

MINUTES
BOATING AND WATERWAYS COMMISSION MEETING
SACRAMENTO, CALIFORNIA
March 15, 2004

Pursuant to due and regular notice, the meeting of the Boating and Waterways Commission was called to order by Chairman Frederic Heim, on March 15, 2004, at 8:52 A.M., at 2000 Evergreen Street, Feather River Room, Sacramento, California.

ROLL CALL

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

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, AGPA, Boating Facilities Division
 Margarita Sanchez, Administrative Assistant

APPROVAL OF MINUTES

Commissioner Nagata pointed out an item in the minutes that needed to be corrected. On page seven, second paragraph, second sentence, the minutes should read, "...we made the loan ..."

MOTION: It was moved by Commissioner Sharpe and seconded by Commissioner Beatie that the minutes of the January 8, 2004, meeting be approved as corrected. The motion carried unanimously.

Commissioner Sharpe indicated that on page seven, seventh paragraph, which states, "...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." should be amended, since it is incorrect. Ms. Fisher responded that Commissioner Sharpe is correct, but that the minutes reflect what was said at the last meeting and should not be changed, but she said that Commissioner Sharpe's objection would be noted in the Minutes of March 15, 2004.

CHAIRMAN'S REPORT

Chairman Heim indicated he had nothing to report.

DIRECTOR'S REPORT

Mr. Tsuneyoshi reported that the terms of Commissioners Beatie and Heim have expired but that they are allowed to continue to serve on the Boating and Waterways Commission for a period of time because of provisions in the Government Code. He added that the Governor's office and the Resources Agency are aware of the need for additional appointments. Mr. Tsuneyoshi indicated the terms might be extended through April 1, 2004, based on special circumstances as to when Governor Schwarzenegger was elected and when he took office. He added that if the Governor's office does not make any appointments in the near future, then there will not be a quorum and the Commission will not be able to meet.

Mr. Tsuneyoshi reported that he attended a meeting in Oakland last week about common boating safety issues with representatives of the U.S. Coast Guard, Nevada, Arizona, and Utah. He added that the primary discussion at the meeting was on the Colorado River and its high number of boating accidents and the need to mark specific navigational hazards that are causing accidents.

Mr. Tsuneyoshi indicated that the Department along with representatives of Nevada and Arizona are planning a Boating Safety/Media Event for the Colorado River on May 1, 2004.

He reported that on February 19, 2004, the California Coastal Commission voted 6-4 on a motion that the Channel Islands Boating Instruction Safety Center, which is a Department capital outlay project and co-sponsored with Ventura County, was not in conformance with the County's Public Works Plan. Mr. Tsuneyoshi added that Ventura County is presently looking at other options and that no decision has been made as what action will be taken.

Mr. Tsuneyoshi reported that the Department is planning to take representatives from the Resources Agency on a Delta trip to illustrate the economic, navigational, and safety problems of water hyacinth and *Egeria densa*.

On a sad note, Mr. Tsuneyoshi reported that Mr. Jeff Schwammel of the Department passed away unexpectedly on March 10, 2004, after suffering complications following surgery.

Commissioner Beatie asked if the U.S. Coast Guard (Coast Guard) no longer patrols in the Colorado River. Mr. Tsuneyoshi responded that the Coast Guard has not patrolled that area for two years due to lack of funds. He indicated that the Department is asking that the Coast Guard resume patrolling the area again.

LEGISLATIVE REPORT

Mr. David Johnson reviewed the Legislative Report and gave the Commission an update of legislative matters concerning the Department. Copies of the Legislative Report were available to the public and Mr. Johnson was available to answer questions from the Commission Members.

CONSIDERATION OF ROLL CALL VOTES

Mr. Johnson indicated that Department staff recommends that the Commission conduct a roll call vote where a vote is necessary and that the Chairman announce the results of each vote. He indicated that after reviewing the Roberts Rule of Order it was determined that the Commission should vote on the procedure of a roll call vote.

MOTION: It was moved by Commissioner Rupf and seconded by Commissioner Beatie that the Commission conduct a roll call vote for each agenda item where a vote is necessary or desirable.

Commissioner Rupf indicated that the memorandum from the Department to the Commission dated March 3, 2004, makes reference to existing rules and policies. He indicated he would like to see the rules and policies or be directed to where he could obtain them so that he may review them. Commissioner Rupf indicated that at any given time the Robert's Rules of Order allows any of the Commission Members to call for a roll call vote, so the proposed procedure is not needed.

