

MINUTE ITEM

This Calendar Item No. 3
was approved as Minute Item
No. 3 by the State Lands
Commission by a vote of 2
to 0 at its 11/16/82
meeting.

MINUTE ITEM

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11/16/82
PRC 3639.1
Rump

STAFF REPORT ON HEARINGS
CONCERNING THE NUMBER OF MOORINGS
UNDER BID SOLICITATION WP 3639.1

During consideration of Calendar Item 3 attached, Jack Rump, Assistant Chief Counsel, summarized the hearings and the staff recommendations.

The following parties appeared stating their comments on the staff report:

1. Mr. Harrison Hertzberg
Ms. Rosemary Woodlock
Catalina Marine Services Corporation
2. Mr. Jim Radcliffe
Island Navigation Company
3. Mr. Charles Greenberg
Santa Catalina Island Company (Present Lessee)
4. Mr. Joseph Steele
Boat Owners Associated Together

The Commission was asked to warrant that it did not contemplate the issuance of competitive revenue moorings to the upland lessee for facilities excluded from the lease. The Commission did so represent that it did not intend that the other leases would be commercially competitive with the lease being bid.

After much discussion, Chairman Cory thanked staff for its work on this matter. The Commission directed staff to make the necessary corrections to the bid proposal, with proposals to be sent to the 3 bidders by November 18, 1982. Bids are to be received no later than 2:00 p.m., November 29, 1982.

Upon motion duly made by Commission-Alternate Ackerman and seconded by Chairman Cory, the following Resolution was approved, as amended, by a vote of 2-0:

THE COMMISSION:

1. FINDS THAT ALL CAMP MOORINGS ARE EXCLUDED FROM THE LEASE PREMISES; AND THAT THE NUMBER OF AUTHORIZED MOORINGS ON THE LEASE PREMISES IS LIMITED TO THOSE WHICH ARE REVENUE-PRODUCING EITHER ON AN ANNUAL OR DAILY BASIS; AND THAT TOYON BAY AND GALLAGHER'S BEACH WILL BE REMOVED FROM THE LEASE PREMISES.
2. FINDS, FOR PURPOSES OF THE BID SOLICITATION AND RESULTING LEASE, THAT THERE ARE 720 REVENUE-PRODUCING MOORINGS AS SHOWN AND NUMBERED 1-720 ON APPENDIX I ATTACHED HERETO, PLUS TWO STRINGLINES AT ISTHMUS COVE, ONE 476' LONG, TO WHICH A MAXIMUM OF 35 SMALL BOATS MAY BE ATTACHED, THE OTHER, 111' LONG, TO WHICH A MAXIMUM OF SIX SMALL BOATS MAY BE ATTACHED, AND THAT THESE ARE THE ONLY AUTHORIZED IMPROVEMENTS TO BE PLACED ON THE PREMISES UNDER THE PROPOSED LEASE.
3. FINDS:
 - (A) ALL REVENUE PRODUCING MOORINGS MUST BE MARKED WITH AN INDIVIDUAL SERIAL NUMBER, AND IN A MANNER WHICH DISTINGUISHES THEM FROM NON-REVENUE MOORINGS.
 - (B) LESSEE WILL BE REQUIRED TO PROVIDE ANNUALLY TO THE COMMISSION DIAGRAMS OF ALL STATIONARY OBJECTS FLOATING UPON THE WATER SURFACE WITHIN THE LEASE PREMISES. LESSEE SHALL NOT ADD OR PERMIT ANY ADDITIONAL OBJECTS UPON THE LEASE PREMISES WITHOUT THE EXPRESS PRIOR WRITTEN CONSENT OF THE COMMISSION.
 - (C) LESSEE WILL BE REQUIRED TO PATROL AND INSPECT THE LEASE PREMISES AND SEND TO THE COMMISSION QUARTERLY, OR DURING THE HIGH SEASON (JUNE 15-OCTOBER 15), MONTHLY REPORTS ON ALL STATIONARY OBJECTS FLOATING ON THE SURFACE WITHIN THE LEASE PREMISES.
4. FINDS THAT LESSEE IS AUTHORIZED TO PERMIT USE OF INDIVIDUAL MOORINGS FOR MORE THAN ONE BOAT, PROVIDED THAT EXISTING CONDITIONS PERMIT SUCH USE TO BE SAFELY MADE. NO ADDITIONAL CHARGE SHALL BE IMPOSED WHERE SUCH MULTIPLE USE IS MADE BY ACTUAL NAMED SUBLESSEES AND REGISTERED VESSELS FOR THE PARTICULAR MOORING IN QUESTION. ALL OTHER SUCH MULTIPLE USERS SHALL BE CHARGED ON A DAILY BASIS, ACCORDING TO THE FEE SCHEDULE INCLUDED IN THE BID SOLICITATION.
5. FINDS THAT SUBLEASE WAITING LISTS MAY BE ESTABLISHED AND MAINTAINED ON A FIRST COME, FIRST SERVE BASIS, WITH DISTINCTIONS MADE ONLY FOR SPECIFIC COVES AND SIZE OF BOATS, NOT YACHT CLUB MEMBERSHIP. CURRENTLY MAINTAINED ADDENDUM MOORING WAITING LISTS MUST BE MERGED WITH THE GENERAL PUBLIC WAITING LISTS ON A CHRONOLOGICAL BASIS.

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Staff Report on Hearing
Concerning the Number of Moorings
Under Bid Solicitation WP 3639.1

11/16/82
PRC 3639.1
Rump

INTRODUCTION

Pursuant to the direction of the Commission, the staff conducted administrative hearings in Los Angeles on October 25, 26, 28, November 1, and 2, 1982. The purpose of the hearings was to examine the number of revenue-producing moorings located on the premises of Lease PRC 3639.1. Witnesses testified for Catalina Marina Services Corporation (CATMAR), B.O.A.T., Santa Catalina Island Company and Santa Catalina Island Conservancy (Company/Conservancy), and Island Navigation Company and Seaway Company of Catalina. Testimony was taken under oath and witnesses were subject to cross-examination by counsel for the interested parties. Testifying were:

Jon Hardy, owner of Argo Diving Services, who performed contracted diving services for CATMAR;

Joseph Steele, for Boat Owners Associated Together (B.O.A.T.);

Douglas Bombard, for Company/Conservancy;

Randall A. Bombard, for Company/Conservancy;

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Michael Dean LeVac, diver for Company/Conservancy; and
Lynn Stokes, for Island Navigation Company and Seaway
Company of Catalina.

Counsel representing interested parties were:

Harrison Hertzberg and Rosemary Woodlock, CATMAR;

Charles Greenberg, Company/Conservancy; and

James Radcliffe, Island Navigation Company and Seaway
Company of Catalina.

Over the five days of hearing, approximately thirty
hours of testimony were taken, amounting to over 900 pages of
transcript. Copies of the full transcript have been provided
previously to the Commissioners and are incorporated herein by
reference. Also, during the hearing, 40 exhibits were received
into evidence. A listing of those exhibits is attached hereto
as Appendix A.

Final arguments and summation after hearing were
submitted by two of the parties. CATMAR's final argument is
attached hereto as Appendix B. The final statement by the

Company/Conservancy are attached hereto as Appendix C.

It should be noted at the outset that a good deal of the confusion as to the number of moorings on the lease premises is attributable to the presence of a varying number of "camp moorings". These are moorings historically used by camps and schools which have upland leases on the island. In some coves, the camp moorings are mixed in with revenue-producing moorings. In Toyon Bay and at Gallagher's Beach, all moorings are camp moorings; none are revenue producing. In many cases, camps install, maintain, and remove moorings on a seasonal basis. In others, they may contract with Doug Bombard Enterprises for such services on a cost and materials basis. The camps do not pay rental fees for their moorings. In order to better assess the number and location of actual and potential revenue-producing moorings on the lease premises, one focus of the staff study was on evidence presented at the hearings regarding weight and buoys believed not to be attributable to camps.

Finally, the Commission instructed staff to conduct this hearing to investigate the number of moorings on the lease premises. Staff attempted to limit issues, testimony, and evidence presented at the hearing in accordance with these instructions. CATMAR, in its Final Argument, has requested that

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the Commission amend the solicitation and proposed lease to provide for rental based upon a percentage of gross income. This matter was not directly covered within the scope of the hearings, and thus is not included elsewhere in this report. For this reason, we make note of it at this time.

SUMMARY OF EVIDENCE PRESENTED AT HEARINGS

Evidence presented at the hearings is summarized below. It should be noted that, due to the volume of testimony and documentary evidence received, the following represents only an overview. Reference should be made to the transcripts and exhibits for more detailed and complete information.

Attached hereto as Appendix D, are diagrams of three types of moorings used at Catalina. These diagrams may be helpful in understanding discussions in this report and in hearing transcripts.

A. Background Information

Joe Steele, of B.O.A.T., testified at the hearings, based on his experience as a former senior officer of the U.S. Coast Guard and former Commander of the Lubbock Coast Guard district, which includes all of Southern California. His testimony is

helpful in providing some perspective on the import of unattached weights found in the mooring areas. He stated that he was amazed that there were so few at Catalina and that in his opinion, much was being made of nothing (see transcript October 25, page 192).

Regarding the possible use of unattached weights on the ocean floor as revenue moorings, Mr. Steele felt that the same use could be made of a weight on shore or even more so, a weight on a barge (see transcript, October 25, page 193).

B.O.A.T. recommends that the confusion between non-revenue, upland lessee (camp) moorings and the rental moorings be resolved by removing the camp moorings from the lease premises, or to clearly indicate in some other way non-revenue moorings. He also stated that B.O.A.T. would oppose any increase in the present number of moorings.

B. Number of Moorings and Weights on the Lease Premises

Testimony and other evidence presented at the hearing reflected three surveys of the number of moorings present on the lease premises, and of other objects found floating on the surface of the water and lying on the ocean floor. The following is a brief overview of testimony and evidence

presented with regard to each of those surveys.

1. Jon Hardy (CATMAR): Mr. Hardy, of Argo Diving Services, an underwater consulting firm, performed above- and under-water surveys of the lease premises for CATMAR, starting in January, 1982 and continuing into April, 1982.

Mr. Hardy, together with other divers, made 63 dives in all coves outside the City of Avalon except Catalina Harbor. Due to poor diving conditions, Mr. Hardy performed only surface counts in Catalina Harbor. His report, dated April 12, 1982, is attached hereto as Appendix E.

Mr. Hardy testified that he had not been aware of the purpose of his survey in January-April, and therefore did not attempt to compare his findings to the lease document or Company/Conservancy diagrams at that time. He did refer to a 1977 "Chart Guide for Catalina Island" in performing his survey.

