MEETING
STATE LANDS COMMISSION

DEPARTMENT OF TRANSPORTATION
BASEMENT BOARDROOM
1120 N Street
Sacramento, California

ORIGINAL

TUESDAY, MARCH 23, 1982
10:40 A.M.

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

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TELEPHONE (916) 383-9001
MEMBERS PRESENT

David Ackerman, Acting Chairperson, representing Mike Curb, Lt. Governor
Susanne Morgan, Commissioner, representing Mary Ann Graves, Director of Finance

MEMBERS ABSENT

John Jervis, representing Ken Cory, Controller

STAFF PRESENT

Claire Dedrick, Executive Officer
Robert Hight, Chief Counsel
Jack Rump, Assistant Chief Counsel
R. S. Golden, Assistant Executive Officer
J. F. Trout
Curtis Fossum
Joyce Lane
Diane Jones, Administrative Assistant
Jane Smith, Secretary

ALSO PRESENT

N. Gregory Taylor, Assistant Attorney General
Jan S. Stevens, Deputy Attorney General

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Adjournment

Certificate of Reporter
ACTING CHAIRPERSON ACKERMAN: Will the State Lands Commission meeting please come to order.

The first item on the agenda is confirmation of the minutes of our meeting of February 9th, 1982. Are there any questions from Commissioners on the minutes?

COMMISSIONER MORGAN: No.

ACTING CHAIRPERSON ACKERMAN: Any comments from the audience?

Without objection, then, the minutes of February 9th will be approved.

We have the report of the Executive Officer.

EXECUTIVE OFFICER DEDEICK: The last time we reported to you that the Coast Guard was closing its 12th District Office and we expressed our concern to them. They have replied by telling us that it's not going to be closed, and I think I probably should read you the brief letter that they sent us.

"Dear Mr. Cory:

"On behalf of Secretary Lewis I am responding to your letter that expressed concern about the possible merger of the Eleventh and Twelfth Coast Guard Districts. The intent of this action was to reduce
expenditures by consolidating administrative functions. Operational capabilities were to be preserved for the most part.

"I am happy to say, however, that the recent prospect of budget relief has suspended this action. Thank you for your concern.

"Sincerely, J. A. McDonough, Jr.,
Captain, U.S. Coast Guard."

The next item is in regard to geothermal bidding.

At the last Commission meeting you requested that we find out what's going on with geothermal leases. We are submitting to you today a preliminary report from the staff on the basis of, where they have talked to past and present bidders and other people in the industry, and to make a long story short, it's the matching bid problem that's a real problem. We can pursue that at the next Commission conference, if you'd like. Is that -- Okay.

COMMISSIONER MORGAN: Yes.

EXECUTIVE OFFICER DEDRICK: Again at the last meeting there were some questions regarding the exploration permits, proposed Section 2100 of Article 2.9. There appeared to have been confusion as to when the Commission would require exploration permits. For clarification of the record, it should be emphasized that under the new regulations a general permit is required for all geological
or geophysical surveys conducted on State lands. The general permits will require advance notice to the Commission staff, local fishermen, and other entities several days prior to the actual survey. The terms and conditions covered by the general permits are still to be determined. It is the staff's understanding that the Commission, at its regular meetings, wishes to have a monthly recap of geological or geophysical activity, if any has taken place. Correct?

ACTING CHAIRPERSON ACKERMAN: Are we going to be asked to approve the permits on a case-by-case basis? Weren't they for general permits?

EXECUTIVE OFFICER DEDRICK: These were the overriding rules and, to a certain -- Yes, I think the answer to that is yes, although it looks like somebody wants to say something here.

MR. HIGHT: The answer is yes.

EXECUTIVE OFFICER DEDRICK: The answer is yes.

You authorized last month the sale of some royalty crude oil and the staff conducted two competitive bids. One on March 16th for oil produced from lease PRC 426 and the other on March 17th for oil produced from lease E-392. Champlin Petroleum submitted the only bids for both leases offering to pay the State bonuses of 15.1 cents and 8.1 cents per barrel. The 8.1 cent sale is on the consent calendar today. The 15.1 cent will be on the April calendar. That
is, of course, above posted price. If the bids are accepted, the State would receive revenues in excess of $300 a day.

ACTING CHAIRPERSON ACKERMAN: Has the Department of Finance already spent that money?

EXECUTIVE OFFICER DEDRICK: I think so.

COMMISSIONER MORGAN: I think the Lt. Governor spent some of it.

[Laughter.]

EXECUTIVE OFFICER DEDRICK: I don't think that was a fair question.

[Laughter.]

EXECUTIVE OFFICER DEDRICK: There is a controlled burn proposed, the Fuel Modification Project, they call it, by the California Department of Forestry on some federal, state and privately-owned lands in Forestry's pilot area. The Eisel and Thatcher Creek Watershed Management Unit in Mendocino County has been selected. The plan is to carry out this project within the time period of late March to early April, this year. There are about ten acres of chaparral which will be affected by the burn. The burning on the school land will consist of a variable width strip across a portion of the parcel to create a wildlife island and improve the wildlife habitat of the area. That may sound unlikely, but it's really true. Wildlife does better when
there is a break in the kind of environment, that is to say, brush to meadow or forest to brush.

With the Commission's concurrence, I will issue a temporary permit so that the project may proceed as scheduled. A formal agreement will be executed and presented at a forthcoming meeting.

ACTING CHAIRPERSON ACKERMAN: Have any problems?
COMMISSIONER MORGAN: No.
ACTING CHAIRPERSON ACKERMAN: Without objection, that's fine.
COMMISSIONER MORGAN: Is this the geothermal thing you refer to?
EXECUTIVE OFFICER DEDRICK: Yes. It is preliminary, but because of the problem with matching bids, the staff feels that it won't improve in the future. But I would be glad to have your response to any concerns that are raised by reading this report and will do our best to answer them next time around.
COMMISSIONER MORGAN: Thank you.
ACTING CHAIRPERSON ACKERMAN: Any other questions?
COMMISSIONER MORGAN: No.
ACTING CHAIRPERSON ACKERMAN: Is there a staff report on Coastal matters?
MR. GOLDEN: Yes, Mr. Chairman.
The Coastal Commission held a public hearing on
OCS Sale 68 proposals on March 17, 1982. The hearing took over three hours and consisted of comments totally opposing oil drilling off the California Coast to specific objections to the sale of specified tracts.

The hearing was held to develop recommendations to the governor on this proposed sale of 172 tracts by the Department of Interior.

At the conclusion of the hearing, the Commission voted to oppose the OCS 68 sale nomination off the California Coast in their entirety with a follow-up resolution as a backup position giving approval to all parcels except some 27 tracts as recommended by staff and two additional tracts off Point Dume added by the Commission as a result of public input.

It was notable that there was no oil company input to the public hearing although their input was actively solicited.

That terminates my report.

ACTING CHAIRPERSON ACKERMAN: Did the Lands Commission get involved at all in OCS Tract 68?

MR. GOLDEN: Yes, Mr. Chairman. There was a member of our staff present on the Policy Advisory Board which sat with the Coastal Commission during this hearing.

ACTING CHAIRPERSON ACKERMAN: Does Tract 68 abut to State-leased tracts?
MR. GOLDEN: Yes. Some of the proposed tracts did and those were the ones that they were eliminating, those in the Orange County and the vessel traffic separation lanes going into Port of Los Angeles, Port of Long Beach, and then there was some other miscellaneous tracts that did abut.

ACTING CHAIRPERSON ACKERMAN: Are you aware if any of the proposed tracts abutted against nonleased State areas?

MR. GOLDEN: I believe some of them did as proposed. That was the problem. They were trying to keep from triggering a mechanism in the oil and gas sanctuaries specifically off Orange County.

ACTING CHAIRPERSON ACKERMAN: Am I not correct that if federal tracts are leased where, against an unleased tract from the strait, drainage occurs, then the State would realize revenues?

MR. GOLDEN: We would have to prove, of course, how much of that was coming from within the State tract and that poses problems.

ACTING CHAIRPERSON ACKERMAN: Thus the Coastal Commission's objection to leasing these tracts could result in the State foregoing revenues?

MR. GOLDEN: Well, I think mainly that it would mean that we would then perhaps go out and put platforms out there as well to drill on our side of the line, and
I think that's what they were concerned about.

ACTING CHAIRPERSON ACKERMAN: It might be advisable to have the staff monitor the situation of what the impact is on State revenues with the Federal OCS policies and maybe report periodically to the Commission in other than just the Coastal Commission report because I realize you're not an expert.

MR. GOLDEN: Right.

MR. TROUT: Mr. Ackerman, I think we should point out that there are provisions with the cooperation of the federal lessees for sharing revenues from a pool that crosses a State line, but we've never been very successful in getting an agreement with the Federal Government. But we would be happy to report on that later.

ACTING CHAIRPERSON ACKERMAN: Okay. Any questions?

COMMISSIONER MORGAN: No.

ACTING CHAIRPERSON ACKERMAN: Thank you, Dick.

Just for your information on calendar items, Item C16 which is on the consent calendar will be pulled off and placed on the regular calendar. I understand there's someone in the audience that wishes to address the Commission on that item. Also, Items 26, 29 and 43 are all off calendar.

We will proceed then with the regular calendar, Items C1 through, is it 25, C1 through 25 with the exception of Item C16 are considered the consent calendar. These are
items that are normally administrative in nature and are noncontroversial. The Commission would approve these items in whole unless there are objections from anyone in the audience who wishes to have any item removed and placed on the regular calendar for hearing. Is there any request from anyone in the audience to remove any item on the consent calendar?

Then without objection, the consent calendar will be deemed approved with the exception of Item C16.

Why don't we just go to C16 at this point.

In fact, Jim or Claire, would you discuss the issue and the item.

MR. TROJT: Mr. Chairman, it would perhaps be helpful if you look at the aerial photo that we've blown up here on the wall. What is on the calendar is the approval of a longstanding, trying to be gracious, longstanding trespass in the Petaluma River and the Gilardi people who are really running this operation as I believe an upland restaurant or coffee shop or something like that, and these facilities in the Petaluma River, this is what's on the calendar for your approval, the issuance of a lease.

We understand that representatives of Mrs. Miller, the neighbor, and her attorney are here and they probably would like to present their side of the case.

Staff put this on the calendar because this solves
a longstanding problem regarding this occupancy of the Petaluma River.

ACTING CHAIRPERSON ACKERMAN: Mr. Matthew Hudson, I believe, is present. Sir, if you could identify yourself for the record and state your relationship in the case.

