MEETING
STATE OF CALIFORNIA
STATE LANDS COMMISSION

STATE CAPITOL
ROOM 447
SACRAMENTO, CALIFORNIA

WEDNESDAY, SEPTEMBER 23, 1992
10:00 A.M.

Ronald J. Peters
Certified Shorthand Reporter
License Number 2780

PETERS SHORTHAND REPORTING CORPORATION
3336 BRADSHAW ROAD, SUITE 240, SACRAMENTO, CA 95827 / (916) 362-2345
APPEARANCES

COMMISSIONERS:

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

HONORABLE LEO T. McCARTHY, Lieutenant Governor

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

STAFF:

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

ALSO PRESENT:

MR. JAN STEVENS, Deputy Attorney General
## Index

| Proceedings                                      | 1 |
| Call to Order                                   | 1 |
| Approval of the minutes of the previous State Lands Commission meeting | 3 |
| **Consent Calendar**                           |   |
| Consent Calendar adopted                       | 4 |
| **Regular Calendar Items**                     |   |
| Item 75                                         | 4 |
| Item 76                                         | 6 |
| Item 77                                         | 6 |
| Item 78                                         | 25 |
| Item 79                                         | 26 |
| Item 80                                         | 28 |
| Item 81                                         | 28 |
| Item 82                                         | 29 |
| Item C33                                        | 31 |
| Item C33                                        |   |
| Item C10                                        | 56 |
| Item C12                                        | 56 |
| Item C32                                        | 56 |
| Item C45                                        | 57 |
PROCEEDINGS

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

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

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

EXECUTIVE OFFICER WARREN: Yes.

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

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

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

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

ACTING CHAIRMAN McCARTHY: All right. We will
take 10, 12 and 32 and put those on the Regular Calendar as well.

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

ACTING CHAIRMAN McCARTHY: That's fine.

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

ACTING CHAIRMAN McCARTHY: And put it on the Regular Calendar?

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

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

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

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

EXECUTIVE OFFICER WARREN: I am sorry?

ACTING CHAIRMAN McCARTHY: Forty-five was not on
my Consent list.

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

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

EXECUTIVE OFFICER WARREN: And put on the Regular Calendar.

ACTING CHAIRMAN MCCARTHY: Okay. We will put it on the Regular Calendar.

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

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

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

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

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

Item 35 is a recreational pier permit at Lake Tahoe. It includes three mooring buoys. We would like to remove the authorization for the three mooring buoys because...
they may be in a fish habitat area and we will come back to you next month with that.

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

ACTING CHAIRMAN McCARTHY: Any objection to that?

ACTING COMMISSIONER SIMPSON: No.

ACTING COMMISSIONER BURTON: No.

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

Let's get started.

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

EXECUTIVE OFFICER WARREN: All right.

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

Will that be all right?

ACTING CHAIRMAN McCARTHY: Yes, that's fine.

EXECUTIVE OFFICER WARREN: All right.

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

She will also present to you subsequent items for which her division is responsible.
LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Okay.

Item 75 considers the approval of a general lease to the C & H Sugar Company for a parcel of tide and submerged land located in the Carquinez Straits near Crockett in Contra Costa County.

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

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

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

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

ACTING CHAIRMAN MCCARTHY: Questions by Members of the Commission?

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

The recommendation is approved.

Next item.

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

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

ACTING CHAIRMAN MCCARTHY: Any questions from the Commission?

Any questions from the audience on Item 76?

The recommendation is approved.

LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Item 77 is requesting authorization for a revision in rent pursuant to the normal five-year rent review provision with regard to
the River View Marina. It is a marina up here in the Sacramento River in Sacramento. The terms of the proposed rent are on Page 2 of the calendar item.

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

ACTING COMMISSIONER BURTON: No.

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

Mr. Ed Coyne.

MR. COYNE: Yes, sir.

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

MR. COYNE: Thank you.

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

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

According to Title 2, Article 2 of the California State Administrative Code regarding this question, rental rates should be set to achieve a nine percent return on the
value of the property owned by the State or a percentage of
gross income based on similar uses in the market. Our
feeling, both as an owner of River View Marina, and also as
a member of the Marina Recreation Association is that
whichever method is utilized should yield approximately the
same rental payment to the State.

