here.

MS. WYLIE: Both sides are in agreement on the 95 feet. We have recommended 50 feet exclusive use, and a remaining 45 feet subject to the bike path. They would like to vary that by 75 feet exclusive use, with the remaining 20 feet subject to a bike path.

CHAIRPERSON CORY: Pardon me.

The question is that it is non-exclusive? The only intrusion to that would be a bike path, and if it is not a bike path, it is exclusive use?
MS. WYLIE: That's correct. In other words, they would have at least 95 feet exclusive use subject to pulling back. Under our proposal it was to 50 feet subject to, if we need to put the bike path closer in, rather than out here on the beach. That location has not been determined yet. That's why we've reserved in our proposal that option of having it come within here, if necessary, if the planning agencies find it necessary to place it there.

We have recommended --

CHAIRPERSON CORY: In the other settlements in the general area, what has been the amount of intrusion, at least, that we've permitted?

MS. WYLIE: The largest encroachment, other than this property, is 125 feet by the Beach Club, and the largest private encroachment is 50 feet.

We have recommended, or had recommended, in our last proposal a lease term of 25 years: 10 years nominal, 15 years at a fair rental value.

As I say, we did not discuss or recommend in our proposal an extension of a parking lot out into this area. However, we have agreed that the club, and this was with the agreement of Parks, that we could utilize this area right in here as part of the lease, because this is already paved and is used for parking. This extends
out about 50 feet here. This is an asphalt area right in here which is currently used for parking.

Other than that, we have agreed to at least accommodate them in acquiring some sort of use of this parking lot, which is a Parks proprietary land, provided that the remaining public parking is maintained there so that there's no diminishment of public use to that parking lot.

And as I said, their offer which they have proposed this morning is very close and may merit consideration. I guess I would let Les respond better as to the staff's position.

COMMISSIONER MORGAN: The yellow area represents how many feet?

MS. WYLIE: Ninety-five feet.

COMMISSIONER MORGAN: And that, according to the legend, represents the area for the exclusive use of the club?

MS. WYLIE: Right, subject to pulling back if it is determined that the bike path has to go closer to the private property along the beach. From this point here out to the water there is somewhere between, probably about 350 feet of the beach area for public use.

COMMISSIONER MORGAN: All right.

MR. GRIMES: Mr. Chairman, Commissioners, this
offer has been a major stride forward by the club, I think, in that now we're talking about, perhaps, modifications to the staff's recommendations rather than modifications to the club's offer.

There are some questions that can't be resolved immediately in the deliberations. One of the problems, of course, is the long term of the lease, 35 years for what would be non-substantial improvements.

The second major problem is that the first 15 years at a nominal rate would be inconsistent with what other people have seemed willing to talk about, and that is 10 years at a nominal rate.

The big problem is setting a rate at this time for 15 years that will become effective 15 years down the road, and will be good for another 15 years.

Thirdly, this is a multi-agency-agreed proposal here, involving Parks and the City of Santa Monica, the City Council of Santa Monica. The ultimate lease issued here will probably be passed on to Parks and Recreation, and then to the City of Santa Monica, and I would not like to recommend something that would be a turkey around their necks for 35 years without talking to them.

CHAIRPERSON CORY: You've not had any conversations with the other agencies?

MR. GRIMES: No, we just got the latest proposal
this morning, about 8:30.

CHAIRPERSON CORY: Have you had prior conversations with them to know what they think is acceptable or not acceptable? Did they have anything that you agreed to previously?

MS. WYLIE: In our private conversations, I know the 95 feet is acceptable, and I know the term at least of 25 years is acceptable, and I believe with Parks a longer term would also be acceptable. We have not discussed this offer with them.

CHAIRPERSON CORY: Any questions from the Commissioners?

COMMISSIONER MORGAN: I have a question of Mr. Shiner.

One of the things that's bothered me all along, I'm interested in resolving the conflict. It's nice for the public to be a good neighbor with private owners. But, it bothers me to have reached agreement with private owners in the area with one set of standards, and to apply a different set of standards for the Jonathon Club.

Can you explain why the Jonathon Club should have a settlement that's different from the private owners' settlements in the area?

MR. SHINER: I can certainly try.

I might say at the outset that we have carefully
endeavored to avoid requesting anything special, or anything which, frankly, could not have been requested by any other property owner up and down the beach.

Seems to me what we're suggesting here is something which indeed could be offered to any other property owner that would be willing to accept it. We're paying for what we're asking for. There is a fixed term to the lease.

There certainly is a situation here from a factual standpoint, which, I think, differs substantially from, perhaps, other areas of the beach. As Ms. Wylie pointed out, the beach area which is available for public use here is quite extensive. Based on my own experience, I found that even on the heaviest days, the 4th of July and the summer months, the public pretty much confines itself to this area of the beach, and there's very, very little use in this particular area. And I would suggest that that very same factual situation indeed does not exist all the way up and down the beach.

I don't think that there's anything in the proposal that was shared with the Commission this morning which indeed could not be offered to any other property owner. Whether it has or not, I'm simply not sure.

There probably would be a third response to your question. That is, we seem to have a mutual problem
in terms of parking accessibility at the beach. One of our concerns, to the extent that the applicable agencies would permit us to do so, is to extend our parking. To the extent that we're permitted to do so in an aesthetically acceptable manner, certainly with the approval of the applicable agencies, that hopefully would relieve parking congestion in the contiguous city and state lots. So, there would be more parking available both at the North State Parking Lot and other parking lots, and hopefully this would be beneficial to the state, the city, and indeed the club as well.

CHAIRPERSON CORY: May I ask a question about the parking.

You're saying that because your members would not park in those public facilities, there would be more public parking. You're not contemplating that you would make your additional constructed parking available to the public?

MR. SHINER: Only to the extent that -- and I might add, in response to your question which you put a little earlier, I have discussed the parking situation with Mr. Bucher (ph.) from Parks and Recreation. His response was that they would not look askance to the possibility of combining the South State Lot and our lot, and moving those lots jointly at some point seaward to
1921 linc, on the condition, that you just pointed out, that we maintain approximately 51 spaces, approximately 51 spaces, or at least maintain the public capacity that currently exists in those lots, which we would be willing to do.

Again, my understanding subject to his rebuttal is that that proposition is acceptable to Parks and Recreation.

I hope that was responsive to your question.

COMMISSIONER MORGAN: Well, not really.

Sue, have we offered anything over 50 feet to any other private property owner?

MS. WYLIE: What we did try to do was to allow the private owners to keep the area that they had encroached on. It so happened that the farthest extent of that was 50 feet. So we allowed them to keep their encroachment area, which is 50 feet.

The Jonathon Club, now, encroaches 135 feet. They are willing to pull back 40 feet, to 95 feet.

CHAIRPERSON CORY: The encroachment of 135 feet doesn't change the facts. Is there anything other than that?

MR. GRIMES: There's a flag pole, some trees. These are artificially induced trees.

MR. SHINER: Windbreak to the north.
MR. GRIMES: This fence, these bushes probably aren't yours.

MR. SHINER: No, I think that's the result of nature.

MR. GRIMES: Relatively minor improvements all around.

CHAIRPERSON CORY: In terms of encroachments, it seems to be significantly less encroachments than someone who has a swimming pool sitting there.

MS. WYLIE: The only substantial encroachment along the beach is the swimming pool, and one party has a paddle tennis court. The rest of the people basically have fenced areas of beach which they use for dog runs, or little walkway, or landscaping.

CHAIRPERSON CORY: If they want to put dogs in, I can't complain about that.

(Laughter.)

CHAIRPERSON CORY: So, what about the term? Do you have problems with the term?

COMMISSIONER MORGAN: I'm the one who thought anything over 4 years was too much in this political world that we deal in. I mean, who knows what the next group of people --

CHAIRPERSON CORY: I want to get the issues on the table.
COMMISSIONER MORGAN: And the staff has been working with them, which to me, is a long-term lease. To the Jonathon Club, it's not.

CHAIRPERSON CORY: Any other comments and questions?

COMMISSIONER ACKERMAN: I guess my question is, at what point are we right now? Do we hold a hearing at this point on it to make a decision, or is the desire to refer this latest proposal back to staff for further analysis and report back to us after talking with the city and Parks Department? Are we in a position here to make the decision that has to be submitted to two other bodies before final ratification, or legally what's available to us right now?

MR. GRIMES: I think that the issue of how long the free rent, or nominal rent period, and how to set the rent for the remaining term of the lease is something that I couldn't give the Commission a recommendation on right now. It would take some study and some additional negotiation.

There are a number of ways it could be done. We're certainly sympathetic with it, and it's the best thing we've seen in the last four months.

CHAIRPERSON CORY: I have a question for the Jonathon Club.
Are you in a position to enter into a firm agreement as of this point in time, or do you need approval from your organization to enter into something?

MR. SHINER: Mr. Chairman, we would technically, yes, need the formal approval of our Board of Directors. I can say, and again, I have Mr. Taft, the President, in the hearing room today, and the counterproposal that was suggested this morning I would recommend to our Board of Directors, and I believe it would be looked upon favorably.

MS. WYLIE: To answer Mr. Ackerman's question, we are in litigation, and the Department of Parks and Recreation and the City are also plaintiffs with us, and any settlement would require their approval, ultimate approval.

COMMISSIONER ACKERMAN: Who should move first?

MS. WYLIE: I believe the State Lands Commission, because the lease part of it will be with the State Lands.

COMMISSIONER ACKERMAN: So, in any event, we should take initial action and then it will be ratified by the other two agencies?

MS. WYLIE: That is one way that we could go.

CHAIRPERSON CORY: I'm not so sure that we should actually take the initial action, but I think we owe it to the Jonathon Club to expose our hand in terms of where we sit as individuals.
I'm not so sure that it is not one of the unfortunate things that the Jonathon Club ought to commit itself to the proposal before we're required to. It's just a matter of public policy of invoking the public's business above private business. That's just sort of a thing, historically, we get into a bad precedent.

I think we owe it to you to say this is where we sit individually, as you have given us indications, but for us to go ahead, when there are other public agencies, commit ourselves to a program on which you have not gotten firm approval on your side is setting in motion several public agencies' time and effort, and that I question. I think we ought to give you a firm indication where we're thinking.

MR. SHINER: Mr. Chairman, that is not an unfair observation.

It is a situation that has been complicated by the fact that we have so many agencies, bodies, and individuals.

If it would be more acceptable to the Commission, I could obtain a formal verification of the counterproposal and submit it to you for review.

CHAIRPERSON CORY: I think we'd better find out in our own heads what people are thinking specifically in terms of the counterproposal to this Commission so that
you know whether or not we're close enough. Because, my
instincts sort of tell me that we're close, but no cigar
yet. I don't think you've got two votes here.

COMMISSIONER ACKERMAN: Do you want to discuss
it point by point?

CHAIRPERSON CORY: I think that's probably what
we should do so you can get a feeling where we are, and
you can argue, and the staff can tell us where we're coming
with it wrong.

One of the difficulties is, basically, this
Commission has been tougher than the staff. I want you
to clearly understand that.

As Sue indicated, the staff has been coming
in saying 10 years, and the Commission has not yet shown
that there are two votes for the 10-year proposal, and
you're asking for what?

MR. SHINER: Thirty-five years.

CHAIRPERSON CORY: So, there's some substantive
difference from the people who have the vote. So the
question of time, I think, ought to be laid on the table.

COMMISSIONER ACKERMAN: Let's go through point
by point, then.

MS. WYLIE: Mr. Cory, the staff recommendation
has been 10 years at a nominal rate, and an additional
15 years at a fair rental value.
CHAIRPERSON CORY: The staff is 10 nominal, 15 full market value.

COMMISSIONER MORGAN: Kicking and screaming, we went along with that at one point, didn't we?

CHAIRPERSON CORY: But your basic position was you thought 4 years at nominal, and we're looking at nominal compared to 10 to 4, but if we could get it down, you'd agree with that?

COMMISSIONER ACKERMAN: My position's probably just the opposite direction, and my position's consistent with the private land owners, that leases should be longer than the time we approved at the last Commission meeting. So, I think where I'm coming from would be more in line with what the latest proposal is of the club. I think that initial proposal was 50 and 50.

MR. SHINER: Fifteen years nominal.

COMMISSIONER ACKERMAN: Your original --

MR. SHINER: Fifteen and fifty.

COMMISSIONER ACKERMAN: The State Lands Commission doesn't even have the authority, I believe, to issue anything in excess of 66 years, which we have done with commercial developments.

What I do is, I draw distinction between private use, and I would consider this either simply public use or commercial use to a club. In our discussions so far,
we have differentiated between a private land owner as
an individual and the club situation. In fact, the clubs
being beach clubs, and the Jonathon Club is a beach club,
should be specifically pulled out to be handled separately.

So obviously, there's some reason, or some thinking behind the staff's reason, to handle the situations because of their uniqueness in facts and circumstances.

So, we would lean more toward giving a longer lease period here because, and Sue correct me if I'm wrong, was the initial feeling of the staff not to include the lease provisions for the Jonathon, as a beach club, under the same terms as for private land owners, looking at longer terms for them because of the unique circumstances?

So, I would lean towards the longer lease.

COMMISSIONER MORGAN: Actually, my impression was that the reason they were separate was because we were getting some agreement out of the private land owners, and we weren't out of the Jonathon Club.

