

- Corrected -

MINUTES
BOATING AND WATERWAYS COMMISSION MEETING
SACRAMENTO, CALIFORNIA
January 8, 2004

Pursuant to due and regular notice, the meeting of the Boating and Waterways Commission was called to order by Chairman, Michael L. Beatie, on January 8, 2004, at 8:30 A.M., at 2000 Evergreen Street, Feather River Room, Sacramento, California.

ROLL CALL

Commissioners Present: Michael L. Beatie, Chairman
Frederic A. Heim, Vice Chairman
Robert Y. Nagata
Warren E. Rupf
Joseph P. Sharpe

Department of Boating and
Waterways Personnel Present: Raynor Tsuneyoshi, Director
Joy Fisher, Staff Counsel
David Johnson, Acting Deputy Director
Steve Watanabe, Acting Chief, Boating Facilities Division
Dolores Farrell, Chief, Boating Operations Division
Harold Flood, Supervisor of Planning, Facilities Division
April Moses, Associate Governmental Program Analyst
Margarita Sanchez, Administrative Assistant
Sumer Goza, Staff Services Analyst

Chairman Beatie reported that Mr. Pius Lee, who was recently appointed to the Boating and Waterways Commission by the previous Administration, was unfortunately removed by the present Administration.

Chairman Beatie then turned the chairmanship over to Commissioner Heim.

APPROVAL OF MINUTES

MOTION: It was moved by Commissioner Sharpe and seconded by Commissioner Beatie that the minutes of the November 14, 2003, meeting be approved as distributed. The motion carried unanimously.

CHAIRMAN'S REPORT

Chairman Heim indicated he did not have a report, but would comment later on a project site he had visited.

DIRECTOR'S REPORT

Mr. Tsuneyoshi thanked Commissioner Beatie for his dedication as chairman and wished everyone a happy New Year. Mr. Tsuneyoshi continued by reporting on the following:

- Meeting with Mr. Mike Chrisman, Agency Secretary, in December went well.
- Messrs. Greg Wapinsky, Landscape Architect, John Middleton, Larry Danielsen, Associate Civil Engineers and Larry Wesley, Delineator, have retired from the Department.
- The Governor's proposed 2004-05 State budget will be released January 9, 2004.
- The Ventura County Board of Supervisors approved on December 16 to have the California State University of Channel Islands operate the Boating Instruction Safety Center at Channel Islands. The proposed site for the project has been controversial and a lawsuit has been filed. Updates will be given to the Commission as they develop.
- The annual *Safe and Wise Waterways* Poster Contest winners have been chosen and awards will be presented in January.
- The Post-certified training courses for law enforcement officers have commenced and a class schedule is posted on the Department's Website.
- The *AquaSMART* materials have been updated and distributed to schools.

Mr. Tsuneyoshi presented a plaque for outstanding achievement to Commissioner Beatie for serving two consecutive years as chairman of the Boating and Waterways Commission. Commissioner Beatie thanked everyone.

Chairman Heim stated he has seldom met anyone who is as devoted and cared as deeply for the Department as Commissioner Beatie.

LEGISLATIVE REPORT

Mr. David Johnson indicated he did not have a Legislative Report since the Legislators just started the new session last week. He updated the Commission on SB 1043, a bill about Castaic Lake. Mr. Johnson reported that the SB 1043 has been placed on the inactive file but if it becomes active there would be legislative hearings due to the efforts from boating organizations.

Mr. Johnson also reported that Los Angeles County is issuing news releases indicating they will cease operation of the recreational facilities at Castaic Lake some time this year. Mr. Nagata asked if Castaic Lake would be closed at the end of January 2004. Mr. Johnson responded that the

Los Angeles County Board of Supervisors had appropriated \$750,000, which would last until January 2004, but the latest news release from Los Angeles County indicated a possible closure by May 1, 2004.

CONSIDERATION OF PUBLIC GRANTS

Mr. Flood presented to the Commission for its advice and consent the following request for a public grant.

Lake Ming Boat Launching Facility

Request for a Department of Boating and Waterways Phase I grant of \$153,000 to Kern County to make improvements to the Lake Ming Boat Launching Facility. The total amount of the grant would be \$1,526,000.

Lake Ming Boat Launching Facility is located approximately 10 miles northeast of Bakersfield in Kern County.

Mr. Flood reviewed the project and explained that the proposed project would entail the following: (1) removal of existing boarding floats and docking facilities, (2) replacement of two, two-lane concrete boat launching ramps, (3) installation of four new pile-guided boarding floats, (4) new ADA accessible restrooms, (5) resurfacing of two parking areas, and (6) parking lot launch area lighting.

