MEETING

STATE OF CALIFORNIA

STATE LANDS COMMISSION

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

TUESDAY, FEBRUARY 8, 2000

10:00 A.M.

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
APPEARANCES

COMMISSIONERS

Dr. Kathleen Connell, Chairperson

Mr. Cruz Bustamante, Member

Mr. B. Timothy Gage, Member, represented by Ms. Annette Porini

STAFF

Mr. M. L. Eskijian, P.E.

Ms. Marya Faulkner

Mr. Curtis Fossum, Senior Staff Counsel

Ms. Kimberly L. Korhonen, Executive Secretary

Mr. Jack Rump, Chief Counsel

Mr. Paul Thayer, Executive Officer

ALSO PRESENT

Mr. Dennis Eagan, Deputy Attorney General

PUBLIC SPEAKERS

Mr. Martin Collins

Mr. Lester Denevan

Ms. Lisa DiMaggio

Mr. Robert Keller

Mr. Kenneth Levin

Ms. CiCi Sayer

Mr. Alan Schretzmann
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
CHAIRPERSON CONNELL: I'll call the meeting to order. Well, two of the representatives of the Commission are present today. I'm Kathleen Connell. I'm joined by a Annette Porini from the Department of Finance and Mark --

ACTING COMMISSIONER CARREL: Carrel.

CHAIRPERSON CONNELL: Carrel from the Lieutenant Governor's Office.

For those who have not attended our meetings before in the audience, the State Lands Commission, as you know, administers real property located throughout California and is responsible for its mineral interests. And today we are going to hear proposals concerning the leasing and management of some of these public properties.

But the first item I want to take is an adoption of the minutes of the last meeting. May I have a motion for adoption of the minutes.

ACTING COMMISSIONER PORINI: Move approval.

CHAIRPERSON CONNELL: Is there a second?

ACTING COMMISSIONER CARREL: Second.

CHAIRPERSON CONNELL: Is that okay?

EXECUTIVE OFFICER THAYER: Maybe it would be better if you seconded it.

CHAIRPERSON CONNELL: I will second it. And the vote is unanimous.
The next order of business is the Executive Officer's report.

Mr. Thayer, may we have your report.

EXECUTIVE OFFICER THAYER: Yes. I just have several brief items that I wanted to cover. I want to draw your attention to one of the items on the consent calendar, C48, which is an oil lease quitclaim. As the Commission will recall we've had several of these. Last year we had four. This will be the fifth one in the last 12 months.

It's moving the Commission down the road towards a situation where there won't be these leases along the coast in oil development any longer. This is a sunset industry. We do expect to have one more of these at the next Commission meeting which would mean six in 12 months.

The next issue I wanted to mention is that, as the Commission will recall, we had a rigs to reefs workshop at our December meeting. As we indicated, we would then, and at the request of the Commissioners, expect to have that on our web page, all the presentations that were made both by the Commissioners and the individual witnesses in the next couple of weeks. We have a rough draft of that already and it should soon be on. And we'll notify the Commissioners and their offices once that occurs.

CHAIRPERSON CONNELL: Thank you, because, as you recall, when we did the rigs to reefs, I thought it would be
a vital element for the science programs of our elementary schools in particular.

EXECUTIVE OFFICER THAYER: Absolutely. I wanted to also draw attention to another item that's on the consent calendar, which is the fiber optic project at C5. This is the first of four. And there's been a fair amount of publicity in the papers about the resurgence of new projects along these lines.

I'm proud of the staff who have worked on this project for the last year and a half. And their work has resulted in this being placed on the consent calendar. There were serious issues when the project was originally proposed dealing with fishing for the most part, but some environmental issues as well.

And due to mitigation, including rerouting and cable burial, all of these issues have been taken care of and we can have it on consent. And I think it's a tribute to the staff.

CHAIRPERSON CONNELL: Is this item C05?

EXECUTIVE OFFICER THAYER: C05.

CHAIRPERSON CONNELL: Mr. Thayer, we have a number of people who wish to speak to that item, so we're not going to be able to put that on consent. It is going to have to be called upon as a regular item, because they wish to speak.

EXECUTIVE OFFICER THAYER: Madam Chair, I believe
that most of those individuals, perhaps all of them, let me check, are individuals that represent the applicant. And they had put in their names to speak only in case that came off consent, if somebody else had asked.

CHAIRPERSON CONNELL: Is there anyone who wants to speak if we handle this as -- if we don't handle this as a consent item?

Is everyone comfortable with keeping this on consent?

Let me give you a suggestion in the future whoever may be here. Don't put your name in if you want to keep it on consent, because under California law, we will pull it off the consent, if there's a request to speak. So you kind of destroy your opportunity to be on the consent calendar. So from a strategy viewpoint, wait till you see whether or not your item is adopted as part of the consent calendar. Safer strategy in the future.

Go ahead, Mr. Thayer.

EXECUTIVE OFFICER THAYER: And then I would just close on that item by saying that we expect to have on the April Commission meeting three more fiber optic projects. And that's the final issue that I wanted to raise as well is to let the Commissioners know that we're working towards having our next Commission meeting in the first week in April. And, of course, we'll be contacting your staffs to
see if we can arrange for it in the time interval.

And that concludes the Executive Officer's report.

CHAIRPERSON CONNELL: Thank you. Are there any
questions by Members of the Commission?

The next order of business will then be the adoption
of the consent calendar. Is there anyone in the audience who
wishes to speak to the consent calendar?

Mr. Thayer, can you tell us what items are going to
be on the consent calendar?

EXECUTIVE OFFICER THAYER: There are several items.
There will be the items that are in your binder and there's
several items that will be removed for additional work. They
include items 6, 7, 32, 45, and 51.

CHAIRPERSON CONNELL: Okay. May I have a motion
then to adopt the consent calendar?

ACTING COMMISSIONER PORINI: I'll move the consent
Calendar.

COMMISSIONER BUSTAMANTE: Second.

CHAIRPERSON CONNELL: It's been moved and seconded
and welcome, Mr. Bustamante. All in favor of the consent
calendar?

(Ayes.)

CHAIRPERSON CONNELL: All right, that's a unanimous
vote.

Now, that takes us to the items on the regular
calendar. And I believe we should move to item 52?

EXECUTIVE OFFICER THAYER: That's correct.

CHAIRPERSON CONNELL: Which is the status report on Oil Terminal Engineering Regulations. And, Mr. Thayer, will you begin the staff presentation, please.

EXECUTIVE OFFICER THAYER: Yes. This presentation will be made by Martin Eskijian, one of our attorneys, who's been working on this project.

Mr. Eskijian.

MR. ESKIJIAN: Thank you, Mr. Thayer. I'm not an attorney, I didn't go to law school. I dropped out.

CHAIRPERSON CONNELL: Something that many of us would be pleased to hear. Do not feel you need to apologize.

(Laughter.)

MR. ESKIJIAN: Thank you. I started law school and I didn't like, so I went back to engineering grad school. One of my bigger mistakes in life, but it's worked out.

(Thereupon an overhead presentation was presented as follows.)

MR. ESKIJIAN: Thank you for letting me be here today. And it's a pleasure to speak to you Commissioners about this project. We spoke to you about a year and a half ago about the MOTERP project. It's not some sort of an insect. It will start up in a minute.

CHAIRPERSON CONNELL: Can we lower the lights in
here, it's difficult to see the screen.

Thank you.

MR. ESKIJIAN: Give us one second here to get back to the beginning. Don't peek, this is the briefing.

Again, I'm Martin Eskijian and I'm with the Engineering Branch with the Marine Facilities Division of the California State Lands Commission.

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MR. ESKIJIAN: What is MOTERP? There is a need to develop some set of standards for marine oil terminals because, as it is today, there is no uniformed building code, there is no accepted standard in the United States for these.

We've inspected them since about 1992. And as we inspect, we say well, there's damage. And then the people that own or operate these facilities can rehabilitate to any standard they want. So if you built it in 1930, you could fix it to 1930 standards. We find that unacceptable.

The other complication is that very likely the vessels that are used in that facility are much larger today than when it was originally designed. So whatever you did in 1930, 40, 50 or 60 may not be applicable today.

CHAIRPERSON CONNELL: What did you say the design expectancy was?

MR. ESKIJIAN: What?
CHAIRPERSON CONNELL: What was the design expectancy when they were first built?

MR. ESKIJIAN: That's a good question. One of the best ones in California was built the year I was born in 1946, and the life expectancy is usually something like 50 years for these sorts of structures. And now they're finding as their life expectancy comes to a close, they want a new lease on life and they want to go another 20 to 30 to 40 more years. So that's a real big issue and it's very important.

CHAIRPERSON CONNELL: Well, when they determine life expectancy, was it because of the expected deterioration of the materials that went into the construction or what limited the life expectancy?

MR. ESKIJIAN: Engineering design in the marine environment, usually 40 to 50 years, is kind of the expected lifetime.

CHAIRPERSON CONNELL: Because of the corrosion?

MR. ESKIJIAN: Yeah, because of the marine bores because of the corrosion, because of any kind of abrasion or problems. We have some timber structures that have been around since the twenties. And many of them are not fit for purpose today but they're still being used.

CHAIRPERSON CONNELL: What can you do to extend the life of these structures? Is there a coding or something?

MR. ESKIJIAN: That's another good question.
There's people that have coded it. They have clad it, by putting a cladding round it. They have, what's called, twinned the piles where they put another pile next to the first pile. There's all kinds of options. We're going to provide the standard to give you some of those options.

Also, I should mention new marine oil terminals, there's no standard for those either, so you could be one operator and build to one standard. Whereas, your cousin down the street that's building a new marine facility could use a totally different set of standards.

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MR. ESKIJIAN: We came before this group about a year and a half ago and we were telling the Commissioners that we were ready to proceed and put a contract out for funding. We've done that now. The project is about half over.

Our prime contractors are a joint venture between Han-Padron & Associates and Ben C. Gerwick. The gentlemen on the joint venture have over a hundred years of experience. Han-Padron is about one block away from our office in Long Beach. Their specialty is marine oil terminals.

Ben C. Gerwick is an elderly gentlemen in his eighties that was very much involved in some of the original designs of these structures in northern California, as well as his company being active on ridge retrofit and on seismic
retrofit for CalTrans.

So we put together the best team of contractors we can. We've put together what's called a cooperative research and development agreement with the Navy. And we're using the Port Huenme Group of the Naval Facilities Engineering Service Center. And by using this vehicle, we're able to capture the non-seismic portions of the problem as well as get to some of the seismic experts or gurus in the world, namely a gentleman named Nigel Priestley.

There's also a collateral grant to the University of Southern California for one million dollars. I'll talk about that a little bit later.

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MR. ESKIJIAN: Now, I would love to talk for about two hours on each one of these topics, but most of you know --

(Laughter.)