MS. WYLIE: We were trying to gauge the term to the use that was being made. We felt that for the beach clubs, that this is more of a commercial or a quasi-public use. There are a large number of members who use this area who are also members of the public, and the area itself gets more general use. However, I think it has been our aim also to try to treat all of the people along the beach,
whether homeowners or clubs, fairly, and it may be that we may want to include the same terms across the board.

COMMISSIONER ACKERMAN: Let me ask another question of staff.

What is the longest lease to a private facility that's been granted by the State Lands Commission?

MS. WYLIE: The lease that we just approved last month for 25 years was geared to the property with the swimming pool, and that was acceptable to the owner and it was 25 years.

As far as the others, we have recommended a period of 10 years nominal, 10 years fair rental value.

COMMISSIONER ACKERMAN: My question really was statewide.

EXECUTIVE OFFICER NORTHROP: A 100-year lease for C&H Sugar, and up at the crossing of the Martinez Bridge. You want to address that one?

MR. GRIMES: That was a legislative act back in 1896 or something.

COMMISSIONER ACKERMAN: As far as a Commission-approved lease, what's the longest?

MR. GRIMES: There are leases up to 40 to 45 years, but those contain a provision for five-year rent review and resetting.

COMMISSIONER ACKERMAN: So each one, basically,
has been structured for a certain circumstance.

MR. GRIMES: Yes, sir. Each lease, we try to
keep the term of the lease consistent with the economic
life of whatever is to be constructed on the site.

CHAIRPERSON CORY: We have one 66-year lease
or not?

EXECUTIVE OFFICER NORTHROP: A public agency
66-year lease, yes. And I think -- what was the term on
the Hyatt House in Long Beach?

MR. GRIMES: Fifty years, fifty years on the
Hyatt lease in Long Beach, which we approved several meetings
ago. But that was for multi-story hotel.

MS. WYLIE: Excuse me, but I think the Hyatt
lease carried a provision that they could extend that 75
years if the City Charter was amended, so that's 75 years
for that.

EXECUTIVE OFFICER NORTHROP: That's a long time
for a very expensive dwelling.

CHAIRPERSON CORY: So, you do have sympathy
here. You have a fundamental four years, willing to go
to 25, and I'm willing to look at 25, but not any longer.

So the question is, is there anything to gain
by pursuing any of the other issues?

MR. SHINER: I'd suggest, if I might, if I'm
not being presumptuous, that the approach you've begun
is probably a good one. Perhaps, as Commissioner Ackerman suggested, you might conclude by going through the rest of the issues so that we have a feel where the Commission is.

CHAIRPERSON CORY: I guess the other question is the amount of the lease, the distance. The staff is recommending 95. I've got some qualms about the 95.

It seems to me that 50 is basically where it is, and I just cannot, in my own mind, see that there is much encroachments that need to be protected as a matter of equity. To me, it's an equity claim at best. As I look at it, a flag pole, a fence, a couple of palm trees, don't establish a great deal of equity.

So, I'm having trouble seeing how we get to 95 feet. I don't know where the other Commissioners are, but it's a question that you should be aware of that is bothering me in terms of the whole settlement.

COMMISSIONER MORGAN: I agree with that.

It seems to me that what you're reserving is use of the beach, which has been determined to be a public beach basically. And the question is, how much would we recognize based on the fact that you've been there such a long time? I don't really see that the commercial argument -- what you're doing at the club is providing access to a public beach through a club, it's true, through a club
that's been there a long time. But I don't really see reserving any more than has been offered to the private land owners.

MS. WYLIE: One point I want to clarify.
This has not been adjudged to be a public beach at this point. That is the subject of our litigation.

CHAIRPERSON CORY: In my view it is, because if they own it, then they should do whatever they want with it.

MS. WYLIE: That's just to clarify.

CHAIRPERSON CORY: If they lose the lawsuit, that doesn't bother me, because it's not my property. I have a different view of that in that I'm a trustee, and if we owned the property, then we've got an obligation to protect. If we don't own it, and the appropriate authorities decide we don't own it, so be it.

That's why I have to come to the conclusion that the only thing we have to talk about is, assuming that our side of the litigation is meritorious --

MS. WYLIE: I would also point out, but I don't want to influence the Commission's opinions, that the length of the original distance has been gone over with Parks and Recreation and the City, and they did not object to that. But this Commission, of course, has to make its own independent decision on it.
COMMISSIONER ACKERMAN: I think we are again looking at not just this club, but within the entire settlement with Santa Monica, and what appears to be consistent across the board. If we were purely consistent, I think we'd be looking at a starting point of 135 feet, because any other parcel along Santa Monica Beach, we've come out to wherever they use that encroachment upon the seaward portion of the high tideline. In this case, I think no one would really buy that amount of encroachment. I think it appears to be unreasonable, so we're looking for some kind of compromise.

Since the City Council and the Department of Parks has settled with the 95 feet, I think I feel comfortable with 95 feet. However, I'm probably still open to how the division within that 95 feet is handled for exclusive use, then some type of an easement to allow for the placement of a bike path that the City Planning Commission may ultimately put in there, whether it be 45 feet, 50 feet, whatever.

I think I'd like to get some feeling from the City as to how they would respond to that, because it's their planning commission that's going to do that type of location, as I understand it. I think that element is important, to get some feedback from them.

I think the 95 feet to me is all right. It's where we place the line within that 95 feet that I don't
think we're really in a position, at least I'm not right now, in a position to buy off on that.

I think the staff recommendation was 45 feet of exclusive use.

CHAIRPERSON CORY: Fifty feet.

COMMISSIONER ACKERMAN: Plus --

MS. WYLIE: Forty-five feet subject to the bike path.

COMMISSIONER ACKERMAN: Your counter offer was 75 feet?

MR. SHINER: The counter was 75 exclusive, and the balance of 95, 20 non-exclusive. Again, I'm not sure that is characterized accurately. The non-exclusive is to be subject, of course, to the bike path.

If I may comment on some of the comments I've just heard, certainly the alleged encroachments which intrude between the 1921 line are not as substantial as the swimming pool or something of that magnitude. But again, based on historical use of the property in question, which constitutes roughly about 135 feet seaward of the 1921 line, out to about this point, that has been in use almost exclusively for in excess of 50 years.

This proposal pulls back from that point to 95 feet, and back even further to 75 feet based on the exclusive use basis.
I would suggest to the Commission that I think, under the circumstances and under the duration of the use of that property for those purposes, that that counter offer is not out of line.

CHAIRPERSON CORY: The other remaining point is what is the ratio of nominal-full market value.

MR. SHINER: That's correct. The staff -- pardon me.

CHAIRPERSON CORY: Well, the concept I tend to go along with, but I'm not sure what reason, with the 10 and 15 ratio nominal to full market. I don't know where the other members are on this, but that's a point of contention, as I understand it.

MR. SHINER: That's correct, Mr. Chairman.

CHAIRPERSON CORY: David?

COMMISSIONER ACKERMAN: I don't really have a position yet, I think, but I would side with Mr. Shiner, with yourself, as saying I think you need some assurance from the Commission on that, whatever ratio we decide.

CHAIRPERSON CORY: That's the additional point.

COMMISSIONER ACKERMAN: And the next point is that you have some relative assurances as to what the basis the rent's going to be charged so you know what you're getting into at the outset. I think that's only fair.

MR. SHINER: It's good for you and good for
us as well I think.

CHAIRPERSON CORY: Susanne, on the question of nominal versus --

COMMISSIONER ACKERMAN: I think fair market depends whether we're going 20 years, 25, 35, before I would make the split. Probably on nominal rate, I would opt for the same at the outset, maybe 10 years at the outset, and then the balance of whatever we mutually decide to extend the full market value.

COMMISSIONER MORGAN: To me, the total term is more important than how you split the nominal versus market value portion of it.

CHAIRPERSON CORY: An interesting concept to toy with.

COMMISSIONER MORGAN: Because we're not going to make money on this deal anyway. The point is not to milk the Jonathon Club dry.

MR. SHINER: I'm glad to hear that.

COMMISSIONER MORGAN: Surprise. We thought we'd tap into your reserve.

MR. SHINER: Isn't hard to do so.

CHAIRPERSON CORY: The question is the mechanism for establish fair market value.

The point I would like to understand is the discrepancy, because it seems to me like that's almost
an arithematic function, putting aside the question of what the appraised value of the property is. But if you agree to, you know, from even arbitration concept, of you name one, we name one, and they name one, and the three of them average their proposal and come up with a fair market value, at that point it's almost arithematic, is it not, to calculate what a lease should be worth based on market value?

MR. SHINER: As I'm sure Sue will support, we have had appraisers there to go through this exercise for months. And between them, they couldn't agree.

I guess our concern is as follows. With respect to the property in question, at the conclusion of the nominal period, whatever that might be ultimately, that at the front end we should have some formula, some cap, something, which would indicate what we would have to pay. Obviously, we can see that we would have to pay more money at the conclusion of that initial period.

The appraiser-approach gives us some concern for the reason that customarily, obviously, appraisers get up there and appraise on highest and best use. We think that's a very strict construction to be applied, because we're talking about an isolated parcel of property. It seems to us that some other formula would be more appropriate.
We're more than willing to sit down with staff and arrive at what that formula, whatever that might be.

CHAIRPERSON CORY: Just talking out loud at this point, I don't see how I could, as trustee for the public property, use anything other than highest and best use. That's what I was trying to get at. If that's a point of contention, you know, we're providing an exclusive use, and it seems to me we should consider all the alternatives.

MR. SHINER: Even if that were the case, and I suggest that this argument has been made, the highest and best use would be, possibly, for condominiums. And the argument could be made further that, even though we had no intention of building condominiums up there, there's the density proposal with respect to this part of the property.

My suggestion, if you would, is to pursue an alternative that would have covenants or restrictions on the use of that particular parcel. We have no intention of constructing condominiums.

CHAIRPERSON CORY: But maybe we should.

MR. SHINER: That's entirely possible. You'd make more money under the lease.

But it just seems to me, with appropriate restrictions on the use of that piece of property, the highest and best use may indeed be something other than
condominium use, and I think it should be primarily
recreation purposes, something like sun bathing, or whatever
the lease term might be demonstrated to be. So, that would
be another way to characterize highest and best use.

COMMISSIONER ACKERMAN: On the other leases
that we have approved at the last meeting for the private
property owners, on what basis was the second portion of
their lease computed?

MS. WYLIE: The second 10 years would be a fair
rental value to be established in the 10th year of the
lease for the remaining 10 years.

CHAIRPERSON CORY: Fair rental or fair market
rental? I thought it was fair market rental.

MS. WYLIE: It was my understanding the term
was fair rental value. I'd have to check the actual lease
to be certain.

Let me point out, though, in running these figures
through with an appraiser, if you appraise this for the
highest and best use, it might come up $200 a square foot
with the best use being condominiums. When you're looking
at inflation at eight percent, that's $8 a square foot
the club would have to pay for 60,000 square feet, $480,000
a year for rent for beach purposes using that formula.
Appraisers have suggested that condominiums might not --
you know, if we're not going to lease it for condominiums,
then it should be based upon its use.

CHAIRPERSON CORY: This is what I would like you to drop me a note on, because from the prior ones, the term fair market value, when I wear my hat as a member of the Board of Equalization, I've dealt with the pressure of appraising property, and I can stipulate that that formula is not a science. That's one of the greatest shocks I had when I sat down and tried to figure out how to try to appraise a utility company. But, I assume that we're talking about that kind of adjustment in terms of highest and best use standards. That's what we got when we approved those other ones.

I need to have that information. I am well aware why they're apprehensive about that. I think there's a J factor to put in there in terms of highest and best use based on as opposed to the tax standard, and what is practical as opposed to what the total Commission and various regulatory agencies would, in fact, allow in terms of use.

MS. WYLIE: I would also point out that that is in our other leases, and we would recommend the same restriction here. We do not allow any additional improvements to be placed on the property without your express approval.

CHAIRPERSON CORY: But that's a separate question.

MS. WYLIE: Which would affect --
CHAIRPERSON CORY: If we're at the end of the nominal, I think we have to be fair to the Jonathon Club, that if there were some public purpose, whether it's by making revenue for the state, or whether there's some other public purpose 10 years, 20 years, or 30 years from now, we have to deal with that question. They ought to clearly know what risks they're taking.

I think that's a fair request on their part, and I have to, in good conscience, tell you that I'm trying to reach for something.

MR. SHINER: I understand.

CHAIRPERSON CORY: If there were a tremendous need for public housing, and if that were the only parcel we had, that could cause you some serious problems, I realize. That's the kind of highest and best use, I think, that ought to be something that would be debated. If the public owns property, it's publicly owned property, and we ought to tell you the options you're competing against.

MR. SHINER: I think that the points of the Commissioners are well taken, and I really think they echo our concerns. I think we ought to be able to try to establish some very concrete formula to place the fair rental value on it and try to evaluate it.

COMMISSIONER ACKERMAN: Consistent, too, I think is something. Wherever possible, try to treat each of
the beach clubs the same that we've treated the private
property owners insofar as the nominal as well as the exten-
sion of the lease as well. I think to where we're treating
each party the same way and applying the same criteria,
I wouldn't like a person who has an encroachment of 50
feet right next to the Jonathon Club to be treated differently,
and say that their property's assessed for these high purposes.
I don't think that's fair, either. I think you should
be subject to the same type of assessment practices that
the other land owners are.

CHAIRPERSON CORY: That's the reason for my
question, why I treated the term fair market in the context
of tax agencies, and that is the term of art.

MR. SHINER: I think, in fairness to the staff,
that's what they intended. That's what they communicated
to us.