The survey methodology was primarily to proceed down the mooring rows by means of a tow sled, or by swimming compass courses, counting weights on the bottom, while a deckhand counted surface buoys. Numbers of weights and

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surface buoys were tallied at the end of each row and cove. Only bow weights were counted by Hardy. No search was made for stern weights, necessary to complete a typical Catalina-type mooring.

Mr. Hardy testified that he and his divers had counted as weights only those objects traditionally used as weights (cement blocks, gear wheels, train wheels, etc.), and did not include in their count abandoned debris (chain, refrigerators, etc.).

Mr. Hardy also made a surface inspection in August, primarily centered on the camp areas to see what had been hooked up for the summer. A verbal report on the August inspection was made to CATMAR.

Sometime after the August survey, and five to nine months subsequent to the completion of his January-April survey, Hardy placed upon aerial photographs which had been produced for CATMAR, numerous orange rectangles and white dots. These photographs, including orange rectangles and white dots, were presented to Commission staff by CATMAR with a copy of Hardy's report on October 1, 1982. Staff provided copies of these photographs and the Hardy report to Mr. Greenberg and Mr. Radcliffe shortly thereafter.

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These photographs were entered into evidence at the hearing as Exhibit 2.

On page 4 of his Declaration, dated September 30, 1982, which accompanied his report submitted by CATMAR to Commission staff on October 1, 1982, Mr. Hardy stated that he carefully placed the orange rectangles on the aerial photographs to ". . . designate the location of mooring weights with no buoys on the surface." He further stated that he had placed the white dots to indicate mooring weights without visible buoys, which appeared to belong to upland lessees. (White dots in Catalina Harbor, unlike those in other coves, designated mooring buoys over the number listed in the 1977 Chart Guide for Catalina Island.)

During extensive testimony throughout the course of the hearing, however, Mr. Hardy explained that he had spent between one-half and one hour placing the rectangles and dots on the photographs and did not intend them to be accurate (see transcripts, October 25, page 65 and page 164; October 28, pages 106, 112, and 120).

CATMAR also introduced into evidence at the hearings diagrams upon which Mr. Hardy had placed colored dots, again apparently to indicate the presence of buoys and/or

weights, beyond those indicated in the lease, or Company/Conservancy diagrams which he had located during his January-April surveys. Mr. Hardy testified that he had made reference to his notes, Commission lease PRC 3639.1, and the Mooring Master List in marking these diagrams. He had spent several hours at this task on Sunday, October 24, the day before the beginning of the hearings (see transcript, October 28, pages 120-121, and 125). Nevertheless, Mr. Hardy testified that even these diagrams were not accurate (see transcript, October 28, pages 121, 124, 132-133, 140, 147-148, 150-151).

Additionally, Mr. Hardy cited numerous factors which contributed to the difficulty of performing an accurate survey of the number of moorings or potential moorings on the lease premises:

1. We are dealing with a dynamic environment in the sea. Moorings are lost in storms; also, boats damage moorings;
2. The counting has taken place on different days and totally different months, winter, summer and fall;
3. There is uncertainty of what to count as a mooring buoy; large buoys, smaller pick-up whips, swim

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floats, dinghy moorings; and

4. Camp moorings are actually mixed into rental areas. What's camp and what's rental?

(See transcript, October 28, pages 126-127.)

Mr. Hardy did testify that with his knowledge of and experience in the leased areas, and with his notes, he would be able to relocate approximately 90% of the weights he had located in January and April, 1982, if asked to do so (see transcript, October 28, page 161).

In an attempt to clarify and summarize the information provided by Mr. Hardy, Mr. Taylor, Assistant Attorney General, prepared a chart, entered into evidence as Exhibit 21, during cross-examination of Mr. Hardy (see transcript, October 25, pages 168-182). That chart has been typed and reduced and follows this page as Figure 1.

During this cross-examination, Mr Hardy's counts were compared by cove to the number of moorings listed under the column marked "Island's Count of Rental Moorings," on the "Catalina Mooring Comparison Chart." This chart had been prepared by CATMAR and was entered into evidence as Exhibit 4. A copy of this chart has been typed and included in this

report as Figure 2, immediately following Figure 1.

As may be seen on Figure 1, and from Mr Hardy's testimony (transcript, October 25, page 182), the total difference in actual buoys between Mr. Hardy's count and that represented by CATMAR to be the Company/Conservancy count, is twenty-five, given a possible error of two. Adding to the number of buoys found by Mr. Hardy, the number of single weights unattached to visible buoys, the total difference between his count (total buoys plus unattached weights) and the "Island's Count of Rental Moorings" (see Figure 2) is seventy-one.

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EXHIBIT 21

PROBLEM AREAS

- GALLAGHERS - CAMP AREA - NO COMMERCIAL LEASES
- TOYON - CAMP AREA - NO COMMERCIAL LEASES
- MOONSTONE - ALL COMMERCIAL
AGREE - 39 BUOYS
DIFFERENCE IS IN WEIGHTS 6
- WHITES - CAMP & COMMERCIAL
AGREE - 17 BUOYS - COMMERCIAL
DIFFERENCE IS ONE EXTRA WEIGHT --
REST OF DIFFERENCE IN AREA IS CAMP USE
- HEN ROCK - ALL COMMERCIAL - NO CAMP
(1 BUOY MISSING AT TIME OF SURVEY)
AGREE THAT THERE ARE 25
DIFFERENCE IS THAT THERE MAY BE 3 MORE WEIGHTS
- BUTTONSHELL - COMMERCIAL & CAMP
AGREE - 8
DIFFERENCE 1 MORE COMMERCIAL BUOY AND 2 MORE
WEIGHTS ONLY
REST OF PROBLEM IS WITH CAMP
- ISTHMUS - NO PROBLEM
- 4TH OF JULY - ALL COMMERCIAL
AGREE - 42
DIFFERENCE 1 ADDITIONAL BUOY AND 3 WEIGHTS
WITHOUT BUOYS

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EXHIBIT 21 - PAGE 2

CHERRY - CAMP AREA & COMMERCIAL
AGREE - 101 COMMERCIAL
DIFFERENCE IS 3 MORE COMMERCIAL BUOYS
DIFFERENCE IS 13 MORE WEIGHTS WITHOUT BUOYS

LITTLE GEIGER - ONLY COMMERCIAL
AGREE - 1 BUOY
DIFFERENCE IS 1 EXTRA WEIGHT

HOWLAND - CAMP & COMMERCIAL
AGREE - 37
DIFFERENCE IS 6 MORE BUOYS
DIFFERENCE IS 12 MORE WEIGHTS

EMERALD - CAMP & COMMERCIAL
AGREE - 99 (OUT OF 100 IN LEASE)
DIFFERENCE IS 5 WEIGHTS ONLY PLUS
1 WEIGHT WHICH WOULD MAKE THE 100

CAT HARBOR - COMMERCIAL ONLY
AGREE - 98
DIFFERENCE IS 14 ADDITIONAL BUOYS
(DID NOT DIVE)

TOTAL DIFFERENCE - WEIGHTS AND BUOYS - 71

TOTAL DIFFERENCE - BUOYS ONLY - 25 BUOYS ± 2

OTHER DIFFERENCE IS HOW DO YOU HANDLE LEASES TO UPLAND

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CATALINA MOORING COMPARISON CHART

	P. 3-Lease #3632.1 Islands Count	Catmar's April Survey Including Wts.	Catmar's April Survey Buys Only	Islands Count of Rental Moorings	Upland's Lessees According to Island Co.	Upland's Lessees per Catmar Survey	Stokes** Count 6/19/82
ISTHMUS	249	249	249	249	0	0	151
5-h-OF JULY	42	46	43	42	0	0	57
HOWLAND'S	42	63	48	37 40*	5	8	50
EMERALD	101	114	105	100	1	9	101
CAT HARBOR	98	112	112	98 97*	0	0	101
BITTONSHELL	9	17	9	7	2	7	36
WHITE'S	17	24	19	17	0	6	24
MOONSTONE	39	45	39	39	0	0	40
TOYON	6	14	8	0	6	14	9
GALLAGHER	3	6	6	0	3	6	8
CHERRY COVE	104	124	108	101 103*	3	7	109
GEIGER	1	2	1	1	0	0	1
HEN ROCK	25	28	24	25	0	0	26
	736 (Including Camp Moorings)	844	771	716 720 Plus (2) Stringlines*	20	57	813

The following footnotes, and the asterisks placed upon the chart above, do not appear on the actual document entered into evidence as Exhibit 4.

*Rafay Bombard, witness for Company/Conservancy, placed these figures on the original exhibit to indicate the evidence as Exhibit 4.

**John Stokes, witness for Island Navigation Company and Seaway Company of Catalina, placed this column on the original exhibit to indicate the total number of moorings, revenue and non-revenue, he found on the surface of the lease premises on June 19, 1982. His figures also include one stringline at the Isthmus (Transcript, November 2, pages 158-162).

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2. Company/Conservancy:

Upon receipt of copies of the aerial photographs marked with orange rectangles and white dots provided to Commission staff by CATMAR, Doug Bombard Enterprises ("DBE", operator of the lease premises for the Company/Conservancy) performed a diving survey of the lease premises on October 12, 13, 14, and 22, 1982. Testimony as to this survey was provided by Randy Bombard and Mike LeVac, an employee of DBE.

The Bombard survey involved diving in the specific areas of the orange rectangles placed upon the aerial photographs by Mr. Hardy. A total of seven divers participated in the survey. Two divers at a time searched in a zig-zag pattern. Each orange rectangle (also referred to as red dots in testimony) was numbered and diving slips were prepared. Copies of the slips are attached hereto as Appendix F.

According to testimony received, the diving slips were initially filled out by a person on the diving vessel, as divers came to the surface to report their findings. Upon return to shore, the persons involved in the day's survey met with Doug Bombard to discuss their findings.

As indicated on these diving slips, the Bombard divers located substantial amounts of abandoned debris on the ocean floor, including unattached chain, refrigerators, and deteriorated cans. They also located unused mooring weights. Mike LeVac testified that of the objects they did locate, approximately 20% to 25% were unused weights. Of these weights, Mr. LeVac stated that none could be instantly used for moorings. Randy Bombard's testimony and diving slips reflected that of the objects located, approximately 40 were weights. Some were unuseable; others were being used as stern weights or for camp facilities.