CHAIRPERSON CONNELL: Find it within yourself to show some discipline.

(Laughter.)

MR. ESKIJIAN: Thank you, Madam Chair.

CHAIRPERSON CONNELL: If not, as Chair, I shall exercise my authority.

(Laughter.)

MR. ESKIJIAN: I'll just kind of talk about them for
a few seconds. This is the real engineering that's involved here. How often do you inspect and where do you inspect above water and below the water. What kind of design criteria and seismic analysis are required. And this is where we've had Dr. Priestley help us with setting state-of-the-art solutions to these problems. Mooring and berthing is pretty much routine, but nobody has put it in a format that is actually into regulation.

Geotechnical hazards have to be assessed and then we do a structural analysis of components and we use a, what's called, a deformation performance standard for the structures. And one thing that's kind of nice is the grant has allowed us to get into fire detection suppression, which we thought was kind of a jump to seismic, but they bought it and we said yes, yes, yes. And that's the way it worked.

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MR. ESKIJIAN: What have we done so far in terms of peer review is very important to this project. We have kept everybody in California and the United States and even internationally aware of what we're doing. We had a workshop in July of '99 and had about 100 engineers come to that workshop at USC. And we invited, of course, the regulated community of marine terminal operators, consulting and port engineers including Los Angeles, Long Beach and the Port of Oakland. POO is the Port Of Oakland.
The next workshop will be coming up and I'll show you a schedule of that in a minute. The second group that has reviewed it and is totally aware of our work is the ASCE group. I'm on a number of committees, one involved in underwater inspection criteria and one involved in seismic criteria for coastal structures. In both of these groups, the people on these national committees are also part of our team. So our team knows very well this is the same information they're trying to use nationally for standards.

We have also talked to, what's called, the OCIMF. These are the big oil companies that take care of the mooring and berthing issues for major oil companies. And they're aware of our work. We briefed them a year ago in New Orleans and we'll brief them again as we complete the marine mooring and berthing aspects of the project.

We've also been working with the Japanese. Dr. Susumu Iai is the head of an international committee to develop similar standards in Japan. We've worked with him. These are the gentlemen in the organization inviting me to Kobe after the Kobe earthquake. And so we've got a good relationship there. They look at our work and we look at their work.

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MR. ESKIJIAN: Our schedule. We're going to have our next workshop in May of this year. And then the
remaining task will be to develop a cost benefit analysis to see if what we're doing is cost beneficial to an operator. And then by the end of this year, we hope to have draft regulations in some sort of format, start a public hearing process in 2001 and come to you in mid-2001 and say here's some regulations and they refer to our book of standards that we would like to adopt. So about a year, year and a half from now, we're going to come back and that should be our last visit to this group.

We do have technical advisory groups that are working and they'll be more active as we continue the process.

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MR. ESKIJIAN: Some of the things that we're looking at into the future as we begin to put this in regulatory format is that our goal is to project the environment and the economy of California. We know that there are people that may resist these changes because this will cost some money, but there are benefits to the protection of the environment and the economy. And I'll talk about that for a few minutes now.

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MR. ESKIJIAN: We were privileged to go to Turkey about one week after the first earthquake. The earthquake occurred on August 17th, 1999 and one week later we were in
the field. And this is what's called a mooring dolphin. That means that you tie the vessel up to this hook and this is used as a tension device to hold the vessel at the facility.

What you notice here is that the concrete is seriously spalled and the structure is not fit for purpose. It cannot carry the load of the vessel and is out of service. This design is very typical of what we have in northern California. This structure was built by Americans in the mid-nineteen sixties. And we think that whatever happened there can happen here. Because of the mass on this top, it acts as an inverted pendulum and that's what caused the failure there.

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MR. ESKIJIAN: Now, in all the earthquakes I've looked at, which include about four major ones in the world, this is the first time I was there on the spot when there was a major oil spill associated with the earthquake. And it's not clear whether the refinery -- they were transferring fuel -- they were transferring crude oil from a ship to the refinery. The hose was ruptured. We think the vessel pulled away, but we're not positive.

Another option is the oil-water separator failed as they were trying to flood the tank farm, with about 50 tanks damaged and about ten on fire. But the bottom line is that
there were more than 3,000 barrels of oil that were put into
the eastern section of the Sea of Maramara.

And as we came to this little fishing harbor with
these -- this very poor little villages with very poor
fishing boats, John took this picture and there's about three
to six inches of oil in this little marina. It was very sad.

CHAIRPERSON CONNELL: But was that related to the
earthquake or because of an accident?

MR. ESKIJIAN: Oh, yes. Oh, yes related to the
earthquake, directly related, as a result of the earthquake,
directly related. So my point is oil spills do happen
following earthquakes in refinery areas. They do occur, and
this was a classic example for us.

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MR. ESKIJIAN: It was also interesting that just as
you would expect, it was a week after the earthquake before
the Government and the people that were controlling the oil
refinery got serious about cleaning it up. The first concern
is life, the preservation of life and taking care of the
people and the next concern is the environment. So just as
you'd expect, it's about a week after the earthquake they
began to get interested in the oil spill.

This is closer to home. One of, you know, hundreds
of examples I could show you. But this is a facility in
northern California. It is just a little thing, just a
little break here in this conduit. But what that means is that if there is a hazardous vapor around, which is very possible as they're transferring oil or product, that a spark here could cause an ignition source and we could have a massive fire.

This is one of the little things that we inspect for as we go around and do our little inspections, in addition to the structural and looking under water and surveys and all those kinds of things.

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MR. ESKIJIAN: Our mandate, as explained in the Oil Spill Prevention Response Act, is that the Commission, the State Lands Commission, is responsible for adopting rules. And we consider this performance standards. And that's what we're doing is we're trying to set up performance standards that could be used in California as well as the rest of the United States, but primarily for California, to minimize the discharge of oil.

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MR. ESKIJIAN: Where did our money come from? As a result of the earthquake of January 17th, 1994, Northridge, FEMA began to make monies available for, what they called, mitigation. And that means that you don't want this damage to happen again, so you try to do something to reduce the effect next time. And so they made some money available.
Fortuitously, we had worked on a project for the Seismic Safety Commission called California At Risk. We documented that the State Lands Commission is involved in those coastal structures to reduce the oil in the water. Gee, it would be great to have more money, so we can do a better job. And that was our vehicle that gave us the money, to go ahead, to request money from FEMA. We did that. We got 500 K and it comes through the Office of Emergency Services of California.

The catch is with the funding is that we have to provide what's called a soft match. So to get 500 K we have to put in 167 K of our own resources, which we do by our time and our effort. And so that's how we funded this project. The State Lands Commission put in 300 K for the non-seismic parts because this grant money was for the seismic parts of the problem.

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MR. ESKIJIAN: We have two collateral projects and this is what we were requested to go to Turkey through this project. Dr. Costas Synolakis of USC is funded from OES, FEMA for the Tsunami hazard and the seismic hazard. And the interesting thing about these two projects is FEMA doesn't want to fund research, but if that research can be applied and put into our regulations to reduce the earthquake damage the next time, FEMA said we'll fund you.
So FEMA agreed to fund with the stipulation that whatever they come up with goes into our set of quote "regulations or standards."

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MR. ESKIJIAN: And that work specifically relates to the three-county area affected by the Northridge earthquake, Los Angeles, Orange and Ventura.

So that sort of summarizes our project. I don't want to take anymore time, but that's sort of where we're at. We'll come back in mid-2001, hopefully, with some regulatory format and a set of standards ready to present to you. Thank you very much for your time and interest.

Are there any more questions?

CHAIRPERSON CONNELL: Thank you.

Are there questions by Members of the Commission?

COMMISSIONER BUSTAMANTE: It indicated that the oil spill that took place off Turkey was directly related to an earthquake. Do we have facilities that are susceptible?

MR. ESKIJIAN: Yes, we do. We could have the exact same problem in California. And as you know by looking at the --

COMMISSIONER BUSTAMANTE: Which ones specifically?

MR. ESKIJIAN: Specifically, I think there's a number of them in northern California with the exact same similar design built in the sixties and fifties. Now,
whether they will spill, I can't guarantee that, but I'm saying structurally they're very similar.

COMMISSIONER BUSTAMANTE: And they're right on the same types of faults?

MR. ESKIJIAN: Yes, they are. I didn't bring my Kobe -- I'm sorry, my briefing for that earthquake in Turkey, but there is -- one of our briefing charts has an overlay of Turkey here and California here. Okay, the fault of the North Anatolian fault and the San Andreas fault are very similar. And as you know by reading what's going on right now on the Seismic Safety Commission and USGS there's a 70 percent chance that the northern California Hayward fault area will experience, I think it's, a 6.5 or greater earthquake in the next 30 years.

So within my lifetime and maybe I'll still be here at that time and maybe you will too, that maybe for sure there's going to be an earthquake in California in the north and bay area, almost guaranteed.

COMMISSIONER BUSTAMANTE: Is there a way of listing the number of facilities that are susceptible that are near water or waterways?

MR. ESKIJIAN: Sure, we can do that. I think tank farms are also a greater risk. And the tank farms here caught fire and I think that's a very, very large risk that's underrated in California. And I can tell you something about
that maybe you haven't heard yet is that remember this little
earthquake we had in southern California, the one that was
way out in the desert that nobody really wants to say that
anything major happened.

That affected tank farms in the Long Beach and
Wilmington area because of the energy associated with that
earthquake and because those tanks were filled to the top.
And that problem is real and that problem is in California.

COMMISSIONER BUSTAMANTE: And so you're saying first
on one hand that only northern California has refineries, yet
you're saying that there may be some tank farms?

MR. ESKIJIAN: There's refineries in southern
California, Wilmington. And they could be at risk. They are
at risk.

COMMISSIONER BUSTAMANTE: And only those areas as
far as you know at this point?

MR. ESKIJIAN: There's a lot of areas at risk. I
can't tell you for the entire State, but marine oil terminals
and tank farms definitely pose a risk.

CHAIRPERSON CONNELL: Any further questions?

No action is necessary on this item. I believe this
is information only.

EXECUTIVE OFFICER THAYER: That's correct, Madam
Chair.

CHAIRPERSON CONNELL: Okay. Then we will go on to
Item 53 and we have a number of people who want to speak on item 53. What I'm going to do is have the staff presentation first, Mr. Thayer, and then we will ask for the members of the audience who indicated they wish to address us to come forward.

Mr. Thayer.

EXECUTIVE OFFICER THAYER: Thank you, Madam Chair.

This staff person who will make this presentation is Curtis Fossum from our legal division.