Mr. Bob Addison, Director, Kern County Parks and Recreation and Mr. Matt Pontes, Park Planner, were available to answer questions from the Commission.

Mr. Flood indicated that staff recommended that the Commission consent to the project.

Commissioner Rupf asked if the engineering or inspection costs are local and if Kern County is charging the grant for inspecting the project. Mr. Addison responded that it is.

Chairman Heim reported he had visited the site and indicated the Lake has become a major part of Bakersfield's recreation because of its location. He reported Kern County has done a great job on developing the surrounding area.

Mr. Addison responded that in 1959 Lake Ming was built and now is used for boating and picnicking and has become very popular over the years. He indicated that this project would be the first major upgrade since it was built. He said the County had constructed a new restroom, which was over \$250,000, and a children's playground, which was about \$100,000. Mr. Addison stated he is asking the Boating and Waterways Commission to grant the money to upgrade the boat launching facilities, add another restroom, paving and add other facilities. Mr. Addison added that Kern County has to contract the inspection and design to another city department.

Commissioner Rupf commented that he has a problem with grant money being used to pay for engineering and inspections. Mr. Addison responded that the County has done about \$350,000 in

improvements within the last couple of years and that with this grant, the money will be used for the parking area that is directly associated with the launch ramps.

Mr. Flood indicated that Kern County is spending their own money on the restroom and additional parking areas and expanding the camping at the end of the Lake. He added that our Department, when doing capital outlay projects and building our own facilities using similar type of funds, is also required by law to use another department and pay them for their engineering and contracting services.

Commissioner Rupf made a motion that the grant be approved on the condition that the County assumes responsibility of any local engineering or inspection costs. Mr. Addison responded that the only way to pay for engineering and contracting services is to contract it out, and he does not have the authority to commit for another department.

MOTION: It was moved by Commissioner Rupf and seconded by Commissioner Sharpe that the Commission consent to the Phase I grant of \$153,000 to Kern County to make improvements to the Lake Ming Boat Launching Facility on the condition that Kern County assume responsibility of any local engineering or inspection costs. Commissioners Rupf and Sharpe voted “Yes.” Commissioner Beatie and Nagata Abstained. Motion failed.

Commissioner Beatie commented he would not like to have this agenda item moved to another meeting because it would cost more money with delays. He stated that engineering and inspection costs have been included in other projects.

Mr. Flood stated that when Kern County applied for the grant two years ago, the Department included the engineering and inspections costs in all its project contracts. He indicated that in next year’s contracts this would not be the case. Commissioner Nagata asked if the Department has covered these similar costs before. Mr. Flood responded that the Department has always covered the engineering and inspection costs, but with current projects the Department is asking the organizations to cover their own costs whenever possible.

Commissioner Rupf responded that based on what Mr. Flood has indicated he would make a motion to accept staff recommendations.

MOTION: It was moved by Commissioner Rupf and seconded by Commissioner Beatie that the Commission consent to the Phase I grant of \$153,000 to Kern County to make improvements to the Lake Ming Boat Launching Facility. The motion carried unanimously.

Mr. Addison thanked the Commission.

CONSIDERATION OF PUBLIC GRANT/LOAN PROJECT CHANGE OF SCOPE

Cabrillo Marina

Mr. Flood indicated that the agenda item Cabrillo Marina was removed from the Agenda.

CONSIDERATION OF PUBLIC LOAN TIME EXTENSION

Martinez Marina

Request from the City of Martinez to extend the loan agreement with the Department of Boating and Waterways. Mr. Mark Ross, City Councilperson and Ms. Joann De Graef Tool, representing the City of Martinez, were available to answer questions from the Commission.

Mr. Flood gave the Commission a brief history on the Martinez Marina. He indicated that currently there has been no release of funds to the City of Martinez (City) and that the City is currently pursuing a new agreement with Westrec. He also reported that the City has prepared a new Request for Proposal (RFP) for the operation of the marina.

Mr. Flood indicated that staff recommended that the Commission consent to the loan extension request with the following conditions:

- 1) A loan agreement covering all three phases of funding between the Department of Boating and Waterways and the City is signed and approved by the Department of General Services no later than February 1, 2004.
- 2) A long-term agreement between the City and a private operator is signed no later than May 1, 2004.
- 3) Should the City not receive adequate proposals to its RFP, additional RFPs may be advertised, however, all loan funds will revert to the Harbors and Watercraft Revolving Fund on June 30, 2005, if conditions 1 and 2 are not met by August 1, 2004.