Because of the inaccuracy of the placement of orange rectangles on the aerial photographs, the Bombard dives may not have been in the actual locations in which Hardy said he found unattached weights. Therefore, the locations and results of the Bombard and Hardy surveys cannot be expected to correspond in all cases. After it was discovered that the parties may have been talking about different areas in their dives, it was stipulated that the numbers could range higher, as much as 900 to 910 total weights in the coves (see transcript, October 28, page 151). Mr. Hardy explained how the divers could find different weights due to their different methodology (see transcript, October 28, pages 152-154).

The Company/Conservancy also introduced, over protests of irrelevancy by other counsel, testimony regarding dives at Avalon to show similar debris or weights in the Avalon operation. Mr. Hardy admitted that Avalon has a common practice of leaving old weights and chains on the bottom (see transcript, October 25, pages 96-97). He indicated that, in fact, the bottom of the lease area is policed more actively than Avalon (see transcript, October 25, page 99).

Randy Bombard testified that the total number of revenue-producing moorings on the lease premises is 720 (see transcript, November 1, pages 115 and 153). Randy Bombard marked on the "Catalina Mooring Comparison Chart" provided by CATMAR (Figure 2, above) to the right of the column "Island's Count of Rental Moorings," the Bombard count where it differed from that listed on the chart by CATMAR (see transcript, November 1, page 153).

In addition, Randy Bombard testified that revenues are generated from stringlines on the lease premises. There are two stringlines at the Isthmus Cove. One to the west that holds above five or six boats, primarily employee boats. The other stringline is to the east and holds about 40 boats, about 20 foot and under (see transcript: for

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stringline discussion, November 1, pages 6-13, and 123-25). There is a charge to use the stringline of \$8 weekdays and \$9 weekends. It is probably full Friday and Saturday, July 15 to mid-September. The present lessee does not consider it to be a revenue "mooring".

Finally, it was clarified through Randy Bombard's testimony that daily use fees are charged to non-sublessees who side-tie to a mooring (use of one mooring by multiple vessels). (See transcript, November 1, pages 122-123.)

3. Stokes' Count (Island Navigation Company and Seaway Company of Catalina): At the direction of Island Navigation Company, Lynn Stokes, who has a boat repair service in Avalon, made a count of all visible moorings on the island on June 19, 1982. The date is the same as that of the computer printout of sublessees supplied to the Commission by the present lessee. As Mr. Stokes made his count, he compared it to the Bombard "Hot Sheets," a manually prepared list of sublessees on the lease premises. Mr. Stokes counted a total of surface floats and buoys of 813, not including stringlines. Although Mr. Stokes does not claim to have determined which of the surface objects were revenue producing, when obvious camp buoys are deducted from the tally, the number of can-type buoys

closely approximates the Company/Conservancy figures for revenue moorings. Mr. Stokes' report is attached as Appendix G.

C. Description of Current Operation

Doug Bombard testified as to numbers of moorings and administrative policies under the current lease. His testimony appears in the transcript of November 2, 1982, pages 1-148. The following represents a brief overview of the topics covered in Mr. Bombard's testimony.

1. Ownership of mooring tackle: The tackle in 299 moorings is owned by individual sublessees; therefore, 421 are owned by the Company and/or Conservancy. (See transcript, November 2, pages 51-52.)
2. Mooring diagrams: The mooring diagrams provided to staff by Doug Bombard Enterprises are outdated and inaccurate as to scale and location. (See transcript, November 2, page 11.)
3. Live-aboard Employees: Employees may use moorings without charge; the value of this use is considered part of their salaries. (See transcript, November 2, page 35.)

Employees are charged for permanent assignment to stringline slots. (See transcript, November 2, page 119.)

4. Skiff Moorings: There are between four and six skiff moorings included in the Company/Conservancy count of 720 revenue-producing moorings. These are located in Cherry Cove and the Isthmus and are leased at an annual rate lower than that for a standard, full-size mooring. (See transcript, November 2, pages 33-34.)

5. Stringlines: Doug Bombard generally confirmed the testimony of his son, Randy, as to use of two stringlines at the Isthmus. He did state, however, that he felt the maximum capacity of the rental stringline was 35 boats. (See transcript, November 2, page 120.)

6. Waiting Lists: Mr. Bombard testified that thirteen moorings in Fourth of July and Isthmus Coves have been, for many years, set aside for yacht club members. Mr. Bombard has continued to maintain a separate waiting list for these thirteen "addendum" moorings under the current lease. (See transcript, November 2, pages 25-28 and 135-144.)

7. Transient Use of Camp Moorings: The Bid Solicitation issued October 8, 1982, indicates that transient public

use may be made of camp moorings when not in use by the camps. According to Doug Bombard's testimony, however, such use was made only two or three times this year. (See transcript, November 2, page 73.)

STAFF AUDIT

On November 10, 1982, subsequent to conclusion of the hearing, staff performed a limited examination of DBE records for the purpose of auditing the number of revenue producing moorings. A copy of their report is attached hereto as Appendix H. The conclusions reached by the audit staff may be summarized as follows:

1. Based upon a limited examination, that the Mooring Master List is reliable. The Mooring Master List shows a total of 720 moorings excluding double buoys, stringline, swimline and oyster buoys, camp buoys, and including skiff moorings with no buoys; and
2. Based upon a limited examination of transaction controls, that the methods and procedures adopted by the Company appear to protect the assets of the business, and insure accurate and reliable accounting data.

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CONCLUSIONS

A. Determination of the Number of Moorings

The present lessee testified that there are 720 revenue-producing moorings on the lease premises. This figure seems to have been borne out by the interpretation of the independent testimony of Mr. Stokes, who did a count of surface markers for Island Navigation Company. There remains, however, some discrepancy between these figures and those prepared by Mr. Hardy, CATMAR's diver. Hardy's surface count was 741 moorings, plus or minus two. (See transcript, November 2, page 24.)

As to the presence of unattached weights on the floor of the lease premises, it is clear from the evidence that a number of them do exist. Mr. Hardy originally testified that there were about 71 extra weights that he found (see transcript, October 25, page 179). Hardy's survey also included those in the camp areas (see transcript, October 28, page 154). The Company/Conservancy also admitted to finding previously used weights in the areas of their dives (see transcript, October 26, page 14). Joe Steele, of B.O.A.T., testified that it is very common to find unattached, abandoned weights and debris on the ocean floor.

The potential use of these weights was disputed. Mr. Hardy estimated 90% could be used (see transcript, October 25, page 37). He further testified, however, that it would be less trouble to drop new equipment down than to go down and recoup the other material. (See transcript, November 2, page 196.) Some would have to be moved. Mr. LeVac testified that of the weights they found, none could be used immediately (see transcript, October 28, page 89). One reason would possibly be that additional weights and tackle would have to be added before a single weight could be turned into a typical Catalina mooring (see transcript, October 25, pages 110-111, page 157, and Appendix D, Diagrams of Typical Moorings).

Once the weight was found, it was estimated that it would take one to two hours to rig (see transcript, October 25, page 189). However, it was admitted that there is not a time savings by rigging in this fashion (see transcript, October 25, page 90).

In summary, Hardy testified that in his opinion, the number of possible moorings with the weights he found were 787, not including additional weights found by the Company/Conservancy.

Regardless of the number of weights that are there, the bottom line question is whether or not they have been hooked up

and used as revenue moorings. The Company/Conservancy testimony represented that of the weights there, 720 moorings are hooked up on the premises and used as revenue moorings. Mr. Hardy was asked if any of the unattached weights he found were actually later hooked up as revenue moorings. He answered he did not know of such an instance (see transcript, October 25, pages 33-34, 84-85).

B. Stringlines and Side-ties

Testimony and further staff inquiry clarified the present lease practice as follows:

(1) Two stringlines at the Isthmus are used to tie smaller boats, especially on busy weekends when moorings are not available. One is approximately 111' long, and is used primarily for employee and company boats; it will hold up to six boats. The other is approximately 476' long and will hold up to 35 boats. Vessels tied to the stringlines on a rental basis pay a daily use fee as delineated in the fee schedule included in the Bid Solicitation.

(2) Conditions permitting, the present lessee allows multiple boats to moor on a single mooring. Sublessees assigned that mooring are not charged a daily use fee for

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the multiple use. Each party not a sublessee named for that mooring must pay a daily fee.

C. Waiting Lists

Testimony revealed that in two coves, there are thirteen special "addendum" moorings for which waiting lists are maintained on the basis of yacht club membership.

RECOMMENDATIONS

It would be an understatement to say that there has been a great deal of confusion over what moorings in the coves of Catalina are included and excluded from the lease being bid. Several measures may be taken to clarify the terms of the Bid Solicitation and resulting lease in this regard.

A. Mooring Identification and Number

1. First, the lease may delineate non-revenue moorings (upland lessees/camps) from revenue-producing moorings. Under the present lease, some camp moorings are apparently included in the lease premises. Toyon and Gallagher coves included in the text of the present lease (see Section 2, paragraph 4), are used exclusively by upland lessees (schools and camps). Yet the lease

description expressly excludes from the lease premises areas traditionally used by camps (see Section 3 of the lease). The Commission may eliminate the confusion on this issue by (1) designating mooring by mooring which moorings listed in the sublessee computer printout are camp moorings for which no revenue shall be produced through rental; or by (2) removing all camp moorings from the lease, thereby leaving only revenue moorings in the lease. Staff recommends the latter.

2. Another means of clarifying the number of moorings on the lease premises would be adding provisions to the bid lease which would require the lessee to provide updated and accurate charts showing the location of all moorings on the lease premises annually. The present lessee has begun to sequentially number the moorings (see Appendix I attached). This should be made mandatory in the lease.

3. A third method of assuring compliance with lease provisions regarding the number of moorings on the lease premises would be to expressly require the lessee to patrol and inspect the lease premises and send to the Commission, quarterly, or during high season, monthly, reports on what surface floats are in place in the cove. This would help in any future investigations.

4. Finally, a determination may be made to change the number of revenue-producing moorings permissible on the lease premises. The Commission may wish to authorize use of presently unattached weights on the ocean floor in the installation of new moorings. In the alternative, the Commission may wish to require that these unattached weights and other debris on the ocean floor be removed.

In light of the fact that these weights have not been shown to be hooked up and used as rental moorings, the staff would not recommend their addition or removal at this time. Lease terms providing strong penalties against the performance bond, and the ultimate possibility of loss of the lease in the event of breach, should be an incentive against use of these weights as "secret" moorings.

Staff recommends the use of the 720 figure as number of authorized moorings on the lease premises. The use of any other number is complicated by the lack of specific information provided as to location, which would lead to further uncertainty among the bidders. Therefore, staff recommends the use of Appendix I attached hereto as specifying the moorings and their sequential numbering for reference in the bid and resulting lease. Staff also recommends express authorization of the two stringlines

that now exist at the Isthmus, in addition to the 720 moorings. No addition of surface floats of any kind by lessee should be permitted above the authorized number without prior written consent of the Commission.