SENIOR STAFF COUNSEL FOSSUM: Chair Connell, Commissioner Bustamante, and Commissioner Porini, good morning. I'm Senior Staff Counsel Curtis Fossum. And this calendar item 53 involves a request by the Port of San Diego for your consent to sublease four mooring areas in San Diego Bay to the San Diego Mooring Company.

For over 20 years the Commission and its staff have cooperated with the Port of San Diego in an attempt to remedy the results of what was an unregulated and haphazard free anchorage over much of San Diego Bay. The free anchorage resulted in adverse navigation and water quality impacts to both Port and State Lands Commission lands.

The port took the lead by drafting a baywide small craft mooring and anchorage plan in the early nineteen eighties. This was followed by a joint EIR/EA with the Coast Guard and approval of the Coastal Commission in amending the
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Port Master Plan.

Finally, the Coast Guard eliminated the free anchorage designation and recognized the Port's authority to regulate anchorage in the bay. Legal challenges to the Port's mooring plans and regulations were filed in both State and federal courts. The Commission participated with the Port in several of these. The Port's authority was upheld in each instance.

The Port, like the Commission, generally operates as a lessor of its properties and not a direct operator of facilities. Direct operation of the moorings has resulted in annual losses for the Port in excess of $200,000, that's per year.

After a number of years of study of how to improve management efficiency and cut financial losses to the Port resulting from the mooring operations, the Port decided to initiate a process to solicit operational alternatives. In June of 1998 the Board of Port Commissioners authorized the preparation of an RFP for an operating and maintenance agreement for lease of the mooring buoy system. A representative of the mooring tenants sat on the panel giving input into that RFP process.

Nineteen proposals were received in response to the RFP. These were evaluated by a cross-departmental committee of port staff based upon services offered, reasonableness of
proposed fees, experience of bidders and financial responsibility.

The Committee's evaluation concluded that the lease proposal submitted by the San Diego Mooring Company met or exceeded all evaluation criteria while offering additional services to the boater at little or no cost.

At its November 1998 meeting, the Board of Port Commissioners approved the Committee's recommendation. In December the Port approved the fee structure. It's shown on your Exhibit C to this item. And in March of 1999 granted a lease to the San Diego Mooring Company subject to your approval.

In April, the Port formally requested the Commission consent to the proposed sublease between the Port and the mooring company for operation of the Port's mooring system. Last June, due to continuing operating losses, the Board of Port Commissioners raised the mooring fee from $2 a day, which it's been since 1994, to $3.40 a day effective September 1st of last year.

Such time as the sublease, which is before you today, goes into effect, the fee that is charged to 351 of the 437 moorings will decrease to the amount shown on Exhibit C. The other 86 moorings will increase by 15 cents a day.

Since the Port first proposed operating alternatives, a number of issues have been raised by the
mooring tenants. These issues concern the ongoing condition
and maintenance of the moorings, the RFP process, the terms
and conditions of the lease and the successful bidder.

The staff of the Commission has treated these issues
seriously and in attempt to both understand and address the
boaters concerns has investigated and reviewed the complaints
and the Port's responses thereto. Two of the issues of
primary concern were mooring safety and the opportunity for
public review and comment.

After investigating and analysis of the complaints
and responses, staff believes the safety issue has been
adequately addressed in the sublease, which contains specific
criteria adopted as part of the development of the RFP. That
criteria and inspection schedule in the lease exceeds that of
any lease we are aware of including Commission leases.
Criticism of past Port maintenance practices is inapposite to
the issue of future maintenance by a new operator.

Although there were several misunderstandings
requiring clarification in the bidding process, staff
believes that any errors committed were neither intentional
nor prejudicial to the final outcome.

On the public view issue. In order to ensure that
members of the public had an opportunity to review the lease
and offer comments to the Board of Port Commissioners, State
Lands' staff requested the Board of Port Commissioners hold
an additional public hearing at which time the public would have an opportunity for a full and complete airing of the issues and be able to comment on the procedures followed by the Port, as well as any other relevant issues. And frankly, that's the sixth hearing they've had in the last 18 months on this issue.

The Port did so at its November 16th board meeting. And after the staff report, public comment and board member discussion, voted unanimously to ratify the approval of the lease. Your direct involvement in this contract is more narrow than that of the Port. The Commission's criteria for sublease consent is set forth in Section 4 paragraph 10 of lease PRC 7987.

That section requires that the State shall have a reasonable period of time to consent or deny approval of the sublease and that consent shall not be unreasonably withheld. The standard review of the sublease is commercial reasonableness considering the following factors: the sublessee's financial strength, reliability, business experience and expertise --

CHAIRPERSON CONNELL: Can you slow down. Why don't you go through this slowly.

SENIOR STAFF COUNSEL FOSSUM: Yes, okay. The sublessee's financial strength. We're talking about the San Diego Mooring Company, their reliability, business experience
and expertise, personal and business reputation, managerial
and operational skills, and the proposed use and rent. And
frankly, those are the almost identical issues that the Port
used in its criteria in the bidding process.

Following review of all relevant information, staff
has concluded that the Port has complied with the terms of
lease PRC 7987 relating to sublease approval. It is
therefore staff's recommendation that the Commission consent
to the sublease of those portions of 7987 provided for in the
lease between the Port District and the San Diego Mooring
Company as described in Exhibit B hereto.

That concludes my remarks. I understand that
several representatives of the mooring tenants are prepared
to make remarks. And representatives of the Port and the
mooring company are prepared to answer questions of the
Commission as am I.

Thank you.

CHAIRPERSON CONNELL: We have a number of people who
want to really speak to this issue today. I think it's
appropriate, at this point, to bring them forward. And I
will just read them in the order in which we've received
them. Lorenzo Miller, would you like to come forward,
please?

MR. MILLER: I'm available to answer questions, but
it may not be necessary.
CHAIRPERSON CONNELL: All right. John Grimstad. Is it Grimstad?

MR. GRIMSTAD: The same. I can answer questions. I represent the San Diego Mooring Company.

CHAIRPERSON CONNELL: Okay. Is it Barber Robert?

MR. ROBERT: The same thing. I'm just here to answer questions if called on.

CHAIRPERSON CONNELL: Such a quiet audience today.

(Laughter.)

CHAIRPERSON CONNELL: Ellen Corey Born?

MS. BORN: The same thing. I'm here to answer questions.

CHAIRPERSON CONNELL: Is there anyone here who wants to speak?

(Laughter.)

CHAIRPERSON CONNELL: Martin Collins?

That was a hypothetical.

MR. COLLINS: Madam Chair, I'm the same.

CHAIRPERSON CONNELL: The same thing okay. And what about Eric Leslie, the same thing?

MR. LESLIE: The same party.

CHAIRPERSON CONNELL: Well, how about Robert Keller. Robert, we're delighted to have you come up.

(Laughter.)

CHAIRPERSON CONNELL: Normally, we would restrain
the amount of time that you have to speak, Robert, but you
have won the lottery.

(Laughter.)

MR. KELLER: Good morning. My name is Bob Keller.
I'm the technical advisor to the San Diego Mooring Tenants
Association. I'm a marine engineer and I'm intimately
familiar with the operation and maintenance of underwater
systems and components.

The San Diego Mooring Tenants Association from its
inception had a goal of ensuring safe moorings to their
tenants at a reasonable cost. For the system to meet these
goals, a suitably designed system using quality equipment,
and on which adequate maintenance is performed, is
essential.

At the November 16th, '99 meeting of the San Diego
Port Commissioners, I requested that the technical issues
that related to the RFP, the proposed lease and the actual
configuration of the system in the harbor be corrected prior
to submitting a lease for approval. In the information
package I sent the Commissioners, I described the many
technical issues related to the proposed lease. Let me
summarize just a few of these deficiencies.

The inspection criteria provided for the chain is
different than that that's used by the Port. The inspection
criteria that is specified for the wear of the remaining
structural components of the system, i.e., shackles, swivels, mooring block bails, is different than that -- it is not in the lease itself.

The inspection intervals specified by the lease is not the inspection interval that's used by the Port. No inspection criteria is specified for the anchor blocks themselves. Incorrect replacement chain size is specified by the lease. No criteria is specified for the quality of chain to be used in the system. Shackles required by the lease are of a different material and type than is used by the Port. The chain lengths to be used are not specified by the lease. No specification is included for the size, type or length of mooring lines.

It is not difficult to understand why the Port has had such a problem in specifying the necessary technical requirements to operate the mooring system. During the RFP process, Port staff readily admitted that it did not have the baseline information on the maintenance requirement for a particular mooring or a mooring area. This was even after 15 years of operation of their system.

The mooring tenants offered their services free of charge to the Port and additionally suggested outside consultants to help the corrected technical issues. The issues still exist.

CHAIRPERSON CONNELL: You don't feel that the issues
MR. KELLER: No. There's still many discrepancies as far as the technical specifications and criteria for all the components that hold the boats in the harbor.

Most of the deficiencies could have been corrected by the inclusion of an accurate drawing depicting the configuration of the mooring assemblies. Although the lease references a drawing of the mooring assemblies in a number of places, no drawing is included anywhere in the document nor is any specific number drawing referenced.

Drawings and specifications provide the necessary instruments for anyone to use to audit the Port for the new operator's performance relative to the maintenance requirements of the system. It appears that neither the Port nor the new operator is interested in this type of accountability.

I'm sure that the Port has argued that all of these issues of technical deficiencies listed in your package have been resolved, but this is not the case. Since the RFP was issued Port records indicate that an additional 19 mooring assemblies have failed in the harbor. I have personally dove many of the Port's operated moorings in San Diego Bay and I have seen the neglect of the system, the overgrown chains not routinely inspected and cleaned, chains worn dangerously thin, mooring blocks out of position lying on their sides and
mooring lines frayed to a thread.

And what is the Port's response to our request? The Port threatened an additional rate increase of $5 a day and still the lease has not been corrected.

All the above issues are not new. Resolutions of the technical inaccuracies of the RFP and the lease were requested on August 26th, 1998 during the RFP pre-submittal meeting. So finally after a year of -- over a year of phone calls, conversations, meetings and hearings and analysis, you now are presented with a lease which is still technically flawed.

Since a majority of the components of the mooring system are under water and cannot be inspected except by diving, a matter of trust must exist between the mooring tenants and the mooring system operator. The Port has not earned this trust of the mooring tenants nor will the issuance of a lease, which is technically flawed, reassure the tenants.

Since the new operator has no experience in the maintenance or operation of a mooring system, accurate drawings, detailed inspection requirements and complete material specifications are essential to ensure the safe and efficient operation of the mooring system in San Diego Bay.

The conditions described above are not just the opinions of the mooring tenants. The Port's performance with
respect to mooring operations and lease negotiations have been extensively discussed in numerous newspaper articles which we have included in your package.

Verbal assurances are not enough. The mooring tenants demand a mooring system operated based on contractually documented requirements. Nothing else will do.