Commissioner Nagata asked if there would be enough time to accomplish the conditions. Mr. Flood responded that he is not sure but that these are the new requirements of the Department of Finance.

MOTION: It was moved by Commissioner Rupf and seconded by Commissioner Sharpe that the Commission consent to the request of the City of Martinez to extend the loan agreement with the conditions recommended by the Department of Boating and Waterways. The motion carried unanimously.

Mr. Ross thanked the Commission for their consideration.

CONSIDERATION OF PRIVATE LOAN PAYMENT DEFERMENT

Pier 38

Request for a loan payment deferment of one year by Pier 38 Maritime Recreation Center, Inc. (Pier 38) to the Department of Boating and Waterways. This agenda item was deferred from the November 14, 2003, Commission meeting. Mr. Carl Ernst, Principle Officer, was available to answer any questions from the Commission.

Ms. Moses gave a brief history on the Pier 38 project. She indicated that staff recommends that the Commission consent to the loan payment deferment of up to one year to Pier 38.

Mr. Ernst reported that years ago Pier 38 requested three million dollars to build the project in two phases and after the first phase was completed, the Commission required a significant change in the lease in order to further fund the project. He said Pier 38 fulfilled that requirement and has increased the size of the leasehold by 25 percent to more than 10 acres. He indicated that the San Francisco Port has agreed to approve Pier 38's Mega Yacht plan, which took two years of time to develop. Mr. Ernst stated that Pier 38 is presently working with two qualified investor groups and he has a waiting list of tenants for when the project is completed. He indicated that he now has a restaurant, which he will rent for \$15,000 per month, and is currently negotiating with a few individuals who can take over that operation. He asked that the Commission approve the deferment.

Commissioner Beatie asked how Mr. Ernst describes a "mega yacht." Mr. Ernst responded that mega yachts are yachts 80 feet or greater in length. He indicated most harbors are built for boats 50 feet or less and that in the San Francisco Bay the larger boats have grown in numbers.

Commissioner Rupf pointed out that according to Table 1 of the Feasibility Report, after Pier 38 makes two payments there would be net revenue of \$277,000. Ms. Moses responded yes, if Pier 38 has the restaurant, and the revenue for the restaurant in 2004 is for approximately 8 months. Commissioner Rupf said that the revenue is stated as \$135,000, even without the restaurant, you still have a net profit of \$142,000 plus or minus. Ms. Moses responded that it is correct. She stated that if Pier 38 paid a full year of payments to the Department that would be approximately \$216,000, then Mr. Ernst would have a deficit of \$74,000, during 2004. Commissioner Rupf stated if you take the restaurant revenues out in calendar year 2004, there would still be a net profit of \$142,000. Ms. Moses responded yes, with the proposed deferment and with only two loan payments. Commissioner Rupf indicated that in fiscal year 96-97, a loan of \$1.5 million was granted for the project and that the outstanding balance on the loan with the last payment, which occurred in September or October of 2003, was about \$1.8 million. He added that in 2001 the Commission supported a deferment in payment until July or August.

Mr. Ernst pointed out the condition of the deferment is that if there are revenues from the restaurant then payments would begin to the Department. He indicated that the Port of San Francisco denied him the permit for the restaurant. Commissioner Rupf responded why should the Commission then accept the eventuality of a restaurant ever being built. Mr. Ernst stated that the lease states that he

cannot unreasonably be refused a permit and they have reached the point where it is clearly unreasonable. He also stated that today there will be a change in regime in San Francisco which would facilitate the production of permits.

Commissioner Nagata stated that the Commission is in the business of making boat facilities loans and the facilities produce revenues to pay the Department. This project, he said, has more than boating facilities and if we took the income from the boating facilities that we made the loan for and take the allocable expense just for that, then there should be money to pay the loan back or the Department made a mistake in making this loan. Commissioner Nagata pointed out that because of the way the project has been developed, the Department now is relying upon a restaurant to pay back the loan. He indicated it bothers him, but is inclined to go along with the deferment.

MOTION: It was moved by Commissioner Rupf and seconded by Commissioner Sharpe that the Commission not grant the request for a loan payment deferment of one year to Pier 38 Maritime Recreation Center, Inc.

Mr. Tsuneyoshi indicated if the project does not proceed, there might be some difficult legal issues to resolve. Commissioner Beatie commented that too many chances have been given and that the issue could come up again in six months.

Commissioner Rupf stated he is concerned that the Department may attempt to avoid litigation at any cost. He indicated he had mentioned that litigation might be a prospect and requested to discuss it in a closed session, but on advise of counsel it could not be done.

