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Date: January 30, 2014

Subject: Comments & Considerations on the proposed RFP for  
the Tiburon-Angel Island Ferry Route Concession

Dear Director Jackson and other Staff,

Please consider the following comments prior to issuing a new RFP on the route between Tiburon and Angel Island State Park, and with regard to their inclusion in any new such RFP to issue.

Please bear in mind that Angel Island State Park is *sui generis* in that it is the ONLY state park which can be reached only by either boat or by swimming.

**A. NOT PROCEEDING WITH AN RFP AT THIS TIME.**

1. **PARKS FORWARD.** The issuance of any new RFP for the route should be deferred until after the Legislature has had the opportunity to act upon recommendations anticipated to be made by PARKS FORWARD within the next 18 to 24 months. In this regard, please consider:

A. In that the Angel Island-Tiburon Ferry since 1959 (both prior to and subsequent to its incorporation) (“AITF”) has operated the route for over 14 years on a month-to-month basis, the DPR would suffer no prejudice by allowing it to continue to that time;

B. In that the feasibility study on the route, commissioned by the DPR and completed in 2012 (the “Dornbusch Report”) concluded

(i) that the high-frequency direct, non-stop service between Tiburon and Angel Island was the route most convenient to the public;

(ii) that the frequency of service not exceed that

currently provided by AITF, and

(iii) that such Model #2 franchise fees be less than they are now for a 10 year contract. I suggest that the DPR and the Public would suffer no prejudice by allowing the current AITF month-to-month contract continue in operation until the Legislature acts upon the PARKS FORWARD recommendations.

C. In any event, under Resources Code § 5080.23, the Director should take notice that the route between Tiburon, or San Francisco, or any other point located on the San Francisco Bay, is owned and regulated by the Public Utilities Commission, not by the DPR. Only the dock itself located at Ayala Cove on Angel Island State Park, is owned by the DPR or State.

**2. APPLICABILTY OF RESOURCES CODE §§ 5080.23 & 5080.16(a), (c), (d), and (f).** At the January 16, 2014 Public Meeting held at Mill Valley, CA, the representative from the DPR stated that if there were a second party interested in a concession, that state law precluded entering into a concession contract under Resources Code § 5080.16. **There is neither statutory nor regulatory authority for that position.**

Resources Code § 5080.16, reads in pertinent part as follows:

**5080.16. If the director determines that it is for the best interests of the state, the director, upon giving notice to the State Park and Recreation Commission, may negotiate or renegotiate a contract, including terms and conditions, when one or more of the following conditions exist:**

**(a) The bid process as prescribed in this article has failed to produce a best responsible bidder.**

In this regard, there were no bidders to either the 2008 RFP or the 2009 “limited” RFP (which director Coleman limited

to AITF and Blue & Gold Fleet). Thus, the requirements of Resources Code § 5080.16(a) have been fulfilled TWICE, both with regard to the 2008 RFP, and to the “limited” 2009 RFP.

That being the case, with regard to both failed RFPs, AITF requested that the Director enter into negotiations for a contract. James Luscutoff, the then Chief of Concessions on behalf of the Director, stated that the terms of any such contract was required by law to be within 10% of the terms of the failed RFP. Subsequently, in a newspaper interview with Deirdre McCohan published May 6, 2009 in THE ARK, Luscutoff admitted that there was no “10% rule”, and that he had invented it for the purposes of the failed 2008 RFP.

That same discredited “10% Rule” proposition was made by DPR staff at the January 16, 2014 Public Meeting, who stated that unless the DPR started fresh with a new RFP, that the DPR, notwithstanding that the Dornbusch Report stated that the AIF model best served the public, would have to follow the terms of the 2008 failed RFP in any negotiations.

**THERE IS NO STATUTORY OR REGULATORY AUTHORITY FOR THAT POSITION.**

In fact, in his letter dated July 3, 2012, addressed to then Chief of Concessions James Luscutoff, the Assembly Majority Leader wrote to Mr. Luscutoff, in part, as follows:

Why, after the failed RFP, did you implement an arbitrary 10% negotiation threshold you had characterized as law, then a rule, then an understanding and finally a creation of your office, intended to apply to the subject RFP alone, as was your statement published in the ARK, May 6, 2009?

In your letter of April 28, 2009, you stated,

“Please note in preparing your proposals the State cannot accept material changes to the RFP, which are changes that deviate more than 10% of the value of the facilities services, rent, etc. to State that the RFP requires.”

What was the legal basis for that “10% rule”, especially when applied to negotiating after a failed RFP?

**I now reiterate that question: What is the legal basis for that purported “10% rule”?**

A copy of the Letter dated July 3, 2012 is attached to this communication. All the issues raised in that letter apply today, and the Director should response to each of them. Unfortunately, Mr. Luscutoff took retirement before ever responding.