On a different note, speaking as a taxpayer of the State of California, I would like to know why the State Lands Commission would approve a lease, which produces State revenues for the use of the State controlled lands, by over a million dollars and give these funds to the business sector. If this is not a giveaway of the public resources, I don't know what is.

CHAIRPERSON CONNELL: Thank you. Mr. Keller, why don't you stay right where you are. And could we have our staff come back up and respond to the concerns that have been expressed. You expressed so many of them, but I think they can fall into the general category of maintenance and of repair.

And, Mr. Keller, could you address them? I mean Mr. Fossum.

SENIOR STAFF COUNSEL FOSSUM: Yeah. In fact, I think after reviewing the submittal made by Mr. Keller and the opponents, I think they really make the case for this
lease. What they do point out is that there have been
concerns about the past operation by the Port, that the
comparison of what this lease calls for and the criteria in
it is much greater in all instances than the Port's current
operation.

And as I pointed out in my statement, the details
are better than we've seen in any other lease including our
own. Because of all the controversy over that, the boaters
even sat on the panel that helped put together the RFP and
the criteria for the tackle. And so they've had input for a
year and a half. Or even prior to the RFP process, there was
input on those criteria.

I think they'd probably like to have Martin Eskijian
working for them. And after several hundred thousand dollars
in studies, they could have maybe a seismically safe thing.
But what we're really talking about here is mooring tackle
and not a marine terminal.

Mr. Keller does work for a nuclear power plant and
deals with those kind of issues for them and I'm sure his
standards are quite high. We believe the standards that the
Port has adopted in this are safe and more than safe. And
the reputation of the winning bidder in operating over 2,100
slips in California and having constructed slips in three or
four marinas throughout California goes to their ability not
only to construct and maintain maritime facilities, but they
also have the expertise and the ability to contract if they
don't have the sufficient personnel.

In addition, the other bidders who bid on the
project did not score as high in many of the categories as
the San Diego Mooring Company. And so after our review, we
concurred with the Port and believe that this is the safest
and best operation for the moorings.

The last statement that Mr. Keller made about us
giving up millions of dollars worth of real estate in this
instance is that we actually will be increasing the revenue
both to the Port District and to the State on this. And so I
don't understand where we're losing money.

The mooring tenants have tried for many years to
keep the rents down. And the result of that has been the
Port has lost money and has not been able to maintain the
mooring tackle as good as they would have liked to.

CHAIRPERSON CONNELL: Is there a requirement in the
lease to bring the Port up to a level of repair and
maintenance that we are comfortable with? I mean, everyone
seems to have acknowledged here that there's been a
deterioration of this facility. Is there any requirement
that we bring it up to a basic minimum so that some of the
concerns that Mr. Keller represented, even if he is more
fastidious than perhaps others might be in analyzing the
condition of this facility, there obviously is some disrepair
from reading your materials and Mr. Keller's and other materials that have been submitted to the Board. What is the requirement under the lease document?

SENIOR STAFF COUNSEL FOSSUM: There's a detailed exhibit to the agreement that talks about the type of chain to be used and so forth. And part of the criticism of the mooring tenants has been that some of those were left blank when the lease was printed and it went to the Board of Harbor Commissioners. That was cured last May when they put in the size of the link of the chain and those kind of details.

CHAIRPERSON CONNELL: Mr. Keller, you're disagreeing?

MR. KELLER: I disagree. The quality of the chain as specified by the lease is indeterminate. And we've had a problem for years with chain that was of poor quality, foreign made chain, which has a tendency to fail and wear out rapidly. There is no specification that says what quality we need to put the chain in. Yeah, there's one that says what size it is and there's one that says it has to be galvanized, but that's all. The chain comes in various qualities and we don't want junk chain installed in the harbor. There's nothing in the lease that prevents that.

SENIOR STAFF COUNSEL FOSSUM: Part of the details I think have been included is that as the chain does deteriorate, because all chain does, the standards are set in there at what point they have to be replaced. Plus, there is
a twice-a-year inspection system on this, which we're not familiar, is required in any other lease. And actually the winning bidder is required to inspect twice a week to actually go out and inspect the facilities as part of this operation. And they will actually go and inspect, dive this, twice a year.

That's been one of the problems. The Port has not had the ability to do that in the past. Some of our other leases for moorings require an annual inspection. This will require it twice a year and it's in a protected buy, so our analysis is that this is more than sufficient to ensure that this chain will be safe. It's higher standards than we've seen in any other lease such as this. And even though it may not have every possible detail in it, that's the kind of determination that the operator and the people who are maintaining the chain should be making as opposed to us, frankly.

CHAIRPERSON CONNELL: So you feel that the standards have been upgraded?

SENIOR STAFF COUNSEL FOSSUM: Absolutely.

CHAIRPERSON CONNELL: So it's a matter of a period of years before the chain, which may be at a lower quality or have deteriorated, would be replaced, is that a correct analysis?

SENIOR STAFF COUNSEL FOSSUM: Well, there's existing
chain there now. And as the divers inspect it, they make a
determination, based on the criteria in the lease and their
own professional knowledge, whether or not a particular chain
and tackle really need to be replaced. But the inspection
period is much more often than is typical or required.

    MR. KELLER: But that's pretty much the problem with
the chain itself. We use one size chain in the harbor for
all boats whether they be a little 22 foot or a 65 foot
boat. The specification of four-tenths of an inch is not
really good enough for the biggest boats and the Port divers
do recognize this.

    They recognize that you must put -- what the new
operator with no experience doesn't have that ability to do
that. He doesn't know what the big boats need to hold them
in place. The criteria is not clearly specified. They're
not adequate.

    SENIOR STAFF COUNSEL FOSSUM: I haven't personally
met the divers, but the contract or the submittal by the San
Diego Mooring Company indicates that they have two divers on
staff and an additional maintenance diver as a backup. And
I'm sure that they would be able to speak to these issues
specifically.

    CHAIRPERSON CONNELL: Why don't we ask them to do
that?

    EXECUTIVE OFFICER THAYER: And Madam Chair, if I
might interject just as a suggestion, I think there are three or four other witnesses who have concerns about this sublease. And perhaps one method that we might approach this would be to hear from all of the witnesses who have problems and then ask the Port and the potential sublessee to come up and respond to those. Curtis is familiar with the law but he's not so good on --

CHAIRPERSON CONNELL: I have CiCi Sayer. Would you come forward. CiCi, are you also with the tenants association?

MS. SAYER: Yes, I am.

CHAIRPERSON CONNELL: Good. Thank you, Mr. Keller. Standby for further dialogue.

Then we're going to be calling Alan -- Wow, Alan, I don't think I'm going to get your name right. Is it Schretzmann?

MR. SCHRETZMANN: Schretzmann.

CHAIRPERSON CONNELL: Okay. You'll be next if you want to be available.

Go ahead, CiCi.

MS. SAYER: Thank you, Madam Chairman. Can everybody hear me? I've got like some laryngitis here, sorry.

Good morning. My name is CiCi Sayer. I'm the president of the San Diego Mooring Tenants Association. I
represent over 200 tenants who currently moor their vessels on the public mooring system operated by the San Diego Port District. Additionally, I am here on behalf of many of the mooring tenants who are not members of the association but who have also expressed their concern regarding the proposed lease now before you.

I am here today to ask that you do not approve this lease. While there are numerous reasons to deny this lease, fundamentally, we believe that this is illegal and unethical. Time doesn't permit a full recital of all the reasons for this, but I will focus on a few of the most compelling reasons, the legally questionable motives behind the attempt to privatize and the inproprieties behind the RFP process and the lease itself.

I'd first like to say very clearly here that the Port District staff has not been truthful with the public concerning the underlying reasons they wish to have the moorings privatized. This effort, in fact, dates back to a letter sent to the Port of San Diego by the Chairman of the Marina Committee of the Port Tenants Association. The Port Tenants Association represents among others the Marina Operators in San Diego Bay.

This letter stated that one of the biggest problems affecting the marinas is the existence of the large number of port moorings. The letter went on to say that the Port was
losing $50 to $90 per month for every boat using a port mooring rather than being in a marina slip.

This figure is based on fees paid to the Port by the marinas for each vessel in their marina. Not coincidentally this amount is equal to about $22,000 per month an amount suspiciously similar to the $20,000 per month that the Port claims to have been losing on operating costs of the mooring system.

Obviously, this was the amount which was suggested to the Port District in the letter from 1993. The marina operators decided that an appropriate adjustment was necessary and demanded that the Port increase the mooring rates. It's become quite clear now what the marinas were after. They wanted to reduce competition from the Port by reducing or eliminating altogether the number of public moorings.

They even went on to suggest in that letter that the Port should not be operating any moorings at all. They wanted their marinas full and the moorings privatized. To achieve that goal, the rates on the moorings first needed to be increased. However, the Port knew that this would never be supported by the public, so a fabrication was put forth that they were losing $20,000 per month in operating costs.

There was never any mention of privatization or marina concerns. Shortly after this letter was written, the
Port attempted to increase the rates for the moorings 500 percent. While that extreme increase was denied, a 100 percent rate increase was approved.

Since then, the marina operators continued to lobby the Port to increase the rates on the moorings. And the Port continued to tell the public that they were losing $20,000 per month and must increase the rates even further or privatize the mooring.

Recently, the rates were increased again to 240 percent of the original 1993 rates that were charged. As you know, this latest increase took place after the decision to privatize the moorings was made and after the San Diego Mooring Company was selected to operate them.

So while the Port was telling the boaters on the moorings and the public one story to justify why the rates had to be increased, in reality these increases had nothing to do with the cost of maintaining the moorings. Rather, the Port was working behind the scenes with the marina operators and the Port Tenants Association laying the groundwork for privatization of the moorings.

The Port's rate increases clearly ensure profitability for the new private operator and is certainly in keeping with the marina's requests that they raise the rates prior to privatization.

A few issues concerning the lease that I'd like to
address are the terms of the lease document that you have
before you were negotiated outside the scope of the RFP and
give significant economic advantage to the San Diego Mooring
Company over any of the other bidders.

Number one, the RFP clearly stated that the moorings
were to be purchased in an as-is condition and that all
investigations as to their conditions would take place prior
to the signing of the lease. The new lease that was
negotiated violates the RFP by permitting the proposed
operator to perform his inspections up to six months after
the lease is signed. And it provides monetary compensation
up to $40,000 for any deficiencies found.

The second major issue is permitting the sale of
ground tackle to the mooring buoy occupants. This term was
specifically deleted from the RFP. Thus, all of the
respondents to the RFP presumed that this revenue source
would not be available to them. While the Port has finally,
just this morning, clarified the term ground tackle, if the
moorings were to be reconfigured in the future as provided in
this lease, this could still be an advantage to the new
operator if he should go to an all-lined mooring system.