Mr. Johnson stated that with one of the agenda items at the last Commission meeting it was extremely difficult for staff to determine what the vote was based on the transcript of the meeting. He added that historically the Boating and Waterways Commission had roll call votes on all motions made. Mr. Johnson stated that this action would make things clearer on votes taking by the Commission. He indicated that the previous secretary had typed the rules and policies of informal items that previous Boating and Waterways Commission had voted on and he would provide the Commission with a copy of them.

Commissioner Beatie asked if the secretary could just ask for a roll call vote if there is confusion in the votes taken on the motion. Mr. Johnson responded that it would be up to the Commission.

Ms. Fisher read from the Basic Rules and Policies: "All Commission proceedings shall be in accordance with the provisions of the Bagley-Keene Open Meetings Act, Government Code Section 11120-11132. In all cases not covered by the State Agency Act or Commission Rules, Roberts Rules of Order shall prevail." She stated that the Roberts Rules of Order indicates that the usual method of taking a vote is by voice and that in small assemblies the vote is taking by a show of hands, roll call, by rising, by ballot, etc. Ms. Fisher also added that the responsibility of announcing or declaring the vote rests upon the Chair and he has the right to have the vote taken again but he cannot have the vote taken by ballot or yeas or nays (roll call) unless it is required by the rules or by a vote of the assembly. She suggested that a roll call vote be required by the rules so that the

Commission would not have to have a vote each time the Commission wishes to take a vote by yeas or nays (roll call). Ms. Fisher indicated that by making roll call voting a rule of the Commission, the Chair could require it automatically.

Commissioner Rupf responded that the Chair might call for other alternatives with regards to the voting. Ms. Fisher indicated that the Chair cannot have a vote taken by roll call, unless it is required by the rules or by a vote of the assembly, so either the Commission has a rule saying you will take a roll call vote or you have to have a vote of the assembly each time you want to have a roll call vote on that particular motion.

Commissioner Sharpe stated he would like to have this agenda item moved to the next Commission meeting.

Chairman Heim asked that this agenda item be moved to the next meeting.

CONSENT CALENDAR

Mr. Flood presented to the Commission the Consent Calendar of loans and grants amendments that require time extensions to finish construction of the projects. Mr. Flood indicated that staff recommended approval of time extensions on all project contracts listed. After discussion, a motion was made.

MOTION: It was moved by Commissioner Rupf and seconded by Commissioner Beatie that the Commission approve the Consent Calendar as presented. The motion carried unanimously.

Commissioner Nagata asked that the Department include any prior request for extensions on future Consent Calendars.

Chairman Heim asked that Department staff look at extension requests more carefully and give the Commission more details on the Consent Calendars.

CONSIDERATION OF CONSOLIDATION OF PUBLIC LOAN

City of Long Beach – Loan Consolidation

The City of Long Beach has asked the Department of Boating and Waterways to consolidate the loans of: City of Long Beach Downtown Marinas; Alamitos Bay Basin 4; Alamitos Bay Basin 1; Alamitos Bay Basin 2 & 3 (future loan). The total loan amount would be \$95,573,000.

Mr. Flood indicated that the Commission has approved the City of Long Beach Downtown Marinas, Alamitos Bay Basin 1, and Basin 4. He stated the benefits associated with combining the existing loans and one future loan under one loan agreement are: 1) Loan consolidation will allow the City of Long Beach to apply existing and future loan funds to any or all of the approved projects as

appropriate, accelerating the construction of individual projects; 2) Loan repayment would begin sooner for individual projects, benefiting the Department, the City of Long Beach, and California boaters; 3) Currently encumbered funds can be used immediately to begin construction on City of Long Beach's highest priority project.

Mr. Flood indicated that staff recommended that the Commission consent to consolidating the loan agreements for the City of Long Beach Downtown Marinas, Alamitos Bay Basins 1, 2, 3 and 4 into one loan agreement. Mr. Douglas Parsons was available to answer questions from the Commission.

Mr. Parsons reported to the Commission that with the consolidation of the loan agreements a project could start almost immediately and he indicated the proposed construction start dates for all the various projects are included in the Feasibility Report. He indicated it is very difficult to get a contractor to agree to a seven-year contract on a project that will only allow so much money per year as that money may or may not be available by the Commission's vote and or the Governor's budget.