Our major concern was how is that to be applied.

CHAIRPERSON CORY: Well, I think we've gone
over the terms to try to give you the tenor of the Commission.
I guess it's probably time for staff and you to try to
work out such details and talk to your own members, and
Board Members, to see what can be pieced together here.
It might be a question of on those various points
you're going to have a different coalition on each point.

COMMISSIONER ACKERMAN: I think that they probably
have an offer or proposal from you that the staff could
respond to it and make recommendations on each of the points
for the Commission.

CHAIRPERSON CORY: You're going to need two
votes here, and two votes here may be tougher to get than
from the staff.

MR. SHINER: We appreciate your courtesy and
consideration this morning.

I gather the next step, if I heard the Commission
correctly, would be to have staff evaluate the counter-
proposal that they received only this morning. We would
be happy to continue meeting with the staff for the purposes
of any clarification of the points that you felt need to
be made more definitive.

CHAIRPERSON CORY: But at the same time, the
staff should contact the City and other agencies to make
sure that you know what pitfalls are there.

COMMISSIONER ACKERMAN: We wouldn't do you any
service if we entered into an agreement which then was
rejected by the other agencies or the City, and then you'd
have to go back and start all over again.

MR. SHINER: That's a very good point of putting
the cart before the horse problem. We didn't know where
to start, even with this Commission. That point is well
taken.
COMMISSIONER MORGAN: I have one more question for the club.

How old is the club?

MR. SHINER: The club's approximately 50 to 60 years old.

COMMISSIONER MORGAN: How many members are there?

MR. SHINER: Approximately 3400 members.

COMMISSIONER MORGAN: Thank you.

CHAIRPERSON CORY: Thank you very much for your time.

MR. SHINER: Thank you very much.

CHAIRPERSON CORY: We are now into out official agenda.

Any corrections or additions to the minutes of April 7th?

Without objection, the minutes will be confirmed as presented.

The items currently now before us are the Consent Calendar. Are there any members of the audience that oppose the staff recommendations on the items C1 through C15? They will be taken up as one motion if there's no objection to the proposed staff recommendations.

All in favor signify by saying ayes.

(Ayes.)

CHAIRPERSON CORY: The Consent Calendar is
Item 16 has been put over.

Item 17, the next item on the agenda, is the consideration of a Joint Powers Agreement for acquisition and construction of tidelands oil pumping and storage, et cetera.

I think we have some people who would like to speak on this.

EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Harley Pinson from our staff will be making a presentation, legal points involved in the program, and I understand Mr. Buchanan would like to speak on it as well.

MR. PINSON: Mr. Chairman and Members, at your last meeting you asked the staff to look into the matter of the oil and gas operations of the submerged lands of the City of Newport Beach. The staff has done so.

Today we recommend approval of the Joint Powers Agreement between the City of Newport Beach and the State Lands Commission to conduct an eminent domain action to acquire facilities to resume oil and gas operation on the granted lands.

The staff makes this recommendation because we believe that it is the most -- that it is the fastest and most efficient way to resume the operation and to maintain the rights of all parties, and any other litigation that
is now occurring, or that may occur.

CHAIRPERSON CORY: Is the City of Newport Beach
in favor of that proposal? Is there anybody representing
the City of Newport Beach here?

MR. KUPERBERG: Yes, Joel Kuperberg, of the
firm Rutan and Tucker, representing the City of Newport
Beach.

The City Council, the City of Newport Beach,
has adopted a resolution authorizing this Joint Powers
Agreement, and they're in full accord with the provisions.

CHAIRPERSON CORY: What was the vote on it?

MR. KUPERBERG: The vote was, I believe, unanimous
on the Consent Calendar.

CHAIRPERSON CORY: You have strong support in
the local community?

MR. KUPERBERG: Yes, sir. We have very strong
sentiment with the people of Newport Beach, the residents
are particularly concerned that the oil pumping operation
commence again as soon as possible.

COMMISSIONER ACKERMAN: How about a position
from the County on that?

MR. KUPERBERG: The County of Orange has not
taken any position at all in this matter. The County
concerns really -- the County really doesn't have the concern
here. They obtained certain mineral taxes which would
not be affected by this, and their concerns really relate
to the tax issue since it doesn't become involved in this
type of acquisition. They're not all that concerned.

CHAIRPERSON CORY: Does Mr. Devlin, the
utilities director, wish to say anything?

MR. DEVLIN: No, sir, not unless it's necessary.

CHAIRPERSON CORY: All right.

Mr. Buchanan.

MR. BUCHANAN: Good morning, ladies and gentlemen.
I'm Robert Buchanan, representing Armstrong
Petroleum Corporation. I have with me Mr. Richard Del
Gercio, who I have called as an expert in eminent domain.

Prior to asking him to come forth, Mr. Cory
and Members, I want to repeat that there is litigation,
a lot of litigation involved, pending between the City
and Armstrong Petroleum about this matter. We feel that's
the proper place for this dispute to be resolved.

We're also apprised that a bill has been intro-
duced in the Legislature that presumably would be addressed,
is addressed to this problem. As a consequence, we feel
very strongly that any efforts by the City and the State
Lands Commission for the item you're considering here is
not only improper, but we think, perhaps, illegal.

With that, I will ask Mr. Del Gercio to come
forward.
CHAIRPERSON CORY: Before you leave, I'm a little troubled at what I thought was an agreement, an offer, and an understanding at the last meeting with your client as the way to resolve this problem.

Would you like to shed light upon that, because I think it bears rather significantly on the credibility of your client and his true motives.

MR. BUCHANAN: As you will recall, I was here as well as my client at the last meeting. I was quite surprised when I met with Mr. Northrop, I think, on the 3rd of April or so, to understand from him that it was your view, and perhaps all of those Members of the Commission, that there was some kind of an oral agreement reached between you and Mr. Armstrong to the effect that the State itself would physically operate those wells.

I subsequently talked with Mr. Armstrong, and it surprised me, because I didn't read that conversation or the discussion that way. Nor did I understand it that way.

My understanding was, and Mr. Armstrong, who I've talked to at some length, his impression also was, that he understood you to be addressing yourself to the idea of the State taking over the position of the City as distinguished from the physical operation of the wells themselves. And to this extent, his view was, he didn't
care whether it was the City of the State, words to that
general effect.

CHAIRPERSON CORY: That's an interesting approach,
and all I can tell you, if that's the case, then you have
put me on notice that I have to be extremely explicit,
which I thought I was last time.

MR. BUCHANAN: Evidently Mr. Armstrong should
be also, sir.

CHAIRPERSON CORY: Let's hear from your witness.

MR. DEL GERCIO: Mr. Chairman, Members of the
Commission, my name is Richard Del Gercio. I'm an attorney
at law. I specialize in eminent domain proceedings. My
office is at 601 West Fifth Street, Los Angeles.

I think it might be helpful if I gave you a
little historical background with respect to the proceedings
that have been undertaken to date which led to the presenta-
tion of a Joint Powers Agreement to you today, which concerns
itself with the initiation of eminent domain proceedings.

In the latter part of 1980, after the contract
between my client and the City of Newport Beach had expired,
the City took certain actions designed to enable the City
to acquire, through eminent domain proceedings, certain
private property rights for which had -- were used in connec-
tion with the production of crude oil from tidelands previously
granted by the State to the City. The City sought to acquire
this property so that it, as a government agency, might
directly conduct the activity of oil production and storage
with respect to these tidelands, which kind of activity,
insofar as the City was concerned, and I believe typically
counties as well as the State Lands Commission, historically
has been performed by private contractors pursuant to agree-
ment with public agencies.

In the course of public hearings before the
City Council with respect to the City's action to initiate
annexation and eminent domain proceedings, Armstrong
Petroleum Company appeared before the City because it has
a substantial property interest in the lands that are sought
to be condemned, a property interest that's separate and
apart from the contractual relationship that it previously
had with the City and a contract to produce the crude oil
on behalf of the City.

We lodged a formal protest with the City, pointing
out that the City lacked any statutory power of eminent
domain to acquire property for the purposes of its conducting
a private oil production storage operation under the circum-
stances, and also that the City lacked the power to initiate
eminent domain proceedings to acquire property outside
the City for these particular purposes.

Notwithstanding the objections, the City adopted
the resolution of intention to initiate eminent domain
proceedings, and also attempted to proceed further, to
annex the property to the City.

The owners at that time were prepared to raise
objections to the institution of the legal proceedings
at such time, and they were brought forward. At some
point in time after the City took its initial action, it
apparently recognized that it lacked the authority to initiate
the eminent domain proceedings to acquire private property
for this particular use, and particularly to acquire private
property outside of its city limits. Then it turned to
the State Lands Commission for assistance.

If you'll recall the two prior occasions, this
matter came before the Lands Commission, in which the City's
lack of authority to proceed was brought to the attention
of the Lands Commission, and the Lands Commission made
a determination to provide some assistance to the City
in an effort to resolve its problems and obstensibly in
an effort to recommence the production of crude oil.

I understand from prior discussions that it
has been made clear that Armstrong Petroleum Company is
willing to allow the City to use these production facilities
until these matters have been resolved without prejudice
to the rights of any of the parties in the show of good
faith.

CHAIRPERSON CORY: Would you explain to me what
you mean by that, allow the City to use these facilities?

MR. DEL GERCIÓ: As I understand, there was

a letter written by Armstrong Petroleum Company to the
City, which has been referred to in prior proceedings before
the Commission. I wasn't present at those proceedings,
but Mr. Buchanan was. I think perhaps he could more properly
answer your question, Mr. Cory.

MR. BUCHANAN: I think Mr. Del Gercio is referring
to proposals made by Armstrong Petroleum to the City on
an interim operation.

CHAIRPERSON CORY: An interim operating agreement
which he would operate?

MR. BUCHANAN: Yes, that's correct.

CHAIRPERSON CORY: That's significantly different
than allowing the City to use the facilities.

MR. BUCHANAN: It is dependent on trying to
be concise, as you were suggesting earlier.

Since the contract has expired, I think Mr.
Del Gercio is suggesting that, on an interim basis, continuing to operate the wells. But, you're right. Armstrong
has always had in mind only they themselves.

CHAIRPERSON CORY: The distinction being he
has the benefit from operating.

MR. BUCHANAN: Certainly, no question about
that.
CHAIRPERSON CORY: That's something less than --

MR. BUCHANAN: Yes, he's in private enterprise.

CHAIRPERSON CORY: I wanted to clarify that, because it leaves the impression --

MR. BUCHANAN: As a gift or something, and that would be a wrong impression.

MR. DEL GERCIO: And I think it ought to be brought to the attention of the Commission --

CHAIRPERSON CORY: While we're defining things, I would like to state for the record here that I'm reading from the transcript of the prior meeting, which I'm quoting my question to Mr. Armstrong:

"CHAIRPERSON CORY: Would you be interested in allowing a third party, like the State, to come in and operate it during the interim?"

"MR. ARMSTRONG: Sure, let them operate."

So, I have trouble with Mr. Armstrong, an oil man as he claims to be, and I think the term "operate" is a term of art that's known to oil men, and that means operate. That doesn't mean that Armstrong would operate; it means the State would operate. I think that was explicit and clear.

I find it hard to believe, since he even used
the same terminology, that he misunderstood the meaning of what I was contending.

I wanted to make that clear. Go ahead.

MR. DEL GERCIO: I think there's probably a practical problem when you're trying to bring in a third party, because they have no property rights to use any of those facilities or lands as distinguished from Armstrong. From a very practical standpoint, he may be the only one that's in the position, that has the property rights available.

CHAIRPERSON CORY: That's the heart of the matter, isn't it?

MR. DEL GERCIO: I think that's right. And his property rights, if I may digress for just a moment, extend far beyond the production of crude oil from the tide and submerged lands. He has property rights to produce from other lands which the City has absolutely no interests. So, those are substantial property rights he does enjoy.

Now, I'd like to now address myself to the specific proposal that's before you, which is a proposed Joint Powers Agreement. Simply put, it places the Lands Commission in the posture of being hired out, if you will, for the purpose of providing the authority to condemn private property for use of the City under circumstances where the City admittedly doesn't have any power to undertake the activity
on its own behalf, because if they did, they wouldn't be
before you asking for your assistance.

Now, the purpose here, insofar as this particular
point is concerned, is not to engage in the argument as
to whether Armstrong should be doing it or anybody else
should be doing it, but to point out what I believe are
some basic legal problems with the Joint Powers Agreement
that's proposed to be entered into under these circumstances.
I think it presents a serious question as to the fundamental
power of the Commission and the City to make such an agreement.
I will try to suggest what I think is a fair course of
action to protect not only the interests of the Lands Commis-
sion and the City, but also my client.

There's no question but what that public agencies
may undertake, by the Institution of a Joint Powers Agreement,
activities where one party or the other will perform functions
which each of them are authorized to perform. The fundamental
premise upon which those joint power agreements are
predicated is that power which is sought to be exercised,
that is the power to condemn property outside of the city
limits of the City of Newport Beach, must be possessed
by the parties in common. This is an absolute requirement
of the Government Code Section 6502, which is the basis
for all joint powers agreements, and which is referred
to in the draft agreement before you.
CHAIRPERSON CORY: David, you had a question?

COMMISSIONER ACKERMAN: Does that mean the Joint Powers Agreement, in your interpretation, would have to be exercised between the City and the County?