B. Stringlines and Side-Ties

In order to eliminate confusion as to the use of stringlines as part of the commercial mooring operations on the lease premises, the lease should be amended to include the two Isthmus stringlines as authorized improvements. The Bid Solicitation should expressly note this modification.

With regard to side-ties, a statement is included in Exhibit D of the Bid Solicitation explaining the present fee policies.

C. Waiting Lists

It should be made clear that sublease waiting lists must be maintained on a first come, first serve basis only. While the lease permits lists to be maintained by cove and size of vessel, no potential discrimination based upon yacht club membership or other characteristics should be

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allowed. Any lists currently maintained on a yacht club membership basis should be absorbed into the general public waiting lists on a chronological basis.

THEREFORE, IT IS RECOMMENDED THAT:

(1) IT BE MADE CLEAR THAT ALL CAMP MOORINGS ARE EXCLUDED FROM THE LEASE PREMISES; AND THAT THE NUMBER OF AUTHORIZED MOORINGS ON THE LEASE PREMISES IS LIMITED TO THOSE WHICH ARE REVENUE-PRODUCING EITHER ON AN ANNUAL OR DAILY BASIS; AND THAT TOYOM BAY AND GALLAGHER'S BEACH WILL BE REMOVED FROM THE LEASE PREMISES.

(2) THE COMMISSION FIND, FOR PURPOSES OF THE BID SOLICITATION AND RESULTING LEASE, THAT THERE ARE 720 REVENUE-PRODUCING MOORINGS AS SHOWN AND NUMBERED 1-720 ON APPENDIX I ATTACHED HERETO, PLUS TWO STRINGLINES AT ISTHMUS COVE, ONE 476' LONG, TO WHICH A MAXIMUM OF 35 SMALL BOATS MAY BE ATTACHED, THE OTHER, 111' LONG, TO WHICH A MAXIMUM OF SIX SMALL BOATS MAY BE ATTACHED, AND THAT THESE ARE THE ONLY AUTHORIZED IMPROVEMENTS TO BE PLACED ON THE PREMISES UNDER THE PROPOSED LEASE.

OR, IN THE ALTERNATIVE
THE COMMISSION DETERMINE THAT _____ MOORINGS AND TWO

STRINGLINES SHALL BE AUTHORIZED IMPROVEMENTS ON THE LEASE PREMISES.

(3) (a) ALL REVENUE PRODUCING MOORINGS MUST BE MARKED WITH AN INDIVIDUAL SERIAL NUMBER, AND MUST BE PAINTED WITH A COLOR WHICH DISTINGUISHES THEM FROM NON-REVENUE MOORINGS.

(b) LESSEE WILL BE REQUIRED TO PROVIDE ANNUALLY TO THE COMMISSION DIAGRAMS OF ALL STATIONARY OBJECTS FLOATING UPON THE WATER SURFACE WITHIN THE LEASE PREMISES. LESSEE SHALL NOT ADD OR PERMIT ANY ADDITIONAL OBJECTS UPON THE LEASE PREMISES WITHOUT THE EXPRESS PRIOR WRITTEN CONSENT OF THE COMMISSION.

(c) LESSEE WILL BE REQUIRED TO PATROL AND INSPECT THE LEASE PREMISES AND SEND TO THE COMMISSION QUARTERLY, OR DURING THE HIGH SEASON, MONTHLY REPORTS ON ALL STATIONARY OBJECTS FLOATING ON THE SURFACE WITHIN THE LEASE PREMISES.

4. LESSEE IS AUTHORIZED TO PERMIT USE OF INDIVIDUAL MOORINGS FOR MORE THAN ONE BOAT, PROVIDED THAT EXISTING CONDITIONS PERMIT SUCH USE TO BE SAFELY MADE. NO ADDITIONAL CHARGE SHALL BE IMPOSED WHERE SUCH MULTIPLE USE IS MADE BY ACTUAL NAMED SUBLESSEES AND REGISTERED VESSELS FOR THE PARTICULAR MOORING IN QUESTION. ALL OTHER SUCH MULTIPLE USERS

SHALL BE CHARGED ON A DAILY BASIS, ACCORDING TO THE FEE SCHEDULE INCLUDED IN THE BID SOLICITATION.

5. IT BE MADE CLEAR THAT SUBLEASE WAITING LISTS MAY BE ESTABLISHED AND MAINTAINED ON A FIRST COME, FIRST SERVE BASIS, WITH DISTINCTIONS MADE ONLY FOR SPECIFIC COVES AND SIZE OF BOATS, NOT YACHT CLUB MEMBERSHIP. CURRENTLY MAINTAINED ADDENDUM MOORING WAITING LISTS MUST BE MERGED WITH THE GENERAL PUBLIC WAITING LISTS ON A CHRONOLOGICAL BASIS.

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APPENDIX "A"

EXHIBITS TO HEARING, STATE OF CALIFORNIA
STATE LANDS COMMISSION, IN THE MATTER OF
SOLICITATION BID NO. WP 3639, SOLICITATION
OF BIDS FOR A LEASE OF SUBMERGED LANDS AT
SANTA CATALINA ISLAND; HEARING DATES:
OCTOBER 25, 26 and 28 AND NOVEMBER 1 AND
2, 1982.

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EXHIBITS TO HEARING, STATE OF CALIFORNIA
STATE LANDS COMMISSION, IN THE MATTER OF
SOLICITATION BID NO. WP 3639, SOLICITATION
OF BIDS FOR A LEASE OF SUBMERGED LANDS AT
SANTA CATALINA ISLAND

Exhibit Number

Document

- 1
Petition by Hertzberg and Hertzberg
Dated September 30, 1982
(submitted by CATMAR)
- 2
CATMAR aerial photographs (black & white)
submitted to State Lands Commission
with Exhibit 1 -photo mosiacs
labeled A through M
Exhibit 2F (Cabrillo Beach/Little
Gibraltar) is a xerox copy not a photo.
(submitted by CATMAR)
- 3
photographs of Exhibit 2
photographs depicting camp & club
application areas with yellow tape,
consisting of 5 large sheets
(submitted by staff)
- 4
Catalina mooring comparison chart
(submitted by CATMAR)
- 5
Large mooring chart, diagram of
Whites Cove and Moonstone Beach
(submitted by CATMAR)
- 6
Large mooring chart, diagram of Hen Rock
Cove
(submitted by CATMAR)
- 7
Large mooring chart, diagram of
Button Shell Cove
(submitted by CATMAR)
- 8
Large mooring chart, diagram of
Isthmus Cove
(submitted by CATMAR)

<u>Exhibit Number</u>	<u>Document</u>
9	Large mooring chart, diagram of Fourth of July Cove (submitted by CATMAR)
10	Large mooring chart, diagram of Cherry Cove (submitted by CATMAR)
11	Large mooring chart, diagram of Big Geiger and Little Geiger Coves (submitted by CATMAR)
12	Large mooring chart, diagram of Howland Landing (submitted by CATMAR)
13	Large mooring chart, diagram of Emerald Bay (submitted by CATMAR)
14	Large mooring chart, diagram of Catalina Harbor and Wells Beach (submitted by CATMAR)
15	Diver's photos of not-in-use mooring, Fourth of July Cove, designated a, b, c; Hardy's photo numbers 35A, 15A, 34A (submitted by CATMAR)
16	Diver's photos of in-use mooring, Fourth of July Cove, D-1, designated a, b, c; Hardy's photo numbers 8A, 6A, 33A (submitted by CATMAR)
17	Diver's photo essay of mooring consisting of 10 photos, designated as A-J, Hardy's photo numbers 13A, 24A, 26A, 2A, 11A, 22A, 15, 7A, 16A, and one unnumbered (submitted by CATMAR)

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Exhibit NumberDocument

- 18 Catalina-type mooring diagram - sketch by Doug Bombard (submitted by Isl. Co. and Conservancy)
- 19 Deep water mooring (50-100') diagram (submitted by Isl. Co. and Conservancy)
- 20 Letter of Charles Greenberg to State Lands Commission dated September 20, 1982 (submitted by Isl. Co. and Conservancy)
- 21 Work sheet in red felt pen, consisting of three pages (submitted by N. Greg Taylor)
- 22 Catalina Isl., US West Coast, California, NOAA Map, Santa Catalina Island (submitted by Isl. Co. and Conservancy)
- 23 Accordion folder with xerox copies of CATMAR aerial photos, and clipped diving slips (submitted by Isl. Co. and Conservancy)
- 24 Topographical map of Avalon, including Avalon Bay, scale 1" to 200' (submitted by Isl. Co. and Conservancy)
- 25 Catalina Mooring Service skiff/dinghy mooring shallow water diagram (submitted by Isl. Co. and Conservancy)
- 26 Xerox of DBE moorings Master list (computer print out) June 19, 1982
- 27 Xerox copy of CATMAR photo- Exhibit 2H -Cherry Cove (submitted by CATMAR)

<u>Exhibit Number</u>	<u>Document</u>
28	Hardy slide of mooring, slide number 28 (submitted by CATMAR)
29	Hardy slide of mooring, slide number 34 (submitted by CATMAR)
30	Hardy diving slate - Cherry Cove
31	Six small black and white photos of Isthmus Cove in April, 1982 (submitted by CATMAR)
32	Black & white photo of Isthmus Cove; photo identification number: 7-2-82; 1:2000; 82116; 81 (submitted by CATMAR)
33	Black & white photo of Fourth of July Cove; photo identification number 7-2-82; 1:2000; 82116; 73. (submitted by CATMAR)
34	Catalina Mooring Service - Mooring Site & Equipment Sublease (1982) (submitted by Isl. Navigation Co.)
35	Catalina Mooring Service - Mooring Sublease & Service Contract (1982) (submitted by Isl. Navigation Co.)
36	Small xerox copies of chart diagrams of coves, showing serial numbers on moorings (consisting of 10 pages) (submitted by Isl. Co. and Conservancy)
37	Mooring lease waiting lists (consisting of 29 pages) (submitted by CATMAR)

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Exhibit List

Exhibit NumberDocument

38

Xerox copy of Santa Catalina Briefing Package
(submitted by Isl. Navigation Co.)

39

Exhibit C to Island Co./Conservancy
bid package - mooring fee schedule
(submitted by Isl. Navigation Co.)

40

Island Navigation report (2 pages)
dated July 11, 1982
addressee Jim Radcliff
re: buoy count (Stokes report)
(submitted by Isl. Navigation Co.)