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

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

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

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

ACTING CHAIRMAN McCARTHY: How does the statute
read?

LAND MANAGEMENT DIVISION CHIEF SEKELSKY: The
statute -- What he's referring to is in our regulations, and
the regulations provide that the Commission will set rents
based on either/or or a combination thereof of the following
factors. One is the nine percent of the appraised value,
and then the other is the percentage of gross receipts.

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

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

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

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

CHIEF COUNSEL HIGHT: No, sir.

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

LAND MANAGEMENT DIVISION CHIEF SEKELSKY: We have
examined the market in the Sacramento area which we consider
to be applicable to Mr. Coyne's situation. We have another
lease that is next door to Mr. Coyne, to the Riverbank
Marina, and we have examined that relative to his concern as
well.

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

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

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

ACTING CHAIRMAN McCARTHY: Any questions by
Commissioners?

Would you like to respond to that?

LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Mr.
Coyne is raising several issues here that, in fact, have been under discussion with the Association, the Marina Recreation Association that he represents, with both Mr. Coyne and some of the other representatives of the Association.

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

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

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

EXECUTIVE OFFICER WARREN: On that point, Mr. Chairman, I would just like to point out that Mr. Coyne is presently two years in arrears on his rent under the present lease and that in my numerous meetings with the Marina Recreation Association little has come -- which have taken
place over a matter of months, if not years -- little has
come from what appears from time to time to be some general
agreement. We search for a response from these folks and
they can never get them. They all have different individual
objectives and they are just not able to reach any consensus
among themselves.

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

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

ACTING CHAIRMAN McCARTHY: Questions from
Commissioners?

ACTING COMMISSIONER BURTON: I have a question.

ACTING CHAIRMAN McCARTHY: Commissioner Burton.

ACTING COMMISSIONER BURTON: Have we in the past
employed any intermediary third-party reviewer when we have
had rent disputes? Do we have a process for doing that?

LAND MANAGEMENT DIVISION CHIEF SEKELSKY: No.

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

CHIEF COUNSEL HIGHT: Yes.

LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Yes.

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

ACTING COMMISSIONER BURTON: To whomever.

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

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

ACTING COMMISSIONER BURTON: What is the change?

EXECUTIVE OFFICER WARREN: But we still haven't
been able to obtain any response from the Association itself because they don't really know what to advise us, frankly. So what we fall back on or what we are falling back on now is kind of establishing a general approach which is applicable to commercial marinas of like nature in a general area.

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

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

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

In this case we have broken it down further in the proposed rent. One is to take three percent of the gross income generated on the lease premises for the snack bar and deli operations, one percent of the gross income derived
from the yacht sales, and it is my understanding that they
have never had yacht sales on this property, nor is there
any anticipated at this time.

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

LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Oh, do
you?

MR. COYNE: Yes.

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

ACTING COMMISSIONER BURTON: That's the new lease?

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

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

ACTING CHAIRMAN McCARTHY: Yes.

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

MR. COYNE: Yes. I can give you that fairly
precisely. I think we have been in business for about 11,
going on 12 years at that site. We constructed the marina
and completed it in 1981 or 1982. The first year of our
operation, I believe our rents were approximately $6,000.
We were paying a percentage of the gross and I believe at
that time we had the highest rates that were set anywhere in
these market areas. We were the leader in terms of setting
what the market is.

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

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

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

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

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

LAND MANAGEMENT DIVISION CHIEF SEKELSKY: One
point, just to make sure that it is understood here that the staff has established the percentages in the proposed rent according to what the market rates are in this area.

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

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

LAND MANAGEMENT DIVISION CHIEF SEKELSKY: That is correct.

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

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

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

EXECUTIVE OFFICER WARREN: Not individually, as I can recall. We have had discussions with representatives of this marina owners association. Some of them, as Mr. Coyne,
would prefer to have a flat fee like a nine percent of the appraised value. But there are others who say that this is undesirable because it is unrelated to their commercial activity. So when times get tough, they are stuck there with a flat rental fee.