MR. DEL GERCIO: No, I don't know that the City is a proper party to the Joint Powers Agreement, because the City lacks the power to undertake an eminent domain proceeding to acquire private property outside its historical limits for any particular purpose.

So what I'm saying is that, inasmuch if that is the case, merely going out and looking for some agency, which arguably does have the power to condemn private property to produce crude oil and store crude oil, doesn't fit the agreement within the scope of the statutory authorization.

The Supreme Court in this state has ruled on this question in the past, and has said that the power which is sought to be exercised under the joint powers agreement is one which independently could be exercised by the parties to the contract. And it's clear that the City does not have the power independently to do what they seek to accomplish under the Joint Powers Agreement. Now, I think that's one basic, fundamental substantial problem.

CHAIRPERSON CORY: How much longer will your presentation take?
MR. DEL GERCIO: Probably about three minutes, Mr. Cory.

I'm not here today to try to persuade you from a legal standpoint that I'm right and some other lawyer is wrong, because I don't think that's the way to proceed. What I propose to do is suggest to you that there are questions that ought to be resolved that haven't been resolved before you take an action on this particular agreement.

Let me suggest what I think is another problem with respect to the agreement.

I think there's a serious question with respect to the authority of the State Lands Commission to condemn property in connection with the production of crude oil as to granted tidelands. There's no question but that the State Lands Commission, pursuant to the provisions of Public Resources Code Section 6808 has the authority to condemn property for state-owned lands, and state-owned lands is the criteria.

These lands are no state-owned lands, because they previously were granted to the City of Newport Beach pursuant to an expressed statutory grant which granted all of the right, title and interest to the State of California, which passes all rights and title and interest with respect to minerals. I'm aware of the reversionary interest that the state has, but a reversionary interest in property
doesn't make the property state-owned lands.

So, I think from a second standpoint, you have a significant defect with respect to the Joint Powers Agreement that you propose to enter into.

Beyond these legal arguments, I think you should be aware of one other factor, and that is what I think is perhaps a precedent that you would be setting here, perhaps without undertaking some specific basic policy determinations as to the propriety of that precedent.

It's my understanding that the State of California, through the State Lands Commission, with respect to ungranted tidelands, and with respect to granted tidelands, where the state has reserved the mineral rights, undertakes the production of those minerals through contracts with private contractors, because that is the only mode which the Legislature has prescribed presently for the engagement in that particular activity, the same is true with the City and County as to which tidelands have been granted by the state. That is the mode in which they exercised their power.

This particular Joint Powers Agreement will take a quantum step beyond that, because it will authorize and allow the City of Newport Beach to engage, as a city, in the production activities. That is to say, they will have the power to utilize these properties for the purpose
of engaging in the production of crude oil, which is
something that the State Lands Commission does not do on
its own behalf. Now, whether that's a desirable objective,
it was a legislative request to be answered, and I don't
know that the State Lands Commission has taken a policy
position with respect to that in connection with its dealing
with cities and counties. I'm not aware of any prior
practice of the State Lands Commission which recognizes
that distinction, and places its stamp of approval on cities
or counties engaging in that type of activity with respect
to granted tidelands.

COMMISSIONER ACKERMANN: Let me offer a comment.

It was represented to me, and if the City wants
to correct me they may do so, that at no instance has the
City, other than the transcript you read, Ken, during an
interim period, where the state may operate, never has
it been the intent of either the state or the City to go
in and actually operate for a long period of time both
oil production facilities. The intent that has been
represented to me, and I understood that you approved the
action taken at our previous meetings, is that this would
be a leased out operation, and it would not be directly
run by either the state or the City. In fact, I've had
discussions with Assemblywoman Bergeson concerning her
legislation, and she would be receptive to amending her
bill to specifically state that. So, I would be willing
to go along. It's been under that.

CHAIRPERSON CORY: It's my understanding of
it, also.

COMMISSIONER ACKERMAN: There was never a point
in time when either the City or the state was to be getting
into the oil business down there.

MR. KUPERBERG: On June 26th, 1981, the City
Council by unanimous vote, determined that the terms of
the operation of these tideland wells would go out to public
bid for a private contractor. One of the problems with
renewing the contract with Armstrong on an interim period
is that Armstrong Petroleum Corporation, of course, is
not the subject of public bid. And not only is it the
private operation that concerns the City Council, but it's
the Council's feelings that it go to a public bid process.

COMMISSIONER ACKERMAN: I would concur with
that.

MR. DEL GERCIO: That provision isn't in the
proposed Joint Powers Agreement, and it conflicts with
the initial resolution that the City adopted with respect
to the proposed condemnation of the property previously,
because, and I'm quoting from the resolution, the resolution
said, in paragraph two, that the purpose of the project
would consist of the acquisition, construction, operation,
and maintenance by the City of the proposed production
and storage facilities.

So this is a matter, which again as pointed
out earlier, Mr. Cory, might be subject to different
interpretations.

May I make a suggestion?

COMMISSIONER ACKERMAN: On that point, when
we authorized the staff to support and assist in legislation
dealing with this matter, the legislation was drafted,
I believe, in concert with the City, with the staff of
the City. The specific language stating the intent that
it would not be the City operating was not included in
that legislation.

Maybe this is an appropriate time to offer that
as an amendment to the Commission's direction to the staff,
to seek an amendment to the legislation currently before
the Legislature that expresses the intent, either expressly
in the statutory provisions of the bill, or in the intent
portion of the bill, that neither the City nor the State
operate the facilities, but be on a leased-out basis.

CHAIRPERSON CORY: The question that you get
to is, the City could end up being the operator through
a lease arrangement with a contractor. That is going to
be a difficult thing. What you've stated, I think, might
preclude certain forms of state operation, and I'm not
sure you're wanting to do that.

It's my understanding that they're going to
the private sector, engaging a contractor.

COMMISSIONER ACKERMAN: That's what I want to
make sure gets done.

CHAIRPERSON CORY: But they don't have to have
just one contractor, if midway in the operation
they decide they should have the operation of, in essence,
a series of subcontractors, if you take the analogy. I
think that's why I'm hesitant with the way you worded that.

COMMISSIONER ACKERMAN: The City should have
the option, but I don't want the City to actually produce
the oil.

MR. KUPERBERG: If I might clarify.

The relation that Mr. Del Gercio refers to was
really codicilled in that unanimous resolution that I
previously mentioned. It occurred to the City subsequent
to the adoption of this resolution that there may be that
interpretation in terms of operation. It was not the
intention of the City to operate the wells, but we realize
that the semantics of the resolution were such that they
seemed to say that. They passed the unanimous resolution
in January of 1981 to make certain that the operation will
be either by one contractor or a series of subcontractors,
but all of the private sector.
CHAIRPERSON CORY: I think staff should sit down with the author of the bill and with people of the City and make sure that's our understanding of what we're working on, as opposed to them hiring only civil service, and any other problems or difficulties.

COMMISSIONER ACKERMAN: One more thing. Once the Legislature passes something, it's a different thing to argue the intent three or four years down the road.

CHAIRPERSON CORY: Report back to the Commissioners.

EXECUTIVE OFFICER NORTHROP: We shall.

MR. DEL GERCIO: That really leaves two remaining problems with respect to the document. That is, the question of the basic validity of the Joint Powers Agreement, where one of the parties doesn't have the power that's sought to be jointly exercised.

May I suggest this, or at least inquire as to the feasibility in view of the fact that this is a substantial departure from the past practices of the State Lands Commission, and I think, indeed, it's a unique situation in that it's the first time that the State Lands Commission has been asked to lend its authority under the circumstances, or any circumstances, to a proposed acquisition by a city or a county, that a formal written opinion from the Attorney General's Office be secured to focus on the precise question.

If there are any questions on behalf of the
Commission, I'll try to answer them.

CHAIRPERSON CORY: Question?

COMMISSIONER ACKERMAN: Our whole point is that we're trying to be in a position to resume oil production. If we take the action that's recommended by the staff today, this is a rhetorical question, are we likely to subject ourselves to a lawsuit questioning the constitutionality or illegality, and rather than the production of oil, with the litigation the wells would get shut down for another six months or a year?

CHAIRPERSON CORY: It seems to me we've got litigation no matter what.

COMMISSIONER ACKERMAN: Where are we on this? My intent is to get those wells into production.

CHAIRPERSON CORY: That's right.

MR. PINSON: Harley Pinson.

I think that the first issue that would be tried in an eminent domain action would be whether or not there is power to condemn. That would be resolved very quickly, could be resolved very quickly.

CHAIRPERSON CORY: To wait for the formal written opinion just delays the question. It would seem to me that, even if the Attorney General said yes, in a formal written opinion, yes, that you have the power, the same question would have to be resolved by the court, because
given what we see Armstrong Petroleum’s position thus far, with all due respect to what’s said by the parties, appears to me to be delay, obviscation, and maintaining obstruction, and that’s fine; I understand that. I don’t see how, by any way, we can shorten the time frame. That’s my difficulty with the proposal.

COMMISSIONER MORGAN: I have a question of the staff.

Did you consider the arguments that counsel is making today?

MR. PINSON: Yes, we did.

COMMISSIONER MORGAN: And you want us to proceed with the recommended action?

MR. PINSON: It is our advice that the power is there.

COMMISSIONER MORGAN: I move approval of the staff recommendation.

MR. TAYLOR: Before there’s a vote, there’s one additional item to be brought up.

This in examining the descriptions that would be used in the complaint, that they overlap into an area claimed to be granted to the City, and therefore it would be necessary to amend the Commission’s understanding with the City to make sure that those issues are presented in that litigation.
Many of the rights which Mr. Armstrong claims to hold may already be owned by the City, and that is known as Ox Bow Loop, which was the subject before in considerable negotiations between the surface owner of the property, and it was contemplated when Mr. Armstrong was granted the contract that he had prior, that by its terms, that he had no further rights under the lease with respect to the City's interests, because he was required, at the end of the lease, to surrender it peacefully and give the City the rights that he had acquired that were necessary to operate it.

CHAIRPERSON CORY: We have a motion and a second that the staff proposal be approved.

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

All those in favor, signify by saying aye.

(Ayes.)

CHAIRPERSON CORY: The motion is carried. I have to excuse myself. Carl D'Agostino will sit in and take over from here. I wish you God speed in your deliberations.

(Thereupon Chairperson Cory left the meeting and Mr. Carl D'Agostino assumed the position of Temporary Chairperson.)

CHAIRPERSON D'AGOSTINO: Let's take a five-
minute recess

(Thereupon a brief recess was taken.)

CHAIRPERSON D'AGOSTINO: We reconvene the meeting.

We're back to Item 18.

MR. TAYLOR: Mr. D'Agostino, I might just note how the meeting is proceeding.

Mr. D'Agostino, due to Mr. Cory's departure and the provisions of Section 7.6 of the Government Code, it has been agreed that you will participate and act as Chairman of the meeting without vote, and that the two voting members, for the rest of the meeting, will be Ms. Morgan and Mr. Ackerman.

CHAIRPERSON D'AGOSTINO: Proceed with Item 18.

EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item 18, as you recall, was brought to the Commission last week. It's an operational audit, by Deloitte, Haskins and Sells.

We are asking that the Commission accept for review this audit, to which the staff will respond at a subsequent meeting.

Deloitte, Haskins and Sells are here to make a report to the Commission, and if they would come forward at this time.

MR. STEVENS: My name is Paul Stevens, and I work with Deloitte, Haskins and Sells. In the audience
with me is Mr. John Gedney (ph.), project manager for this work, and Mr. Bill Green, who was our lead consultant for the work.

In the interest of time, I would be happy to summarize this. It's rather lengthy.

If you would prefer, we could simply respond to any questions that you might have on it. I assume everyone's had a chance to at least partially read the recommendations.

COMMISSIONER MORGAN: I don't have any questions. I'm the one that held up the discussion at the last meeting because I wanted our auditor and staff to have a chance to look at it, and they have. Everyone says it's a good starting point for us. It gives us some new issues to deal with, and we appreciate the work that you did.

MR. STEVENS: Thank you.

COMMISSIONER MORGAN: Did you get paid yet?

MR. STEVENS: We have billed. We have not been paid, but we will be.

COMMISSIONER MORGAN: Do we have to move to accept the report?

EXECUTIVE OFFICER NORTHROP: To accept the report.

COMMISSIONER MORGAN: We did that the last time.

EXECUTIVE OFFICER NORTHROP: Accepted for review.

COMMISSIONER MORGAN: And to direct the staff to report back to us at a subsequent meeting, okay.
CHAIRPERSON D'AGOSTINO: So moved.

EXECUTIVE OFFICER NORTHP: Mr. Chairman,

Item No. 19 is termination of a lease and replacement with a general lease for Paul L. Erman and Linda F. Erman. It brings the lease up to current regulations, and it's for the new owners.

COMMISSIONER MORGAN: I have a question. Why was this not on the Consent Calendar? Is there some opposition?

EXECUTIVE OFFICER NORTHP: There was no objection to it. It was a change of lease, and it was with a commercial marina, so we decided to put it on this calendar in case there were surrounding neighbors that had comments.

COMMISSIONER MORGAN: I don't have any problems. Do you have any?

COMMISSIONER ACKERMAN: No.

CHAIRPERSON D'AGOSTINO: Without objection, it's approved.

EXECUTIVE OFFICER NORTHP: Mr. Chairman, Item No. 20 is a boundary line agreement with the City of Pittsburg which was the legislative grantee. The current boundary of the grant was never really defined. This defines that boundary line.

COMMISSIONER MORGAN: That's fine.