APPENDIX "B"

FINAL ARGUMENT OF CATALINA MARINE SERVICES
CORPORATION, PREPARED BY THE LAW FIRM OF
HERTZBERG AND HERTZBERG.

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FINAL ARGUMENT

Catalina Marine Services requested this hearing in order to determine how many revenue-producing moorings are in existence on the lease premises. The conclusion to be drawn from the five-day hearing appears to validate our contention that there is no accurate count and no one figure to which all parties can agree.

The basic problem arose because the staff analysts originally assigned to this lease believed that only the existing lessee was capable of operating the premises. It did not matter that the initial information given the other bidders was incorrect and incomplete. The staff apparently made no independent determination of the revenue-producing facilities or a precise definition of those facilities and their locations because they had already been convinced that only the Island Company could qualify. If the only "qualified" bidder were the current lessee, accuracy of financial projections by all bidders is not important because no other bidder would be awarded the lease. This was demonstrated by the dismissal of Island Navigation's highest bid in the staff recommendations at the December 17, 1981, hearing. The foregoing

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factors produced an inaccurate and variable information base upon which the other bidders have attempted to make accurate financial projections. The danger engendered by these frustrated attempts has been evident throughout the bid process.

Other factors have also contributed to the lack of accuracy. Prior to 1981, the rent charged by the State was a fixed sum. Mr. Doug Bombard stated during his testimony that the count was somewhat off in May 1981 because, under the old lease, it made no difference how many moorings there were and how much revenue was derived.* Under the old lease, accuracy was not required and as near as we can determine, the entire lease premises have been run primarily as an semi-private yacht club. "Pioneer Chicken" has been the subject of much amusement throughout these proceedings. However, we cannot imagine Pioneer Take Out Corporation not knowing the exact number of stores at any given time or excluding a store because the major part of its revenue was from drive-thru sales as opposed to walk-in trade.

An additional and very unfortunate factor underlying the hearing is that apparently the Santa Catalina Island Company and the Santa Catalina Island Conservancy feel that the purpose of the hearing was to delay the bidding past the November 2 election and/or to have access to their

*Without the transcript available, this statement and others are based on notes made during the hearing.

HER1:J2

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books and records in order to determine the amount they would be bidding. The Island Company/Conservancy focused on discrediting the other bidders' information instead of assisting the staff in arriving at a figure to which all parties could agree.

Therefore, the major issue of the hearings became the credibility of our witness, Jon Hardy, versus the credibility of their diver and their survey techniques. Our survey was conducted by an extraordinarily experienced and highly regarded diver who has no connection with or economic interest in Catalina Marine Services. Their survey was conducted by employees of Catalina Cove and Camp Agency. Mr. Hardy has, in addition to his professional diving experience, ten years experience installing and maintaining moorings at one of the camps on the lease premises. Their diver is still a trainee in mooring servicing. Mr. Hardy catalogued in his study debris on the ocean floor in addition to the extra mooring weights he found. Their report does not even take judicial notice of the legitimate moorings, but, interestingly enough, found mooring weights Mr. Hardy missed, raising the total number of extra weights.

Although Mr. Hardy spelled out the methodology of his survey in his report, Mr. Randy Bombard did not attempt to duplicate the Hardy survey in even one cove on the lease premises. Mr. Bombard did, however, spend an entire day having every piece of junk which could be found on the

HER1:J3

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bottom of Avalon Harbor catalogued -- which has nothing to do with the number of usable moorings on the lease premises.

Mr. Hardy testified that many of the additional mooring weights he found were of the same size, age, appearance, wear, and in the same rows as weights which were hooked up to complete sets of mooring gear. These additional weights, in his opinion, could be hooked up to mooring gear at any time and used. In fact, when he returned in August for a visual survey, many of the mooring weights which he could easily identify because of their location had been rigged for use. Mr. Hardy illustrated his assessment of the usability of these moorings by providing pictures taken during the survey and slides taken just prior to the hearing of "in-use" and "not-in-use" mooring weights found next to each other. Those pictures clearly demonstrate the identical nature of those weights. The Bombard survey included no such documentation.

In his eagerness to refute the additional count, Mr. Bombard assumed that Mr. Hardy counted debris which no diver of Mr. Hardy's experience would ever mistake for a mooring weight. Mr. Bombard, additionally, did not even read the report closely enough to learn that Mr. Hardy not only did not count debris such as the new famous refrigerator as a mooring weight but specifically listed it as having been found in "the immediate area of some mooring weights." In some cases, some of the extra moorings were dismissed as merely being "skiff moorings," yet

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later testimony by both Randy and Doug Bombard revealed that some skiff moorings are in fact revenue-producing moorings.

In Catalina Harbor, Mr. Randy Bombard testified why the 14 extra buoys weren't extra moorings and what he thought they were. Mr. Hardy testified as to why at least 11 of those buoys should be counted as moorings. Mr. Hardy's testimony is clearly and adequately based on sound empirical data. Among the skiff-type buoys observed by Mr. Hardy were two at the back of Catalina Harbor during his initial survey and which were dismissed by Mr. Randy Bombard as being either lobster pot buoys or buoys for which he could not account. Another set of buoys in Catalina Harbor brushed aside as being outside the leased premises appear to be within the metes and bounds description of the lease. Mr. Hardy testified that the wrecked boat was nowhere near extra buoys he counted so that the need to lift some mooring equipment over that wreck would not account for those buoys. The mooring for the Phoenix is counted as one mooring by the Bombards although the two Phoenix buoys on the surface are both numbered and separate mooring numbers are listed on the "Master List".

Buoys and weights are erratically included or not included in the total count by the Bombards. For example, a skiff buoy was observed by Mr. Hardy in August over an area where he had previously observed mooring weights. Mr. Randy Bombard confirmed the existence of this mooring as belonging to the Balboa Bay Yacht Club at White's Landing.

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At Fourth of July, we learned of the existence of a stringline previously unacknowledged. At no time during their testimony did either Bombard explain why some skiff moorings were listed as revenue moorings, some as camp moorings, and some not at all until located by Mr. Hardy. At no time was it explained why two stringlines which are revenue-producing facilities were listed on the "Master List" as "Employee Stringlines," inferring that they were non-revenue producing company facilities, and one stringline was not mentioned at all. The only explanation offered by either Bombard was that the Fourth of July stringline and the Balboa Bay Yacht Club mooring belong to "camps" despite the fact that the State Lands Commission letter of November 30, 1981, to the Angeles Girl Scout Council specifically defines those camps whose historical use areas were to be excluded from the lease premises (attached). That definition does not include any yacht club, although some yacht club docks or piers are excluded. Since such additional weights (be they used for skiffs, larger boats or stringlines) are subject to negotiated rental fees, they should be included in the revenue-producing count. Even if the current lessee or operator does not now charge for such moorings, they should be inventoried with the revenue-producing moorings just as the moorings used for live-aboard employees' boats and company boats are.

The simple fact is that determination of the exact number of moorings and their distribution, ownership and use is within the domain

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and control of the Santa Catalina Island Company, the Santa Catalina Island Conservancy, and their operating agent. At no time during the hearing did the Catalina Cove and Camp Agency or the lessee offer any comprehensive documentation to validate their contention that there are only 720 moorings from which the Santa Catalina Island Company, the Santa Catalina Island Conservancy or their agent collect some form of revenue.

Jon Hardy, owner of Argo Diving Services, an independent entity with 24 years of experience, testified that there were 844 total moorings and mooring weights in use and/or available for immediate use on the demised premises. Of these, 57, in his opinion, belonged to camps or uplands lessees, leaving 787 revenue-producing mooring weights available for immediate use. He further testified that between April, when he completed his survey, and August, when he revisited the premises, that a number of the mooring weights which were unconnected in April were connected in August. The difference between 720 moorings admitted by the Island Company and 787 established by Catmar is about 10% of the total.

Additionally, there were 35 small boats in our aerial photos paying rent to tie to a stringline, yet no information was given as to stringline capacity up until the time of this hearing when elicited on cross-examination.

HERI:J7

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Additionally, there exists in Fourth of July Cove an additional rentable stringline about which neither the Commission nor the other bidders were told.

The primary issue in these hearings was the total number of revenue-producing moorings and stringlines at the disputed moorings. Mr. Randy Bombard testified that, in the normal course of business, his books and records would reflect the daily count of the number of boats that paid rental fees for each and every day for the past several years. It is interesting to note that the Island Company could have simply settled the entire problem with an inspection of these books which include the rental count and we would know the exact number of revenue-producing moorings. However, they did not produce these records.

Catalina Marine Services believes that the State Lands Commission should grant our request and return to a rent plus percentage bid. Five days of testimony have brought us no closer to agreement as to the number of moorings on the lease premises. We did learn that sublessees and owners do not use their moorings 75% of the time, that the Catalina Camp and Cove Agency claims to have had to advertise for sublessees although no one we've talked to ever saw those ads, that at least one stringline can handle up to 40 revenue-producing boats at a time, that yearly subleases are granted for stringline and skiff moorings, that side-tying is allowed to a much greater extent than previously admitted,

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and that many of the more desirable moorings are set aside for exclusive sublease to members of private yacht clubs which are uplands lessees. All of the above illustrates how the fixed-rent factor favors the current lessee who alone had this information prior to this hearing and who is probably aware of other sources of revenue not yet revealed.

We believe that the State Lands Commission cannot justify the use of a fixed rental amount on the grounds that it does not want to have to monitor its lessee. The ambivalent and misleading material previously supplied by the current lessee, only partially corrected during the hearing, indicates that the State Lands Commission staff should have taken a more skeptical position with respect to the current lessee rather than looking to a future of less involvement with any lessee.

Rather than continue this investigation until a definite number is agreed upon, we urge the State Lands Commission to change the rent factor in the bid solicitation and allow each bidder to use its best business judgment in the bid. This would remove any competitive advantage which current lessee now has.

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STATE LANDS COMMISSION

KENNETH CORY, Controller
MIKE CURB, Lieutenant Governor
MARY ANN GRAVES, Director of Finance

EXECUTIVE OFFICE
1807 - 13th Street
Sacramento, California 95814

WILLIAM F. BORTHROP
Executive Officer

File Ref.: WP 3639



November 30, 1981

Response to Angeles Girl Scout Council

1. The Bid Lease will not include tideland and submerged land use areas of camps located on adjacent uplands. See Response Number 2 below. Leases of those use areas will be negotiated directly with upland owners or lessees. Therefore, it will be unnecessary to provide in the Bid Lease any provisions regarding rates to be charged for use of those areas by the State's lessee.
2. It is intended that the Girl Scouts and other similar organizations listed below will be allowed to continue their past use of tidelands and submerged lands adjacent to their upland facilities. Therefore, those use areas will be excluded from the Bid Lease. The use areas to be excluded from the Bid Lease are hereby described as:

"those tidelands and submerged lands lying beneath existing piers together with those areas historically used for activities in conjunction with upland camp programs".