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

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

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

In our efforts to bring some rational approach to this entire marina leasing operation of the agency, this is what we are doing. We are trying to keep it within acceptable commercial levels. We check with appraisers. We check with the commercial rates. We look at lessee
operations on adjacent property to see if they have been successful. And it's a kind of a judgement call, influenced by negotiations with the lessee, with the applicant, as to how it works out. And it's a process which is incapable of being precisely defined, I have found, but we are trying to improve it so as to bring some certainty at least to the approach taken by the staff to these matters.

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

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

ACTING CHAIRMAN McCARTHY: Our staff is telling us that a number of such meetings to try to resolve this have
been taking place, Mr. Coyne.

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

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

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

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

ACTING CHAIRMAN McCARTHY: Any further comments?

ACTING COMMISSIONER BURTON: Well, I didn't mean
to suggest that we needed a dispute resolution process. I was trying to find out whether we had one because I don't think that this body, the Commission Members, are any of us experts in the area, but we expect our staff to be and we expect them also to be able to come to a resolution on these matters.

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

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

So I don't know how to resolve this but I certainly don't think we want to turn into a hearing body on what the appropriate rent levels are, but what we have our
staff presenting for us and this gentleman disputing --

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

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

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

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

Now, at this point in time, we are proposing an
increase in the percentages only up to a market rate that is
common in the area, and while I grant you that that will
certainly result in an increase, assuming his gross stays
the same or goes up, in what he owes us, it does not seem as
though it would increase it to the extent that he is
speaking of unless, of course, his gross is going up at the
same time.

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

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

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

EXECUTIVE OFFICER WARREN: Yes.

LAND MANAGEMENT DIVISION CHIEF SEKELSKY: That is
correct.

ACTING CHAIRMAN McCARTHY: Do you dispute that,
Mr. Coyne?
MR. COYNE: I don't really dispute that, no. I think the distinction, though, is that there is a large increase that would go into the operation where we have the Jammin' Salmon Restaurant on the property, and that tenant was liable for one percent payment of his gross. And now that is going to three percent, so it's a 300 percent increase on him in particular on his situation, and I think his business would be jeopardized as a result of that.

ACTING CHAIRMAN McCarthy: Would you be paying more rent if the Commission approved this than your competitors are paying?

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

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

I would say that it's -- that the rents that are being set for the berthing is equivalent roughly to what is happening in the market now, and also with the restaurant, but I think that they are way too high.
ACTING CHAIRMAN McCarthy: Any other questions by Commissioners?

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

Do I have a motion?

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

Are you ready for a vote?

ACTING COMMISSIONER SIMPSON: Second.

ACTING CHAIRMAN McCarthy: All right. How do you vote?

ACTING COMMISSIONER BURTON: I will vote aye.

ACTING CHAIRMAN McCarthy: All right. The Commission unanimously accepts the recommendation of the staff.

The next item on the agenda, Item 78.

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

This is a situation where the yacht club has worked cooperatively with staff to design the project to avoid impacts to shoreline vegetation, and has agreed to grant to the State a conservation easement over their own
uplands to provide permanent protection for riparian habitat. We see this as a really good example of how we can work together with private industry to establish protection for riparian resources.

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

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

Any questions from the audience?

All right. The recommendation is approved.

Next item.

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

ACTING CHAIRMAN McCARTHY: Questions by Members of the Commission?

Anyone in the audience?

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

LAND MANAGEMENT DIVISION CHIEF SEKELSKY: That is correct.

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

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

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

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

Anyone else on this issue?

Thank you.

Anyone else on this issue?

Ready for action?
All right.

ACTING COMMISSIONER BURTON: So moved.

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

Next item.

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

ACTING CHAIRMAN McCARTHY: Any questions by any of the Commission?

ACTING COMMISSIONER BURTON: No.

ACTING CHAIRMAN McCARTHY: Any questions from the audience?

The recommendation is adopted.

Next.

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

Essentially this is acceptance by the Commission of the offer of dedication of lateral public access easements to coastal properties. These dedications were obtained by the Coastal Commission. It is a lateral access and not a vertical access.
And since what we do is take these easements and add them to the sovereign interests of the State along the coast, this is by an agreement that we reached this among the various state agencies. And this will formalize the dedication of the acceptance for these specific easements designated.

I ask for approval.

ACTING CHAIRMAN MCCARTHY: Any questions by Members?