**(c) Lands in the state park system administered by the department and lands under the legal control of the prospective concessionaire are so situated that the concession is dependent upon the use of those public and private lands for the physical or economic success, or both, of the concession.**

Given the physical and historic relationship between AITF, the size of AITF’s dock, the size of its staging area, and its proximity to Angel Island’s port at Ayala Cove, the importance of AITF is serving Angel Island during emergencies [e.g. the 2008 fire], the history of ridership, and the convenience to the public and the park, this qualification is easily met.

**(d) Whenever a concession is desired for particular**

**interpretive purposes in a unit of the state park system and the prospective concessionaire possesses special knowledge, experience, skills, or ability appropriate to the particular interpretive purposes.**

AITF is a part of the interpretive history of Angel Island State Park, in that AITF and its predecessors in interest (the "McDonogh family") has been serving the route between Angel Island and Tiburon since the 1870's, and is a part of the history of the island. Maggie McDonogh, who currently owns and operated AITF is the 5<sup>th</sup> generation operator. Interpretive materials are found at her dock and pier at 21 Main Street, Tiburon, on her largest vessel the ANGEL ISLAND (which transports most of the passengers year-round), and Ms. McDonogh, together with her other captains, knows the full history of the island, knows its geography, and the details of its historical and cultural assets, and when appropriate lectures the passengers during the transit via the boat's P.A.S. system, advising the passengers of items of special interest, and of what events, if any, are happening on the island. Such knowledge and detailed personal experience, and the quality of its communication, is unique, and is an asset to the park.

**(f) Whenever the estimated administrative costs for the bid process exceed the projected annual net rental revenue the state.**

The costs to the DPR of the 2008, 2009, and now the proposed 2014 RFP, inclusive of the cumulative costs of feasibility studies (not less than \$50,000 at this reckoning), together with the costs of hearings, administrative hearings, and proceedings before the Director [e.g., the meeting of April 27, 2009, when the Director and high echelon of the Department were present], and legal research and legal opinions, the involvement of the Attorney General's office, the litigation of EIRs, EISs, and Negative Declarations, might

well outweigh any marginal increase in projected net rental revenue to the state.

**3. NEED FOR SUBSTANTIATION OF FINANCIAL INFORMATION SUBMITTED BY DPR TO LAO.** The financial data and projections used by the Legislative Accounting Office (“LAO”) in formulating its reports and projections with regard to any proposed RFP come from the DPR. Those data and projections are themselves not verified. Consequently, the data and projections upon which an RFP and feasibility study are based, are flawed. Consequently, any RFP should be deferred until such time as verified, audited data are supplied to the LAO, so that the LAO may properly advise the Legislature, and any RFP projected on such flawed data should be taken off calendar, and wait until the Legislature acts upon an LAO report based on verified data. It is scandalous that the LAO depends entirely on the self-reported data provided by the agencies, without any attempt at verifying those numbers. And in the case of the DPR submitting data to the LAO, those data have been historically erroneous and flawed, resulting in numerous failed RFPs.

**B. IF THE DPR DECIDES TO PROCEED WITH AN RFP.**

**If the DPR decides to proceed with and RFP notwithstanding the issues raised in Part A above, then the DPR should incorporate the following comments and points into the RFP:**

**1. THE SCORING MATRIX SHOULD BE MODIFIED AS FOLLOWS:**

The following RFP scoring criteria are necessary to insure that price alone does not become the deciding factor when awarding the new concession contract.

- a. Provide additional points for locally, disadvantaged, and/or woman-owned businesses. More points should be provided for each of these categories.
- b. Points should be awarded for providing maximum direct, non-stop service. Visitors' convenience accessing the island should be the highest priority. Keeping in mind that the dornbusch report suggests that the number of trips be no greater than they are at present.
- c. Points should be awarded for the number of regularly scheduled non-stop departures to and from Tiburon and Angel Island during the peak seasons of April through October.
- d. Points should be awarded for on-dock and ship-board hospitality and educational services. This can greatly expand the visitor experience before and after transport to Angel Island.
- e. Points should be awarded for past, current, and future community involvement by a concessionaire. Giving back to the area where a business operates is important.
- f. Points should be awarded for least time emergency response services proposed. The existing AITF operator has earned significant local appreciation for providing this service.
- g. Points should be given for the historical connection between a respondent to the RFP to the State Park.
- h. Points should be awarded for positive public feedback.
- i. Points should be awarded for ownership of facility and vessels.