A more precise description of these areas will be provided in leases negotiated directly with upland owners or lessees for the use of the subject use areas. These exclusions will not include individual mooring sites under sublease to boaters under the current lease, PRC 3639.1.

These exclusions will constitute amendments to property descriptions listed in the Solicitation and Bid Lease regarding the following coves:

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COVE

UPLAND LESSEE/USE

Howland's Landing

Catalina Island Boys Camp
Catalina Island Girls Camp

Emerald Bay

Great Western Boy Scout Council

Buttonsell Beach

Glendale YMCA

White's Landing

Angeles Girl Scout Council

Toyon Bay

Catalina Island Marine Institute

Gallagher Beach

Intervarsity Christian Fellowship

Cherry Cove

San Gabriel Valley Boy Scouts

Cabrillo Harbor

Long Beach Boy Scout Council

Parson's Landing

Great Western Boy Scout Council

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APPENDIX "C"

FINAL STATEMENT OF SANTA CATALINA ISLAND
CONSERVANCY AND SANTA CATALINA ISLAND
COMPANY, BY CHARLES E. GREENBERG, ATTORNEY.

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1 BALL, HUNT, HART, BROWN AND BAERWITZ
2 120 LINDEN AVENUE
3 LONG BEACH, CALIFORNIA 90802
4 (213) 435-5631
5 Attorneys for Santa Catalina Island Conservancy,
6 and Santa Catalina Island Company
7
8
9

10 HEARING STATE OF CALIFORNIA STATE LANDS COMMISSION
11
12

13 In the Matter of:

14 SOLICITATION BID NO. WP-3639; : FINAL STATEMENT BY SANTA
15 SOLICITATION OF BIDS FOUR A; : CATALINA ISLAND CONSERVANCY,
16 LEASE OF SUBMERGED LANDS ON : AND SANTA CATALINA ISLAND
SANTA CATALINA ISLAND : COMPANY
17
18
19

20 During the evidentiary phase of these hearings it
21 was appropriate for lawyers representing the various parties
22 to probe each witness within the limits of the adversary method
23 of arriving at the truth. In closing statement, however, it
24 becomes our duty to put the adversary system behind us, to weave
25 together in a meaningful fashion the facts that have emerged
26 from the hearings and to provide the hearing officer a coherent
27 picture of the results of the hearings.

28 These hearings were called to test the charge made

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(.)

1 by Cat Mar that my clients operate a minimum of 850 potential
2 revenue-producing moorings within their lease premises, although
3 the lease restricts the premises to 720 revenue-producing moorings.
4 The sum and substance of the evidence upon which Cat Mar makes its
5 charge are the results of a diving survey conducted in January and
6 April of 1982 by Mr. Hardy and his Argo Diving Services. The
7 primary thrust of Mr. Hardy's testimony was that there are
8 scattered at the bottom of the waters of the lease premises a
9 substantial number of weights, chains and other paraphernalia that
10 constitute potential revenue-producing moorings. Mr. Hardy also
11 testified that there are in excess of 720 buoys present on the
12 surface of the water within the lease premises. Mr. Hardy's
13 testimony is the totality of the Cat Mar case.

14 First, let us discuss the significance of the fact
15 that there are a good number of weights and assorted other items
16 on the bottom of the ocean within the lease premises. The hearings
17 have made clear that these objects are not "potential revenue-
18 producing moorings." The one independent expert who testified
19 in this case was retired Coast Guard Admiral Joe Steel. Admiral
20 Steel testified that when he was a Coast Guard operations officer
21 and later a Coast Guard commandant, the United States Coast Guard
22 lost thousands of weights from its buoys. The Coast Guard never
23 attempted to recapture such weights, but instead left them where
24 they had fallen. In addition, Admiral Steel made clear that it
25 does not make economic sense to utilize abandoned weights as part
26 of a newly installed mooring system. It takes less time, effort
27 and expense to fabricate an entire new mooring system ashore
28 and to drop it as a functional whole in the place where the buoy

1 is needed. Under questioning by Assistant Attorney General
2 Gregory Taylor, Mr. Hardy also admitted these facts. Thus, even
3 if your lessées wished to create and operate bootleg moorings
4 (which I assure you they do not), they would do so ashore and not
5 utilize abandoned weights at the bottom of the ocean.

6 Admiral Steel's testimony is further substantiated by
7 the fact that the bottom of Avalon Bay appears to be the
8 receptacle of just as many weights and other assorted items as
9 does the lease premises. The presence of weights on the ocean
10 bottom is no evidence that the operator is attempting to secrete
11 hidden moorings.

12 Upon cross-examination of Mr. Hardy, it became clear
13 that his survey last spring and the photographs and renderings
14 submitted by Cat Mar this fall were put together in such a way
15 that neither the weight count nor the location of the claimed
16 weights on the ocean floor is dependable evidence. Further, it
17 is most significant that Cat Mar used great care to attempt to
18 hide the technical weaknesses in their survey and demonstrative
19 evidence. At the time Cat Mar first made its charges, it sent
20 to you as part of its sworn testimony, aerial photographs con-
21 taining pieces of red tape supposedly placed where the so-called
22 secret weights were located on the ocean floor. At the beginning
23 of the hearings, however, Cat Mar informed us that these photo-
24 graphs were not accurate and should not be relied upon. Instead,
25 Cat Mar introduced new renderings for each cove. On each
26 rendering a red dot indicated where each so-called mooring
27 weight was located. Cross-examination developed that there
28 were huge discrepancies between the numbers and locations of

1 weights depicted upon the photographs and the renderings.
2 Cross-examination also developed that there were substantial
3 inconsistencies between the renderings and Mr. Hardy's notes.

4 Mr. Hardy explained the discrepancies between his
5 notes and the location and number of weights found on the aerial
6 photographs and renderings by stating that when he performed his
7 survey early this year, he did not know he was supposed to keep
8 track of the location of each weight. He also did not know that
9 he was supposed to distinguish between weights for camp moorings
10 and weights for potential revenue-producing moorings. Further,
11 he did not know he was supposed to discriminate between weights
12 that may be used for revenue-producing purposes and weights
13 that may be used for someone else upon the lease premises for
14 nonrevenue-producing purposes. Thus, some seven to nine months
15 after the survey was completed, Mr. Hardy faced the Herculean
16 task of reconstructing from his memory the location and number
17 of each weight that might be fairly attributed to the various
18 types of mooring use found on or near the lease premises.

19 If Cat Mar had been forthright about these major
20 omissions in their survey data at the beginning of these hearings,
21 we might have been more tolerant of their evidentiary problems.
22 Unfortunately, however, Cat Mar attempted to hide these gaping
23 holes in its survey methodology and data. The company's efforts
24 to produce two sets of contradictory demonstrative evidence
25 purporting to show the locations of the weights when it knew in
26 its heart it did not know the locations of those weights is a
27 very serious matter. It is difficult to give much credence to
28 a charge based upon data that was flawed at its inception and

1 where rather extraordinary measures were taken to obfuscate those
2 flaws.

3 It seems clear that Cat Mar cannot and has not produced
4 any evidence that the weights and other items found at the bottom
5 of the sea upon the lease premises constitute a source of potential
6 revenue-generating moorings in excess of the number allowed by the
7 lease. Finally, not one iota of evidence was ever submitted by
8 Cat Mar that its extensive observations of our operations ever
9 disclosed that we had in fact hooked up or otherwise attempted
10 to operate as moorings more than the revenue-producing moorings
11 allowed by the lease.

12 Now, let us analyze the evidence produced by Cat Mar
13 that there are more than 720 buoys on the surface of the water
14 within the lease premises. At the conclusion of the first
15 segment of Mr. Hardy's testimony, Assistant Attorney General
16 Grey Taylor reached agreement with Mr. Hardy as to the number of
17 surface buoys claimed by Cat Mar to be potential revenue-producing
18 moorings. When one adds up the number of buoys claimed by Mr.
19 Hardy to constitute potential revenue-producing moorings, they
20 total 739 if one excludes the camp moorings from the count.

21 No evidence, however, was ever offered that these some
22 19 extra moorings were actually operated as potential revenue-
23 producing moorings. To the contrary, it is clear that many of
24 the buoys counted by Mr. Hardy were not revenue-producing moorings.
25 Both Randy and Doug Bombard explained in some detail that approxi-
26 mately 15 to 20 of the buoys counted by Mr. Hardy as
27 revenue-producing moorings actually are used by fishermen,
28 scientists, yacht club caretakers, et cetera, for their own

()

1 purposes. These buoys were not painted, marked or otherwise
2 maintained in an identical fashion to our usual revenue-producing
3 buoys. On cross-examination, Mr. Hardy agreed with many of the
4 explanations of the Bombards, although he objected to a few on the
5 grounds that the Bombards were explaining buoys that were not
6 actually in the count made by Mr. Hardy. In any case, if one
7 subtracts from the 739 potential revenue-producing mooring buoys
8 counted by Mr. Hardy those buoys apparently used by others, the
9 total number of apparent revenue-producing moorings, even
10 according to the Hardy count, seems to be in the range of 720
11 plus or minus five.

12 To be fair to Cat Mar, we must admit that, with one
13 exception, all of the parties who have attempted to count surface
14 buoys within the lease premises have had great difficulty in
15 obtaining consistent, accurate and dependable buoy counts. I
16 do not understand why it has proven so difficult to obtain con-
17 sistent accurate buoy counts, but must admit that the task
18 has apparently proven difficult when attempted by Cat Mar, my
19 clients and representatives of the State of California.

20 Ironically, the one man who apparently had very little
21 difficulty in obtaining an accurate buoy count was Mr. Lyn Stokes.
22 Mr. Stokes was retained by Island Navigation Company and Seaway
23 Company of Catalina to attempt such a buoy count on June 19th,
24 1982. Island Navigation provided Mr. Stokes with a copy of one
25 of our "hot sheets" to help him in this effort. Mr. Stokes runs
26 and operates a boating maintenance business in Avalon and
27 obviously is familiar with the various types of uses made of
28 differing buoy systems found around Catalina. Mr. Stokes' count

1 of what appeared to him to be revenue-producing buoys was 723.
2 After explanation was given to him concerning the extra three
3 mooring buoys he found that bore a resemblance to normal revenue-
4 producing moorings but were not actually used for such purposes,
5 Mr. Stokes' buoy count became 720 -- the exact figure set forth
6 in the lease. Mr. Stokes found a good number of other buoys but
7 had no difficulty distinguishing their operation and use as
8 being different than revenue-producing moorings.