This would permit the San Diego Mooring Company to
sell the components of the mooring assembly to the tenant and
additionally charge rent. The economic advantage and the
ramifications of these terms are huge because it increases
revenue and reduces the cost to this particular operator. This is akin to renting an apartment and being required to purchase the building first.

The third major issue is a provision on page 15, paragraph 16 at the top of the page, "The lesser agrees to reasonably consider modifications to maintenance specifications upon request of the lessee." In essence, this would allow the proposed new operator to reduce his required level of maintenance from that which is now specified in the lease.

Thus, in conjunction with the permitted sale, the possibly permitted sale of ground tackle to the mooring tenant in the future, the new operator could totally eliminate all his material costs for the upkeep of the system and reduce his maintenance costs by extending the inspection intervals which are now required by the lease.

Nowhere in the RFP are these cash saving incentives permitted. If other RFP respondents had the chance to submit a bid taking these cost-saving opportunities into account, they would have been able to propose a more desirable contract. The RFP clearly stated that the terms of the lease were fixed and any proposal submitted with unauthorized conditions, limitations or provisions should be a cause for rejection.

The above three items plainly fall into the category
of unauthorized conditions. Yet this lease, which now contains significant cost advantages via the inclusion of unauthorized conditions, was accepted by the Port District staff and approved by the Commissioners of the Port of San Diego.

Finally, there is probably no one who would argue the fact that our bay is San Diego's greatest asset. Public access to that asset must be preserved. If this lease is approved, not only will public access to the boating community be restricted by the private marinas, but it will also constitute a public giveaway, public asset giveaway.

I fail to see how this would ever be in the interests of the State of California or its citizens.

Thank you.

CHAIRPERSON CONNELL: Thank you. Well, you've certainly raised a number of questions, CiCi. And I guess I would like to direct -- I don't know who can answer these questions. The Port of San Diego should have publicly audited statements. Is the Port of San Diego here?

MR. COLLINS: Yes, ma'am.

CHAIRPERSON CONNELL: Tell me what your financial statements indicate about the need for raising the rents as high as they apparently have been raised. What was the number, CiCi?

MS. SAYER: 240 percent over the 1993 rate.
CHAIRPERSON CONNELL: Right.

MR. COLLINS: Madam Chair, First of all, I'm Martin Collins. I'm the Senior Director of Maritime Services for the Port of San Diego and have the responsibility for these moorings.

The moorings started out at $1 and were raised to $2 and then raised, as CiCi said, to $3. We have presented, at various times to the mooring tenants and to the public, a breakdown of those costs, breaking it down to maintenance, administration, payment to the State Lands Commission other allocations that a public agency puts to all the different areas within the departments and added those up and made presentations.

And the records of those have shown basically $3.48 per day per mooring cost of which the maintenance itself is cyclic. It varies. It depends on how often a chain is replaced and as to what other maintenance is, but can range anywhere from a third of that amount to a half to two-thirds of that amount, but that documentation has been presented to the tenants. It was available during the RFP process. It was presented to the Board at various occasions historically going back as far as we had the records for.

CHAIRPERSON CONNELL: Did you want to ask a question?

COMMISSIONER BUSTAMANTE: Have you compared the
rates for mooring in your facility or what you're
anticipating the rates in this facility to be compared to
other facilities that are similar?

MR. COLLINS: Yes, sir. We actually did a
collection of both public and private. We did private within
our bay because that's all the other items that are there.
We did up the California coast. We did western Canada,
Mexico and I believe we did the east coast.

But it is compare -- I can't say that it was the
lowest, but it certainly was not unreasonable.

COMMISSIONER BUSTAMANTE: Can you tell me how it
would compare with just the public facilities in California?

MR. COLLINS: It fell within -- it was not the
lowest, but it was nowhere near the highest. But I must say
that in many cases there's some apples to oranges comparison
here because of the things that are provided. For instance,
if you go to Catalina Avalon Harbor, there it's significantly
higher. And there's an initial kind of buy-in that has to
happen with it.

There are some places that provide additional shower
amenities and things like that that have another cost to it.
So the comparison in all cases is not a perfect comparison,
but we certainly were within the reasonable -- what we felt
were reasonable bounds with the rest of the State.

COMMISSIONER BUSTAMANTE: CiCi, do you believe that
that information is true?

   MS. SAYER: No, I don't. I have done probably not
   as an extensive study as the Port of San Diego, but I do know
   that there are mooring facilities, for instance, up in San
   Luis Obispo, which are much cheaper, for want of a better
   word. Also, the City of San Diego itself maintains moorings
   in Mission Bay at a cost that is much less than what the Port
   says it is going to cost them -- that it costs them to
   maintain their moorings per mooring.

   CHAIRPERSON CONNELL: Why would that be?

   MR. COLLINS: I'm not sure. Barber, are you
   familiar with the Mission Bay?

   MR. ROBERT: Mission Bay you provide your -- we
   provide an anchor block in Anchorage A. In Mission Bay
   you're required to supply that for yourself. And if they
   inspect it and find something wrong with it, you're required
   to replace it. Also, they have a dingy rack that they get
   like for $99 a month, which we provide dingy facilities.

   CHAIRPERSON CONNELL: We can't have responses from
   the audience. We're going to conduct this meeting from the
   microphones up here. So if you're going to be answering a
   question in the future, please come to the microphone.

   Annette.

   ACTING COMMISSIONER PORINI: Yes. I just want to
   know, what was the process that you used when you increased
the rates? Did you have a public hearing process or was there any --

MR. COLLINS: Yes, ma'am. And CiCi alluded or mentioned it and this goes back actually before my time as such. But the fees were $1 a day. And there was a request to raise the fees to approximately, and I'm thinking, $3.50 in nineteen --

SENIOR STAFF COUNSEL FOSSUM: Nineteen ninety-four.

MR. COLLINS: -- ninety-four. Pardon me for forgetting that. They run together after awhile, 1994. The Board decided not to make that increase at that time and increased it to $2. And that was when -- that was based on a public hearing. And that was when we were asked to go back and try to work with the tenants to come to an amiable solution, which included the Port recovering its cost.

One of the things had to occur in order to properly do that was to bring a number of leases together, State Lands leases, that were all independent and separate. And they were brought together and that took some time. And quite frankly, the Port dragged its feet to a certain extent and for other reasons that just that there were other things on the plate.

And so back in 1997, we put this committee together to look at ways to come forward, and that included tenants, with a recommendation to the Commission for recovering costs,
which we did in 1997, not with, of course, the tenant representatives on that committee, of which CiCi was not, but Lisa DiMaggio and Alan Schretzmann were members, did not agree. We finally agreed to disagree and we brought forward the recommendation for $3.50 to the Commission.

And, at that time, it was decided rather than raise the fees that we would get together and try to see if there was another way to do this, like an RFP for privatizing the moorings or, as the Board asked us to do, to review the possibility of contracting out the maintenance and administration, asked us to look at it to cast the net wide for the best way to do this. And we did that. And, in fact, the mooring tenants themselves were one of the bidders. CiCi's group made an actual bid and was one of the losing bidders in the process.

And so when the fees then were not increased again until last July, as CiCi noted, and that was quite simply because I did not have anymore budget dollars left, our fiscal year ran to 1 July, I was covered until then, we had planned on the lease going into effect by that time. It had not gone into effect by that time, so I was required to go back to my board and request dollars to run the moorings for the coming year. And I requested the fee of what it would cost us to operate. The actual fee operation was, at that time, figured out to be $3.48 for the fiscal year ending in
June of last year. And we rounded that off and asked for $3.40 and that was approved by the Board in July.

CHAIRPERSON CONNELL: So you think this would be a market rent, is that a fair statement?

MR. COLLINS: I think it's actually below market rent. I think it's the market comparable to public facilities.

CHAIRPERSON CONNELL: I have a question on the RFP process. Are you the best to answer that?

MR. COLLINS: I think so.

CHAIRPERSON CONNELL: Why is there such a strong feeling on the part of CiCi and the previous speaker that the RFP process was not held as it generally is, at least at the State, as the basis by which you have to negotiate a document?

In other words, we're not given a lot of latitude here at the State level. We issue an RFP, then we are required to negotiate a contract based on the specifications of that RFP. Should we choose to significantly change the nature of the contract, then we have a problem, because that's considered a violation of an RFP process up here.

I'm a little surprised that you have such flexibility. Can you explain that?

MR. COLLINS: I didn't consider that we had great flexibility in it. As far as the substandard portions of the
lease, the terms, the amounts and things like that, there were no changes in the lease. The only thing that really changed was when the RFP process allowed for the bidders to go beyond in offering services or to make suggestions to other things that they wanted to do.

The winning bidder in this case did that, things like reciprocal slip -- excuse me, privileges, bad weather anchorages, a certain number of free pump outs and things like that. And so we felt that was the best offer, but we held some discussions with them to work out the numbers and try to get a maximum amount of those for the tenants as we could.

Additionally, during that hearing when we went to our board, public hearing for the winning bidder, based on tenant comments and based on board comments, the issue of the condition of the moorings was raised. And, Madam Chair, I will disagree that the moorings are in bad condition. I think they are in more than adequate condition to be turned over.

But based on those comments that were there, one of the thought processes that came up, and CiCi mentioned it, although her connotation on it is much different than ours, is this $40,000, what I would call, an insurance policy. That because the tenants were fearful that there was a -- that the moorings were not safe or that in reality the new
bidder would go in, take a look at it, he would find, in
their minds, bad conditions and then he would charge -- he
would increase the rates to do that and that's really a fear
that was on their part.

We offered this insurance policy that is solely at
our discretion to the benefit of the Port and to the benefit
of the tenants that said during that first cycle of
inspections, a requirement of inspections for six months, if
you find conditions down there that are not adequate or below
the minimums that are required in the lease, and those
conditions can be traced to the Port prior to the turnover of
this and the Port agrees with you on that, then we will take
out of this $40,000 fund -- $40,000 fund of which really
would come out of the purchase price of the moorings, we
would just hold $40,000 out and then we would cover it out of
that amount.

We fully expect none of that to be used because,
quite frankly, we believe the moorings are in adequate
condition. However, it was done for the benefit of the
mooring tenants and the district and it provides no monetary
advantage to the bidder. And quite frankly, it had nothing
to do with the bid process because none of the bidders knew
about that.

CHAIRPERSON CONNELL: So you think it's really, as
you say, an enhancement not a variation or modification of
the RFP, is that what you're suggesting?

MR. COLLINS: I'm not even sure it's an enhancement.

SENIOR STAFF COUNSEL FOSSUM: Madam Chair, what took place was, at the time that the bid was accepted, the boaters were still complaining about the chain. And so the Commissioners, the Port Commissioners, decided in order to ensure them of the safety of the chain, they would allow a sum to be paid or the cost of repair if that chain was, in fact, proven, within a six-month period, to not have been up to the appropriate standards.