- j. Points should be awarded for historical value to the Park and community.
2. **EVEN PLAYING FIELD.** Route to be assessed by itself, disregarding other sources of revenue, and assuring an 8% return on capital.
3. **CALCULATION OF PERCENTAGE FEES.** Percentage fees [fees other than base rent] are to be calculated on the basis of a percentage of concessionaire's gross income less the sum of (a) the concessionaire's net operating profit, (b) an appropriate capital replacement reserve, and (c) an 8% return on capital.
4. **PARKING & BATHROOM FACILITIES.** Any new concessionaire shall be required to provide for such vehicle parking places as are required under the ordinances of the city of Tiburon. In this regard AITF is "grandfathered" in since its concession between Tiburon and Angel Island pre-existed the ordinance. Likewise, any concessionaire must satisfy the City of Tiburon's requirements for public bathroom facilities.
5. **COLLECTION OF ADMISSION FEES.** The DPR should provide for the collection of admission fees by the DPR at the Ayala Cove port facility on Angel Island. This burden and cost should not be required of the concessionaire. Besides, this way, the DPR would be assured of receiving all admission fees to which it is entitled.
5. **EIR NEEDED ON DEEP HULL BOATS ON RACCOON STRAIGHTS.** Currently the great majority of passengers passing between Tiburon and Angel Island are on the shallow-bottomed flat boat the ANGEL ISLAND, belonging to AITF. If any other operator is to consider becoming the concessionaire for the run, then the awarding of any contract must

be contingent on their boats not creating any more wake than the AITF boats currently in use. In the event that any other deeper draft hulls are used, then an EIR must be required with regard to the erosion effect on the littoral affected coastline on both sides of the Raccoon Straights.

If the RFP moves forward and is to be awarded to a company other than AITF, then, as a condition of the approval of that contract, a traffic flow study should be completed as to the impact of shifting the ferry's operating location and the resulting congestion/safety issues with the new pedestrian foot traffic. Only when this condition is satisfied, with no likely adverse impact on Tiburon, shall the contract issue.

**6. CONCESSIONAIRE TO PROVIDE ADEQUATE STAGING AREA FOR PASSENGERS AND THEIR EQUIPMENT.** During the summer months, several hundred passengers, together with bicycles, camping equipment, and the like, gather for the ferry service to Angel Island. The RFP must provide that any such potential concessionaire possess an appropriate staging area, of not less than 1,000 square feet, on private property operated by the concessionaire.

**7. PARK "VOLUNTEERS" TO BE NARROWLY DEFINED AS DOCENTS AND DOCENTS IN TRAINING.** In any RFP the burden to be placed upon the concessionaire to provide "free rides" should be curtailed. Consequently, any "free rides" should be limited to (a) scheduled trips, (b) State Park employees, (c) family of State Park employees who live on Angel Island, and (d) docents and docents in training.

**8. SPECIAL EVENTS ON ANGEL ISLAND ARE TO BE ENCOURAGED BY DPR.** As a part of any RFP, the DPR should covenant to administratively facilitate special events on

Angel Island, and to otherwise reasonably encourage special events on Angel Island.

**THE FOLLOWING ISSUES ARE ALSO TO BE CONSIDERED IN ANY PROPOSED RFP ON THE TIBURON-ANGEL ISLAND ROUTE:**

**9. NO INELIGIBLE SUBCONTRACTORS.** Prospective bidders on combined contracts cannot utilize subcontractors who would otherwise be considered ineligible if they were to bid on the Contract(s) directly.

**10. REDUCTION OF POINTS.** In evaluating bids on single or combined contracts, the DPR should reduce points awarded in evaluation of the contract(s) as it relates to Concession Fees and Marketing Plans to the extent a Non-Public bidder receives subsidies from a government or quasi-government agency. In determining the relative weight of reduction, the dollar value of the Concession Fees and the Expected Cost/Benefit of the Marketing Plan should be reduced to the extent of the subsidy. If that makes either less than the minimum amount required to be offered, so be it.

**11. Reliability Factor:** Since both likely bidders have substantial history with the DPR, and because the potential for combining the contracts might lead to more late arrivals and departures, the process of evaluating the relative strengths of the offers should include the award of up to 5 additional points out of the 100 points for reliability based on past performance.

12. **MODEL 2 OPERATOR.** Since, per the Dornbusch Report, the model 2 operator will not likely bid on the combined contracts, the State needs to clearly delineate how the point system compares a combined contract to a single contract. Total points might skew that comparison, especially if neither bidder were to submit a single contract for the route. It is not clear that a pure point system is a fair comparison combined versus single, because while a combined contract might get more points, the individual legs may be less desirable when considered by themselves. In short, the people of Tiburon might receive a less desirable solution.

13. **Fares:** The new RFP should require initial fares to be agreed to for a two year period for each route. It should also require an estimate of fares over the remaining 8 year period. We think this is important, because we believe the pressure to increase fares on the Tiburon/Angel Island route will be tremendous if the contracts are combined. We think these fare estimates should be made public prior to the award of the contract(s).

14. **FREQUENCY OF SERVICE.** Any RFP should provide Service between Tiburon and Angel Island shall be no less frequent than the service currently scheduled by AITF for the winter, shoulder seasons, and busy season.

I hope to hear from you regarding my suggestions and questions.

Thank you for the opportunity to comment.

Sincerely,

*Richard N. Snyder*

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