9

10

CONCLUSION

11

12 These hearings commenced because Cat Mar alleged my
13 client has 850 "potential" revenue-producing moorings on the
14 lease premises. This charge, even if it were true, by its own
15 terms fails to allege a violation of our lease agreement with
16 the State of California. Cat Mar did not and cannot charge that
17 we are actually operating more than the 720 revenue-producing
18 moorings allowed on the lease premises. But Cat Mar has failed
19 dismally even to produce credible evidence that we have more than
20 720 "potential" let alone "actual" revenue-producing moorings on
21 the lease premises. The sole evidence Cat Mar has produced is the
22 Hardy survey of weights found on the bottom and buoys found on the
23 surface of the lease premises. The Cat Mar survey was flawed at
24 its inception and has suffered from those flaws ever since. The
25 evidence is overwhelming that the weights and other objects found
26 at the sea bottom cannot be characterized as "potential" revenue-
27 producing moorings. The evidence is overwhelming that even
28 Cat Mar's buoy count, when limited to revenue-producing type

1 buoys, is not inconsistent with a 720 revenue-producing buoy
2 count. The evidence is both clear and convincing that as of
3 June 19th, 1982 a survey conducted for Island Marine disclosed
4 720 revenue-producing moorings, the exact number provided for by
5 the lease.

6 The evidence is conclusive that the State of California
7 has spent substantial time, energy and funds chasing a will-o'-
8 the-wisp charge that should never have been brought in the first
9 place. We now understand why Cat Mar has declined consistently
10 to accept our challenge that if it could prove its charges my
11 clients would pay the costs of these hearings, but that if it
12 could not prove such charges Cat Mar should pay those costs. We
13 urge the commission to bring this investigation to a close and to
14 renew the bidding process as rapidly as possible. We also urge
15 the commission to issue a report clearly branding Cat Mar's
16 charges for what they are, so that any potential cloud over my
17 clients' good name and reputation will be lifted.

18 Finally, should Cat Mar or Island Marine wish to
19 pursue their intention announced in the hearings to procure
20 the examination of our books and records to determine whether we
21 have derived income from or serviced more than the allowed number
22 of revenue-producing moorings, we reiterate our offer made at the
23 hearing on this matter. If Cat Mar or Island Navigation
24 specifies in its final statement which records identified in
25 the hearings it wishes examined to see if there is any evidence
26 we are operating more than 720 revenue-producing moorings, we
27 will be happy to make such records available to State auditors
28 or other State representatives for examination between today

1 and the State Lands Commission meeting of November 16th. We will
2 not make such records directly available to Cat Mar or Island
3 Navigation. We believe the purpose of Cat Mar and Island
4 Navigation requesting the right to examine such records, is their
5 desire to obtain as much proprietary information from us as
6 possible to enable them to better judge the likely amount of
7 our bid. We believe such a purpose is improper. On the other
8 hand, we trust the State not to disclose such proprietary
9 information. Therefore, we will be happy to allow the State to
10 examine any books or records it or the other bidders believe are
11 relevant to the issue of whether or not we are operating more
12 than 720 revenue-producing moorings on the lease premises.
13

14 DATED: November 6, 1982.

15
16 BALL, HUNT, HART, BROWN AND BAERWITZ

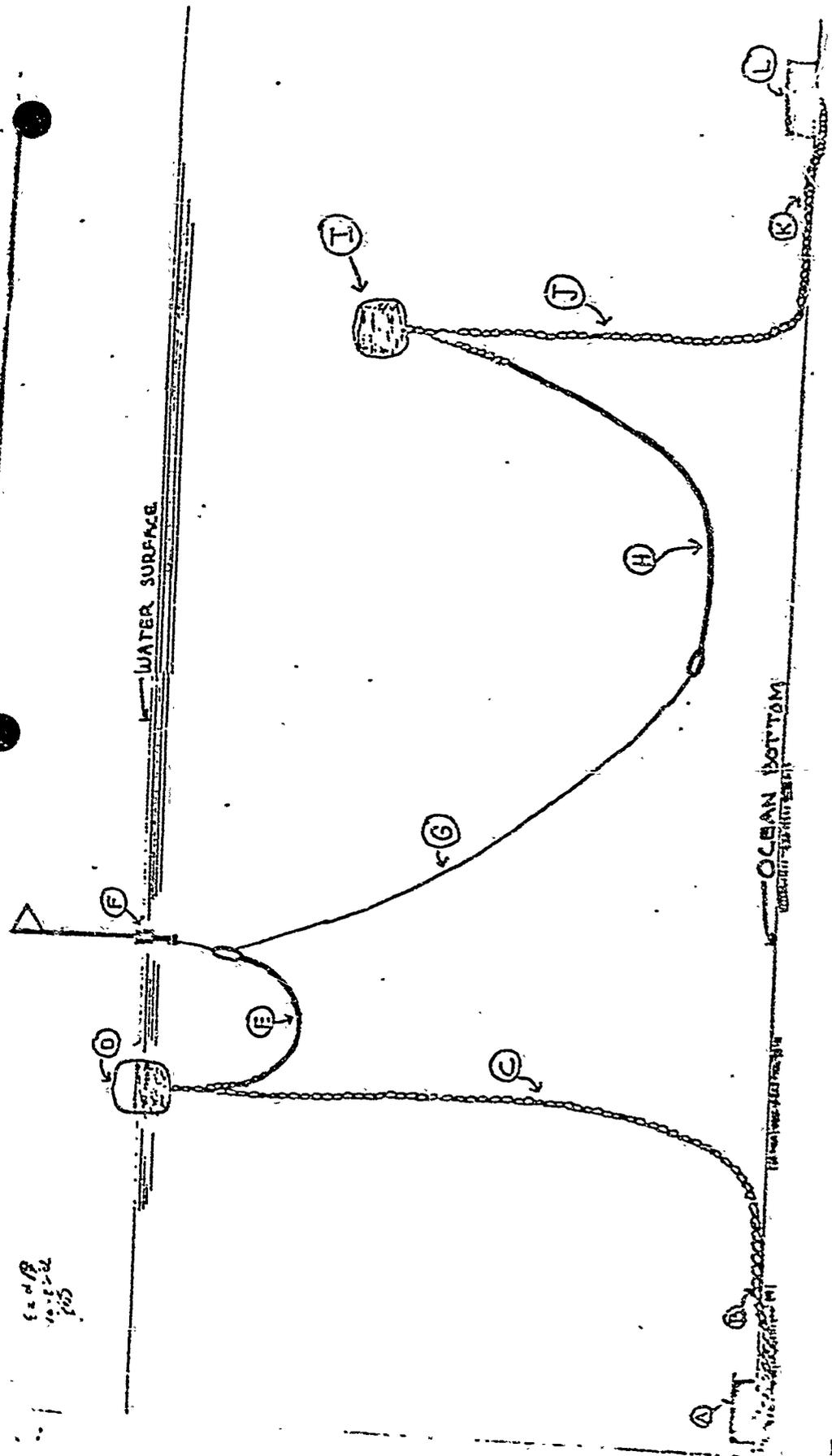
17
18 BY Charles E. Greenberg
19 Charles E. Greenberg
20 Attorneys for Santa Catalina Island
21 Conservancy, and Santa Catalina Island
22 Company
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APPENDIX "D"