MR. HUDSON: Thank you. My name is Matthew Hudson. My offices are at 205 Kelly Street in Petaluma. I represent Mrs. Natalie Miller, who is the landowner adjacent to the Gilardi property.

That's a good picture up there. Mrs. Miller, as you can see, is to the right as you view that picture. The Lakeville Highway runs at about the top of that picture. Mrs. Miller owns parcels on either side of it. Below the Lakeville Highway is about 10.4 acres with a barn that she leases to a local merchant who stores hay. Above the highway is another 250 or so acres which is leased for dairy cattle and for ranching generally. The 10.4 acres is also leased to John Bordessa who runs a portion of his sheep operation on it. Mr. Bordessa also owns property to the left of the Gilardi property as you see it on the picture.

The marina layout originally, at least until about 1975, had a dock that ran just above to but not quite the boundary between the Gilardi and Miller properties. In about 1975, perhaps slightly later than that, three pilings were put in place by Mr. Gilardi or by his agents and the dock
was extended across the property line by about 75 feet. Millers have owned their property, and it was the Merrill property earlier, for about 33 years. The area itself is agriculture. In fact, the marina represents the only commercial activity in that area for some distance in either direction, in fact, until you really get into the environs of Petaluma as you head north.

There are, of course, the agricultural operations including John Bordessa's on either side of the marina and the cattle and dairy ranches on the other side of the Lakeville Highway.

The barn, as I said, is also leased and stores hay for a local grain and hay merchant who does business in the City of Petaluma. The older docks have probably been in place for at least 30 years. It was grandfathered, as we understand it, by the Corps of Engineers at least as to the original extent of the marina. It is a modest point, unassuming and right now in the state of, I think you can call, genteel dilapidation including even the new portions of it. It's a very colorful place run by a very colorful person. If you haven't been there, you should try it some day.

It advertises itself as having the best hamburgers in the whole damn universe which is an indication of its character, too.
The problem though is that we do have this extension of the pier. If I might, I'd like to show the Commission several pictures to indicate both the nature of the area and of the marina itself. Can I hand them up there?

There are about ten or twelve of them.

ACTING CHAIRPERSON ACKERMAN: This is genteel state of repair?

MR. HUDSON: That's right. It's not Newport Beach, that's for sure.

In about 1972, in fact, in November of '72, Mr. Gilardi, the owner of the marina property, wrote to Mrs. Miller and actually to her agent, Mr. George Schlenker, in asking permission to drive these piles in. I'd like to show you a copy of the letter that Mr. Gilardi wrote and then a copy of the response that Mr. Schlenker wrote in return. I'll give you several copies of this, if I might.

ACTING CHAIRPERSON ACKERMAN: I don't mean to -- Has the staff had a chance to examine or discuss in detail with Mr. Hudson the points that he's raising?

MR. TROUT: We've been aware of this problem and maybe Curtis Fossum and Joyce Lane of our staff who handled it could specifically answer any questions. I believe they have been in contact with Mr. Hudson and with others prior to this meeting.

ACTING CHAIRPERSON ACKERMAN: What I want to make
sure, Susie, unless you feel differently, is that the information is being presented today, that the staff has had an opportunity or been afforded an opportunity to at least consider it and be prepared to at least make a recommendation to the Commission possibly to settle this without having to get into a debate before us. Is that possible?

EXECUTIVE OFFICER DEDRICK: Let's see what Curt has to say.

MR. FÖSSUM: As Mr. Trout mentioned, we have been trying for some time to get this operation under lease. Staff feels that, based on the present lessee of Mr. Gilardi who is Mrs. Lahargoue, that her cooperation in entering this lease and the terms of the lease are such that it's in the best interest of the State to enter the lease at this time. It is an existing structure and our alternatives are to remove the structure. So based on her cooperation and the revenues that will be generated and the fact that this particular commercial operation, while it does occupy a part of the river that's in front of Mrs. Miller's property, the staff feels that it does not interfere with her use of the property.

ACTING CHAIRPERSON ACKERMAN: She is not proposed to be charged any rent in this case; is that correct?

EXECUTIVE OFFICER DEDRICK: That's correct.
MR. FOSSUM: No, it's not. She has an existing pier and had a lease with us and has informed us that she will remove her pier.

ACTING CHAIRPERSON ACKERMAN: Is her pier a commercial pier or private?

MR. FOSSUM: No.

ACTING CHAIRPERSON ACKERMAN: It's under the auspices of the free recreational piers?

MR. FOSSUM: Well, there's no house on the property. So she's not in fact a residential use. It's this pier that's to be removed. But the lease that we are proposing, the description of the lease itself, does not abut Mrs. Miller's property. It's out in the water and technically Mrs. Lahargoue, who is the lessee of Mr. Gilardi will not occupy any abutting lands.

ACTING CHAIRPERSON ACKERMAN: And that's the principal point at issue here?

MR. HUDSON: Is the extension across the property line.

MR. FOSSUM: Projected property line.

MR. HUDSON: We have no complaint about the marina itself. It's the intrusion on what we view, as I will describe, intrusion on the use of the property that Mrs. Miller owns. I should say that the Miller's dock is in no condition to be used at all. It should be torn down.
ACTING CHAIRPERSON ACKERMAN: What latitude does the Commission have here? Can the Commission require removal of a portion of the dock?

EXECUTIVE OFFICER DEDRICK: I would think so, Bob.

MR. HIGHT: The Commission has broad latitude and could require removal of the dock or permitting of the dock at your discretion and the finding necessary is, is there an interference with public use and benefit.

ACTING CHAIRPERSON ACKERMAN: Has the staff had an opportunity to review it from that point and to make a recommendation?

MR. FOSSUM: Yes. We recommend, based on what we feel is the lack of interference of this structure to the adjacent property owner —

MR. TROUT: Mr. Chairman, I think the important issue here is that if, for example, at Clear Lake or even here, if this dock were to go across a series of individual property ownerships and block the access to the waterfront, staff would not be making this recommendation. In this particular case, we feel it is in the best interests. The latitude that the Commission has in approving this is that there's a large expansive frontage on the Miller property and that this small extension here which is about 30 feet from the water line here and extends about 70 feet out, does
not unnecessarily or unreasonably interfere with the access to the property. Now, the lease could be handled at some future time if it did become a problem. But the Commission has the authority to either approve it with the extension across, to approve it limited to this point and require the removal of this area, in which case we may lose our applicant, I don't know. But that's really what's before the Commission.

MR. TAYLOR: Mr. Chairman, just for the record, could I clarify a number of matters? It appears that the dock, as Mr. Trout noted, is out away from the shoreline and that there is passageway for boats to go to the shoreline of the Miller property.

MR. TROUT: It's about 30 feet in here.

MR. TAYLOR: Secondly, the ownership of the petaluma River itself is in the State. It is a navigable river. We've had an Appellate Court recently on that, White versus the State. It still carries a considerable amount of tonnage. So from that standpoint the ownership of the State to the riverbed is clear.

There is a regulation that gives a preference to the upland owner. However, the Commission may find in the best interests of the State that that not be the case in a particular instance and by awarding this lease the Commission would be making a determination that it would
be in the best interest of the State due to the physical configuration of this property and the fact that the State owns the waterway to award the lease or in its discretion it may decide not to do so. But I think that needs to be made clear for the record.

I believe I understand the Miller's attorney's position is that they feel that this interferes with their exercise of rights to come out into the waterway which in the position of counsel --

ACTING CHAIRPERSON ACKERMAN: Mr. Hudson is shaking his head.

MR. TAYLOR: Well, then perhaps we've interrupted him. Maybe we should let him finish.

MR. HUDSON: I don't know --

ACTING CHAIRPERSON ACKERMAN: If you could speak directly to the point and what you are requesting the Commission to do. That would help us in our deliberations.

MR. HUDSON: I don't know whether you want to mark those pictures in evidence or not. I don't know what your procedures are. I'd like to have them before you, whatever process you use.

ACTING CHAIRPERSON ACKERMAN: If you wish, we will so designate as Exhibit A.

MR. HUDSON: If you don't traditionally, I'm not going to worry about it either. I just want to make sure
they get in the record.

ACTING CHAIRPERSON ACKERMAN: We have enough attorneys in the room, I think they can.

MR. HUDSON: I was amazed.

[Thereupon the above-mentioned 13 photographs were marked as Exhibit A.]

MR. HUDSON: Well, the question really is whether that extension across the property line is appropriate. The issue arises because of the agricultural nature of the property and because there are liveaboards who tie up at the marina for long periods of time and there's no provision for disposal of human waste or other sewage or garbage and that is a problem.

MR. FOSSUM: The lease will prohibit liveaboards.

MR. HUDSON: That will help a lot. That means that it won't be necessary for her to have that additional 70 feet either because it won't be economically necessary. I'm glad to hear that, Curt.

The problem with the extension also is that it permits people with boats who have dogs on those boats to tie up and the dogs then jump off the pier, go to the tules and kill sheep. I think that is one of the primary problems.

I have a letter from John Bordessa which I'd like to give the Commission and have you consider it as evidence today. In 1978, ten of his sheep were killed by a dog that
had jumped off the pier. Three weeks ago he lost another lamb. In between those two incidents he's lost about a dozen sheep. So in the last five years, he's lost about two dozen animals to dogs specifically coming along this pier, jumping off and going in for his animals. He's tried to catch up with the owners of the animals, but they are transient in that they can untie their boats and leave or else they've just been uncooperative and John Bordessa is a good neighbor. He doesn't want to cause any problems for Gilardi. So he's just sat back and taken it.

The problem of dogs and sheep is a big one in Sonoma County if it's not in this county. We recently had an episode of a rancher shooting a dog and hanging it by its neck by a sign that says your dog will be shot if it's caught molesting sheep and cattle. Millions of dollars of product are lost every year in our county to dogs. So this isn't a phony issue that I raise. It's a real one and it comes because this is the only commercial enterprise within this large agricultural area.

What we propose is to remove this dock and the three pilings which Mr. Gilardi put in without our consent and with the knowledge that things like this were going to happen because of the intrusion of a commercial enterprise in this area. We want him to take out those pilings, take out the dock and put a fence across the end of it. We also
want to improve the fence in between the two properties, but that isn't where the dogs are coming from. That fence isn't the problem because these dogs come down that are tied up to the dock itself.

That is the sum and substance of our problem.