Mr. Ernst pointed out that the Commission should grant the deferment and he could give a status report to the Commission at the next meeting.

Ms. Fisher indicated that Commissioner Rupf had made a motion denying the deferment and if there are not four votes for that motion, that motion is defeated, but she added the Commission still has to make a motion granting the deferment and four votes will be needed in order for it to pass.

Commissioner Rupf indicated that Mr. Ernst has been previously granted two deferments, which have expired, and now a third deferment is being requested. He noted a net profit that exceeds the projected revenues from the restaurant by \$142,000. He said the Commission should not continue with this and should end these requests. Ms. Moses commented that \$142,000 is not enough to make the full year of loan payments, which is \$216,000 and that Mr. Flood has pointed out to the Commission that the Department has enough collateral to cover what is owed and after the one year deferment, the Department would still have enough collateral. She responded to Commissioner Nagata's question on the revenue from the restaurant. Ms. Moses indicated that Mr. Ernst has an opportunity to gain another partnership and that would bring additional revenue.

Chairman Heim asked Ms. Fisher that if there would be legal consequences if the Commission takes a position not to grant the deferment. Ms. Fisher responded that the only issue before the Commission at this time is whether or not to grant the deferment. She indicated that if the

Commission denies the deferment, and if Mr. Ernst fails to make his payments and is in default, then the Commission may consider litigation. She said at that point the Commission could have an executive session to consider any litigation.

Chairman Heim asked for a vote on the motion.

MOTION: It was moved by Commissioner Rupf and seconded by Commissioner Sharpe that the Commission deny the request for a loan payment deferment of one year by Pier 38 Maritime Recreation Center, Inc. Commissioners Beatie and Nagata voted “No.” Commissioners Rupf and Sharpe voted “Yes.” The motion failed.

MOTION: It was moved by Commissioner Beatie and seconded by Commissioner Nagata that the Commission grant the request for a loan payment deferment of one year by Pier 38 Maritime Recreation Center, Inc. Commissioners Beatie and Nagata voted “Yes.” Commissioners Rupf and Sharpe voted “No.” The motion failed.

MOTION: It was moved by Commissioner Nagata and seconded by Commissioner Beatie that the Commission grant a loan payment deferment of six months to Pier 38 Maritime Recreation Center, Inc, with the provision that Pier 38 Maritime Recreation Center, Inc. will not come before the Commission again to seek another deferment. Commissioners Beatie and Nagata voted “Yes.” Commissioners Rupf and Sharpe voted “No.” The motion failed.

Chairman Heim asked if there could be an executive session on Pier 38. Ms. Fisher responded that an executive session could be held at the next Commission meeting, which would be held in March. Chairman Heim requested that there be an executive session at the next Commission meeting.

Mr. Ernst thanked the Commission for their consideration.

OLD BUSINESS

New Bullards Bar Reservoir-Dark Day Boat Launching Facility

Ms. Goza gave a project completion report on New Bullards Bar Reservoir-Dark Day Boat Launching Facility. She indicated the project was completed and was under budget.

Commissioner Beatie indicated he visited the project site a few years ago and it is good to see it has been completed.

Commission Travel Bag

Mr. Johnson reported that this agenda item is a continuation from the previous Commission meeting, where Commissioner Rupf had asked the Department staff to look into obtaining commissioner's travel bags. Chairman Heim indicated there is no reason for further discussion on this agenda item, since Commissioner Rupf has taken care it.

NEW BUSINESS

None.

PUBLIC COMMENTS

Mr. Warburton of California Association of Harbor Masters and Port Captains (CAHMPC) introduced Mr. Mick Kronman as the new President of CAHMPC. He indicated Mr. Kronman is currently the Harbor Master for Santa Barbara Harbor. Mr. Kronman introduced himself to the Commission.

Mr. Tsuneyoshi stated that he is in appreciation for the support CAHMPC has given the Department. He thanked CAHMPC for all the support given him and the Department.

COMMISSIONER ANNOUNCEMENTS

Mr. Johnson pointed out that there are two members on the Commission, who will have their terms expire on January 15, 2004. He added that a Government Code section would allow them to serve until March 15, 2004, but after March 15, 2004, if the Governor does not appoint a new commissioner, then there would not be a quorum and the Commission would not be able to meet.

After discussion, it was decided that the next Commission Meeting would be held on March 15, 2004, in Sacramento.

ADJOURNMENT

The chair adjourned the meeting at 10:07 A.M.

Raynor Tsuneyoshi, Secretary
Attachment