Any questions by members of the audience?

If not, it is approved unanimously.

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

ACTING CHAIRMAN MCCARTHY: Question by Members of the Commission?

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

ACTING CHAIRMAN MCCARTHY: Absolutely.

MR. GREGORY: Yes, sir, Mr. Chairman. These are regulations based upon the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act to provide the best achievable protection standard given our current level of knowledge as
required by the Act. It will impact the marine oil
terminals, both onshore and offshore terminals, in the State
of California and will provide comprehensive regulations for
the operation and maintenance of these terminals.

ACTING CHAIRMAN McCARTHY: All right.

I am impressed with the work developed in these
regs.

Does anyone have any questions from the
Commission?

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

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

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

ACTING COMMISSIONER BURTON: Okay.

ACTING CHAIRMAN McCARTHY: All right.

Thank you, Mr. Gregory.

The Commission unanimously adopts the
recommendations.

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

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

Thank you.

All right. Now we are on Item 33.

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

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

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

ACTING CHAIRMAN McCARTHY: Mr. Robert Madox has signed in. He will want to give testimony in just a moment on Item 33, so we are addressing 32 and 33 together here, and we say that items 10 and 12 are also related to this issue.
LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Only as to this one particular issue. The other items, 10, 12 and 32, involve other permitting issues, but there is one issue in common to all.

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

LAND MANAGEMENT DIVISION CHIEF SEKELSKY: That is correct.

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

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

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

In this particular case, Chinquapin has been privileged over the last number of years to have a rent-free status based on a review of their status and a number of other associations who are in that type of position, and in a legal opinion which I drafted at the request of senior staff, they are no longer or never were, quite frankly, entitled to that status. And because they are up for rent
review at this time, they are raising the question of whether or not they should maintain the rent-free eligibility or whether they should be required to pay rent.

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

ACTING CHAIRMAN McCARTHY: Thank you.

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

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

LAND MANAGEMENT DIVISION CHIEF SEKELSKY: I would like to add also that the other three items that are before you that are part of this issue in common, in none of those cases has the applicant objected. They have all agreed to the rent as the staff has set it in accordance with the
legal advice we have and there has been no issue raised by those parties.

ACTING CHAIRMAN McCARTHY: All right. Let's please give Mr. Madox a seat.

Mr. Madox, would you like to step forward? Welcome and let us hear what you would like to say.

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

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

(Laughter.)

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

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

The statute that we are discussing today is Public Resources Code Section 6503.5, which states in pertinent part that no rent shall be charged for any private recreational pier constructed on state lands for the use of a littoral landowner. Littoral landowner is defined to
include among other things any association of or any nonprofit corporation consisting of natural persons who own parcels of land, each of which is zoned or used solely for a single family dwelling.

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

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

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

First, regarding the legislative history, I'd like to quote from something that a legislative intent service
has provided me, and that is the statement that in applying
the rules of statutory construction, the courts of
California, as well as those of most other jurisdictions,
have routinely held that the cardinal principle of statutory
construction is that the court must choose the
interpretation which most nearly effectuates the purpose of
the Legislature.

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

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

And Senator John Nejedly addressed the legislative
intent question with SB 349, in 1977, which provided the
findings that were required and simply repeated the former
law that owners of single family residences were entitled to
the rent-free pier. And the question arose after that
enactment in 1977 as to what about homeowners associations?
So at least prior to the statute that we are now relying on, that is in 1977, owners of single family residences, who are natural persons, were entitled to the rent-free provisions for a pier on state lands and corporations were not.

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

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

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

And that type of statement is repeated throughout the legislative history. The purpose of that bill, the current Public Resources Code 6503.5, was to put homeowners
associations on the same standing as individuals.

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

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

   So that's the position that we take and I'd be
happy to answer any questions.
ACTING CHAIRMAN McCARTHY: Any questions at this point?

ACTING COMMISSIONER BURTON: No.

ACTING COMMISSIONER SIMPSON: No.

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

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

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

We will apply the statute to the leases as they come up for renewal. There are four leases up before you today for renewal. All four of them are being treated the same way.
Three of them, three of the applicants, have found staff's interpretation of the statute to be correct and have indicated their willingness to comply with the new lease provisions. Chinquapin feels that staff's interpretation is incorrect for the reasons which have been stated.