DIAGRAMS OF TYPICAL MOORINGS

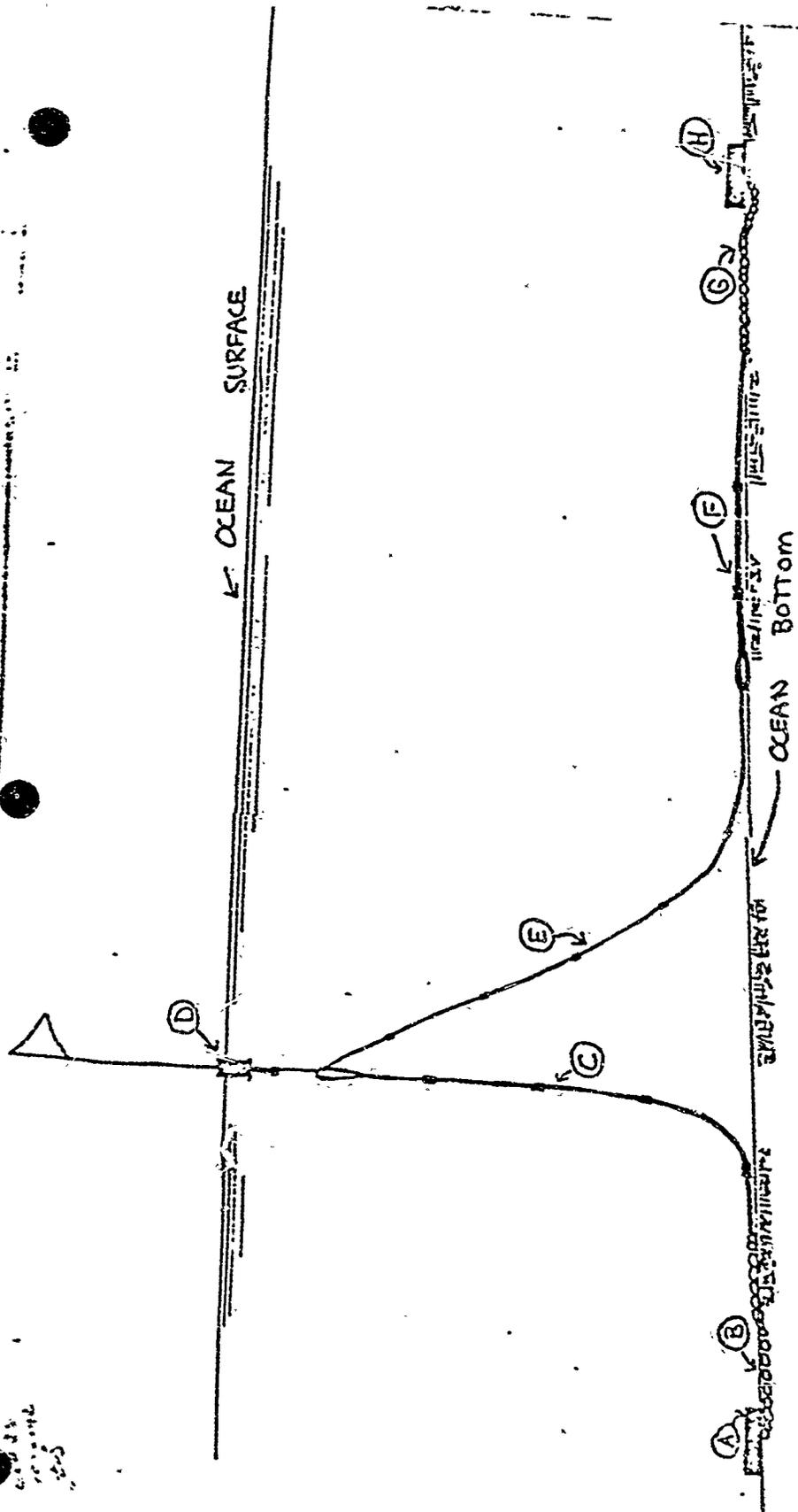
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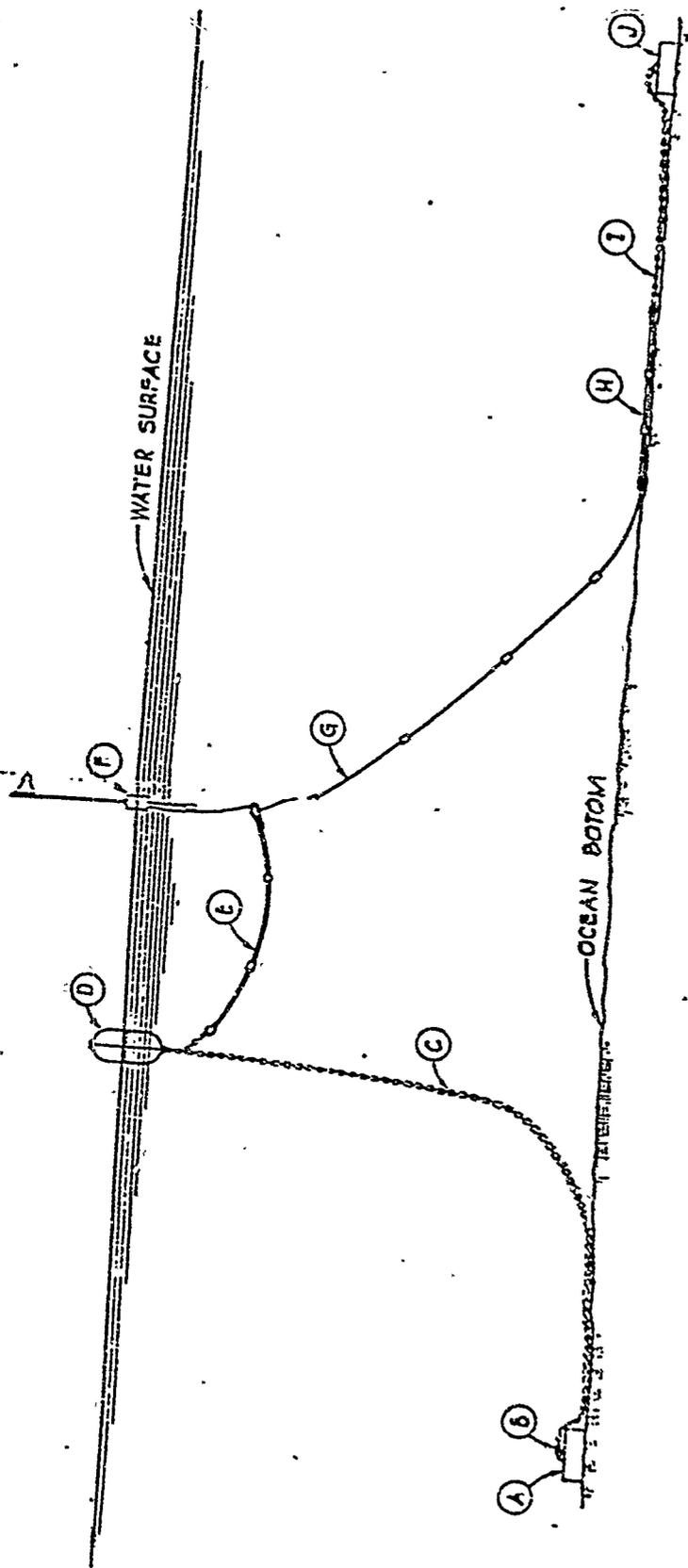
CATALINA MOORING SERVICE
 DEEP WATER MOORING 50' TO 100'

62 of B
 10.5.52
 105

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FROM SKETCH BY MR. DOUGLAS BOMBARD, MANAGER,
 CATALINA COVE AND CAMP AGENCY

APPENDIX D

DATE	NOV 21 1944
BY	DOUGLAS BOMBARD
FOR	NAVY
PROJECT	CATALINA TYPE MOORING
SCALE	AS SHOWN

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APPENDIX "E"

DECLARATION AND
REPORT ON A MARINE SURVEY CONDUCTED
BY ARGO DIVING SERVICES (JON HARDY)
IN JANUARY AND APRIL, 1982, AT
SANTA CATALINA ISLAND

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DECLARATION OF JON S. HARDY

1
2
3 I, JON S. HARDY, declare and state:

4 1. The facts set forth in this declaration are of my
5 personal knowledge and if called as a witness before the State
6 Lands Commission, I would and could competently testify thereto
7 as follows:

8 BACKGROUND AND QUALIFICATIONS

9 2. For the past 24 years I have been a diving instructor
10 certified by National Association of Underwater Instructors
11 (NAUI); Professional Association of Diving Instructors (PADI);
12 Scuba Schools International (SSI); Los Angeles County Department
13 of Parks and Recreation, and the YMCA. For 21 of the 24 years,
14 I have acted as a consultant to corporations and instructional
15 institutions relating to diving and/or marine-related matters.

16 3. I presently own and operate Argo Diving Services, a
17 sole proprietorship which I have operated for the last three
18 years. Presently, Argo Diving Services provides underwater
19 instruction; both public and private including the training of
20 professional divers for commercial diving and special groups
21 such as Navy diving instructors and astronauts; marine surveys;
22 salvage operations; search and recovery diving; underwater film-
23 ing projects including a recent Disney film and television shows;
24 underwater photography. These activities necessitate over 300
25 dives per year.

26 4. Presently, in my capacity as a diving consultant,
27 I engage in the following activities:

28 ////

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1 Contributing author for a column in Diver Magazine;
2 prior to that, feature article writer for Sport Diver Magazine;
3 instructor-trainer for underwater instructors conducting four to
4 six courses per year; advisor to Scuba Schools International to
5 develop new educational materials for their trade association;
6 expert witness on diving-related cases with six to nine cases
7 pending at any one time.

8 5. Recently, I was invited by the U. S. Air Force and
9 McDonald Douglas to bid on the training of astronauts for the
10 SPACE SHUTTLE PROGRAM.

11 6. In 1971 and again in 1982, I was invited by the
12 U. S. Navy to train and in fact trained some of their diving
13 instructors in civilian commercial diving techniques.

14 7. Over the last 21 years I have held various pro-
15 fessional positions. In 1974 to 1978, I was the Executive
16 Director of the National Association of Underwater Instructors,
17 located in Colton, California.

18 8. From 1973 to 1974, I was Business Manager and Diving
19 Officer for Catalina Island School at Toyon Bay.

20 9. From 1971 to 1973, I was the Projects Director of
21 the National Association of Underwater Instructors.

22 10. From 1969 to 1971, I was one of several directors at
23 the Santa Barbara YMCA responsible for youth programs and all
24 aquatic programs, including the diving programs.

25 11. From 1964 to 1968, I was on active duty in the U. S.
26 Navy. During this time, I was promoted from Quarter Master to
27 Lieutenant Commander. Most of my time in the Navy was spent as
28 a marine inspector.

1 12. From 1961 to 1964, I was Manager of Camp Fox at
2 Buttonshell Beach, Catalina Island.

3 13. I have a Bachelor of Science in Recreation Education
4 which I received from California State University, Los Angeles,
5 in 1963. I received additional qualifications in commercial
6 diving from Santa Barbara City College.

7 UNDERWATER AND ABOVE WATER SURVEY

8 OF SANTA CATALINA ISLAND

9 14. At the request of Catalina Marine Services Cor-
10 poration ("Cat Mar"), Argo Diving Services conducted a marine
11 survey both above and below the waters in the coves and harbors
12 of Santa Catalina Island in or about January or April 1982. A
13 notarized copy of my report, dated April 12, 1982, is attached
14 hereto ("April Report").

15 15. The April Report required approximately 63 dives to
16 do a complete examination of the ocean floor in those coves and
17 harbors listed in my report. I supervised and was present at
18 all of the dives referred to in my April Report and personally
19 dove on approximately 50% of the dives. I personally examined
20 chains and mooring weights in many of the coves and harbors sur-
21 rounding Santa Catalina Island. From my examinations, in most
22 instances, the mooring weights were found to be lined up in an
23 obvious and planned manner. Those mooring weights which did not
24 have a buoy on the surface were examined closely. Most of these
25 mooring weights and chains appeared to be of very similar quality
26 to those mooring weights and chains which had surface buoys. It
27 appeared to me that these mooring weights and chains could be
28 easily and safely utilized by simply attaching a buoy to them.

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1 16. I have had an opportunity to examine the aerial
2 photographs which are presented with the Request for Emergency
3 Meeting and can state that these aerial photographs properly
4 represent the harbors and coves for which they are marked.

5 17. As part of the process of finding and searching
6 for mooring weights on the ocean floor of the harbors and coves
7 referred to in my report, I personally prepared and oversaw the
8 preparation of diagrams which represent the location of mooring
9 weights and buoys in all harbors and coves we surveyed at Santa
10 Catalina Island except Catalina Harbor. These diagrams were pre-
11 pared by me and other divers at boatside at the time the survey
12 was done.

13 I have reviewed each of the diagrams which were prepared
14 during the survey and have carefully marked each of the aerial
15 photographs with orange rectangles to designate the location
16 of mooring weights with no buoys on the surface. Some of the
17 weights did, however, have submerged buoys attached to them.

18 18. I have placed a white dot with a "U" written on it
19 on each of the aerial photographs to designate mooring weights
20 with no visible buoy and which appear to belong to uplands'
21 lessees. I assigned these mooring weights in my report to up-
22 lands' lessees because they were in areas with other designated
23 moorings belonging to uplands' lessees.

24 19. As is reflected in my April report, I was unable to
25 do an underwater survey at Catalina Harbor because of extremely
26 poor underwater visibility. I did, however, do a surface count
27 of mooring buoys in Catalina Harbor. The white dots on the
28 aerial photograph of Catalina Harbor differ from the white dots

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