Commissioner Rupf pointed out that to consolidate these projects and phase monies and put them into a revolving fund would have unanticipated consequences. He asked what will be the mid or long-term consequence for the Department if the consolidation is done.

Commissioner Nagata questioned the consolidation of loans that have not been approved yet. He inquired about when payments will be made.

Mr. Flood responded that there are three projects that have already been approved and are going through phased funding. He indicated that there is a future loan that has been applied for, but the Department is not asking to approve, because if that loan comes before the Commission next year and the Commission decides to decline it, the consolidation will still work. Mr. Flood stated that the consolidation would combine three existing loans and one future loan and currently encumbered funds could go directly to the first project listed in the Feasibility Report. He stated once a project is completed then repayment would start immediately and then the next project would commence.

Commissioner Nagata asked how long it takes to get funding from the time the Commission approves a loan. Mr. Flood responded that it depends on the size of the loan, but it would take about seven years and the project could not start until the seventh year when they have the final phase money and by that time the project's cost have gone up.

Mr. Flood stated that if this consolidation was approved all the money that is already encumbered would go into the Downtown Marinas and any future funds would come up before the Commission on an annual basis and at that time the Commission can approve or disapprove it. He added that it would still have to go through the Legislature and the Governor's office, as is the regular procedure. Mr. Flood stated that the Commission still has the authority to disapprove any future spending on any projects presented before the Commission.

Commissioner Rupf asked when was the last time a project was approved and then stopped when it was into the phased funding. Mr. Flood responded he does not remember, but that the contract with the City of Long Beach would specify that if funding is not approved for whatever reason, the City of Long Beach would either have to finish the project with their own money or repay the Department for whatever portion was spent.

Mr. Parsons stated that this project was started seven years ago and that there is a need to finish the Downtown Shoreline Marina. He added that the City of Long Beach is asking the Commission to accelerate the program for the Downtown Marina and as the monies for the other phases come in, which the Commission has to approve each year, the City of Long Beach would be reporting on what project the money would be used for and give the Commission a construction start date.

Commissioner Beatie stated that the Department has done phased projects before and would like to know what makes this project different. Mr. Flood responded that this one is not any different, but that the City of Long Beach has the opportunity to finish one of those phases almost immediately rather than wait an additional three years for funding.

Commissioner Nagata asked if the loan agreement provides that no more than \$31,718,000 would go into the Downtown Marina. Mr. Flood responded that if the City of Long Beach were to spend more money than what is already allocated in any one of those areas, they would have come back to the Commission for an approved increase or they would have to fund it themselves. He added if the City of Long Beach could not get the construction started on any one of the projects then they would have to repay the Department immediately.

Commissioner Nagata asked why the Commission is not approving the City of Long Beach Downtown Marinas Phase IV Loan agenda item before voting on the City of Long Beach consolidation. He added that the way the Feasibility Report is written, the agenda item is already included in the consolidation. Commissioner Nagata added it would be better to vote on the Downtown Marinas Phase IV Loan agenda item first and then the City of Long Beach consolidation.

Chairman Heim requested that the Commission hear the City of Long Beach Downtown Marinas Phase IV agenda item before voting on the consolidation of the City of Long Beach Marinas agenda item.

CONSIDERATION OF PUBLIC LOAN

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

City of Long Beach Downtown Marinas

Request for a Department of Boating and Waterways Phase IV loan of \$15,000,000 to the City of Long Beach to improve the City of Long Beach Shoreline Marina (previously known as the Downtown Marina) and the Rainbow Marina (previously known as the Shoreline Village Marina.) The total amount of loan would be \$31,718,000. The City of Long Beach is located in Southern California. The Downtown Marinas are located in the northwest portion of the City of Long Beach.

The Downtown Marinas project includes: (1) replacing docks and fingers, including demolition of existing treated wood docks and fingers, (2) utilities replacement, (3) piles, (4) widening/replacement of gangways and docks for ADA compliance, and (5) ancillary items.

Mr. Flood reported that the City of Long Beach has applied for the additional Phase IV loan due to the new Americans with Disabilities Act Federal requirements regarding gangways and slip widths, and costs shown on bids received from three major construction contractors.

Mr. Douglas Parsons representing the City of Long Beach was available to answer questions from the Commission.