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

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

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

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

So we continue to urge the Commission to concur
with staff recommendations in this instance.

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

MR. MADOX: Yes, sir.

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

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

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

MR. MADOX: No, sir.

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

MR. MADOX: Yes, sir.

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

MR. MADOX: No.

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

MR. MADOX: No. The Declaration of Covenants, Conditions and Restrictions, commonly known as CC and R's
spells out that each person who owns a unit at Chinquapin is thereby a member of the association, no matter what the form of ownership.

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

MR. MADOX: No, sir, no.

ACTING CHAIRMAN McCARTHY: What is your position?

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

ACTING CHAIRMAN McCARTHY: Apportionment.

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

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

MR. MADOX: I strongly feel, and I have taken a good hard look at this, that the prior interpretation of staff was the correct one because the purpose of the bill in 1978 was to put homeowners associations on the same basis as
individuals, so the apportionment follows that just
perfectly. If you had a hundred seventy-two homes there,
all lakefront, one was owned by a corporation, and every one
of them had a pier, which would be a terrible situation,
this state would be entitled to collect the full rent on one
pier but not on the others.

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

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

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

ACTING CHAIRMAN McCARTHY: I understand that.

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

ACTING CHAIRMAN McCARTHY: Any questions?
Mr. Warren, do you have anything else?

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

MR. MADOX: Mr. Chairman.

ACTING CHAIRMAN McCARTHY: Mr. Madox.

Incidently, where I said taxes before, I delete that. I meant rates.

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

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

MR. MADOX: All right. I will read (a). "Any natural person or persons who own littoral land improved
with and used solely for a single family dwelling, or (b),
any association of or any nonprofit corporation consisting
of natural persons who own parcels of land, each of which is
zoned or used solely for a single family dwelling, et
cetera."

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

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

I'm sorry. The et cetera is important.

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

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

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

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

ACTING CHAIRMAN McCarthy: Mr. Warren.

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

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

ACTING CHAIRMAN McCarthy: Commissioner Simpson.

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

I would like to see staff, if it is appropriate, approach the Legislature and find out what legislative intent is on this. It's been a while since the issue was
visited by them and perhaps it is appropriate now to seek out a different interpretation for this statute to find out where they were coming from and what they actually intended.

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

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

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

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

ACTING CHAIRMAN McCARTHY: Do we have examples of other homeowners associations around the State that include corporate members?

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

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

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

ACTING CHAIRMAN McCARTHY: Yes.

ACTING COMMISSIONER BURTON: I'd like to propose something. And I'm not sure I entirely understand exactly what generated this issue, but it seems to me having a longstanding practice of applying the statutes and interpreting the statutes in a certain way, that we should continue that practice absent any subsequent legislation.
that would tell us to alter that practice. And that's kind of where I am coming from now.

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

ACTING CHAIRMAN MCCARTHY: Go ahead.

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

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

MR. MADOX: Mr. Chairman.

ACTING CHAIRMAN McCARTHY: Mr. Madox.

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

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

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

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

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

LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Yes, of course.

(Laughter.)

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

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

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

ACTING CHAIRMAN McCARTHY: Yes.

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

MR. MADOX: May I ask a question?

ACTING CHAIRMAN McCARTHY: Go ahead.

MR. MADOX: What would that involve?

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

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

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

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

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

LAND MANAGEMENT DIVISION CHIEF SEKELSKY: That may be correct.

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

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

EXECUTIVE OFFICER WARREN: All right. In carrying out the Chairman's wishes, I suggest on Item 33 that subject to the agreement by the applicant to waive 884 requirements, that would be put over for further consideration of the Commission.
ACTING CHAIRMAN MCCARTHY: I don't think this prejudices your case, Mr. Madox.

EXECUTIVE OFFICER WARREN: No.

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

ACTING CHAIRMAN MCCARTHY: The other three leases also deal with proration.

EXECUTIVE OFFICER WARREN: Yes.

SENIOR COUNSEL PELKOFER: Yes.

LAND MANAGEMENT DIVISION CHIEF SEKELSKY: Correct.

ACTING CHAIRMAN MCCARTHY: At this moment.