So it was based on the boaters' concerns that this money was made available so that the Port would not turnover anything that was not adequate at the time of the turnover of the lease. And that was something that was added because of boaters' concerns.

CHAIRPERSON CONNELL: I believe that Ms. Porini has a follow-up question.

ACTING COMMISSIONER PORINI: Well, on that very point, I was a little confused in the discussion, perhaps you could clarify for me. When will a baseline evaluation be done? Is the Port going to do a baseline evaluation of the chains and the buoys and the entire mooring system before it turns over operation to the new company or I think I heard that that was not going to happen until six months after the
company took over, can you clarify that for me?

MR. COLLINS: The Port has a six-month inspection cycle. And the Port, as of last July, and to a certain extent I will admit in response to the mooring tenants, we felt our records prior to that were adequate, the mooring tenants certainly did not. And so we actually took some of their suggestions and tried to make it even more specific than what it was.

And so for the last -- we've now been through two of those complete cycles. Those records will be turned over to the San Diego Mooring Company upon the transfer. In other words, they've been inspected, any repairs that have been done on each mooring the condition of the mooring is documented and those will be provided to the winning bidder.

ACTING COMMISSIONER PORINI: Now, CiCi is shaking her head no.

MS. SAYER: With all due respect to Mr. Collins, my mooring, for instance, was replaced in January of 1999. If there had been two inspections since the RFP was let, we would have known it. Our mooring chain has not been inspected, has not been cleaned. It is the same mooring with the growth. And in that package that I sent to you, there is a picture of that.

Not only is there a picture of that, there is a picture of another mooring chain with growth that exceeds two
years worth of mussels growing on that chain. These moorings have not been adequately inspected.

CHAIRPERSON CONNELL: Response.

MR. COLLINS: We would disagree. I did say as of July of last year, so I must admit that we are in the second cycle now starting January, and so it was one full cycle not two full cycles. I misspoke on that.

As far as the growth, I believe that's the chain we also did after CiCi pointed out the growth on that chain. We did go and clean that chain off specifically to took at -- is that the chain that we talked about?

MS. SAYER: No, this is a different one.

MR. COLLINS: All I can say is the records that we have based on that, they were, in fact, inspected properly. And I will also mention that even though it was mentioned early that there were 19 failures there, there is only one documented failure in the last three years that has anything to do with the chain itself.

CHAIRPERSON CONNELL: I'm going to ask Ms. Porini to follow up again, then we are going to call on the three additional speakers in the audience.

Annette.

ACTING COMMISSIONER PORINI: Yes, I just wanted to understand the hearing process that the Port has gone through.
MR. COLLINS: Yes, ma'am.

ACTING COMMISSIONER PORINI: Now, I believe you indicated, Mr. Fossum, that there's been a total of six hearings. But since the RFP was issued, can you tell me what the hearing process has been at the Port?

MR. COLLINS: Yes, ma'am. We went to the Board with permission to go out with an RFP. So we brought the RFP to the Board first for their review. We came back to the Board, in I guess November of '98, with the selection process of who the winning bidder was.

We specifically did not include the fee schedule in that because we wanted that to be the subject -- each of the bidders had submitted a fee schedule. And rather than put it all in the same package, we wanted to have the public to have an opportunity to comment on that specifically. So a month later we came back at another board meeting with specifically the fee schedule that was contained within the winning bidders. And we presented that to the Board and they accepted that.

After that, we came back again -- I guess the next time we came back was in --

SENIOR STAFF COUNSEL FOSSUM: March.

MR. COLLINS: -- March.

ACTING COMMISSIONER PORINI: That's 1998?

SENIOR STAFF COUNSEL FOSSUM: Ninety-nine.
MR. COLLINS: Ninety-nine. Well, March of 1999 they were completed for the approval of the lease at that time. And that was also approved by the Board. And then with the delay in the turnover, we came back again in July of '99 for the increase in the -- excuse me, yeah, it's July for the increase in the fees. And all of those were public hearings.

SENIOR STAFF COUNSEL FOSSUM: And then November of this last year they held another public hearing at which time they had the opportunity to comment.

MR. COLLINS: That's correct, at the request of the State Lands of your staff, we held another public hearing at that time.

ACTING COMMISSIONER PORINI: And were there members of the public who did testify at that hearing in November?

MR. COLLINS: Oh, yes, ma'am. CiCi was there and other members.

CHAIRPERSON CONNELL: Okay. CiCi, I'm going to ask that you allow your seat to be filled by the next speaker.

MS. SAYER: Sure.

CHAIRPERSON CONNELL: Thank you for your comments. Alan, if you'd like to come forward. And then the next speaker I think they're related, they have the same last name Dory Schretzmann. And then finally we finish up with Lisa, unless there are others who want to be recognized.

MR. SCHRETZMANN: In an effort to save some time, a
lot of issues have been covered here that I think are important. I believe Lisa DiMaggio is going to cover in detail the RFP process and some questions about that. But I would like to just read a brief statement for the record.

My name is Alan Schretzmann. I was on the Port District's outreach panel, but I'm here today as a concerned citizen that would like to see public access to the San Diego Bay preserved. The lease submitted today would significantly change the future use of the affected submerged tide lands held in the public trust by the Port of San Diego.

There is a long well-documented history of interactions between the Port District and the public regarding the private vessel mooring operation. The State Lands Commission's staff summary suggests that the San Diego Unified Port District has responded to and resolved all the complaints and concerns that the public has raised.

That is not the case or we would not be here today. The public has made many accusations that deserve a closer examination. Violations of the public process should be taken seriously.

Just a few of the issues that should be addressed are, instead of approving a lease document, there should be a call for an independent audit of the mooring operation. Instead of validating an RFP that does not match conflicting wording in ordinances and resolutions endorsed by the Port
Commissioners, we should be examining each and every document for its consistency and accuracy. A full and complete airing of the issues would not be represented as a consent only vote by the Port Commissioners without proper public notice.

Wording that is in the State Lands Commission staff summary lease quote, "Lease, sublease provides for the rental of recreational mooring buoys to the public and the sale by the Port of mooring ground tackle." The wording in the lease that should have been removed by Amendments 1 and 2 to the RFP, "The sale of mooring ground tackle and lines and other items to the mooring buoy occupants."

The implications of that statement would significantly impact the calculations of the cost of operating the moorings in the RFP. It also opens up to interpretation future unknown uses of the moorings. The fact that these issues remain unresolved and have reached this level indicates to me there is a problem with the process.

If you are not the officials to address these issues, please let us know who is.

Thank you very much for your attention on this important matter.

CHAIRPERSON CONNELL: Thank you, Alan.

Dory?

MS. SCHRETZMANN: I'm going to go ahead and pass. I believe that Alan covered a lot of my information, and Lisa
will be covering the rest.

CHAIRPERSON CONNELL: Thank you very much. We appreciate that.

Lisa DiMaggio.

I believe that's the last speaker on this item.

MS. DIMAGGIO: I guess that makes me the clean-up batter as it were.

Well, I had a prepared speech here, but I found the other speakers' statements pretty interesting. My name is Lisa DiMaggio and I'm here today as a concerned person. I'm not a mooring tenant. I used to be. I'm a founding member of an organization that we formed in 1994 when some of the processes were starting, the fee increases, et cetera.

I was a participant in the outreach panel that was discussed earlier. And probably the most important part of why I'm here today is I was one of two non-port staff members who drafted the RFP. I believe I have strong working knowledge of what I was told the intentions were and what the public were told the intentions were of the RFP.

I've heard a lot of he said, she said, we thought, they said today. So I really want to talk about the document you've been asked to approve. I heard comment with respect to Mr. Collins addressing the meetings and the hearings that you've talked about before. I brought the ordinances with me from those meetings. And I can tell you that what really
happened and what you're being told here today is not the same thing.

I can also document that. We have tape recorded meetings of each and every one of these hearings and of all the outreach meeting panels. The only meetings that weren't recorded were those for the RFP to give the bidders a chance, to not tip each other's hands -- rather the RFP drafting, I should say.

So I want to talk about the lease. That's what you're being asked to approve. And it would appear from the staff summary that you're being asked to approve an innocent turnover of the operation and maintenance of existing mooring facilities and anchorages and dingy docks associated with them.

But what you're really approving today is on page eight under use, and I might add that's not the only place where this is ramified. There are other portions within the lease document. By the way, I got the copy of this lease, I wanted to make sure I had the lease, not, you know, another version, I got it from Curt Fossum on Friday. I literally spent my whole weekend page by page, RFP to the lease, to see what exactly it is you're being asked to sign today.

Under the use provisions of the lease document, there's a significant difference between the turnover. In fact, there is nowhere in this document that it says that
this lease provides for the operation and maintenance of the
mooring system, blah, blah, blah.

It says, "Rental of mooring buoys to recreational
boaters..." and it talks about the sale of mooring ground
tackle and line. I got a letter today, handed to me by Mr.
Fossum, prepared by the Port District on what their
interpretation of the sale of ground tackle is. And it's
well and good, but the problem is it's left for
interpretation.

And the way this document is right now, it could
mean, it could mean, now or later, it could be interpreted in
a lot of ways. But one in particular would be we're going to
replace your chain at one of those intervals because it needs
to be replaced and we're going to pass the costs on to you.
That is a substantial significant difference between what our
rents are.

So in addition to renting the buoy, that's what CiCi
I think was trying to say, is we may end up bearing that
cost. Well, this document would allow for that to happen.
And in my opinion that's the least of our concerns. Isn't
that funny. I'm not here about the money. I'm here about
telling the truth and providing the proper public forum for
complete airing and discussion.

There's been an address about a November of 1999
meeting. Because I've been so involved over all this time, I
know the difference now between, it took us awhile to figure this out, the difference between a public hearing, a public meeting, a Commissioner's hearing, a workshop, a consent agenda only item, a for-discussion item that pulled it from consent and a public hearing item.

When the lease was first brought to the State Lands for approval in May of 1999, what really happened is this, there should have been a lease signed within three days of the bidder being selected in November of '98. It didn't happen. I asked for a copy of the document referenced in this ordinance and do you know what the clerk told me. It doesn't exist. It never was a lease.

In December they approved a fee schedule and that fee schedule was what was in the RFP or negotiated therefrom, but there's no lease. We were told that the lease was delayed because of State Lands agenda issues, that there wasn't -- we couldn't get it on the agenda because the State hadn't met.