COMMISSIONER ACKERMAN: No problem.
CHAIRPERSON D'AGOSTINO: Without objection.

Item 21.

EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item 21 authorizes the Executive Officer to enter into a Memorandum of Understanding with the United States Bureau of Land Management on approximately 62.4 thousand acres of indemnity land, and 52.7 thousand acres of unassessed land. The state indemnity selections we will attempt to block up and to use, as we've outlined in previous reports to the Commission.

We would like the Commission's approval for my execution of that Memorandum of Understanding.

COMMISSIONER MORGAN: What exactly does this do for you, Bill?

EXECUTIVE OFFICER NORTHROP: This Memorandum of Understanding lays out the ground rules by which we will attempt to make and select the parcels of property involved.

COMMISSIONER MORGAN: It's a starting point?

EXECUTIVE OFFICER NORTHROP: It's a starting point for us as a followup to the Western States Land Commissioners Memorandum of Understanding in which all of the Western States came to an agreement that we were all going to try to work out these MOU's on a state-by-state basis. This is our basis. So far, the California
State Office has been very helpful in putting this memorandum together, so it gives us a starting point. We made the specific exchange, then we will come back to the Commission.

COMMISSIONER MORGAN: All right.

COMMISSIONER ACKERMAN: Bill, do you anticipate that the current administration will facilitate this effort a little bit?

EXECUTIVE OFFICER NORTHROP: I will know better next week. I'm going to Washington to meet with the Secretary and with others, a group of us from the Western States are going to meet, and this is going to be one of the points we're going to address, the implementation of MOU's.

COMMISSIONER ACKERMAN: It might be a good item for the Executive Officer's Report at the next meeting.

COMMISSIONER MORGAN: We may be on the right side of an issue in Washington.

CHAIRPERSON D'AGOSTINO: Without objection. Item 22.

EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item No. 22 is a name change for the Ancient Marine to the Rusty Pelican for reaffirmation of determinations of a lease.

The City of Long Beach has already made a determination concerning this lease, and due to the name change,
it is necessary for the leasees to obtain financing, and
they have asked that this reaffirmation be approved.

COMMISSIONER ACKERMAN: No problem.

COMMISSIONER MORGAN: Okay.

CHAIRPERSON D'AGOSTINO: Next Item 23.

EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item
23 is a return to the Commission calendar of an item we
had last month, in which there was some concern over the
bid on a sand and gravel permit, in which the percentage
high bidder determined that they had, perhaps, bid on the
wrong parcel.

Staff is working with them on that problem.
The second bidder has rescinded his bid. So, we're left
with the current bidder, Western-Pacific Construction
Materials Company, who proposed a 10.51 percent of the
gross selling price of sand and gravel. Staff points out
that that is the sale directly to the retail trade, so
we feel that the 10.5 percent would probably be higher
than the other bid, because they were bid on a wholesale
seller.

COMMISSIONER ACKERMAN: Is this the one where
there was a question about returning?

EXECUTIVE OFFICER NORTHROP: Right. We're still
working on that.

COMMISSIONER ACKERMAN: Was that involving the
contractor who allegedly bid on he wrong parcel?

EXECUTIVE OFFICER NORTHROP: right.

COMMISSIONER MORGAN: I'm satisfied on this one.

CHAIRPERSON D'AGOSTINO: David?

COMMISSIONER ACKERMAN: No problem.

CHAIRPERSON D'AGOSTINO: No problem.

Item 24.

EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Members, Item 24 is an exploratory well approval for the Shell Oil Company in Ventura County. They have done all of the EIR work, and the calendar item as proposed calls for one well, and if it looks promising, three exploratory wells in that location. And then, an additional well in another location, and if that looks promising, three exploratory wells off of that one.

Staff feels that we have completed the environmental work, and this is an exploratory drilling program and should if proved to be fruitful, the staff will return to the Commission for a drilling program for the field.

COMMISSIONER MORGAN: Okay.

COMMISSIONER ACKERMAN: No objection to this item.

EXECUTIVE OFFICER NORTHROP: Surprisingly, in our Santa Barbara hearing, it lasted less than 20 minutes.

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We had very few objections on it. The staff and Commission members had worked with people in that area.

COMMISSIONER ACKERMAN: All right.

CHAIRPERSON D'AGOSTINO: Without objection.

Item 25.

EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item 25 is a selloff of approximately 1100 barrels of Huntington Beach oil from a statewide bid of $1.56125 per barrel over the base price. There were approximately 15 bidders on this, and Macmillan Ring-Free Oil Company was the high bidder.

In addition to that, we have a language change. We'd like to submit it at this time to the calendar item.

The original bid, or letter of credit we had, requested that the amount of security required under this contract be $3 million. However, in receiving a letter from Macmillan and recalculating the exposure, we feel that two and a half million dollars better covers our exposure.

So, we ask that the following be used instead, or that you authorize the Executive Officer to reduce the amount of security required under Section 19 of the Royalty Oil Sales Contract from 3 million to $2,500,000, and accept such security in the form of a bond or letter of credit.

COMMISSIONER MORGAN: Is that changing the bid
specifications?

EXECUTIVE OFFICER NORTHROP: That's changing
the credit. Wait a minute, I'm getting a yes and no.

MR. WILLARD: My name is Al Willard.

The security requirements under the contract
may be changed at the discretion of the State Lands Commission.
So, under the terms of the contract, you are permitted
to change the amount of bonds.

EXECUTIVE OFFICER NORTHROP: The idea is to protect
the State to exposure should something happen to the company,
which is a substantial company. And we don't -- we do
require this on selloff buyers to protect the state.

COMMISSIONER MORGAN: But doesn't it cost the
bidder money?

EXECUTIVE OFFICER NORTHROP: Yes, it costs the
bidder money.

COMMISSIONER MORGAN: Might not it have affected
his bid?

EXECUTIVE OFFICER NORTHROP: Certainly. On
the other hand, when you look at a bidder, or somebody
that is bidding, there are some of those about which
we have very little information and nothing is available
because they're closely held companies, or corporations,
or even individuals. So, we need some protection to the
state. The exposure is high when you're looking at 1100
barrels a day, or 80 days before we get our money. That is a horrendous cash flow that we have to cover ourselves for, and certainly does affect the bid. It's a cost factor.

COMMISSIONER MORGAN: You're saying that because that company --

EXECUTIVE OFFICER NORTHROP: No, because we had originally looked at 90 days exposure, and they have asked us, in lieu of the fact that it is 80 days exposure, to reduce it, because it is a cost factor to them and they were the high bidder.

COMMISSIONER ACKERMAN: My question, and perhaps the same as Susanne has asked, is really, if you had changed this bid spec, would it have changed the order in which your bidders ranked, high to low?

EXECUTIVE OFFICER NORTHROP: No, it didn't, because the break between this bidder and the other bidder was considerable, it was 30 cents difference between the top.

That wouldn't have affected the bid.

COMMISSIONER MORGAN: So, it's a savings to him?

EXECUTIVE OFFICER NORTHROP: It's a savings to him, correct.

COMMISSIONER ACKERMAN: The bidders, when they submitted the change, submitted them on the same specifics?
CHAIRPERSON D'AGOSTINO: That's my understanding. My understanding was, if one of the other bidders was of potentially less substance --

EXECUTIVE OFFICER NORTHROP: We take the company into consideration when we make this change. We took the substance of the company into consideration before we made the change.

CHAIRPERSON D'AGOSTINO: If you're going to take the substance of the company, isn't that in the bid specs?

EXECUTIVE OFFICER NORTHROP: We don't know how to quantify a company. I think that may be a problem.

COMMISSIONER MORGAN: What happens if we don't approve this?

MR. WILLARD: They'll be obligated to submit $3 million.

COMMISSIONER MORGAN: They don't drop out of the bid, though?

MR. WILLARD: No, they have deposited a good faith deposit also of 25,000, so I doubt that they would. They're interested in oil.

COMMISSIONER MORGAN: I would feel more comfortable if you could give me something more objective. You're probably right, there are companies you can depend on, but there are some you don't know as much about. But,
when you're dealing with public bids, it seems to me that we have to deal with objective factors, and not with what we know about how solid a company is.

In this particular case, it may not make any difference, because there is a wide spread.

MR. WILLARD: We based our original security on 90 days, a financing function of that. We came up with this 80-day number. It's really that our exposure is going to be approximately 80 days on this matter. That's the basis for this.

MR. EVERITTS: My name is Don Everitts.

One of the important points is, you're talking about 1100 barrels a day. Over a year's time, you're talking about 400,000 barrels, you're talking about maybe $8 million dollars' worth of oil.

When you're talking about exposure, you're still talking about two or three million dollars.

That difference is not the cost difference in the cost to the bond. I mean, it just wouldn't make up that difference. I think that's pretty important to consider.

MR. WILLARD: One other factor is, you know, when we talk about the bid specifications, all of the bidders were aware of the fact that the contract provides that you may change that bond requirement at your discretion. So, it's not like they were coming in and being blind-
sighted, the low bidders. So they were aware that it could be changed.

MR. TAYLOR: I think it's important to look at the calendar item on page 129. You're accepting the bid and authorizing the Executive Officer to execute it, and you're also authorizing the Executive Officer to take the second action.

The third item, which Mr. Northrop has read to you, is under the contract immediately after it's signed. It's not changing the bid form, it's changing a provision of the contract, which is allowed to be done in the contract. So, we are not changing what went out on the other two items. It is a discretionary item.

This is still a very substantial bond. The difference is 500,000, but it's still a two and a half million dollar bond.

CHAIRPERSON D'AGOSTINO: It's from three to two and a half?

MR. TAYLOR: Yes. So in any event, one of the concerns seems to be, are you changing the bid form, and the answer to that is no. You're really changing something that's allowed to be changed by the contract immediately after it's signed, so there's no changes in operation. You're not doing that, if that satisfies your concerns on that point.
COMMISSIONER MORGAN: No, it has nothing to do with the form. It has to do with what you required when you went out to bid, that you changed one of the requirements of when you wrote the contract.

MR. TAYLOR: No, the contract has not been changed. The contract will be signed at $3 million.

COMMISSIONER MORGAN: And then amended?

MR. TAYLOR: Then a letter of amendment will go out, which is provided for in the contract.

COMMISSIONER MORGAN: Which amounts to the same thing. I mean, in this case it may not make any difference, but as a matter of policy I don't like it. It's poor bidding practice to go out with one set of specifications, and immediately on determining who the bidder is, to change the specifications. It's not a very good approach, I think.

Dave, what do you think? I mean, in this case it may not make any difference, but I need some way to get the point across.

COMMISSIONER ACKERMAN: If things are very close on a bid, and afterwards the successful bidder makes some technical adjustment which would, in fact, may have allowed the second-place bidder to make a better bid, it just seems that you would make those at the time the bid is submitted.

EXECUTIVE OFFICER NORTHRUP: May I point out that this isn't a unique situation. It's been done before.
COMMISSIONER MORGAN: That's what I'm afraid of.

EXECUTIVE OFFICER NORTHROP: The request of the company, as a matter of fact, is not an unusual request.

COMMISSIONER ACKERMAN: Does USA Petrochem know about this change? They were second.

MR. WILLARD: No, sir, I don't believe they do.

You'll be approving other contracts here shortly that they were successful with.

COMMISSIONER ACKERMAN: Would you do the same thing for them on the next one?

MR. WILLARD: No, because, again, our exposure is more close to the 90 days.

EXECUTIVE OFFICER NORTHROP: We're just trying to cover the exposure of the state, and that's really what a bond is. When we're not that exposed, the staff feels it's unfair to have them pay for the exposure.

MR. EVERITTS: Here's the situation. The 90 days on this particular contract, we can return the oil immediately on demand to our lessees should something happen, should this Macmillan default under the contract. We can make immediate delivery on that oil to our lessees.

Under the next contracts, the ones you'll be looking at, we have to give 30 days notice. So, we would
have to be out on the street corner peddling this oil some-
where or another if they defaulted.

COMMISSIONER MORGAN: So, the statement since
this company is so solid, or the implication was, that
is really not the reason for the change in the contract?

EXECUTIVE OFFICER NORTHROP: No, exposure was
the reason.

MR. EVERITTS: We're fully covered on the 80
ys.

EXECUTIVE OFFICER NORTHROP: All we tried to
do was cover our exposure.

COMMISSIONER MORGAN: I don't have a problem
approving it on that basis. I did have problems if you
change after receiving based on who sent it, who submitted
the bid.

EXECUTIVE OFFICER NORTHROP: We're just looking
at exposure.

CHAIRPERSON D'AGOSTINO: We would have, then,
three recommendations.

COMMISSIONER MORGAN: And the third one we don't
have.

CHAIRPERSON D'AGOSTINO: And two are on the
agenda, and the third one you presented as an amendment.

EXECUTIVE OFFICER NORTHROP: Yes, it would be
an amendment to the contract, to authorize me to amend
the contract and not amend the calendar item.

COMMISSIONER MORGAN: With the understanding that the adjustment is made based on exposure.

COMMISSIONER ACKERMAN: I don't have any problem with that.

CHAIRPERSON D'AGOSTINO: There's no problem with that.

Item 26.

EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item 26 is approximately 600 barrels per day bid by USA Petrochem Corporation at a proposed site in Huntington Beach.

COMMISSIONER MORGAN: Is there a third item to be added here?

EXECUTIVE OFFICER NORTHROP: No, ma'am.

COMMISSIONER ACKERMAN: I don't have any problem.