EXECUTIVE OFFICER WARREN: Correct.

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

EXECUTIVE OFFICER WARREN: Yes.

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

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

ACTING CHAIRMAN MCCARTHY: Well, how clear is it
that there is a problem about any construction?

   SENIOR COUNSEL PELKOFER: It is clear.

   ASSISTANT EXECUTIVE OFFICER TROUT: Just one, I think.

   MR. AGAN: I am Kevin Agan of Vail Engineering representing the applicants of the remaining items here. We are tied to an October 1st construction deadline, so it will be imperative to have these approved. I believe we have posted the necessary fees to have this project approved.

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

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

   EXECUTIVE OFFICER WARREN: He just represents the other three.

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

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

   MR. AGAN: For this project to proceed it would have to be approved today to be able to meet the construction deadline. It does have a construction deadline of October 1st also as set forth by the Tahoe Regional Planning Commission.
ACTING CHAIRMAN McCARTHY: Chinquapin has a construction deadline. Is that what you just said?

MR. AGAN: Yes.

ASSISTANT EXECUTIVE OFFICER TROUT: It appears that way.

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

ACTING CHAIRMAN McCARTHY: Yes.

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

ACTING CHAIRMAN McCARTHY: The answer to that is yes.

SENIOR COUNSEL PELKOFER: Thank you.

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

EXECUTIVE OFFICER WARREN: Fine.

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

In terms of noticing this for the next meeting, could it be noticed as an item to review the rent practice, because on the calendar that we all received, which I assume is the public calendar, there is no specific mention of the memorandum, which I assume is also public, that has been
circulated -- but apparently has not been --

SENIOR COUNSEL PELKOFER: I have not received that.

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

EXECUTIVE OFFICER WARREN: Okay.

ACTING CHAIRMAN McCARTHY: Yes.

EXECUTIVE OFFICER WARREN: We will be so directed.

ACTING CHAIRMAN McCARTHY: All right.

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

EXECUTIVE OFFICER WARREN: Yes.

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

EXECUTIVE OFFICER WARREN: That will be fine.

That will be fine.

ACTING CHAIRMAN McCARTHY: Anything else?

All right. Thank you.

EXECUTIVE OFFICER WARREN: Thank you very much.

And we will special order that issue at the next meeting.

ACTING CHAIRMAN McCARTHY: Anything else to come before the Commission?
EXECUTIVE OFFICER WARREN: Yes, one other item, and that is Item C45 which was removed from the Consent Calendar and put on the Regular Calendar.

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

ACTING CHAIRMAN McCARTHY: Proceed.

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

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

Production has been held up, however, because of a dispute as to how such oil will be processed and transported. The County of Santa Barbara and others are insisting that the oil be transported to refineries in other facilities by pipeline. No such pipeline presently exists.
The oil companies have been seeking an alternative transportation means, that is tankering, until such time as the pipeline has been constructed and is available.

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

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

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

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

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

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

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

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

ACTING CHAIRMAN McCARTHY: Questions by Commissioners?

Questions from anyone in the audience?

Do you have a question?
ACTING COMMISSIONER SIMPSON: Yes.

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

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

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

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

EXECUTIVE OFFICER WARREN: Pardon me?

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

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

The Commission's meeting is currently scheduled during the second week of October. To my knowledge the specific date of the item has not been set, but the meeting
begins, I believe, on the 13th and extends for four days.

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

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

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

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

ACTING CHAIRMAN McCARTHY: What do you think?

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

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

I will go along with the wishes of the Commission,
but it seems to me, based on the staff's representations here, that we need to proceed in order to allow the Coastal Commission to take their actions.

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

ACTING CHAIRMAN MCCARTHY: All right. The Commission accepts the recommendations.

EXECUTIVE OFFICER WARREN: Thank you.

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

EXECUTIVE OFFICER WARREN: That concludes the agenda.

ACTING CHAIRMAN MCCARTHY: Thank you, ladies and gentlemen.

We are adjourned.

(Thereupon the September 23rd, 1992, meeting of the State Lands Commission was concluded at 11:35 a.m.)
CERTIFICATE OF SHORTHAND REPORTER

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

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

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

[Signature]
Ronald J. Peters
Certified Shorthand Reporter
License Number 2780