Well, when you met in February of 1999, they couldn't say that anymore. They weren't on the agenda, because there still wasn't a lease. This lease is dated March 1st, 1999. March 30th the Port of San Diego, boom, approved this lease. Of course, they did that. They finally had something to approve, but that's not what they told the public.
The public was told we are approving the lease so that we can extend the time for your approval from what was in the original RFP and the original ordinance, which was December of '98. Now, in the process of doing that, this is interesting because remember that ground tackle sales and other things were being struck from the RFP for the first amendment, but the language slid right back in here. That's what really happened.

Now, what's more important is I read this document page by page, and a lot of this stuff is old hat, old news, but this is why this lease should not be approved today. The intent and content of the RFP have been violated by this lease. Falsification of Port District records, ordinances, resolutions have been made in order to accommodate this lease. False statements have been made by the Port District to community outreach panelists and the public at workshops, committee hearings, regarding their true intent and future operation of the moorings and the true and actual contents of this lease.

Negotiations of more favorable terms to the San Diego Mooring Company that are outside of the scope of the RFP and have still not been disclosed to the public were made between the Port and the San Diego Mooring Company. Please note that while a few of us here know the exact contents of this lease, it's because we independently obtained a copy of

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it, read it and understood it.

At no time has the true nature and content of this lease been made public in any forum whatsoever by the Port District. In fact, this is speculation, I don't know this for a fact, but I'm not sure even that SLC staff is fully aware of some of the changes and nuances of the lease to the RFP. I don't know that reviewing our RFPs is part of your process.

The $40,000 reimbursement account that's included in the lease is to the benefit of the San Diego Mooring Company that was not extended to the other bidders. It was not made public by the Port District. It was only admitted to and explained to the SLC staff after I learned about it and brought it to the State's attention.

Ironically, the $40,000 is for replacement of any substandard materials identified as we talked about before. But the RFP and the Commissioners' statements, which again I have recordings of, they were adamant that it was as-is as-is. Now, the interesting thing is the $256,000 that's going to be paid for the acquisition of these assets less the $40,000 kickback based on the Port District auditor, Bob Munson's report to us, those assets are now fully depreciated from the time that figure was set. That 256 is based on the book value of the assets as of December of 1998. They are now fully depreciated by that on schedule.
And I'm going to segue way here, but it's my understanding that the Port is possibly going to be audited in the very future. And I think we'll find that the figures that are set -- I actually have a document here with me today if anyone wants to see it, dated 1994, from the Marine Operations to the Director of the Port District at the time that talks about what it really costs for them to operate the moorings and it's $1.31 a day.

There is not a $200,000 a year loss, and I think we're going to find that out in the audit. But those figures were what the benchmark were for the RFP and a lease. The whole premise of privatization was to recover costs.

And this is an interesting thing to me, too. Right now, because of the fee increase Martin talked about in July of last year that's now in effect, they are at full cost recovery according to their figures. So it's kind of curious why then won't they take the time to really do the public review. So I want to talk about that hearing.

What was supposed to be a hearing in December -- Curt Fossum has been reviewing things that I've sent and that Martin sent since May of 1999. And this is why. This lease was not dated until March 1st. It was approved March 30th. There was one thing in that meeting that caught my attention more than anything else, and it said the word new lease.

They wanted to approve a new lease not extend the
time of the one that doesn't exist. So I got a copy of it, I asked for a copy from the clerk's office and they could produce this one, but not the first one, because they said it doesn't exist. Not that it was null and void, not that it was no longer of record, because this superseded it, but it doesn't exist.

So when I read it and I saw these things, some things concerned me. And I wrote to Curt and I told him what they were. I only picked three subjects, and that's what's been hammered and hashed out since. But the change of use of the submerged tide lands and the possible interpretation of the language, that hasn't been brought up before. Neither has the potential transfer and assignment language that's included in this lease, that was specifically prohibited in the RFP.

I'm going to conclude real fast. Obviously, I'm impassioned about the subject, but the bottom line is that those issues that were brought up to Curt were serious enough that caused him to keep the lease from being on your agenda three different meetings that you've held so far, since May of '99.

And he asked that the Port District finally resolve the issues before bringing it to you so that we wouldn't be having the debate we're having. The language in the letter that I have with me today specifically says have a public
hearing with all interested parties. Now by government code that means forward notice of a meeting to interested parties. What happened were two phone calls four days before the meeting.

It was on as a consent only agenda item. I got a call and CiCi got a call on Thursday before the Tuesday meeting being told it was on the agenda. I don't think that's public process. I don't think it's been hammered out. And I don't think the document in front of you today is what you think it is. I would ask respectfully that you not approve it, and let us take this back to San Diego and duke it out where it belongs.

Thank you.

CHAIRPERSON CONNELL: Thank you. I thank all the speakers here today. I personally am very disconcerted by the information that has been presented. I don't know how we are to weigh information that is so startlingly different from those who have such varied points of view on both the process and the substance of the contract.

I am concerned to a point where I would be willing to entertain a motion to defer this until our next meeting and request a more active role, I might add, Paul, of our staff. I would like to see us do our own investigation of what we think is the process here, what we think is the actual necessity for the lease being written the way it is.
I'm not comfortable, as a public official, to take action today on a matter that appears to have so many discrepancies in testimony.

I would like to have that testimony reviewed and I'd like to have it verified and I'd like to have a sense of how far off, you know, this process is from where we would like to see it as a Commission.

EXECUTIVE OFFICER THAYER: Okay.

CHAIRPERSON CONNELL: I don't know if anyone else shares that concern with me.

Annette.

ACTING COMMISSIONER PORINI: I do also have a concern about the public hearing process and would really like to have, during whatever interval of time, there be a public hearing. I think it's very difficult for us in Sacramento to attempt to micro manage issues that should be covered at the local level. And I believe that that should be an open public hearing process.

So I recognize that that adds some additional time constraints, but I believe that's necessary to the process.

EXECUTIVE OFFICER THAYER: So I'm to understand from that that we may request, very well request, in the Board report to hold an additional public hearing, monitor very closely the kind of notice that goes into that hearing and that we wouldn't bring it back to you at the next meeting
unless that could be accomplished. We'd bring it back at the
next meeting possibly after that additional board meeting.

CHAIRPERSON CONNELL: I think a public hearing would
be appropriate in San Diego not here. That is not our role.
And secondarily, I certainly want to have some explanation of
why there's this kind of discrepancy in testimony. I don't
think I have in my five years on this Commission ever heard
such a record of disagreement on what appeared to be very
simple facts presented.

Either somebody has got their factual history wrong
here and it has been misrepresented to this Commission or
everyone is misinterpreting it and fudging a little. But it
is really disconcerting to see such a difference of
perspective. I can't recall, Paul, can you, any other
circumstances where we've had this kind of misunderstanding?

EXECUTIVE OFFICER THAYER: I think the two sides are
very passionate on this issue.

SENIOR STAFF COUNSEL FOSSUM: Madam Chair, if I
could. We've heard from the opponents but we haven't heard
from either the Port's Counsel on the public notice issue or
from the winning bidder on that. And certainly having spent
over a year, as part of your staff, reviewing this, we have
gone over each and every one of these issues that have been
raised by both sides to try and come to the truth of the
matter.
And that is the reason that we asked the Port to have an additional public hearing on the matter which they did have. I mean it boils down to the difference of what is a public hearing, that's what they're arguing over. The fact that they spoke at the public hearing and that the Board of Port Commissioners voted unanimously to approve it, they gave -- and I shouldn't be speaking on behalf of the Port's counsel, because they can certainly do that themselves, but the kind of notice that was provided, anybody who had requested notice of it was given notice.

And in addition, they actually called representatives of the two boating organizations to give them notice. So on that notice issue that was probably the primary reason that you have not heard this until now is we were very concerned as a staff that they had not had an opportunity. We believe they have now. But if you'd like to hear from the Port or the mooring tenants, I'm not sure we can resolve anymore than what's already been done.

COMMISSIONER BUSTAMANTE: I would defer to the Commissioners, but I'd like to have staff, the issues raised by Mr. Keller I thought were compelling for me. I'd like to know more about the standards and specifications that were supposed to have been set. If there is something there that you could present to me, I'd appreciate it.

Clearly, when he makes a point about the different
sizes and standards of mooring, one size of boat versus the
other, I think that's a very practical assessment. If there
are no specifications for those kinds of things, I think that
there clearly ought to be.

The other issue that he raised, and there seems to
be quite a disagreement, was whether or not the operator has
any experience in this area or not. He says none and you say
21 other operations at this --

SENIOR STAFF COUNSEL FOSSUM: 2,100 marina slips
that are operating in California.

COMMISSIONER BUSTAMANTE: And so it seems to me that
that could be easily documented, obviously. And I'm going to
assume that, in fact, you've done due diligence on that. But
the other issues of whether or not the chain, the shackles,
and the inspections.

And there was one other issue that was raised by
CiCi, I believe, that the change that was done during the
negotiations of the contract from the ability to change the
maintenance and inspection requirements from the RFP process.
I'd like to hear about that, at some point, when we bring
this back.

Those are the issues that I'm concerned about.
They're more technical. If the rates are within market and
there's and experienced operator, clearly that sounds like it
was needed, I'm more interested in making sure that you were
able to put together an operation that, in fact, with an experienced operator be able to meet the conditions and they're going to be getting what they're paying for.

CHAIRPERSON CONNELL: Mr. Thayer, it is obviously the unanimous attitude of the Commission to not take action today on this. Do we need to have a motion to defer or are substantive concerns registered to a point where you know what you need to do and the kind of report that you need to prepare in putting this on the Commission agenda in April?

EXECUTIVE OFFICER THAYER: I'm advised by the legal counsel that you don't have to take any formal action. We've certainly received the direction from the Commission. We'll research the individual items that I've heard from the Commission today. And, of course, if any other items come to your attention that you want us to look into, please let me know.

I do think, though, that as I said earlier, the differences between these two groups are intense and while we will do our best to reconcile those differences, I'm concerned that there's a difference of interest between these two groups.

CHAIRPERSON CONNELL: I don't have a problem with a difference of interest. I don't have a problem with a difference of passion or perspective. I am concerned, as an elected official, about the difference that appears to exist.
in the way the facts have been presented.

And let me clarify that, that is my concern. We have many heated issues, as you know, before this Commission. Certainly the oil platforms off the coast of southern California being among them, where there are extraordinarily heated divisions and we will never be able to have a common understanding of what we are about in that environment. That's quite different. Even in those hearings, we've never had this kind of discrepancy of fact or at least alleged discrepancy of fact. And that is what concerns me.

I want to make sure that we have a consistent understanding as a Commission of what the facts are before we take action or at least that's my request. I want to make sure that the process has been appropriate at the local level, that there has not been any misuse of the RFP activity, that the hearing process has been in tact. I think it is very vital that we have some assurance that all of the allegations raised today, indeed, have been addressed by this commission prior to it. I think that's the sense of my fellow Commissioners.