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

Commissioner Rupf asked if this would be the last time the Commission would approve this loan, since it is a Phase IV loan. Mr. Parsons responded if the Commission approves the \$15 million loan, the City of Long Beach still has to come back for each phase of more than \$3 million. Mr. Flood added that this is the last time the Commission will consider the Downtown Marina portion. He reported that when the Commission approves a project it approves the entire project even though the funding is not available, and then the Commission comes back each year and approves increases in the dollar amount to a project it already has approved.

MOTION: It was moved by Commissioner Rupf and seconded by Commissioner Sharpe that the Commission consent to the Phase IV loan of \$15,000,000 to the City of Long Beach to improve the City of Long Beach Shoreline Marina and the Rainbow Marina. The motion carried unanimously.

City of Long Beach – Loan Consolidation (cont.)

Mr. Flood recommended that the Commission consolidate the four projects under one contract, which will enable the City of Long Beach to complete the \$32 million project the Commission just approved.

Commissioner Rupf indicated he would like more time to review the consolidation project.

Chairman Heim asked if this type of consolidation could be used on other projects. Mr. Flood responded that the City of Long Beach has several marinas in two locations, and is the only city or county that has multiple marinas and approved projects where a consolidation can apply.

Mr. Parsons added if the Commission approves this consolidation, all of the available funds will be put into one project and the Commission still will have control because of the contract agreement.

Commissioner Nagata asked how much money does the Department have on the prior approved projects. Mr. Flood responded that there is approximately \$27 million and another \$11 million in the 04/05 budget, which would cover this project completely, and provide most of the funding for the next project, which would be Basin 4.

Commissioner Nagata asked when the City of Long Beach would start repaying the loan. Mr. Flood responded that the contract would let them make interest-only payments as soon as they are drawing down, once it is completed it is then amortized over a 30 year period.

MOTION: It was moved by Commissioner Beatie and seconded by Commissioner Nagata that the Commission consent to the request of the City of Long Beach to consolidate the loans; City of Long Beach Downtown Marinas, Alamitos Bay Basin 4, Alamitos Bay Basin 1, Alamitos Bay Basin 2 & 3. The motion failed.

MOTION: It was moved by Commissioner Sharpe and seconded by Commissioner Rupf that the Commission move the agenda item to the next Commission meeting so that the Members could review the project.

Mr. Parsons indicated that the Commission would have to meet before April 1, 2004, since two of the Member's terms will have expired.

Commissioner Nagata asked if this consolidation is legal, since the Legislature has to approve the funding of these projects. Mr. Johnson responded that with regards to future funding, the Harbors and Navigation Code states the Legislature has to approve the Department's budget but as to when the Commission actually votes for these projects is not stated. He added that past advice is that the Commission could approve funding prior to the Legislature actually budgeting the money.

Ms. Fisher added that the Department asked for advice from the Attorney General's (AG) office with respect to how this consolidation could be done. She added that Ms. Arnold of the AG's office, indicated, in a general way, that the projects could be put together as one large project and it would satisfy the legal requirements.

Commissioner Rupf suggested that three of the projects funded be disencumbered and then the money be transferred into one project.

Commissioner Nagata asked if instead of having four projects consolidated, the Department could only have three projects consolidated excluding the \$43 million project, which is a future loan. Mr. Flood responded that it could be done because all the projects can stand-alone.

Commissioner Nagata stated by doing this it would only be one project and three phases the Commission would vote on.

Ms. Fisher stated that in order to do what Commissioner Rupf has suggested, the Department would have to talk to someone about the encumbering and disencumbering process and if a return to the Legislature is necessary.

Mr. Flood responded that technically that is what the consolidation is doing. He stated that the money is available, and that one project can be done and the additional funds would still have to be appropriated by the Legislature and the City of Long Beach would have to come before the Commission for approval.

Mr. Parsons asked if it would help if the City of Long Beach would agree to spend only what is stated on the contract, that is the \$31 million for the Downtown Shoreline project and any of the other projects would not be started until it is brought back to the Commission for approval.

Commissioner Rupf responded since he does not have the rules and policies he couldn't respond as to what is allowed. He stated he does not know if the Commission has the authority to approve three projects; a future fourth project; phase allocations for the three to include the \$15 million which was just approved and allow the City of Long Beach to use project monies as they deem fit.