The other thing is and has bothered me in dealing with the staff, not that they aren't able in doing their job, but it has been a problem of it's a lot easier to get forgiveness than it is to get permission. Mr. Gilardi has put it in, has been able to live with it because Mrs. Miller is also a good neighbor and doesn't want to cause some problem if she doesn't have to. But now she finds herself hung by that goodness, if you will, by not protesting earlier and Mr. Gilardi wants to formalize what in the past he could not have obtained from you, I think, or from the Corps of Engineers if he had made proper application. I think he would have paid attention to the problem of extension into the agricultural areas. I think you would have paid attention to the problem of liveaboards and I think you would have cut him off at the pass, if you will, and contained him within his boundary line.

As your staff has said, you do have the authority to go beyond it, but your rules also say in the general case, in the usual situation, you will not.

Now, I would like to urge the Commission today
not to close down the marina. That's not our intention, but to require the owner to remove the 70 feet of dock space. I saw no evidence in the application and I don't think we'll hear any today that says that that 70 feet is necessary to the owner of the marina to maintain an economic operation. I asked Mrs. Miller whether she's ever seen any boats rafted out during the busiest part of the summer to indicate that they were busier than they could handle, you're not going to see that. I know enough about the operation out there to know that the owner herself probably doesn't know who's tied up there half the time and wouldn't collect rent anyway.

So I would urge you, because of the problems my client has as a neighbor, to limit this lease within the confines of the property boundaries themselves and the extension. I'd be glad to answer any questions if I can.

MR. FOSSUM: Well, yesterday is the first day that staff was informed about this dog problem and we followed up. Joyce Lane contacted the County and they checked their records and there have not been any dog protests in this area in the last four months and some subsequent months in 1981 from this area. The person that was contacted did state that there was as much as $400,000 worth of damage to livestock in the county last year, but this particular location they had no reports.

Our problem is that, I don't know whether the County
has a leash law or not, but that type of activity is one that normally the police powers of the county would be involved in. The Commission could look into it and see whether or not dogs should be prohibited possibly from the dock or something like that. But as far as we know, there's nothing that keeps the dogs from simply crossing upland parcels to get onto the property as well as from any place else. They could swim around it.

ACTING CHAIRPERSON ACKERMAN: Having the 70 feet of dock by itself alleviates the problem?

MR. FOSSUM: It doesn't seem to us that it would.

MR. HUDSON: With fences at the end, I think it would.

MR. FOSSUM: In fact, the proposal to run a fence out into the water would be objected to by the Commission simply as a hazard to navigation. So that wouldn't be allowed in any event.

MR. HUDSON: That wasn't exactly my proposal. The proposal was to fence to the water line at the end, actually at the end of the tules which can't be used anyway and then across the end of the dock itself. I think that would be sufficient because at the end of the dock then you will have boats that will be tied up and prevent the animals from getting through anyway. The problem is that they come across, they can see the sheep. As you can see from the
pictures I gave you, from the end of the dock the animals are out there very obviously. At the back end it's not so much of a problem, especially because there's a barrier there. As for the question of where the dogs came from, I have a letter from John Bordessa which I would also like to present to the Commission, if I might, indicating that he knows that's where the dogs come from and they don't come from the upland areas, partly because Lakeville Highway is a busy road. They don't survive very well out there. Partly because fences on the upland area are better than directly adjacent to the marina itself.

EXECUTIVE OFFICER DEDRICK: Mr. Hudson, this letter from John Bordessa is not dated. Could you give some indication?

MR. HUDSON: It's dated March 18th.

ACTING CHAIRPERSON ACKERMAN: It's dated at the bottom, March 18, 1982.

EXECUTIVE OFFICER DEDRICK: Okay. Sorry.

ACTING CHAIRPERSON ACKERMAN: Susie, what is your pleasure?

COMMISSIONER MORGAN: I think we ought to ask the staff a few more questions, but it's not at all clear to me that taking off 70 feet will have any effect on the problem that you raise of dogs attacking sheep. On the other hand, the point of our giving a blessing and a permit to
something that we would not have approved if it had been
applied for prior to the extra 70 feet put in is a good
point and I don't think the staff has responded to that.

EXECUTIVE OFFICER DEDRICK: Curt, would you respond
to that?

MR. FOSSUM: Well, I think it would be up to the
discretion of the Commission whether they would approve it
if it hadn't actually been constructed yet. The criteria
is rather liberal in giving the Commission extreme discretion
in which they can find simply that it's in the best interest
of the State to issue a lease.

ACTING CHAIRPERSON ACKERMAN: Is this part of our
effort that was initiated by the chairman some time ago to
go out and pick up people that were trespassing?

MR. FOSSUM: That's correct. We have several
people in this vicinity in which we have gotten under lease
recently and after investigations have gone on for years
and we are trying to, as you can see, there are quite a few
structures adjacent to the water there and this was, as was
mentioned, the only commercial one in the area. We felt
that the importance of bringing this commercial operation
under lease would be a big step in bringing the rest of these
people under permit as well.

ACTING CHAIRPERSON ACKERMAN: Is there a precedent
for this type of situation before in going out and leasing
with trespassers?

MR. FOSSUM: It becomes somewhat difficult to negotiate with a potential lessee when part of your conditions would be removal of half their operation. It's difficult enough and in many instances we have to result to litigation to bring people under lease. So it tends to be a situation that when we finally do find out about a trespass that is in existence, that in negotiating and trying to bring these people under lease, part of the give and take would include the reasonableness of our attitude to their existing operation as well as their reasonableness.

ACTING CHAIRPERSON ACKERMAN: If we made a change today in the terms of the lease, then it's very likely in your opinion that the terms would be rejected or you would have to go back and do some different negotiations?

MR. FOSSUM: It would certainly be a potential for them not wanting to accept that. It may not be quite half, but it would be at least over 30 percent of their docking space is actually past that projected line. Once again, it's not a property line out there. We own the river. It's simply projections.

ACTING CHAIRPERSON ACKERMAN: Is it appropriate then today to not approve this item but, instead, have you entertain Mr. Hudson's suggestions or his comments within the scope of negotiations with the owner to see if there's
possibly not his solution but some other way to see if they
can take care of the problem of policing on the dock or some
other physical structure, something like that?

EXECUTIVE OFFICER DEDRICK: I think that would
be entirely appropriate.

MR. FOSSUM: We can contact them. We can also
mention the problem with the dogs to see if we can't include
a provision at least to prohibit dogs.

ACTING CHAIRPERSON ACKERMAN: If you're going to
ask them to entertain any capital expenditures as well, I
think that would affect some terms of the lease that you've
entered into as well.

MR. FOSSUM: We may have an additional problem.
The lessee who we are trying to bring under lease may or
may not own the structures. It may be Mr. Gilardi that
actually owns the dock.

MR. HUDSON: I think that's correct.

MR. FOSSUM: His acquiescence in that possible
removal could be somewhat more difficult.

ACTING CHAIRPERSON ACKERMAN: My position, I'm
sensitive to the concerns you've raised, Mr. Hudson, and
perhaps with your okay, Susie, we'll not approve this item
today and have the staff see what efforts they can undertake
to see if we can get some compromise solution out there.

EXECUTIVE OFFICER DEDRICK: All right. Thank you.
MR. TAYLOR: For purposes of the record we'll say that 13 photographs have been submitted which have a date on them of 3-22-82 of various portions of the properties involved and showing the condition of the boat yard. Those will be put in the staff's file and be made a part of the record of this hearing and the same will be true of the letter.

MR. HUDSON: There were three letters actually.

ACTING CHAIRPERSON ACKERMAN: In fact, Bob, do we specifically have to reference each letter? I have one dated March 18, 1982, from John Bordessa, and there are two other documents.

MR. HUDSON: One dated November 16, 1972, addressed Dear Sir and signed Clarence Gilardi, and the other one dated November 21, 1972, addressed to Clarence Gilardi by George J. Schlenker.

ACTING CHAIRPERSON ACKERMAN: Those will be entered as part of the record and if the staff would undertake their efforts and report back to us at a subsequent meeting.

MR. HUDSON: Thank you very much.

[Thereupon the above-mentioned letters were marked as exhibits.]

ACTING CHAIRPERSON ACKERMAN: Thank you. So much for the consent calendar.
ACTING CHAIRPERSON ACKERMAN: I hope that's not an omen of things to come.

We will then continue with the regular calendar items. Number 26 is off calendar. Item Number 27, we're amending a Minute Item from November 23rd, '81 concerning a boundary line agreement. Any controversial issue on this?

MR. TAYLOR: No.

COMMISSIONER MORGAN: I don't remember, and staff, maybe you do, was this a contested item when we heard it previously?

MR. TAYLOR: No, it was not.

MR. HIGHT: No.

MR. TROUT: No, it was not.

ACTING CHAIRPERSON ACKERMAN: Any objection?

COMMISSIONER MORGAN: No.

ACTING CHAIRPERSON ACKERMAN: Without objection, Item 27 will be deemed approved.

Item 28, City of Long Beach and Wrather Port Properties, approval of first amendment to the lease between the City of Long Beach and Wrather Port Properties, concerning the property around the QUEEN MARY. Is there any comments the staff wishes to make?

MR. TROUT: Unless you have questions.

ACTING CHAIRPERSON ACKERMAN: I've examined the
documents.

Anyone in the audience who wishes to appear on
the item?

Without objection, then, the item will be approved.

COMMISSIONER MORGAN: I have a question, Dave.

I thought, and I remember this was a long time
ago when we discussed this issue, but it was my
understanding that we expected to see some change to the
lease once the Wrather Corporation entered into the marina.
We expected to see some increased rental coming from this.
Now, do I remember incorrectly?

MR. TROUT: No. You remember exactly correct.

Mr. Stevens is here from Wrather on another matter, but he's
in the audience and might want to respond. He has presented
to staff and to the City a rough plan of the development
of the area and that would result in an amendment that I
think, Commissioner Morgan, you remember and it would amend
the lease terms. What this does, you may recall, that the
chairman at the time had a question about the lease terms
were renegotiated after the first loan was paid off and he
said what if they left one dollar owing and never paid it
off, then the lease would never be adjusted. So what has
been put in here is a 30-year window whether the loan is
paid or not. But there is a rather expansive plan being
worked up by the Wrather people for the development of the
whole area. That's just commencing its process down the
road for approval.

COMMISSIONER MORGAN: Okay.

ACTING CHAIRPERSON ACKERMAN: Do we have further
options as well to look at changes in rent review schedules
pending the type of development and schedule for development
that's to be undertaken in the area?

MR. TROUT: Unless there is staff that wants to
correct me, my understanding is that as the developments
come on line over some 20-year period, there will be things
brought before the Port Commission and the State Lands
Commission involving that property.

ACTING CHAIRPERSON ACKERMAN: That was my
understanding when we approved it.

COMMISSIONER MORGAN: Okay.