COMMISSIONER MORGAN: No.

CHAIRPERSON D'AGOSTINO: Without objection.

Item 27.

EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item 27, USA Petrochem Corporation again, approximately 600 barrels per day, but this time $1,452 per barrel has been proposed.

COMMISSIONER MORGAN: Getting a lot of bids, wide range of bids, too.

CHAIRPERSON D'AGOSTINO: Same people.
Without objection.

Item 28.

EXECUTIVE OFFICER NORTHROP: Mr. Chairman, perhaps you'd rather consider Items 28, 29 and 30 as a unit. It is a lease in Lindsey Slough for, in one item, 86.27 acres, and Items 29 and 30, 152.22 acres and 175.52 acres respectively.

In Item 28, 81.38 percent of the net profit was a 16 and two-thirds royalty and $20 per acre.

The net profit changes to 79.50 percent in Item 29 at 16 and two-thirds, and $20 per acre per year rental on 29. So, those two phases remain consistent.

In Item 30, the net profit is 79 and a half percent.

It is the staff's opinion that this bid should be awarded. There has been a question about drill site, and staff assures me that there is adequate drill site available for the production of these fields.

CHAIRPERSON D'AGOSTINO: Where is Lindsey Slough?

We have couple of people from Seahawk in the audience in attendance.

MR. BRASSELTON: Mr. Chairman, Robert Brasselton.

I have no statement to make. It was in case there was any objections, I wanted to be on the record.

CHAIRPERSON D'AGOSTINO: Mr. Fenton is also
here. Do you have anything you want to present into the record?

MR. FENTON: Not at this time, no.

CHAIRPERSON D'AGOSTINO: Anyone else in the audience? Yes, sir.

MR. ERKEL: Mr. Chairman, I put my name in. Apparently you didn't get it.

I'm James L. Erkel, Staff Attorney in the Corporate Law Department of MCOR Oil and Gas Corporation. With me is our senior land man with MCOR.

MCOR Oil and Gas Corporation is developing its oil and gas leasehold interests in and to Hastings Tract in Solano County, California. Lindsey Slough constitutes the southern boundary of Hastings Tract. Title to the surface and mineral estate in and to Hastings Tract was severed by deeds conveying the surface thereof excepting and receiving all interest in oil, gas and other hydrocarbons within or that may be produced from the property, and the right to drill and maintain oil and gas wells into and through the surface of the property.

We have received an oil and gas lease from the owners of the mineral estate which conveys the full and exclusive right to explore, drill for, produce, extract, mine, remove and market oil, gas, hydrocarbon substances, and other commercially valuable substances resulting from
oil, gas, and hydrocarbon operations on or from said lands. The lease was intended by the parties involved to convey the entire interest and estate which the mineral owners have in this transaction.

The State Lands Commission has identified the bids submitted by Seahawk/Casex as having offered the highest bid factor in net profits. The bid proposals required bidders to provide evidence of their plan or ability to obtain all necessary drill sites, easements, and rights-of-way for drilling and production activity. This showing is crucial inasmuch as the proposed lease forms preclude the right to drill any well from the surface area overlying the leased lands or to use any portion of the surface area or the subsurface area within 500 feet of the surface for any purpose. Consequently, a bidder must establish its right to directionally drill a well from adjacent lands.

Although we have not been allowed to evaluate the bid package submitted by Seahawk/Casex, it is our belief that their showing of surface access is based on a contract with Knob Hill Mines, Incorporated, doing business as Hastings Island Land Company, which owns the surface estate in and to Hastings Tract. We believe the contract purports to convey to Seahawk/Casex, the right to locate a well pad on Hastings Tract and directionally drill and
bottom a well under Lindsey Slough.

MCOR objects to the issuance of oil and gas leases to Seahawk/Casex covering Lindsey Slough on the grounds that Hastings Island Land Company cannot grant such a right, and, even if such a right could be conveyed, any such directional drilling would constitute a subsurface trespass as to our leasehold, notwithstanding the surface holder's.

Fundamentally, a grantor may not validly convey a right in real property greater than that which the grantor possesses. The deeds severing the surface and mineral estates in and to Hastings Tract allocated any and all rights to exploit oil, gas and hydrocarbon substances within or that may be produced from Hastings Tract to the owners of the mineral estate, who subsequently granted their right exclusively to MCOR.

Even assuming that Hastings Island Land Company had such a right to convey, the courts have held that the directional drilling by a third party of a well located on land subject to a valid and subsisting oil and gas lease and bottomed-in land leased by the third party constitutes a subsurface trespass as to the lessee, who may enjoin the drilling without regard to the lessor's consent. The salient point is that such a third party well would inevitably affect the lessee by draining its leased land.
The possibility that a well directionally drilled by Seahawk/Casex would drain MCOR's leasehold is substantial. Any well drilled would immediately obligate MCOR to drill an offsetting well under its lease.

The issue is compounded by the possibility, which MCOR has already stated to Commission staff, that certain islands and dredger cuts in Lindsey Slough may actually constitute part of Hastings Tract and be subject to our lease.

We object to the issuance of oil and gas leases to Seahawk/Casex in the absence of any clearly delineated right of surface access, other than the right purportedly conveyed by Hastings Island Land Company.

Should the State Lands Commission accept the joint bids submitted to Seahawk/Casex as presently constituted, MCOR will consider all appropriate legal remedies to defend its leasehold interest in Hastings Tract.

Thank you.

COMMISSIONER MORGAN: I have a question of the staff.

Did the winning bidders, joint bidders, Seahawk and Casex, did they satisfy the requirement of having easement necessary to access?

EXECUTIVE OFFICER NORTHROP: Yes, I believe so.
I had staff recheck it as late as yesterday. Don, would you give us a reading on that, please?

MR. EVERITTS: Our legal staff has reviewed the rights to Seahawk so that they have agreed that they have an easement through the upper 500 feet. A well could be drilled directionally, assuming that we can get close enough to the toe of the levee, which would require a variance, as I mentioned.

At this point, we have been talking to the Reclamation Board. There have been some wells drilled, in fact, MCOR's wells, but many of them are closer than the standard 250 foot of the levee. So, it's our plan that Seahawk does have access to the land.

EXECUTIVE OFFICER NORTHPROP: May I point out that the draining that MCOR is worried about, it is our position that the drilling will not take place on their leasehold, and they do have rights of access.

MR. ERKEL: We understand the approach, and we require only that the drill not take place on our leasehold, and as long as this other right of access is established, we have no objection.

EXECUTIVE OFFICER NORTHPROP: Perhaps --

COMMISSIONER MORGAN: It seems to me that the bid requires that you are able to get to the oil, and they have bid with the understanding that they will. And our
staff believes that they have. I don't know if we need
to go into it any further.

Do you have any questions?

COMMISSIONER ACKERMAN: Not really, other than
it seems fairly clear that you're requesting that your
leasehold not be used to gain the access, and as long as
staff assures us that it's not, then your interests are
being protected.

MR. ERKEL: We just want to reiterate our
objection at this point. That's all we're doing.

COMMISSIONER MORGAN: We heard you.

COMMISSIONER ACKERMAN: All right.

CHAIRPERSON D'AGOSTINO: Anybody else in the
audience wish to comment on this item?

COMMISSIONER MORGAN: Should we act on these
as a group, 28, 29, and 30?

EXECUTIVE OFFICER NORTHROP: Yes.

COMMISSIONER MORGAN: I move approval.

COMMISSIONER ACKERMAN: Without objection.

CHAIRPERSON D'AGOSTINO: Without objection,
28, 29, and 30.

Item 31.

EXECUTIVE OFFICER NORTHROP: Item 31, Mr. Chairman,
we do not have the luxury at this time of a drill site,
so we had to negotiate with Dow Chemical, an award of an
oil and gas lease under Deuel Vocational Institution in San Joaquin County. The bid was 16 and two-thirds royalty and $20 per acre, and the net profit was 30 percent of the net profit.

COMMISSIONER MORGAN: I think our Chairman had some problems with this one, but we have a timing problem, don't we?

EXECUTIVE OFFICER NORTHROP: Right.

MR. RUMP: It's a special problem with the deadline. With the questions that have arisen, we would recommend at this time that the matter be denied without prejudice, and we'll bring it back to the Commission once those items have been explored.

CHAIRPERSON D'AGOSTINO: Is there anyone here from Dow?

COMMISSIONER MORGAN: What's your question? What's your problem?

CHAIRPERSON D'AGOSTINO: One of the problems that I have is that, apparently, Dow really is in a situation where they have the only drill sites other than Deuel. I think that situation means that we are at a very bad disadvantage, and as a result of that, we're getting only 30 percent net profit, potentially, out of this well, or these drill sites.

It seems to me that this is still a very exploratory
area, and is not an area that has known potential for return. We ought to move a little more slowly. We ought to try and see if we can get access from Deuel.

Deuel is a State facility. We ought to be able to work with another State agency that would give us drill sites for a potential higher net return on profit if, in fact, they do find oil and gas. That was my main objection.

MR. DITZLER: May I make one comment?

My name's Clark Ditzler. I'm a manager of Dow Chemical involved in this project.

My only concern is that we have in good faith negotiated from this position with the State for over 15 months to arrive in this position. We have held up our own activities in the area pending the outcome of this, which is considerable.

It was thought, until this morning, that we were informed that there may now be some question regarding a drill site, possible well, that changed the status of that lease. We have been in contact with the staff only on a monthly basis, numerous meetings in Long Beach, and having come to the last possible day this can be considered, and then we find ourselves in somewhat of a business position of, you know, we've waited a long time. We've held up activity on other property and paid rentals on them.

So, that's my only concern. It doesn't change
the situation, but please appreciate where we have come from and how we got here.

It's quite surprising to find out that this may just be totally set aside now after this length of time.

CHAIRPERSON D'AGOSTINO: My understanding is that if we don't approve it today --

MR. TAYLOR: It's deemed approved.

CHAIRPERSON D'AGOSTINO: -- it's deemed approved.

Because of a problem that we have in terms with quorum and voting of members, I would suggest that we deny it but reconsider it. We could reconsider it.

MR. TAYLOR: We can deny it without prejudice and then renew it. You can renew the item at the next meeting.

CHAIRPERSON D'AGOSTINO: That would be my suggestion.

MR. DITZLER: In other words, we're getting an additional month's extension? That would put this beyond --

MR. TAYLOR: Not an extension in that sense. It's a denial.

COMMISSIONER MORGAN: From a business point of view, it's an extension. From a legal point of view, it is not.
MR. DITZLER: I had the impression that, legally, if it was not acted upon today, that the project was terminated.

EXECUTIVE OFFICER NORTHROP: No.

CHAIRPERSON D'AGOSTINO: Let's go off the record.

(Thereupon a brief discussion was held off the record.)

CHAIRPERSON D'AGOSTINO: Can we get back on the record.

COMMISSIONER MORGAN: Before he leaves, the staff's been involved with the Institution for some time, I assume?

EXECUTIVE OFFICER NORTHROP: Yes.

COMMISSIONER MORGAN: Do you know if they looked into the question that Carl is raising about location of the well?

EXECUTIVE OFFICER NORTHROP: We had communication dated September 21, 1980. It's a response dated that time. I thought there was a copy here in which they indicated at that time -- here's a copy of that communication we got back.

COMMISSIONER MORGAN: There were no drill sites available, is that your answer to the question?

EXECUTIVE OFFICER NORTHROP: That was the answer the staff received when we first initiated that program.
We've proceeded on that basis and negotiated.

COMMISSIONER MORGAN: So, you don't know if there are some reasons why drill sites cannot be located there?

EXECUTIVE OFFICER NORTHROP: No, ma'am.

COMMISSIONER MORGAN: On their grounds.

EXECUTIVE OFFICER NORTHROP: It seems reasonable that it could be, if they wanted it to be located there. It's not impossible, the fencing --

COMMISSIONER MORGAN: Is another month going to give us a chance to look into this or not?

MR. RUMP: Unfortunately, consultation with staff as been that the environmental situation as well as with the Department of Corrections and so forth, it would probably a longer period than 30 days to get back on this.

MR. EVERITTS: We're thinking four to six months. We'd have to go through the environmental process again, and certainly have to consult with the agency.

COMMISSIONER MORGAN: You're assuming that they can drill on their own property?

MR. EVERITTS: No, what I'm saying, first of all, as a matter of law, we have asked the agency, and the agency owns the surface rights.

We were initially granted a 90-day extension.
Now, in denying this thing today, you've got to go through a new application. You'll have to go through all the affected agencies, ask for their common consent, and that involves actual in-house work. So, we would estimate a minimum time of three months, and then with all those other factors, it's going to be four months.

COMMISSIONER MORGAN: Waiting for that, it would be four months?

MR. RUMP: For us.

COMMISSIONER MORGAN: But there still is a possibility that we could expect them to wait that long?

MR. EVERITTS: If, in fact, we can't get a drill site, if they're still interested in our proposal, they can proceed. If you could get a drill site, then you probably don't have the option to go out into the competitive bid, and that could be a long, long time.

COMMISSIONER MORGAN: Interesting.

COMMISSIONER ACKERMAN: Is there any way to put a little pressure on Deuel Vocational Institution and still approve this? That way they could go ahead and proceed with their work. Somehow we put pressure on Deuel to put the circumstances --

MR. DITZLER: It seems to me we're in a position of doubting what Deuel has told us exists. We've covered that.
MR. EVERITTS: They're suggesting they might have a little more leverage than I had.