Ms. Fisher responded that she does not know if the Commission has the authority to do it. She added that she is concerned as to whether or not the Commission can take money, which is appropriated by the Legislature, for one project without going back to the Legislature and use it for another project. Ms. Fisher stated the Department might have to ask the Legislature to disencumber the funds and get them transferred.

Mr. Parsons indicated that that was the approach that was first selected, but it was indicated that it would have to go back to the Legislature. He added that legal staff suggested the consolidation was the only way it could be done legally with the funds that are available at the present time.

Commissioner Rupf stated that he would support the consolidation if the Department's legal counsel states that it is lawful and that the consolidation does not set a precedent.

Ms. Fisher stated that the Department would have to ask the Attorney General's office for advice as to the legality of taking money, which is appropriated by the Legislature, for one project and allow an entity to use that money for an entirely different project.

Mr. Parsons stated that he had understood from the Department that the Attorney General's office had stated that the consolidation was lawful and approved by the Department's legal counsel.

Ms. Fisher responded that the Attorney General's office responses were based on a question and answer format and that it was not asked the question on this particular loan and consolidation.

Commissioner Nagata commented that according to what Ms. Fisher has stated, this consolidation could not be done with a future or proposed loan that has not been approved. He added that if the consolidation is legal, then the Commission could approve it but with conditions.

Ms. Fisher responded that if the Commission approves the consolidation it should be done contingent on a memorandum from the Attorney General's office specific to this particular situation, including whether or not money that has been appropriated by the Legislature for one fund could then be consolidated and used for another project. She added that a response from the AG's office could take several weeks.

Mr. Parsons apologized for bringing this consolidation before the Commission, but he had understood that this consolidation was looked at by the AG's office and was deemed legal.

Commissioner Rupf responded that the City of Long Beach has always been articulate, professional and has done what is in the best interest of boaters and this would not distract from that reputation.

Ms. Fisher added that the AG's office was given some information about the City of Long Beach's project and that Mr. Flood did write to the Attorney General's office about the current situation with the City of Long Beach, and their response was in the context of some information about the loans.

MOTION: It was moved by Commissioner Nagata and seconded by Commissioner Beatie that the Commission consent to the request of the City of Long Beach to consolidate the Long Beach Downtown Marinas, Alamitos Basin 4 and Basin 1, contingent upon the Department obtaining an opinion from the Attorney General's office that states the consolidation is legal, and that this consolidation should not be looked on by a future Commission as precedent. The motion carried unanimously.

Mr. Parsons thanked the Commission and asked if once approval has been made by the Attorney General's office could he then proceed without having to come before the Commission to be formally notified of the approval. Commissioner Rupf responded that there is no need to come before the Commission and that the Department will notify the City of Long Beach of the Attorney General's opinion.

Chairman Heim called for a break at 10:40 A.M.; the meeting resumed at 10:50 A.M.

CONSIDERATION OF PUBLIC LOAN TIME EXTENSION

Martinez Marina

Request from the City of Martinez to extend the loan agreement from February 1, 2004 to April 30, 2004, with the Department of Boating and Waterways. Mr. Mark Ross, City Councilperson and Mr. Rob Schroder, Mayor, 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 pursuing a new agreement with Westrec. Mr. Flood 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. He reported the extension would be from February 1, 2004 to April 30, 2004. After discussion, a motion was made.

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 from February 1, 2004 to April 30, 2004. The motion carried unanimously.

OLD BUSINESS

None

NEW BUSINESS

Commissioner Beatie, as a member of San Francisco Bay Harbor Safety Committee, presented a video titled "*Sharing the Bay*" to Mr. Tsuneyoshi. Commissioner Beatie asked that the video be shown at the next Commission meeting.

Mr. Tsuneyoshi presented a plaque to Chairman Heim and Commissioner Beatie for their service on the Boating and Waterways Commission.

Commissioner Rupf presented travel bags to Commissioner Heim and Commissioner Sharpe. Chairman Heim asked that the Department send a thank you letter to Commissioner Rupf and his staff for the travel bags.

PUBLIC COMMENTS

None

COMMISSIONER ANNOUNCEMENTS

Commissioner Rupf commented on the disappointment of not having a full Commission after this meeting and thanked the Commission members for allowing him to share the dais with them.

Mr. Johnson indicated that the next scheduled Commission meeting would be May 6, 2004, in Sacramento.

ADJOURNMENT

The Chair adjourned the meeting at 11:14 A.M.

Raynor Tsuneyoshi, Secretary

Attachment