MR. TROUT: At the moment it's not certain exactly
what the development would look like. There could be
everything from cruise ship terminals to marine institutes,
to motels and restaurants.

COMMISSIONER MORGAN: Okay.

ACTING CHAIRPERSON ACKERMAN: All of those plans
are subject to specific approval by the Commission anyway.

COMMISSIONER MORGAN: A year and a half ago we
asked the City and Wrather Corporation to negotiate an
amendment that would provide for renegotiation of rental
in the event that they exercise the option to build the marina.

MR. TROUT: Your approval was conditional on them doing it.

COMMISSIONER MORGAN: So now they've come to some agreement and that's what is before us?

MR. TROUT: Yes.

COMMISSIONER MORGAN: And the agreement is, let's see, that the rent will be reviewed or increased or reconsidered in the marina area when in the marina area the payment of the first permanent loan occurs or 30 years from the funding of the loan. What does that mean?

MR. TROUT: That gives you an absolute window so that they couldn't extend the adjustment on the marina out forever. Most of the other facilities are on a percentage of net or some other thing that wouldn't require a rent review window.

ACTING CHAIRPERSON ACKERMAN: The concern was made a year and a half ago that the owner in this case could either refinance the property or through some other financial means simply extend that final date and never be subjected to any rent review based on the improvements they made in the property. The Commission at that time wanted to make sure that this didn't happen.

COMMISSIONER MORGAN: So what we provide for now
is a 30-year rent review?

MR. TROUT: Or if the loan is paid off earlier, Mr. Stevens is here if you want to get into greater detail.

MR. STEVENS: Briefly what this is is merely reflecting the negotiation that was done up here in front of your Commission and it's just taken a long time and there was some other housekeeping cleanup. There's no change in what you're seeing here than what the Commission agreed to.

With respect to the marina, it was negotiated here that because Mr. Cory was concerned that, as was stated, that we could just never pay off a loan and the State would never get a chance to amend the percentage paid for the slips and that window was closed at 30 years because if we didn't finance for 20, we'd still have only ten years before it would be renegotiated. There's no change in what the Commission has already agreed to.

Just for information purposes, we were obligated to submit a master plan within a certain time period and we just recently submitted it. So it will be working its way up to the Commission over a period of months.

MR. TAYLOR: For the record, Mr. Stevens, could you identify yourself?

MR. STEVENS: Richard S. Stevens, Wrather Corporation.

ACTING CHAIRPERSON ACKERMAN: What's the time
frame for submission of the overall development plan to the Commission? Are we looking at --

MR. STEVENS: Perhaps I can add, the Port of Long Beach had 60 days to act in terms of whether or not they approved the plan in concept. Monday of this week they gave a conditional approval subject to legal and environmental clarification of several elements in the plan. Staff at this level as well as staff at the Port level as well as the AG's office will be looking at those issues that are in question, resolve them and then it would start through its normal permit process environmentally and otherwise.

So we'll keep everybody advised. Nothing's happening yet.

COMMISSIONER MORGAN: Thanks.

ACTING CHAIRPERSON ACKERMAN: Any further questions, Susie?

COMMISSIONER MORGAN: No.

ACTING CHAIRPERSON ACKERMAN: Without objection, Item 28 is deemed approved.

Item 29 is off calendar.

Item Number 30, California Department of Forestry. We're going to approve Management Plans for some forest demonstration projects. Any comment from the staff?

COMMISSIONER MORGAN: Is this the Christmas tree place?

EXECUTIVE OFFICER DEDRICK: One of them is.
ACTING CHAIRPERSON ACKERMAN: It's for Christmas trees, right?

MR. TROUT: Yes.

COMMISSIONER MORGAN: Are we working with the Department of Forestry on very many demonstration projects?

MR. TROUT: Yes, ma'am.

COMMISSIONER MORGAN: What have we done so far?

MR. TROUT: We have ten parcels that are now under management agreement with the Department of Forestry. They are required to submit a management plan on those parcels for Commission approval. You have approved one already. This is the second and third ones, if I recall correctly. Forestry is tentatively talking to us about an additional ten parcels. When we identify the parcels, we'll seek your advice and concurrence.

COMMISSIONER MORGAN: Okay.

ACTING CHAIRPERSON ACKERMAN: Any further questions?

COMMISSIONER MORGAN: No.

ACTING CHAIRPERSON ACKERMAN: Without objection, Item 30 will be deemed approved.

Item 31 is Western Title Insurance Company, preparation and processing of a State patent to be issued in the name of D. J. Canty, for 40 acres of land in Shasta County. Any questions?

EXECUTIVE OFFICER DEDRICK: The operational point
was that he's had it since 1899.

ACTING CHAIRPERSON ACKERMAN: That's right, 1899. We're finally getting around to it.

Anyone in the audience on Item 31?

Without objection, Item 31 will be deemed approved.

Item 32 is the highest qualified bidder selection on award of oil royalty sales. What was the bid?

EXECUTIVE OFFICER DEDRICK: 8.1 cents.

ACTING CHAIRPERSON ACKERMAN: 8.1 cents.

EXECUTIVE OFFICER DEDRICK: The 15 cent will be on the next one.

ACTING CHAIRPERSON ACKERMAN: Okay. Any question from Commissioners?

COMMISSIONER MORGAN: No.

ACTING CHAIRPERSON ACKERMAN: Without objection, Item 32 will be approved.

Item Number 33, Shell Oil Company. They're asking for authorization to conduct a public hearing on subsidence and pollution control for oil and gas leases.

COMMISSIONER MORGAN: Is this the public hearing?

MR. HIGHT: This is the public hearing.

ACTING CHAIRPERSON ACKERMAN: This is on Solano County.

MR. TROUT: This is authorization to conduct the
hearing. This is not the hearing.

COMMISSIONER MORGAN: Okay. Got you.

ACTING CHAIRPERSON ACKERMAN: Anyone in the

audience on Item 33?

Without objection, Item 33 will be deemed

approved.

Item 34, Newmont Exploration Limited. They're
asking for a two-year permit for prospecting for gold and
silver on about 600 acres. Any issue on this item, any
questions?

COMMISSIONER MORGAN: No.

ACTING CHAIRPERSON ACKERMAN: Anyone in the

audience on Item 34?

It will be deemed approved without objection.

Item 35, in the Long Beach Operations, monitoring
of possible subsidence and seismic hazards in the Wilmington
oil field. I understand this is just a continuance of the
annual subsidence monitoring program. Any questions from
Commissioners?

COMMISSIONER MORGAN: No.

ACTING CHAIRPERSON ACKERMAN: Anyone from the

audience?

Claire, do you have a point on this one?

EXECUTIVE OFFICER DEDRICK: No. I was just going
to point out that Mr. Thompson is here if you have any
questions on the Long Beach Operations.

COMMISSIONER MORGAN: Where is he?

EXECUTIVE OFFICER DEDRICK: Back row.

MR. TAYLOR: He's in the last row.

ACTING CHAIRPERSON ACKERMAN: Item 35 will be
deemed approved without objection.

Item 36, City of Long Beach, the notification of
intent by the City to spend $79,000 from its share of the
oil revenues for a capital improvement project. I understand
this is resurfacing a parking lot that has no connection
to the Long Beach Grand Prix; is that correct?

MR. TROUT: That's correct.

EXECUTIVE OFFICER DEDRICK: That's correct.

ACTING CHAIRPERSON ACKERMAN: Any questions from
Commissioners on this?

COMMISSIONER MORGAN: No.

ACTING CHAIRPERSON ACKERMAN: Anyone in the
audience on Item 36?

Item 36 will be deemed approved.

Item 37. This is approval of a Land Bank Option
Agreement with the Trust for Public Lands for 40 acres
located near Suisun City in Solano County. Anyone in the
audience on Item 37?

Any questions from Commissioners?

COMMISSIONER MORGAN: No.
ACTING CHAIRPERSON ACKERMAN: Item 37 will be deemed approved.

Item 38, Usonia, Incorporated, compromise of a Title Settlement Agreement, and this ties into the last item of approval of Land Bank as an exchange parcel.

MR. TROUT: Mr. Chairman, you previously approved the settlement and this will take 31 percent of the item you just approved.

ACTING CHAIRPERSON ACKERMAN: Anyone in the audience on Item 38?

Any questions, Susie?

COMMISSIONER MORGAN: No.

ACTING CHAIRPERSON ACKERMAN: Item 38 will be deemed approved.

Item 39, Title Insurance and Trust, approval for authorization for the Attorney General and the Commission to litigate concerning hazards in Malibu.

COMMISSIONER MORGAN: We should do it.

ACTING CHAIRPERSON ACKERMAN: We should do that.

Anyone in the audience on Item 39?

Any questions from Commissioners?

COMMISSIONER MORGAN: No.

ACTING CHAIRPERSON ACKERMAN: Greg, one question on this. Is this the only area in which we're proceeding to remove hazards or is this the first step in a hazard
removal effort along the beaches?

MR. TAYLOR: Well, the Commission has been engaged
in an extensive one in Ventura and Santa Barbara Counties.
You'll recall that there was an appropriation for it with
a machine. I don't know the extent to which staff is going
on any of the others.

MR. TROUT: I think, Mr. Chairman, the significant
difference is in other areas where we have been unable to
find the person who put the facilities in to begin with,
through federal money and through State money and through
the contributions of some oil companies we've been removing
hazards. In this case, it's pretty clear from the record
who installed those groins. So we are basically looking
to the person who originally installed them.

ACTING CHAIRPERSON ACKERMAN: Any questions?

MR. TAYLOR: You'll recall that we had a prior
action that we discussed and the Title Company doesn't
agree with us. That's why we can't reach a settlement.

ACTING CHAIRPERSON ACKERMAN: These are metal spikes
that are just under the surface of the water?

MR. TAYLOR: No. Some of them are rocks and all
kinds of things.

ACTING CHAIRPERSON ACKERMAN: Okay. Any questions,
Susie?

COMMISSIONER MORGAN: No.
ACTING CHAIRPERSON ACKERMAN: Item 39 will be deemed approved without objection.

Item 40, Mrs. Anne Houk. This is another authorization for the Commission and the Attorney General to take steps including litigation to collect rent. Mr. Hight, do you have a comment on this?

MR. HIGHT: Hopefully with this authorization we can either bring the facility under lease or collect the rent.

ACTING CHAIRPERSON ACKERMAN: Is there anyone in the audience on Item 40? I understand someone might appear today.

Any objection?

COMMISSIONER MORGAN: No.

ACTING CHAIRPERSON ACKERMAN: Is there any situation in this that's at all similar to the other one we discussed?