CHAIRPERSON D'AGOSTINO: I can't understand why the staff, why we haven't explored the possibility of sites at Deuel. I don't know if they're worried about environmental reasons for Deuel. I look at the map, and I don't see where there would be any particular objections to the drill site next to the disposal pond, for example.

COMMISSIONER MORGAN: They may be worried about bringing people into a secure area.

MR. EVERITTS: That's basically it.

Wist and Game won't let us go into some of their land areas because they don't want us to scare the birds.

CHAIRPERSON D'AGOSTINO: It just seems that the objection that I have is that we're getting a situation where we're basically entering into a negotiating agreement with basically no competition because of the absence of a drill site. I do not see any compelling need to rush into this.

MR. EVERITTS: I guess, if it's a compelling need, that somebody is able to explore a private land, and we want to be able to tie the package together. This is an exploratory well. There are no known reserves in the area.

CHAIRPERSON D'AGOSTINO: I understand that you
want to explore, and they would like to put together a
total package. But I don't see a compelling reason for
the State to accept a very significantly lower figure than
we're accepting in other leases all over. What sort of
net profits? In the leases earlier, we were looking at
79, 80 percent.

MR. EVERITTS: That's the difference. That's
why I say if in fact a discovery is made near this facility.
Obviously we wouldn't be selling for 30 percent or 35 percent
of the net, either.

The thing that makes the waterways valuable
is that there is production on both sides of the river,
so undoubtedly there's something in the middle. People
don't mind paying a bit of royalty for valuable property.

That's not the same thing here. The number
that we negotiated is probably fair to both sides for a
wildcat prospect, a minimum wildcat prospect. In our
judgment, this is a minimal wildcat project. If there is
a discovery, it wouldn't be minimal.

COMMISSIONER MORGAN: How long does it take
to find out?

MR. EVERITTS: I don't know what the program
is. I presume they'll go ahead if we don't, eventually.
They'll also drill as far away from us as they can on their
place so we won't own any more than we can get.
COMMISSIONER MORGAN: In your plan, how long would it be?

MR. EVERITTS: One year, and one year drilling time.

MR. DITZLER: Yes, the lease provides for drilling within a period of one year or we surrender.

COMMISSIONER MORGAN: I don't understand why the staff says it would take four months before the item could be brought back.

MR. TAYLOR: Because we denied it. It's a new application.

What we have overlooked in our answer to you is the fact that they have to comply with the environmental requirements.

MR. RUMP: It certainly requires that length of time.

EXECUTIVE OFFICER NORTHROP: This is the last meeting.

MR. TAYLOR: When does the time run out?

MR. EVERITTS: Somebody said tomorrow.

He states four months, and I agree with him. No question about it.

MR. SANDER: My name is Dwight Sander.

Assembly Bill 884, Chapter 1200, provides for the processing of applications, and provides 105 days for notification
of agency approval of the document for the lead agency to make a decision. That is within the available one year. The Commission has received a one-time permissible up to 90 days extension, which will run out April 30th, which is tomorrow.

If the project is not acted upon by this Commission today, as has been said before, it's deemed approved. If the Commission denies it without prejudice, the applicant must, in effect, start the process once again.

So, even though there's an existing application as of today, with the proper verbage and proper information, even if there's a Negative Declaration that's been circulated to the proper channels and in the proper manner, that process must again be repeated with the same material. Unfortunately, the law does not provide for a short end or a recirculation that is less than the one time. That's basically what we're faced with.

COMMISSIONER MORGAN: All right.

COMMISSIONER ACKERMAN: We lose four to six months with the reviews during the period that you're waiting to get a lease underway.

MR. EVERTTTS: You'd lose four to six months. If it turned out we could get a drill site, then we'd have to do a little bit different kind of program. Well, the bidding process.
CHAIRPERSON D'AGOSTINO: Is it $20 an acre we're renting?

MR. EVERITTS: That's average.

EXECUTIVE OFFICER NORTHROP: That's the revenue loss.

MR. EVERITTS: Yes, immediate loss.

CHAIRPERSON D'AGOSTINO: If you get the production, you're losing a lot more if you look at the difference between 30 percent and 80 percent on net profit. That's the point I'm making, that I think we're better off to lose $20 an acre rental for the possibility of getting a competitive bid that would give us something more than 30 percent on that profit.

MR. EVERITTS: You're deferring $20 an acre anyway. That's no real loss.

COMMISSIONER MORGAN: What's the going rate for our exploratory wells?

MR. EVERITTS: This is a going rate. It's a six plus 30 percent of net profit, which is about the same as 35 percent of the gross. That's about what we've had on other exploratory leases.

CHAIRPERSON D'AGOSTINO: If we had other drill sites available, what would you expect them to be?

MR. EVERITTS: I'd expect it to be darn near the same thing, honestly. It's a statistical approach to
what we think it's worth, and I think we do it the same way anybody else would.

We gave the thing a four and a half probability, and that discounts your reserve quite a bit.

COMMISSIONER ACKERMAN: You mean if we had our own drill sites on the institution ground, likely you would come up with the same figures?

MR. EVERITTS: I would guess. I don't really know. It could be higher. I know we've had some higher. It seems logical that you're going to get something higher. I don't know what it would be.

COMMISSIONER MORGAN: Is it possible to have the test drill sites in one location, and if they find something, to move to Deuel, to move on a site at Deuel?

MR. TAYLOR: That doesn't correct the problem.

CHAIRPERSON D'AGOSTINO: We've already given up the leases at this point.

MR. TAYLOR: We've already leased the property.

COMMISSIONER ACKERMAN: How long is the term of the lease, one year?

MR. EVERITTS: No, the lease is usually three years, just exploratory.

COMMISSIONER MORGAN: I thought this lease, this gentleman said the lease --

MR. EVERITTS: No, the drilling requirement.
EXECUTIVE OFFICER NORTHROP: The drilling requirement, you must drill within one year.

MR. EVERITTS: Yes, but he may want the site for one year or two years.

COMMISSIONER MORGAN: Is there any reason why, six months from now, they should continue to participate in this agreement? Is there enough hint of oil there that they would be interested in coming back after they've had a chance to look at that?

MR. EVERITTS: That's something you'd have to ask them. As he pointed out, they've waited a long time to develop their interests. They may want to go out and do that. If they don't get a chance, all we've got is 20 bucks an acre, which isn't any big deal.

COMMISSIONER MORGAN: Well, assume that they stick with the same deal?

MR. EVERITTS: Yes.

COMMISSIONER MORGAN: And I don't know why they should. I'm trying to figure out some way -- these guys aren't much help -- to continue the matter without instituting a new four-month period.

MR. TAYLOR: There's already an extension of time given under the statute of 90 days. That's all that the statute provides for. The party could give an additional extension of time that would be beyond the statute, which...
the statute, what the statute constituted. And I would
have a problem at this point, then, as to whether or not
it was deemed approved, or whether the waiver would preclude
us from raising that issue. That would be your gamble
if he would give you the waiver.

MR. TROUT: Perhaps one more alternative, and
I know Dow is unprepared for this, but perhaps they could
offer a higher percentage.

CHAIRPERSON D'AGOSTINO: What I have objected
to is the fact that there is no competitive bidding from
the other side. I think that I might object that we're
now ---

MR. DITZLER: The terms of the lease were
essentially proposed by the State Lands Commission and
agreed to by Dow after much analysis of the situation.

I think Mr. Everitt posed a statistic which
is well worth considering. He said the probability of
success, of finding commercial valuable hydrocarbons on
this property, is four and a half percent, which says that
the chance of facing nothing is 95 and a half percent.
And we feel the same way. It's highly exploratory, a
high risk situation.

The 30 percent, to us, seemed like very high
net profit under the circumstances, considering the fact
that the property value, estimated from all the technology
we have right now, the prospects there are certainly not --
we have drilled three drill holes in the vicinity of this.
None immediately offsetting the property, but --

CHAIRPERSON D'AGOSTINO: What's your pleasure?
COMMISSIONER ACKERMAN: What's your pleasure?
COMMISSIONER MORGAN: Our pleasure is to avoid

six months and coming back with the same issue before us,
which is a possibility, it seems to me, since we have not
had a response to the substantive question that was requested
last fall, about whether the agency had considered using
their own property.

Is it possible to approve this with the under
standing that the agency prove to the Commission's satisfac-
tion that it does not have a site available, and if it
cannot prove that, then it's denied?

MR. TAYLOR: I think you've still got the problem
of the statute. You've got to act within that period of
time.

I think the only alternative you have, which
is a risky one for you if you want the matter put over,
is to get a waiver from Dow for another 30 days, with the
caveat to you that, in litigation, we would assert that
it was a knowledgeable waiver, and they're estopped from
the provisions of the statute, and they would raise whatever
arguments they have as to their ability to give that kind
of a waiver.

Our position would be that a party can waive benefit of any statute, and that's what they're doing here. The question is, since the statute does address the question of extension of time, and only provides for one up to 90 days, whether you can give that kind of a waiver, and there would be a risk in the Commission taking that. The downside of that risk could be a deemed approved.

EXECUTIVE OFFICER NORTHROP: May I make just a comment or suggestion.

In light of the fact that tomorrow is the deadline, perhaps you could authorize the Executive Officer to complete this negotiation with Dow, if Dow indicated they did want to have it, to allow me to execute it tomorrow. If not, if Deuel wanted to do it, then --

MR. DITZLER: In other words, you're saying we could resolve the question by tomorrow?

EXECUTIVE OFFICER NORTHROP: That is what I'm trying to do.

MR. DITZLER: Does it give a preference --

EXECUTIVE OFFICER NORTHROP: We can't get the Commission together in a body tomorrow. That's what I'm trying to get around.

MR. DITZLER: There are obvious business concerns.

MR. TAYLOR: You could word the matter this
way, that you could vote to approve this, provided that, by the close of business tomorrow, the Executive Officer has obtained confirmation from the Department of Corrections that no drill site is available. If, in the event that he finds that there is a drill site available, by the close of business tomorrow, then the action of the Commission would be to deny without prejudice this application.

I'll have to work up language, but I think it gives you the thought.

MR. DITZLER: That would be our preference, rather than having an extension of time of any sort.

MR. TAYLOR: It'll be self-executing. Self-executing one way or the other. The Executive Officer must contact the Department of Corrections and get an answer by tomorrow. If he gets a negative answer or no answer, then the matter is approved. If he gets an answer that they're willing to provide a site, the matter is automatically disapproved without prejudice.

CHAIRPERSON D'AGOSTINO: If nothing happens by tomorrow, it's automatically approved anyway.

MR. TAYLOR: Yes, that's also true, but what we're directed by this motion is the fact that, if the Commission does not want it to go automatically but wants to put a hold on it, if there's a possibility of getting a site, that would kill the project. That's the advantage
of the motion that's been proposed.

COMMISSIONER ACKERMAN: I'm reluctant in
disapproving it if there's no chance of getting drill site.
If there's a chance of getting a drill site there, then
I think we should explore that to the fullest extent. I'm
receptive to the language that was just outlined.

COMMISSIONER MORGAN: That would give them a
day to try to verify.

COMMISSIONER ACKERMAN: If we can verify we
can get a drill site, or hopefully we can negotiate one
very quickly, then that's the direction we ought to go.

MR. TAYLOR: Then the permit would be denied.

COMMISSIONER ACKERMAN: If we don't do it, I
don't know whether it's fair to deny Dow because basically
the facts haven't changed, and they've missed the
opportunity to drill their exploratory well. I don't think
that's fair to them.

MR. DITZLER: That is acceptable to us, because
it gives us -- by tomorrow, we'll know where we stand.
We may move ahead one way or another then.

COMMISSIONER MORGAN: All right?

MR. TAYLOR: Mr. Northrop will give you a call.

EXECUTIVE OFFICER NORTHP: Don will probably
give you a call tomorrow.

MR. DITZLER: Thank you.
CHAIRPERSON D'AGOSTINO: Where will you be around midnight tomorrow night?

MR. DITZLER: Call me earlier, please.

CHAIRPERSON D'AGOSTINO: Item 32.

EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item 32 is approval of the award of a geothermal resources lease with a 12.5 percent royalty, net profit of 70 percent for the Geysers Steam Field in Sonoma County.

COMMISSIONER MORGAN: This was bid?

EXECUTIVE OFFICER NORTHROP: Yes, ma'am.

COMMISSIONER MORGAN: Sounds good.

CHAIRPERSON D'AGOSTINO: Without objection.

Item 33.

EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item 33 is an assignment by the Domenichellis to Aminoil USA. The Domenichellis were the land owners, and they matched a 12 and a half percent plus 55 percent net profit bid. They're coming before us now to sign this geothermal lease to Aminoil USA. Staff recommends the assignment.

COMMISSIONER MORGAN: Okay.

CHAIRPERSON D'AGOSTINO: Without objection.

Item 34.

EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item 34 is the Eleventh Modification of the Long Beach Operations Plan of Budget.
Mr. Thompson, would you speak to this, please.

MR. THOMPSON: This is a ratification of executive action of approving a well be redrilled from one zone to another zone. It has no augmentation of funds transferred from within the budget.

CHAIRPERSON D'AGOSTINO: Any problem with that?

COMMISSIONER ACKERMAN: No problem.

CHAIRPERSON D'AGOSTINO: Without objection.

Item 35.

EXECUTIVE OFFICER NORTHROP: Mr. Chairman,

Item 35 is the 1981-82 Plan and Budget for $181,142.

Mr. Thompson is going to show us how he's going to spend the money.