So we will just move forward on deferring this item then. I did not mean, in any way, to neglect the opportunity of others to speak. Is there anyone else who wishes to speak on this matter?

If not, then we have completed item 53.
Again, thank you for your extended testimony on this item.

We will now move to item 54. And I believe we also have some individuals who wish to address us on 54. Mr. Thayer, if you'd like to give your staff presentation first.

EXECUTIVE OFFICER THAYER: Yes. Item 54 has to do with the setting of the fee in the emergency regulations for the ballast water program. We heard this in December, but we have a revision proposed at this meeting. And that presentation will be made by Marya Faulkner from our marine facilities division.

MS. FAULKNER: Good morning, Commissioners.

(Thereupon an overhead presentation was presented as follows.)

MS. FAULKNER: Can you see this? No.

CHAIRPERSON CONNELL: I'm going to request that the lights be -- is that a little better?

COMMISSIONER BUSTAMANTE: Can we turn that light off right up there.

CHAIRPERSON CONNELL: I'm sorry for the interruption. Please continue on.

MS. FAULKNER: That's okay. Good morning. And this morning we're going to ask you to approve an emergency regulation to reset or reestablish the fee for the ballast water management program.
As you remember in December, you approved a fee of $600 per voyage. And that was based on information we got from the industry. And, at that time, you also asked us to get together with the industry and sit down and basically get their input and so we did that.

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MS. FAULKNER: And in January we formed a technical advisory group that was comprised of these individuals that we invited these people to attend. The technical advisory group set the fee schedule. As you can see, we have individuals from a wide variety of the industry there. Our objective was to evaluate and adopt an appropriate fee schedule.

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MS. FAULKNER: We started off with the understanding that we're kind of working on one fixed target here. We have a set fee for the program that's been tentatively approved through the Department of Finance. We have an annual cost or a cost through 2002 for those agencies. And the overall cost of the whole program spread between four agencies is 6.67 million for 40 years. So we started with that understanding that we had to be able to hit that target. And the technical advisory group met.

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MS. FAULKNER: We evaluated three different options.
One was a flat fee that would apply a fee equally across all voyages, qualifying voyages, that came in. One was a tiered system which would take good players or a certain subset of voyages. And the third was a maximum cap on a voyage that was charged. We evaluated these things, hashed them over, crunched the numbers, played with the computer programs and stuff.

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MS. FAULKNER: And we came up with a recommendation, the technical advisory group, was to adopt the flat fee option. And they set that at $400. And that was based on the following parameters, which the first two, if they vary, we will be coming back to talk to you again reestabishing a new fee amount.

But right now the technical advisory group felt like we would be seeing 6,000 qualified voyages annually. What we should expect, we would guarantee is kind of their words, a 75 percent recovery of the fee. And then, again, we have a fixed cost basically of the program as we understand it.

They also recommended that the current fee amount of $600 per voyage be maintained through the expiration of the emergency regulation, which would take it to April 29th of this year and that we would reconvene this technical advisory group beginning in July of 2000. And, again, sit down, do we have more information on the types of voyages we're seeing,
things such as that, that we might be able to apply a
different type of fee schedule.

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MS. FAULKNER: So that's what we're putting forward
today. We're asking you to approve an emergency regulation
to set the fee at $400, that we would reconvene the technical
advisory group in July of 2000. We're also putting forward
emergency -- or excuse me, a permanent rule-making package
that says basically the same thing. And we have public
hearings set up right now in Oakland and in Los Angeles to
get the input from the public. So this is kind of Phase 2.

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CHAIRPERSON CONNELL: Make sure our public hearings
are widely announced. We do not want to have a repetition on
this item when it comes back. I think that this has been an
extended learning lesson for us and the importance of
handling public hearings correctly.

MS. FAULKNER: Yes. And that's really it that I
have today. If you have any other questions, I can try to
address those.

CHAIRPERSON CONNELL: Well, we do have a person who
wishes to speak on this, if I'm correct. Kenneth Levin.

Mr. Levin, do you want to come forward?

MR. LEVIN: Where do you want me?

CHAIRPERSON CONNELL: Here might be the best place
so that we can record your comments.

MR. LEVIN: Thank you, Commissioners, for the opportunity to speak and support the State Lands Commission proposed emergency regulations. I'm Kenneth Levin. I'm the vice president of the Pacific Merchant Shipping Association, Executive Secretary of the Foreign Shippers Owners Association, and one of our members is also with the Steamship Association of Southern California. So with the three of those groups, we cover pretty well every vessel and every agent in the Pacific.

We strongly support lowering the fee to 400. We think it's equitable. We think it's fair. We think it will get the job done. And as Ms. Faulkner has pointed out, we will have to adjust it later on if we get better handles on traffic.

If there's any questions, I'd be glad to address them.

CHAIRPERSON CONNELL: Are there any questions by the Commissioners?

COMMISSIONER BUSTAMANTE: Just that I think that this is the kind of work that I was hoping that we would get, Paul. I think that working with industry in trying to figure out how to best deal with the issue, we clearly have a mission to accomplish here. And being able to get to the right mountain was an important one. And working with the
industry to get that done in the way that you've done it here today, I think it shows good staff work.

So thank you.

CHAIRPERSON CONNELL: And I might add it was a pleasant comparison with what we saw before, not on our staff's part, but on the importance of having advisory groups from the district. It's a technique that we use in all of our commissions, as Annette and I will soon be leaving from here to go to another commission, where we use these kinds of advisory groups. And it makes a big difference in the quality of the public dialogue and a better sense of support as you bring items before the Commission. So I thank you for your willingness to participate.

I will take a motion, if I may, from my fellow Commissioners on this.

COMMISSIONER BUSTAMANTE: Move.

ACTING COMMISSIONER PORINI: Second.

CHAIRPERSON CONNELL: It's been moved and seconded. And it is a unanimous vote to approve that item. I thank staff on this as well.

Item 55 is off the calendar. Now, that would conclude the regular calendar, but I don't want to forget, is it Lester Denevan? Lester, I don't know where you wanted to come forward.

MR. DENEVAN: Is this fine?
CHAIRPERSON CONNELL: Yes, please. But you don't have a number here. You just say public comment, so I hope I haven't neglected you earlier, Lester.

MR. DENEVAN: My name is Lester Denevan, D-e-n-e-v-a-n. I'm a resident of the City of Long Beach. I was a member of the local coastal program committee that prepared the plan. By the way, next week the Coastal Commission will be hearing about a project from the downtown shoreline. This is in the tide land area south of the Chapter 138 line, a former beach and park area.

And the City is proposing to put in 500,000 square feet of retail use on the former beach and then shoreline park, a theater complex of 16 theaters plus an IMAX theater and some other uses. And the proposal includes to subdivide 20 acres into eight parcels of public titled area. This is the former beach.

CHAIRPERSON CONNELL: Is this next to Shoreline Village? Where is this, Lester?

MR. DENEVAN: It's somewhat to the west of Shoreline Village, and it extends south of Ocean Boulevard, south of Seaside Way down to the water's edge. And this is a very large area which has been undergoing development for a number of years including this area in this application, plus some of the earlier developments.

We have five office buildings on the beach and
constant encroachment into the public recreation area. Now, the tide land grant of 1911 would apply here. And I am requesting that the Lands Commission hear this at a public hearing and determine whether some of these uses are permissible under the tide land grant of 1911 and subsequent amendments of the tide land grant.

CHAIRPERSON CONNELL: Lester, why do you think we have a nexus to this issue?

MR. DENEVAN: Well, for example, the Coastal Commission report itself says that the State Lands Commission has not commented on this specific development proposed by this coast development permit application. Now, I have appeared before the Lands Commission previously for development and it was heard by the Lands Commission. Certainly, there's precedent for public review by the Lands Commission in the tide land area.

CHAIRPERSON CONNELL: Lester, let me ask our General Counsel. Jack, what would be our prospective role in this?

CHIEF COUNSEL RUMP: Since this is the first time we've heard about this item, we're a bit at a loss to know exactly what our role would be, whether or not, under the grant provisions, it would require approval from the Commission or not.

I think we'll need to find out more information here before we could say that. I don't know. Previously, he's
referring to an instance there was a capital expenditure by
the grantee, which would require that approval. If this is a
private development, it may not.

Obviously, the grantee would be looking to see
whether or not it's within the terms of the grant. But we
have not been contacted and we didn't know he was coming
today.

CHAIRPERSON CONNELL: Well, I appreciate your
interest, Lester. And as you've seen in our earlier dialogue
this morning, we are committed, as a Commission, as
individuals, to having public comment and we appreciate the
effort you made to come up here.

I would like to suggest that you work with our staff
here. And perhaps following the closure of our public
session today, you can provide some additional information,
so that if there is the appropriate action that needs to be
taken in the future, we will certainly be happy to work to
get that information on the agenda.

MR. DENEVAN: Groundbreaking is only a few months in
advance, so perhaps maybe at the next meeting of the Lands
Commission, if you so desire to put it on the agenda. I have
a copy of the staff report of the Coastal Commission, about
60 pages single spaced, which gives some of the detail.

Now, this is from 1999. There is another staff
report from the meeting in San Diego next week of the Coastal
Commission. And, at that time, they'll review the plan. And then in this staff report it says in order for the California Coastal Commission to find that the proposed use of state lands is consistent with the city's tide lands grant, the Commission requires that the city document that the proposed project is consistent with all tide land grant requirements imposed on the city with respect to the portion of the downtown shoreline area.

So I'll close on the -- mention just a few of the uses which are proposed, but they're not in the coastal permit application. They are simply what I read in the newspaper.

Remember, this is a public beach and they're proposing these types of uses, the Gap, Warner Brothers store, Warehouse Records, Cost Plus World Market. So those are the types of uses that I'm concerned about. Do they or do they not fall within the tide land grant?

CHAIRPERSON CONNELL: You know, I appreciate your bringing this to our attention. And what I would like to do is ask that you confer with our staff following the meeting, so that we can get the necessary information. We always appreciate the public keeping us informed of issues like this. I think we have an excellent staff, but it is, of course, difficult, given the scope of our responsibilities, to always be aware of all the changes that are occurring.
But I want to thank you on behalf of the Commission for coming here and sharing that with us.

I do believe that concludes now the open session of the Commission. We're now going to adjourn into the closed session. Do I need to make any announcement regarding closed session, Mr. Thayer?

EXECUTIVE OFFICER THAYER: No, we'll make sure the room is cleared at this point.

CHAIRPERSON CONNELL: Those who are not appropriate to stay for the closed session, would you please depart.

(Thereupon the Open Session of the State Lands Commission was adjourned at 12:07 p.m.)
CERTIFICATE OF REPORTER

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing California State Lands Commission hearing was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of February, 2000.

JAMES F. PETERS, CSR, RPR
Certified Shorthand Reporter
License No. 10063