MR. TROUT: Not as far as --

EXECUTIVE OFFICER DEDRICK: Strictly a price tag.

ACTING CHAIRPERSON ACKERMAN: Okay. Without objection, Item 40 then will be deemed approved.

Item 41, Mobil/Redwood Shores. This is approval to execute an amended exchange agreement. This is just to allow an acceptance of a letter of credit, I understand.

MR. HIGHT: Yes, Mr. Chairman.
ACTING CHAIRPERSON ACKERMAN: Any question on Item 41?

COMMISSIONER MORGAN: Redwood Shores and Mobil are one and the same?

MR. HIGHT: Yes.

COMMISSIONER MORGAN: Staff started out talking about Redwood Shores and then continued the discussion using Mobil as the party, but it's the same.

MR. HIGHT: They're a partnership.

COMMISSIONER MORGAN: That's fine.

ACTING CHAIRPERSON ACKERMAN: Anyone in the audience on Item 41?

Without objection, Item 41 will be deemed approved.

Item 42, San Diego LAFCO. They're asking us to approve a boundary line.

MR. HIGHT: Approve the legal sufficiency of their description.

MR. TROUT: I think the staff may have misled the Commission in the briefings because in re-review of the calendar item itself, and Mr. Fossum is here to answer questions, I had told you in the briefings that we were only approving the boundaries. The calendar item on page 170 you are approving the boundaries and the incorporation. So this is not a two-step process as is typical.

COMMISSIONER MORGAN: I'd like to see Exhibits
A and B.

ACTING CHAIRPERSON ACKERMAN: Is there any objection locally to the incorporation? Was there any objection opposed at LAFCO?

MR. FOSUM: This is something LAFCO -- Curtis Fossum.

LAFCO has been working for six months or more. Local cities in the San Dieguito area have been proposing incorporation. They've had some disputes over where the boundaries should be. If the exhibits aren't there --

EXECUTIVE OFFICER DEDRICK: They aren't.

MR. FOSUM: The northern boundary of the proposed City of San Dieguito will be the southern boundary of Datiguito's Lagoon, and that will be excluded. It will be included within the area of Del Mar. So there won't be any tide and submerged lands there. The southern boundary will include San Elijo Lagoon which includes sovereign tide and submerged lands. Also, they are proposing to include the area offshore to the three-mile limit. Therefore, there are lands under the jurisdiction of the State Lands Commission.

You are being asked to approve the propriety of the boundary of this incorporation and additionally I included, because of our somewhat extended problem with Del Mar, I included a provision in there that we also do
not object or we approve as the landowner this particular incorporation.

COMMISSIONER MORGAN: How long would it take to get Exhibits A and B for us to look at? Maybe we could hold the item.

MR. TROUT: We do have egg on face, I have to admit.

COMMISSIONER MORGAN: I'm sorry.

EXECUTIVE OFFICER DEDRICK: How long will it take us to get it?

COMMISSIONER MORGAN: You always have everything here. I didn't mean to embarrass you. I just thought someone forgot to give me my copy.

MR. HIGHT: Fifteen minutes at most.

COMMISSIONER MORGAN: Are they available?

ACTING CHAIRPERSON ACKERMAN: Is there a time difficulty that this has to be approved at this meeting?

MR. FOSSUM: They have been very much aware of our processes and the election is not planned for several more months. So I don't think there would be any problem putting it off.

ACTING CHAIRPERSON ACKERMAN: Why don't we just wait until the next meeting, then?

COMMISSIONER MORGAN: Okay.

EXECUTIVE OFFICER DEDRICK: I would rather like to do that.
ACTING CHAIRPERSON ACKERMAN: Normally, Jim, didn’t you say it was a two-step process to approve the boundaries?

MR. TROUT: Typically those are annexations.

MR. FOSSUM: Excuse me. Mr. Taylor does remind me that technically under the Code we have a 45-day period in which the Commission must approve or reject the description, otherwise it is deemed approved. We have a difficulty every time one of these annexations or incorporations take place because of the timing of the Commission meetings.

ACTING CHAIRPERSON ACKERMAN: How much time do we have left?

MR. FOSSUM: A day or two, maybe.

[Laughter.]

ACTING CHAIRPERSON ACKERMAN: Let’s see if we can get the items and take this as the last item on the agenda.

COMMISSIONER MORGAN: Otherwise, I would be prepared to move denial without prejudice so that we could have an opportunity to review them.

EXECUTIVE OFFICER DEDRICK: That might be the easiest.

ACTING CHAIRPERSON ACKERMAN: We’ll hold it and see if we can do it.

Item 43 is off calendar.

Item 44, State Lands Commission item,
administrative action. We're to approve the replacement of the alternate on BCDC who is just leaving the room.

[Laughter.]

EXECUTIVE OFFICER DEDRICK: Diane.

ACTING CHAIRPERSON ACKERMAN: You must be pretty confident.

[Laughter.]

ACTING CHAIRPERSON ACKERMAN: She won't even come before us for questioning.

Any questions?

COMMISSIONER MORGAN: No. That's fine.

ACTING CHAIRPERSON ACKERMAN: I'm happy to vote on this action. Without objection, Item 44 will be deemed approved.

COMMISSIONER MORGAN: I think we should say thank you to Dick who has represented us longer than I can remember.

MR. GOLDEN: Longer than 11 years.

EXECUTIVE OFFICER DEDRICK: Probably as long as BCDC has been there.

ACTING CHAIRPERSON ACKERMAN: I'm interested in how did Dick finagle his way out of this.

MR. GOLDEN: It's been a privilege. I really appreciate it. Thank you very much.

COMMISSIONER MORGAN: You've been an excellent
representative. We appreciate your work.

ACTING CHAIRPERSON ACKERMAN: I hope that you will be providing some assistance to our new appointee --

MR. GOLDEN: Oh, definitely.

ACTING CHAIRPERSON ACKERMAN: -- for an in-service training program.

MR. GOLDEN: Right.

EXECUTIVE OFFICER DEDRICK: I'd like to say just a word about Dick. I got to know him before I'd ever dreamed I'd be in government. Through his actions on BCDC he is very highly thought of by the other Commissioners. Chairman Joe Houghteling is particularly sorry to lose Dick because they go back to the beginning together. I really think that we have a right to be proud of our staff for the good work that they do and Dick has represented us beautifully. I'm sure Diane will be just as good 11 years from now.

ACTING CHAIRPERSON ACKERMAN: Thank you very much, Dick.

MR. GOLDEN: Thank you.

ACTING CHAIRPERSON ACKERMAN: Item 44, then, will be deemed approved.

[Thereupon, agenda Item 45 was submitted under separate cover.]

COMMISSIONER MORGAN: Item 42.
ACTING CHAIRPERSON ACKERMAN: Item 42.

EXECUTIVE OFFICER DEDRICK: I'd like to ask staff if the Commission follows Commissioner Morgan's suggestion of dismissing it without prejudice while we find some maps that tell us more than the ones we have today, would there be any problem with that that you foresee?

MR. TAYLOR: No.

EXECUTIVE OFFICER DEDRICK: Then I'd like to recommend that we do that. I don't think that the material that is here is going to answer your question.

COMMISSIONER MORGAN: Then I'll move that we dismiss without prejudice and bring it back --

MR. TAYLOR: Deny.

COMMISSIONER MORGAN: Deny.

ACTING CHAIRPERSON ACKERMAN: It is moved that Item 42 be denied without prejudice. That vote should be recorded as unanimous.

In the absence of any other calendar items, the meeting is adjourned.

[Thereupon the State Lands Commission Meeting was adjourned at 12:30 p.m.]

--o0o--
CERTIFICATE OF SHORTHAND REPORTER

I, CATHLEEN SLOCUM, a Certified 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, Cathleen Slocum, and thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 12th day of April, 1982.

[Signature]

CATHLEEN SLOCUM
Certified Shorthand Reporter
License No. 2822

PETERS SHORTHAND REPORTING CORPORATION
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MEETING
STATE LANDS COMMISSION

In the Matter of:

CONSIDERATION BY COMMISSION OF
FUTURE MANAGEMENT OF CERTAIN
SUBMERGED LANDS AT SANTA
CATALINA ISLAND RELATIVE TO
COMMISSION LEASE PRC 3639.1

DEPARTMENT OF TRANSPORTATION
BASEMENT BOARDROOM
1120 N Street
Sacramento, California

EXCERPT

Tuesday, March 23, 1982
10:40 A.M.

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

PETERS SHORTHAND REPORTING CORPORATION
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MEMBERS PRESENT

David Ackerman, Acting Chairperson, representing Mike Curb, Lt. Governor
Susanne Morgan, Commissioner, representing Mary Ann Graves, Director of Finance

MEMBERS ABSENT

John Jervis, representing Ken Cory, Controller

STAFF PRESENT

Robert Hight, Chief Counsel
Claire Dedrick, Executive Officer
Jack Rump, Assistant Chief Counsel
Diane Jones, Administrative Assistant
Jane Smith, Secretary

ALSO PRESENT

N. Gregory Taylor, Assistant Attorney General
Jan Stevens, Deputy Attorney General
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ACTING CHAIRPERSON ACKERMAN: Item 45, Santa Catalina Island, next-to-the-last item on the agenda.

The reason this item is on the agenda, perhaps I can open with a brief reason. The Commission asked that the staff study this issue, take another look at it and come back when prepared to the Commission to lay out very specifically what the options are to the Commission for further study and further action concerning the lease operations at Catalina Island. The staff is prepared to do so today. That's why you have not had specific actions proposed, solicit, or sent out to you because the staff has presented this in a form of a discussion item so that the Commission may decide what course of action it's going to take.

What I would like to do, Susie, if it's okay with you, is have the staff briefly make their presentation on their study so far to the Commission. Then I've received four different requests to appear and testify before the Commission, five, I believe.

I would like to give those people the opportunity to respond to the staff's comments and then I would anticipate the Commission to discuss it and make a decision if one is in order.
Do you have any problem with that approach?

COMMISSIONER MORGAN: That's fine.

ACTING CHAIRPERSON ACKERMAN: Claire.

EXECUTIVE OFFICER DEDRICK: Yes. What the staff has done is to thoroughly research the legal questions that relate to your authorities here and you have received that information on attorney-client relationship, if I'm saying that right, Mr. Taylor?

MR. RUMP: That's correct.

EXECUTIVE OFFICER DEDRICK: We also have looked at the time period which different sorts of reviews would require. There are a range of options that we can pursue. I think you're all cognizant of those options and of what time and legal restrictions you have. That's the substance of the staff report.