MR. THOMPSON: I believe you've all received the booklet of the budget which is the brown one. You have also with you a set of copies of this red-covered back here. These curves are identified in the lower right-hand corner with numbers in case we care to enter those on.

The plan of development and operation budget over $181 million, there's almost $48 million in this capital investment, $128 million for expenses, and $6 million administrative overhead.

In this first graph in your book with the brown cover, you can see these breakdowns in the cross-hatched
area. The present year is the second one from the right, and the budget runs to the far right. The expense portion is down here in the open cross-hatched area, and the investment and administrative overhead.

In the current year, it is represented on the cross-hatched area, it is estimated to carry out to be about 25 or $30 million, and continues into the next year's budget.

The next curve you have in your book is operating expenses. That's the $104 million. That has no investment taxes or administrative overhead. This is your direct operating costs from your wells.

Now, in the plan and budget, there are economic projections in Items C1 through C4. They're in the brown book that you have here. They're after page 24. They are the estimates of production of oil, gas and water costs such to that. Then you can see the difference of the net revenue you get. There is consideration of windfall profits tax. That's the curve in your book again, and you see $660 million anticipated gross revenue with your $180 million budget fund. Again, this $660 million is without consideration of the windfall profits tax and within the various parties.

Now, this in the past has been prepared jointly. We have a little difference of opinion as to the amount
of gross value and increased royalties projected on this one.

Over on the right-hand side there, on the wall, you can see some curves and trends of the way costs have been going here. The one on the far left is translated in dollars to barrels. And the gross revenue is up in red there, and you can see, when we prepared this year’s budget, we anticipated the revenue would look like the broken line there. The reason for the difference for that, primarily, is that oil price is not going up as fast as we estimated. You can see the difference in the slope. We had thought that the oil price would shoot up to ten percent per year. That has not quite reached that.

You can see the drop of the line here again, where we’ve estimated 10 percent in this coming year’s budget, and we may have difficulty reaching that. Again, it provides an adjustment in which they may come all within one time, or we may get 50 cents or a dollar, which made for a stair-step reflection there. So, it’s a little hard to estimate.

On a dollar-per-month basis, we can see the second curve there, both in revenue and costs. Again, you see the projections for the budget we’re anticipating on the broken line. The biggest part of this, of course, is in drilling expenditures. Then we come to the question
of justification of these wells. Here's a curve which shows the drilling structure, the dollars here, number of rigs, and basically over the past year, this again is an estimated production of simply laying the pipe. This is part of the production of the wells. This is the estimate, then, in 1979, if they had not been drilled or redrilled. That's the extrapolation of that. We took that and transferred that over into the rate curve. That's this right here.

Here are the wells since 1977. Had we not drilled or redrilled those, this is the course we would have gotten. At the current time, we're producing about 15,000 barrels a day more. That is the message.

I think in this point in time I'll wrap this up. The power curve up there shows where the electrical energy has been going. Increase in that.

I think that's about all the recommended approval of that budget. We think the funds are adequate. There are surplus funds in a couple of accounts, depends on how much gross value is limited and ingested.

COMMISSIONER MORGAN: What happens if we decide to continue our current wells and didn't reopen any of the old ones?

MR. THOMPSON: We're back to the same situation that took place before, that you would start
dropping off the rate. You would again start to come down like this. You can see that as a trend, this one over here on the far right, what's happened in the past when you stopped drilling. You have some reduction in the amount of drilling to repair those wells, then your production rate falls off.

COMMISSIONER MORGAN: Are you opening new wells?

MR. THOMPSON: Yes, a combination of new wells, and drilling, and repairing old wells.

COMMISSIONER MORGAN: What would happen to the revenues to the State if you held up on drilling new wells for one year?

MR. THOMPSON: You would not spend approximately $50 million. It's not really $50 million, because there's overhead. Those people will still be there, drilling crews, everything else. You have to pay that, the engineers, the project supervisors, things like that. So, only your direct costs for the crews that you would lay off and the extra rigs. So, by the time you scale that down, you would now be down closer to maybe $20 million, and you would pay a penalty of that for every year in the future.

MR. TAYLOR: I should remind the commission that there is a lawsuit pending against the state during a period when there was allegedly no production, no increase of new wells. And the contention of the oil companies
that are suing the State in that case is that good oil field practice requires taking a field out to its maximum potential development in an orderly process.

The existence of that litigation, and the potential if you're considering just letting things, you know, just pulling off some of the new drilling, of an additional claim by the oil companies in those situations, that should be factored into your thinking in connection with that.

MR. THOMPSON: It should rebate now that service is underway, to see how many drillings on the wells have been necessary, and the economic justification. Therefore, some range of estimates, like now there may be as many as 14 drilling rigs might be required in the unit to drill these 50 wells up within a certain period of time. That's probably a little on the high side. Again, you may still be drilling 7 or 17 years from now. Most studies are finished within four or five months.

COMMISSIONER ACKERMAN: No problems.

CHAIRPERSON D'AGOSTINO: Without objection.

Next item.

EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item 36 is a sell-off of approximately 250 barrels a day from the Long Beach Tract No. 2 of the Long Beach Unit. The highest bidder was Fletcher Oil and Refining Company at 1.75. The staff recommends approval.
MR. THOMPSON: That is important. The bond posted there is $500,000.

CHAIRPERSON D'AGOSTINO: How many barrels a day?

MR. THOMPSON: Two hundred fifty.

EXECUTIVE OFFICER NORTHROP: Two hundred fifty; 12.50, it's a percentage figure.

CHAIRPERSON D'AGOSTINO: Any problem with that?

COMMISSIONER MORGAN: No.

CHAIRPERSON D'AGOSTINO: Item 37.

EXECUTIVE OFFICER NORTHROP: Mr. Chairman, Item 37 on Capital Improvement Project Shoreline Aquatic Park, Mr. Thompson also has a member of the City of Long Beach here, I believe.

MR. THOMPSON: This is a notification from the City of Long Beach. We're going to spend their money for the operating fund. The Commission finds that this is authorized under Chapter 128/'64, Section 6. We recommend the approval.

COMMISSIONER MORGAN: What is this?

MR. THOMPSON: This is off setting the shoreline there, and there should be a map there. If you look at the map there, you'd see a new marina, downtown marina, that's being constructed. It's just right off the downtown park there.
You can see Island Grissom off to the right of that, right of that lagoon area, and the convention center.

CHAIRPERSON D’AGOSTINO: There’s no State monies? We’re just finding --

MR. THOMPSON: Making a finding that it is allowable under Chapter 138. If you take no action, it’s going to go right through anyway. You have to do something.

CHAIRPERSON D’AGOSTINO: Without objection.

Item 38.

EXECUTIVE OFFICER NORTHRUP: Item 38, Mr. Chairman will be addressed by Mr. Rump.

MR. RUMP: Item 38 is authorization to file a disclaimer. Essentially this is a disclaimer ascertaining that the State Lands Commission has no interest in the property.

COMMISSIONER MORGAN: Okay.

COMMISSIONER ACKERMAN: Okay.

CHAIRPERSON D’AGOSTINO: Item 39,

EXECUTIVE OFFICER NORTHRUP: Mr. Chairman, Item 39 is off calendar. I’m sorry.

CHAIRPERSON D’AGOSTINO: Item 40.

EXECUTIVE OFFICER NORTHRUP: Item 40 is the Marine Terminal Safety Program, and Mr. Kent Dedrick, who was the director of our Terminal Program, will make a
MR. DEDRICK: My name is Kent Dedrick. National Safety Coordinator.

You've just been given an enormous volume of material, and you really don't have to read it. The big one is the training manual that we produced in cooperation with the California Maritime Academy in order to train operators of terminals consistently across the board so that we all know that all of the terminal operators are getting solid training in every aspect. A lot of the terminals presently have existing training programs, but they seem to be spotty. Some of them appear to be very good, and others are a little short. So, we've set this up, but in cooperation with the Maritime Academy.

The Maritime Academy thinks this sort of training program will fly. It will be the first one in the United States on a public basis, so that any member of the public can go.

I think if you do go look at that big, horrible thing, you know, the manual you've been handed, you could probably just pick out the table of contents and just get an idea as to the depth of material that's given. That was one of our tasks in this whole project.

Another one is to inspect a lot of terminals that are under lease from the State Lands Commission and
see how they're operating. That inspection process is still going on. It started last July. We've perhaps done about 150 inspections by this time.

Of course, after you start looking at a terminal time and time again, the terminal itself becomes kind of a known quantity, because you know every pipe and bolt in the place. But, the ships coming in are different, and of course that's where a lot of the action is, and where some of the more important problems can occur, such as explosions and pills.

I think in the interests of brevity, I can just wrap this up by telling you what the other task was, and that deals with the standard operations manual. Now, what an operations manual is is nothing more than a document that is prepared by the terminal firms that require them. It says what we're going to do in the transfer of oil. Every time they transfer oil, they're going to go through the procedures in the manual. There's a white official document that requires the Coast Guard to review these lease covenants. So, in order to see to it that these terminal manuals, which will be due next January for our leased areas, in order to see that there's some consistency in department coverage, we've prepared these guidelines, and that's that smaller document I've given to you. They have not been distributed yet. As soon as we can
get them distributed in enough quantity, why, they'll go
out to all the terminals.

Incidentally, in terms of deadlines of work
going on, we now expect that that training class, the Maritime
Academy will be giving in September of this year for the
first time. They want a little time to advertise it through
all the maritime trades, and get a brochure out, and all
those matters.

I think that more or less wraps up what I have
to say, except we're out of money.

MR. EVERITT: Legislation.

MR. DEDRICK: Yes, legislation.

We're presently dealing with 23 terminals in
the State of California. Those are the ones on leased
lands.

Now, there are a total of 58 or 60, depending
on how you count the State totally. That means there are
about 35 we're not looking at. The most important are
the Port of Los Angeles, Port of Long Beach, Port of
Richmond.

With our program, I think we've hit an area
that hasn't received much attention in the past. That
is, the terminals along the Carquinez Straits in San Francisco
Bay, and also the offshore terminal in the Southern California
coast.
Now, the legislative analyst, he'd love us to have a nice, consistent program that covered everybody, took care of everybody. Unfortunately, well, we don't have that.

Now, one thing we can do is sponsor legislation that would bring in these other terminals, these other 35 or so terminals. It could at least require that they prepare their operations manuals in accordance with these guidelines that we've prepared. Again, I think that would be a very helpful thing to do, and it wouldn't be too much or a burden on anybody, as you can see.

EXECUTIVE OFFICER NORTHRUP: Thank you, Kent.

As Kent has indicated, we've run out of budget funds to operate this program. The Legislature has indicated they would not renew the funding source.

COMMISSIONER MORGAN: Have we finished our work?

EXECUTIVE OFFICER NORTHRUP: We have finished the work as far as the manuals, as far as the training is concerned. However, I don't think, as long as there's a potential for a blowup because of not following these kinds of regulations, that I don't think our work is finished. Someone has to pick the work up from there. It's us or someone else.

MR. EVERITTS: Something we have to add, though, we have just now, through negotiations with the companies,
renegotiated terminal leases requiring this type of thing, requiring a manual, certain checkoff list. If we lost our funding, lost our program, there's no way we're going to know whether they're following the lease terms or not. I don't know what we're going to do. If they say we don't have a program, we've wasted our time messing around with those leases, I think.

COMMISSIONER MORGAN: Have they already acted on this?

EXECUTIVE OFFICER NORTHROP: On the subcommittees. The resource agency supported, the Governor's Office supported it. But the subcommittees on both sides indicated that -- Senator Boatwright has 15 of the 23 terminals in his district, and he was not present at the subcommittee hearing when it was discussed. So, it was acted on by Senator Briggs and Senator Presley, but Senator Boatwright didn't have any input. So right now, it's out on both sides.

COMMISSIONER MORGAN: What happened in the LA area? Wasn't there a spill recently?

EXECUTIVE OFFICER NORTHROP: There was a spill as of last Friday.

MR. THOMASON: Yes, it was. I don't know what the size of it is.

MR. EVERTTTS: It was around 4,900 barrels,
pretty good sized one. Turns out it was mostly -- it was in the terminal. Very few, approximately 50 barrels in the water, something like that. Their line parted in the tank battery in the uplands just while they were transferring. They noticed it before they could catch it.

EXECUTIVE OFFICER NORTHROP: It was 166,000 gallons.

COMMISSIONER MORGAN: Would your program have presented that from happening?

MR. EVERITTS: A full program might very well have, because with a full program, we would be inspecting that. We've been doing makeshift with a very small program.

EXECUTIVE OFFICER NORTHROP: Starting at page 257 and 8 in the calendar, it gives a sample of just one man's inspection.

Thank you very kindly. That was very informative.

CHAIRPERSON D'AGOSTINO: Anything else on the agenda?

EXECUTIVE OFFICER NORTHROP: The closed session, there is no closed session. The agenda is complete as far as staff is concerned.

COMMISSIONER MORGAN: How come Sue's still here? Are they coming back?

CHAIRPERSON D'AGOSTINO: We stand adjourned.

(Thereupon this meeting before the
State Lands Commission was adjourned
at approximately 12:50 p.m.)

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CERTIFICATE OF SHORTHAND REPORTER

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

That I am a disinterested person herein; that the foregoing State Lands Commission meeting was reported in shorthand by me, Evelyn J. Duggan, and thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of May, 1981.

EVELYN J. DUGGAN
Shorthand Reporter

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