ACTING CHAIRPERSON ACKERMAN: Okay. What I'd like to do is briefly lay out at least my own thoughts on this first and then at least provide a basis and a context in which those people who are going to testify are going to testify so we're not just talking in the dark.

Personally, my own interests are to, one, very carefully and methodically, try to further examine the leasing and subleasing, not the subleasing but the master lease operations, at Catalina. What I will be prepared to propose is to ask the staff for a period of 90 days to
study the prior bid proposal and prior bid proposals and
the framework for those proposals, come back to the
Commission within 90 days with its recommendation as to the
content of a new master lease proposal if one is in order
per the staff's recommendation that could reflect either
the existing lease or modifications to it as determined by
the staff. At our last meeting, we had considerable
discussion concerning pros and cons on the lease,
environmental concerns, legal questions and the like. It's
those questions which I would like the staff to specifically
address in coming back to the Commission with a proposal.

The last time we had limited time with which to
do this. This time I want to make sure that we give the
staff adequate time to consider all ramifications and all
possibilities in their efforts. I'm not planning to ask
any other direction or seek any other resolution at this
time other than to ask the staff to come back to us in 90
days with a detailed proposal for the Commission's action.
That proposal would also have to be given to all interested
parties enough in advance so that any public comment that
was appropriate could be given to the Commission and so that
all individuals have time to study the document and prepare
such comments.

That's why I'm looking at the 90-day time period
on it.
With that, Susie, unless you have any questions which I imagine you probably do.

COMMISSIONER MORGAN: Where you're heading is toward a new bid process; is that true?

ACTING CHAIRPERSON ACKERMAN: I think our options, at least legally that are being looked at, is the Commission can do a variety of things. Number one, we could open it up to an entire new bidding process. Number two, we could limit the process to selected participants which the Commission may wish to select, possibly limited to the bidders that have already expressed an interest in operating at Catalina or, third, do nothing at this particular time frame since a master lessee already is in place and we have the option of substituting that lessee over the first three years of the lease. We could act any time prior to, if staff advises me correctly, October of the third year to substitute a lessee.

So our options would be somewhere within a three-year time frame. We could do nothing this year or next year except further study the issue to make a determination. In 1984, would it be?

EXECUTIVE OFFICER DEDRICK: Yes. October 1st, '84, for operation.

COMMISSIONER MORGAN: You think you're going to outlast me. I think you are, too.
[Laughter.]

ACTING CHAIRPERSON ACKERMAN: So that's what I'm looking at as three options.

What I'd like the staff to do, the way I'm leaning, which I've already discussed with some individuals in the audience in some meetings in Newport, is looking towards some way that the Commission may receive new proposals on a limited and restricted basis to mirror as close as possible the existing operations on the Island. That was our original intent in seeking bids before and I think we should be consistent in soliciting revised proposals on that same basis again without going to an entire, brand-new, public bid package.

I don't know if I confused the issue or not, but that's what I'm looking at as my options. Do you want to comment?

COMMISSIONER MORGAN: I think we ought to hear from the people who are here and see their reactions to that. It's perfectly fine with me if you want to ask the staff to do some more work. It's my feeling that unless we're talking about creating a whole new environment at Catalina, then what we're talking about is ending up at the point where we have to say that the only workable master lessee is the upland owner. I don't know if additional information will bring you to that conclusion or to some other conclusion.
But if you're interested in getting additional staff work, fine. I mean, any more heads on this could surely bring new ideas.

EXECUTIVE OFFICER DEDRICK: Commissioner Ackerman, before you open, we have a couple of communications to the Commission which should be put into the record.

ACTING CHAIRPERSON ACKERMAN: Let me note for the record that we've received one letter from Mr. Richard D. Glenn, the Catalina Oyster Company, asking the Commission to revise the terms of the current lease and take some other relative actions concerning the Island. We also have received correspondence from the law firm of Hertzberg, Koslow and Franzen, asking, among other things, to restrict further consideration of a new lease. These will be entered officially into the record.

Let me start in the order that I received these. Mr. James Radcliffe, attorney for the Island Navigation Company.

MR. RADCLIFFE: Mr. Chairman, Miss Morgan, staff, Mr. Chairman, I must confess that I am not clear, particularly in view of the chairman's statement as to the nature of these proceedings today. It was my original understanding that each of the bidders had been invited to Sacramento and came to Sacramento to present to the staff.
input which was to have been, I understood, communicated
to the Commission and out of which would come some guidelines
for today's hearing. In view of the chairman's original
statement of the various options and of the chairman's
inclination for the 90-day staff study, I would say first
of all that, absent any guidelines, it had been my intention
to suggest to the Commission that there be further staff
study. In view of the fact that the staff report which was
submitted on December the 17th, I believe it was, when the
prior action was taken or a decision was made to take
subsequent action which ultimately did happen, it seemed
to me that the staff study as a result of the fact that the
staff, I'm sure, did not have time to familiarize itself
with the operations on Catalina Island and did not have time
to examine into the factual basis, if any, of some of the
bids, that the recommendations or that the report made to
the Commission by the staff contains some rather glaring
errors of fact.

I'm sure that these errors were a result of what
I have just stated, a lack of time. But I think the
operation in Catalina Island as it has existed over the years
and how it is working and how it has worked is something
that the Commission should in making the decision that it
is going to make for a lessee for a 12-year period or
14-year period or whatever, the balance of the 15-year term,
that the Commission owes to itself and to the people of the State of California, to be fully conversant with the facts as to how the operation has run, the potential gross revenues from the operation in Catalina Island and the effectiveness of the potential bidders.

It was our position when we responded to the original bid that the Commission and the solicitation to bid was inviting a bid that would have either negative or no environmental impacts so it would be either categorically exempt or would be able to simply replace that which was in existence. We felt that our bid had a negative impact. We were going to remove from the Island operations which presently existed on the Island.

ACTING CHAIRPERSON ACKERMAN: You mean negative not in an environmental way, but negative in a positive way?

MR. RADCLIFFE: That's correct. Yes.

In other words, rather than have an impact, it would have not only no impact but it would remove some of the impact of this operation on Catalina Island.

Apparently information was presented where the staff obtained information which indicated that was not the case and that was presented in the staff report as one of the bases for which Pioneer and Island Navigation Company would necessitate an environmental impact report. Now, as the Commission may recall, at the time of the hearing the
staff report did not say that but during the hearing it was subsequently developed that that apparently was the staff opinion.

It seems to me in these times when you're dealing with revenues to the State of California, when we're dealing with property owned by unquestionably the State of California, that it behooves all of us to say that the people of the State, not only the users of the facility, but all of the people of the State of California are not short-changed in which bid and the type of bid and the type of lease that the State enters into. It seems to me that, as I understand this whole process developed, historically there was an operator paying about $19,000 a year for tidelands and submerged lands where the gross revenues ranged, depending upon which estimate you read, three-quarters of a million to a million and a half dollars a year. As I further understand it, there was another party who volunteered to double that and it got redoubled in the process and ultimately led to the notion by the Commission that perhaps open bidding was a way to really determine what that leasehold was worth.

I would suggest to the Commission that with that history in mind in this specific situation, that I would concur certainly with the chairman's notion that there should be an in-depth staff study. I think perhaps 90 days
is an appropriate period of time to allow the staff the time
which they did not have initially and I would suggest that
during that period of time it might be appropriate to have
an adversary administrative hearing in which each of the
bidders and the staff were parties to develop what in fact—is the situation in Catalina Island today and what in fact
is projected by the lease that is anticipated.

I personally believe that that would be
enlightening, both to the Commission and to various of the
bidders, but I think it's not only important, as has been
said, that justice be done, but it must also appear to be
done. I think the Commission, if I may say so, and the
bidders, are obliged to assure the people of the State of
California that they're getting a fair shake. That all of
the revenues which are potential revenues are brought out
into the open and are considered by the Commission in
awarding the bid. I would suggest to the Commission that
that has not been the case and that there are revenues which
the Commission is unaware that would add to the income to
the State of California.

ACTING CHAIRPERSON ACKERMAN: I would expect the
staff work to address those points as well.

MR. RADCLIFFE: The only other suggestion I would
have in view of the chairman's opening statement, would be
as I have said, first of all, an open hearing to assist the
staff by adversary proceedings. That the staff specify to the various bidders what it is in those bids that caused the staff to determine that there was some environmental impact that should be addressed, and to allow each of the bidders, if such is the case -- and I would submit it's true of all three bidders, even though I know that the Island Company Conservancy position has been that they have been there and, therefore, there is no environmental impact. I don't agree with that notion ed on the history of how this has developed.

I think in all fairness if that is the case and if the staff has specifics that it feels would trigger an environmental impact, that each bidder be allowed to amend his bid so that such an impact would be avoided because that, after all, was the condition of the original solicitation to bid.

With that idea in mind, I would like to say that Island Navigation Company as one of the bidders finally would say that the Anglo-Saxon concept of fair play, it seems to me, dictates that all of the bidders having gone to expense -- I've heard the figure in the case of one bidder of $35,000, and I assure the Commission, that's not us -- but considerable money and considerable time and considerable effort not only has been expended by the staff but has been expended by each of these bidders. They have submitted bids
in good faith, all three, I'm sure. They're out on the table for the world to see. There was adequate notice, I feel, for those who were interested at the time to get involved. I would suggest finally and in concluding that it be considered by the Commission that the staff be directed to conduct its study in the next 90 days to a process which would involve the three original bidders with the amendments that I have suggested if there is an environmental impact problem.

I thank you, Commissioners, for your time.

ACTING CHAIRPERSON ACKERMAN: Thank you very much.

MR. TAYLOR: Mr. Chairman, may I make a statement because there has been some reference made in the last presentation to the fact that there is some continuing nature to the bids that were submitted in December. The Commission's action was that those bids were rejected. They no longer had any further force and effect and what is before the Commission at the present time is the consideration under the lease which was issued in December as to whether or not there shall be a substitution. I think that for the record that must be made clear that the bids are no longer in effect. We have so advised you.

It does not preclude the Commission from reentertaining them or having them resubmitted or developing a proposal. But the matter that happened in December has
now been concluded and this is proceeding under a new
bill game which is with respect to the option that is left
to the Commission to substitute somebody.

ACTING CHAIRPERSON ACKERMAN: Point well taken.

MR. RADCLIFFE: I understand.

EXECUTIVE OFFICER DEDRICK: Mr. Chairman,

ACTING CHAIRPERSON ACKERMAN: Mr. Harold Lingle.

COMMISSIONER MORGAN: While you're walking up here,
I wanted to find out how many speakers there are to see if
we should take a break and make a few phone calls or
continue on.

ACTING CHAIRPERSON ACKERMAN: There are four more
speakers, and I don't think with the limited discussion that
we're having, it will take all that long.

MR. HIGHT: Mr. Lingle is very brief.

MR. LINGLE: Thank you.

[Laughter.]

MR. LINGLE: I'm Harold Lingle. I represent Jack
Finnie.

This whole process I believe started because
Mr. Finnie offered to double the amount that was proposed
to have been negotiated. When Mr. Finnie offered to do that,
it was his assumption that he was going to try to operate
the moorings and the leases in the same manner as they
previously had been operated. I think one of the things
that goes on is that there seems to be a fear that
something's going to happen to the yachtsmen, and I hope
nothing happens to the yachtsmen. It certainly was not Mr.
Finnie's intention to make anything happen to the yachtsmen.
I think we have to put that in the perspective that you're
talking about a valuable resource. Those yachtsmen have
boats that are worth a great deal of money and this is a
valuable resource. It's worth a great deal of money.

Do we just provide the yachtsmen a special
anchorage at Catalina or do we attempt to get a fair and
reasonable return for the State and the other people.

Mr. Finnie, as you know, did not bid originally. He is still
interested in bidding. We urge you to put it up to bid on
some reasonable grounds and we want you to know that you
have, in addition to the original bidders, other people that
are looking at it and are interested in bidding who think
they can do a good job.

ACTING CHAIRPERSON ACKERMAN: Let me correct just
one thing that you said so there's no misconception. We
have really two issues at stake here. One is the selection
of a master leaseholder. The other is the terms and
conditions of the lease. At least in my recollection the
terms and conditions of the lease as it affects the boater
have been resolved and put to rest. Those issues are not
going to be reopened again. So as far as the protection
of the boaters is concerned, as to their subleasing and
their subleasing arrangements, that's over. The boater can
rest assured that no master lessee is going to disturb the
guarantees that the Commission has already vested in the
boaters' lease over the next 14 years. At least I'm not
going to vote for that.

MR. LINGLE: Mr. Ackerman, I certainly shouldn't
be making that pitch either. That isn't what I'm trying
to do.

ACTING CHAIRPERSON ACKERMAN: I think the
Commission has stated its position very clearly on that.

MR. LINGLE: Then my real thrust or argument is
we'd like the opportunity to bid on it again or to examine
what that lease that was put up to see whether we want to
bid and we want you to know that you have serious people
and that there is a source of income for this state.

ACTING CHAIRPERSON ACKERMAN: That's what we're
here to find out.

MR. LINGLE: That's all.

ACTING CHAIRPERSON ACKERMAN: Thank you very much.

COMMISSIONER MORGAN: Thanks.

ACTING CHAIRPERSON ACKERMAN: Mr. Robert S. Hood.

Mr. Hood.

MR. HOOD: I'm not going to speak.

ACTING CHAIRPERSON ACKERMAN: Thank you.
Mr. Joseph Steele, Joe,

MR. STEELE: Mr. Chairman, I'm Joe Steele, the
President of Boatowners Associated Together, a California
nonprofit corporation of some 35,000 boat-owning families.

We were not quite sure what action the Commission
intended to do today. So I'm perhaps not as well prepared
to address you as I would have liked to have been.

It was my understanding that the issue of
eliminating the two options to cancel the lease at the first
and second year would arise today. Your meeting in December,
the minutes that I received of that meeting, indicated that
the Commission had voted to offer a lease to the Island
Company for 15 years with a cancellation at the end of the
third year only. There was nothing in the public record
of that meeting indicating a cancellation earlier. So it
was that issue that I primarily came to address you on.

However, a couple of other items have arisen since
that time. The Island Navigation Company brought up the
issue of maximizing the State income on these leases and
that really disturbs me. I'm sure you realize that this
is purely a recreation issue. The State has not invested
one single cent in the development of this. There is no
extraction, there is no oil being taken out or gravel or
any other such thing. The only thing that's being extracted
from Catalina is pleasure and we hope we can continue to
do that, I would certainly hope that it is not the policy of the State of California to maximize the income on every piece of recreational property in the state because if that's the policy, I think you could charge considerably more for many other places where you have invested a large amount of money. That worries me as you assured us that the boaters have been taken care of as far as the subleases are concerned and we are very happy with that. The boater would not be very well taken care of if the master lease were put out to the absolute highest bidder because the only place he's going to get his income is from the boaters and we would be spending a rather tremendous amount of money on that.

Mr. Chairman, we feel that you have a perfectly good lease right now with only one problem, and that is the cancellation clauses that you have imposed on the lease and particularly the fact that the lease can be cancelled at the end of each of the first three years. So in fact, the lessees have a one-year lease with an option to extend one year at a time for three years and then an option to extend for 12. This makes it very difficult for anyone to do anything in the way of capital improvement. We can hardly expect them to buy new boats or make any investments over there when their lease might be cancelled at the end of a year.

If this process that you're going through right
now continues, it makes the whole business even more
doubtful. As you well know, this is a very political year
in the State of California. We feel that this issue should
be resolved quickly and not dragged out until campaign time
because it is a very emotional issue in Southern California.
There are literally hundreds of thousands of boaters down
there who use the facility at Catalina and who are very
worried about this.

I think that's all I have unless you have some
questions.

ACTING CHAIRPERSON ACKERMAN: I've met with you
on several occasions and I think I'm very clear on your
position.

Susie.

COMMISSIONER MORGAN: I want to make it clear,
notwithstanding the fact that someone from your organization
wrote me and told me they'd support me for governor, that
I do not intend to run.

[Laughter.]

MR. STEELE: Maybe you should.

ACTING CHAIRPERSON ACKERMAN: Nor will she accept
a draft.

MR. TAYLOR: Mr. Chairman, I might clarify one
of Mr. Steele's concerns, and that is, that it is a 15-year
lease. That as far as the sublessees are concerned, they
have a right to renew for 15 years provided they want to make whatever the rental consideration fixed by the master lessee. The only option remaining to the Commission at this time is whether at one point during a three-year period which can be exercised on any October during that three-year period the Commission desires to substitute a new master lessee. So from the standpoint of the boatowners, their concerns have been addressed and taken care of and there isn't any problem about their interests being terminated if a new master lessee steps into the picture.

In other words, they have a right to renew under whoever the master lessee is. Does that address your concern?

MR. STEELE: Well, not completely because after all it makes a lot of difference who the landlord is. It's the landlord who is going to provide most of the services over there. So certainly you've taken care of the boaters in one respect in that they're not going to find themselves out in the cold, but they may find themselves with much less cooperative landlord than they have right now.

FROM THE AUDIENCE: Higher prices.

MR. STEELE: And that's worse.

ACTING CHAIRPERSON ACKERMAN: For the record, Barry LeBow [ph.].

MR. LeBOW: I think we're concerned about one other
item in here in this clarification as Greg Taylor just said.

When we left you on December 17th, the statement of the Commission and the motion which you approved, was for a 15-year lease that could be reviewed at the end of three years. The lease that we now prepared at some point prior to the 24th of the month provided for something that wasn't even discussed, and that was that the lease could be reviewed in any one of the first three years, not after three years, by notification on October 1st.

We submit that we the boaters didn't hear any part of that and we wonder how you did it or whether it was proper because, once again, with regard to the things that Joe has just said, with regard specifically to capital improvements and those things that will benefit the boaters, if I was a lessee and I only had a nine-month lease and that's to October 1st or then I had to worry about each successive year, I wouldn't be spending much money for those boaters in that period. I submit that that's a change in the lease and I would hope that at this meeting, even as an interim type of step, that you at least remove the chain between the December 17th and December 24th.

MR. TAYLOR: Could we have the gentleman's name for the record?

MR. LeBOW: I am Barry LeBow, Van Nuys, California. I'm speaking as an individual.
ACTING CHAIRPERSON ACKERMAN: Barry, as you recall, when the Lieutenant Governor and I met with you and several others down in Newport, I believe it was last month, we did discuss that provision.

MR. LeBOW: Correct.

ACTING CHAIRPERSON ACKERMAN: The day following my return to Sacramento, I spent a good, much to the chagrin of the staff, a good four to five hours with the staff going over a lot of the details of the lease and of our actions. I have discussed, not with you personally since then, but with numerous individuals including counsel for several of the parties that issue of the modification of just a three-year lease versus a cancellation clause at each of the first three years.

I committed to you at the time that I would raise that today as an issue and I was prepared to do so. I've talked to counsel for one of the parties involved who suggested to me that perhaps it need not be raised now because future action of the Commission could render that a moot point and that we did not need to go back and start to make technical amendments and technical changes to the lease at this stage when it may be a moot point at some point in the future. So, therefore, I did not plan to raise it today.

MR. LeBOW: Without then bringing it up, can you
just for the record, because I think it was evident in, certainly wasn't in the Commission meeting, but it was evident in the public session, that there was some discrepancy and that the year to year at this point is improper. But rather than raise it as an issue and change the lease at this point, hold off to a more appropriate date. But I think it should be acknowledged that it was an inappropriate change.

MR. HIGHT: No.

ACTING CHAIRPERSON ACKERMAN: The change is advice from counsel and it was done legally and correctly.

EXECUTIVE OFFICER DEDRICK: I think that that should be restated, Greg.

MR. TAYLOR: Following the Commission meeting the form of the lease was shown to individual commissioners who felt that it did not fully reflect their views, whatever the reason for that was, and with regard to concerns about how fast environmental review could be done. It was felt that refinement of what the Commission acted upon was in order and that was discussed with the current lessee and the current lessee executed a letter to the State waiving any objection to that modification of the lease form.

I think it should also be pointed out that with regard to services and other things that the boaters are concerned about, is that the lease is very specific as to
the type of services that will be provided irrespective of the master lessee and it's my understanding that each sublessee sent a copy of the lease which sets forth all of those conditions.

One other individual, Mr. Robert Hertzberg.

MR. HERTZBERG: Mr. Chairman, Commissioner, my name is Robert Hertzberg. I'm counsel for Catalina Marine Services Corporation, one of the three bidders that were considered on December 17th.

In light of the fact that I'm last and comments have been rather long, I'd like to make a very brief outline of a few of our thoughts we have concerning the awarding of the conditional lease.

First, it is our feeling that the conditional bid should be offered and limited to the three bidders who participated at the December 17th, 1981 hearing. We feel that this was a competitive bid process that was entered into, that those bidders stepped forward and bid. We feel that it is now unfair to open it up to any others than those three bidders because those three bidders have now shown their hand as we have set forth in the letter which you acknowledged at the beginning of the meeting.

Second, we feel that there should be a solicitation bid and it should be modified in the following respects: 

A, it should eliminate all references to CEQA,
California Environmental Quality Act, and coastal development permits as a condition to the award of the lease. This, we believe, is in conformity with the commissioners' intent and discussion after reviewing the record from the December 17th hearing.

B, the solicitation bid, the modified solicitation bid should include consideration of additional sources of revenue other than the minimum annual lease payments and percentage of gross revenues. We think that that is a benefit to the State as clearly it will result in more revenue.

Thirdly, we concur with Mr. Radcliffe's statement that the three bidders should be allowed to modify their respective proposals to mitigate any potential CEQA or coastal development action. That should not be, however, a precondition to or consideration of the award of the conditional lease. But what it should be is it should simply allow the parties to do that so that when the conditional lessee is awarded the lease, that they have the opportunity to minimize whatever administrative review is necessary which will shorten down the time that it will take for the conditional lessee to step in the shoes of the present lessee.

COMMISSIONER MORGAN: Could I interrupt and ask a question?
MR. HERTZBERG: Sure.

COMMISSIONER MORGAN: It sounds like nonsense to me, but maybe I'm not following you. What you are asking the Commission to do is ignore the environmental laws and ask the bidders to ignore the environmental laws and, having ignored that, that would not even be a factor in considering the proposals that are brought forward.

MR. HERTZBERG: It is our understanding from your action on December 17th, that what you intended to do by having that three-year clause in the present lessee's document and lease, was to allow a conditional lessee to step in the shoes, to have a conditional lease awarded and then once that conditional lease was awarded, then that would give jurisdiction to the various lead agencies to begin the environmental review process. It would give jurisdiction to the Coastal Commission to begin the development permit process and that while that time was running, that conditional lessee would go through the requisite approvals, and as soon as those approvals were received, based upon the opinion of Mr. Taylor and some of the others here, they thought -- and I think it was Mr. Northrop -- they thought that that process could take upwards of three years. That once that approval was received, all stamped, met all California laws, environmental and coastal, then that person, assuming that happened before October 1st, 1984,
would step in the shoes of the present lessee and will have
met all laws. So it's not ignoring the laws. It's simply
putting each of the parties on an equal footing and ignoring
the CEQA for purposes of granting the conditional lease.
That was our understanding of the Commission's action on
December 17th.

What we're attempting to do here is we'd like to
see the Commission here today limit, to get this thing
underway. Because what's happening here, the real problem
is that the time is ticking against that three-year clock.
If the opinion of Mr. Taylor, if the opinion of Mr. Northrop
is accurate, that it's going to take three years to go through
the process once a conditional lease is granted, that clock
is running and it has to happen before October '81. We've
already lost a tremendous amount of time as it is, any
conditional lessee getting into it.

So what may happen is that the attempt of the
Commission in our opinion by its action on December 17th,
was to put all the parties on equal and fair footing. But
by delaying the process to the other bidders in the process,
you're causing prejudice.

COMMISSIONER MORGAN: Why don't you go ahead with
your points.

MR. HERTZBERG: That was really one of my points.
You saved me a little time.
We respectfully request that the Commission here today reentertain those three bids and make the decision to limit it to those three bids, and 90 days -- Again, we're causing prejudice to the other bidders here. To limit it to 30 days I think that's a reasonable period of time because I believe there was a Commission meeting on November 6th in which it was sent out to bid. There was thereafter a meeting on December 17th, in which the bids were entertained. It's clearly doable. I think that it should be 30 days rather than 90 days. That the staff should come back with a modified bid solicitation which governs the rules and allows the various parties to modify their respective bid leases within the guidelines of that provision.

We agree with Mr. Steele as to the urgency of this matter.

That's all. Thank you.

ACTING CHAIRPERSON ACKERMAN: Is there anyone else in the audience that wishes to address the Commission?

Mr. Greenberg.

MR. GREENBERG: Charles Greenberg of Ball, Hunt Hart, Brown and Baerwitz, representing your present lessee. As representing your lessees, I didn't really think that we would make a comment but I do feel constrained to respond to Mr. Hertzberg's statement because I believe it can lead you into a significant legal error that we believe would
be most unfortunate.

If I understand the gravamen of what he's saying, it is that we are about to undertake a process by which prior to the time the required environmental review is done of a substitute bidder's program, you conditionally award some sort of lease to him and then subsequent to that award you go through some sort of environmental process, whatever you think is appropriate, which we continue to think inevitably will be an EIR. But that I believe clearly is inappropriate legally. The whole thrust of the California Environmental Quality Act is that at the earliest possible time and at the time that you make a decision, tentative or otherwise, to go with a particular project or go with a particular leaseholder in this case, that you should have before you all of the environmental materials that you need, environmental materials that have been properly prepared in accordance with the guidelines of the California Environmental Quality Act. The concept -- this is not a lawyer's esoteric thing -- the concept is very simple. The concept is that an EIR or any environmental documentation is similar to a situation where you want to buy a stock and you want to have before you, a new stock, and you want to have before you the disclosures required by the securities laws at the time you buy the stock. The case law is clear that the environmental review has to be done at the earliest.
possible time and before you take your action in adopting the project.

Therefore, whatever process you set up as far as we're concerned -- by the way, we believe that really at this point, having gone through an exhaustive process where on the one hand the other parties seeking the lease were telling you that you can obtain substantially more monies if you put the matter out to bid and where we were telling you it is impossible for any other party to operate this leasehold without causing substantial environmental effects that require difficult analysis, it seems clear to us that both parties have made their point. That you rent through the bidding process. As a result of it, the funds which the State is going to receive did indeed go substantial up and the people who were telling you that were correct.

Now that you know more about the Catalina operations and how this lease has to be operated, it seems absolutely clear that we were right also and that that operation cannot be operated without having a very careful analysis of very substantial environmental effects if it is to be operated by anybody else but the adjacent land site owner.

Now, having done that, our view would be you've clearly put yourself in a position where you have all the evidence you need before you to say, fine, we're now
obtaining more monies, we now have the best environmentally sound way of operating that lease, and that should be the end of the issue. You have a prerogative under your lease of going forward. If you do go forward, however, I would urge you to do it in a way where you analyze projects and analyze the environmental effect of those projects strictly in accordance with the requirements of California Environmental Quality Act prior to the time you make any decision that might be construed as adopting a project or, quote, conditionally, unquote, awarding the lease to anyone with respect to this project.

Thank you very much. Be pleased to answer any questions you might have.

ACTING CHAIRPERSON ACKERMAN: I think you were very clear.

Yes, sir.

MR. REINHOLD: My name is Jack Reinhold, and I represent my wife and me who are individual boatowners. Several people have commented on the fact that the boater has been taken care of in the Catalina program. I think that's true, but not the way I'd like to be taken care of. Our mooring rates have gone up 34 percent, being forced by this competitive bidding. It's a recreational area. The high dollar boatowners generally go to Avalon. They now can have a daily fee stopover for less money than
we can in the isthmus area. I think you draw a line to it. I think you should leave it with the Island Company. They do an outstanding job. They have the history and let's not let the prices go up any more because most of us are going to be priced out of it. It's our only recreation.

Thank you.

ACTING CHAIRPERSON ACKERMAN: Any other comments from the audience?

Susie, what is your, or do you want me to --

I think based, at least my opinion, based upon the testimony now, I would feel that, number one, the staff and the Commission has to very carefully chart the course that's out before us to both serve ourselves and the people of California and the boaters and the bidders that we have in fact systematically and very completely analyzed all the details on it so that we don't have any unanswered questions. Because right now, at least in my opinion, we are now going on opinion as to environmental impact. We're going on opinion as to the level of services that are provided for in each of the packages.

I, for one, want to see a very clear and a very detailed analysis of that so that the Commission may make a total informed decision on it. I think we would be remiss to do any less.

I picked the 90-day figure somewhat out of the
air, but usually that time frame is given for review processes. I would still offer that the staff within 90 days, which doesn't preclude sooner if the staff is ready, within 90 days come back to the Commission with a very clear and very definite set of proposed actions that lays out the exact course of action for the Commission to follow. I think the staff should do that after consultation and discussion with the people who have testified here today. Each of them have raised various points. I think those points should be considered in the Commission making a final decision as to the direction we're going to proceed.

COMMISSIONER MORGAN: Well, since you are the commissioner who continues to have concerns, it seems to me it would be more appropriate for the staff to work with you in responding to the questions that you have in putting together something that you feel satisfies your concerns. When you feel they have done that, then bring it to the Commission and make a presentation based on what you feel is an appropriate way to go. But at this point I think the Commission has had sufficient public meetings to get public input and if there's a different direction that you would like to go, then it seems to me it's up to you to work with the staff to bring that direction back to the Commission.

Is there anything else we need to do?
EXECUTIVE OFFICER DEDRICK: Yes. We’re through with Catalina.

[Thereupon a brief recess was taken.]

COMMISSIONER MORGAN: I’ll move approval of Item 42 having seen Exhibits A and B.

ACTING CHAIRPERSON ACKERMAN: Let me ask one point of clarification for the staff, whoever should answer.

Does the Commission need to take official action today or should we to initiate a staff review or would that be done in the course of past Commission actions and internal discussions?

EXECUTIVE OFFICER DEDRICK: I would think that your directions to us are already on record. This is a continuing process. Unless you feel you need to do something like that, I think I know what the staff is supposed to be doing. It’s very good for us to have those kinds of directions on the record, but we don’t need you to tell us.

ACTING CHAIRPERSON ACKERMAN: I’ll stipulate to Susie’s remarks, but again realizing that there are only two of us here today. There is necessarily three people that constitute the Lands Commission and I’m only one vote of those three.

Secondly, that it would be my intent, unless there’s objection, that 90 days be a time limit on the
outside on this and if it can be done sooner, so be it.

COMMISSIONER MORGAN: Then if at the end of 90 days you have not brought the matter back to the Commission for discussion, that I will be prepared that we amend the lease to remove the offensive termination language that was mentioned here today.

ACTING CHAIRPERSON ACKERMAN: Okay. No problem with that.

COMMISSIONER MORGAN: Okay.

[Thereupon Agenda Item 45 was concluded.]
CERTIFICATE OF SHORTHAND REPORTER

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

That I am a disinterested person herein; that the foregoing excerpt from the State Lands Commission Meeting was reported in shorthand by me, Cathleen Slocum, and thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of March, 1982.

CATHLEEN SLOCUM
Certified Shorthand Reporter
License No. 2822