

MINUTES
BOATING AND WATERWAYS COMMISSION MEETING
SACRAMENTO, CALIFORNIA
March 11, 2005

Pursuant to due and regular notice, the meeting of the Boating and Waterways Commission was called to order by Chairman Joseph P. Sharpe, on March 11, 2005, at 8:30 A.M., at 500 Leisure Lane, Room 304, Radisson Hotel, Sacramento, California.

ROLL CALL

Commissioners Present: Joseph P. Sharpe, Chairman
 Lenora S. Clark
 Jon S. Fleischman
 Charles P. "Bud" Johnson
 Robert Y. Nagata
 H.P. "Sandy" Purdon

Commissioners Absent: Warren E. Rupf, Vice Chairman

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
 Harold Flood, Supervisor of Planning, Facilities Division
 Mary Just, Associate Governmental Program Analyst
 Margarita Sanchez, Administrative Assistant

APPROVAL OF MINUTES

MOTION: It was moved by Commissioner Nagata and seconded by
 Commissioner Purdon that the Boating and Waterways
 Commission minutes of the November 18, 2004, meeting
 be approved. The motion carried unanimously.

CHAIRMAN'S REPORT

Chairman Sharpe reported that this is his final meeting because his appointment will terminate on March 15, 2005. He expressed his appreciation to his fellow Commissioners for being a part of the Boating and Waterways Commission for the past four years.

Chairman Sharpe commended Raynor Tsuneyoshi and his staff for their excellent support of the Commission. He reported that the Commission in the past four years has approved more than \$160 million in grants and loans to develop boating infrastructure. Chairman Sharpe also thanked the many recreational boating organizations for their support of the Commission.

Chairman Sharpe concluded his report with the following quote, “Civilization is a movement and not a condition, a voyage and not a harbor.”

DIRECTOR’S REPORT

Raynor Tsuneyoshi expressed his condolences for the loss of Mr. Doug Parsons, Superintendent, Marine Bureau, City of Long Beach and for the loss of Mr. Bill McGrath, Commodore of the Bel Marin Keys Yacht Club.

Mr. Tsuneyoshi reported that the Governor had recently withdrawn the Government Reorganization Plan #1, which would have eliminated the Boating and Waterways Commission. He reported that the Department’s proposed FY 05/06 budget included the following: \$19,000,000 for public agencies for marinas; \$3,500,000 for private sector marina loans; \$11,714,000 grants for public agencies for boating launching facilities; \$3,380,000 for boating facilities on state lands; \$9,075,000 for boating law enforcement; \$1,166,000 for beach erosion control and beach restoration projects; \$500,000 for abandoned watercraft abatement; and \$8,111,000 in federal funds for a variety of boating safety, education and access programs including vessel sewage pumpout grants. Mr. Tsuneyoshi stated that \$20.9 million was left as the Department’s reserve and not allocated for any projects or programs.

Mr. Tsuneyoshi reported that he will be participating this week in the International Boating and Water Safety Summit in Newport Beach. He indicated the Summit will host more than 500 U.S. and international participants that will share their knowledge on boating and water safety.

Mr. Tsuneyoshi stated that he had met with the National Oceanic and Atmospheric Administration (NOAA) and Resources Secretary Mike Chrisman about regulations that NOAA will propose in August, which would impact California coastal waters in three federal sanctuaries between Ventura and San Francisco.

Mr. Tsuneyoshi presented plaques to Chairman Sharpe and Commissioner Rupf (not present), whose terms will expire on March 15, 2005. He thanked Chairman Sharpe for serving four years on the Boating and Waterways Commission and thanked Commissioner Rupf for serving eight years on the Commission.

LEGISLATIVE REPORT

Mr. 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.

Mr. Johnson reviewed AB 716 (Canciamilla), removal of abandoned vessels and SB 255 (Torlakson), Vessel Registration Fees. Commissioner Purdon asked about the \$2,000 increased threshold in AB 716 for removing wrecked or abandoned property from navigable waterways.

Mr. Johnson explained that before a public agency removes an abandoned vessel, the value of the vessel has to be estimated and if a value is above \$300, which is the current threshold, then the vessel cannot be removed.

Commissioner Clark asked about SB 255 and asked how much of the vessel registration renewal fee is going into the Harbors and Navigation fund and how much the Department of Motor Vehicles (DMV) is charging the Department to collect the fees. Mr. Johnson replied that DMV takes about 40 cents of every dollar for administrative cost. He added that the registration fee has not been changed since 1980. Mr. Johnson stated that the Department has hired the State Controller's office to conduct an audit of DMV's administrative costs.

Commissioner Fleischman stated that the administrative cost should not be higher if the registration fee was increased. Mr. Johnson replied that theoretically that should be the case, but it is not what actually happens. Mr. Johnson said he will update the Commission on the results of the audit.

CONSENT CALENDAR

Mr. Flood presented to the Commission the Consent Calendar of loans and grants amendments that require time extensions to finish construction of projects. Mr. Flood indicated that staff recommended approval of time extensions on all project contracts listed in the Consent Calendar. However, he pointed out that the Loon Lake project listed in the Consent Calendar does not need a time extension and does not need to be considered.

MOTION: It was moved by Commissioner Fleischman and seconded by Commissioner Johnson that the Boating and Waterways Commission approve the Consent Calendar as presented. The motion carried unanimously.

CONSIDERATION OF PUBLIC GRANT

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

Lopez Lake Boat Launching Facility

Request for a Department of Boating and Waterways phase I grant of \$83,000 to San Luis Obispo County to make improvements to the Lopez Lake Boat Launching Facility. The phase I funding would be for the planning and engineering phase of this project. The total amount of the grant would be \$763,100.

Lopez Lake Boat Launching Facility is located approximately 10 miles east of the City of Arroyo Grande, and 30 miles south of the City of San Luis Obispo.

Mr. Flood indicated the proposed project would entail the following: 1) removal of the existing boarding floats and courtesy "F"-dock, 2) installation of new boarding floats, 3) installation of a new courtesy "F"-dock, 4) resurfacing of the parking area, 5) resurfacing of the marina road, and 6) installation of two new fish-cleaning stations.

Mr. Ernie DelRio, Park Superintendent, and Mr. Shaun Cooper, Park Planner, were available to answer any questions from the Commission.

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

Commissioner Nagata asked if the "Escalation" reference in the feasibility report is a new line item. Mr. Flood responded that it is a new line item. He added that the escalation is an inflation factor of about five percent per year and it will always be included in the feasibility report.

Commissioner Clark asked about the previously considered grant of \$462,000. Mr. Flood responded that the grant was considered in 1983.

Commissioner Fleischman visited the site and indicated it is in urgent need of renovation.

MOTION: It was moved by Commissioner Johnson and seconded by Commissioner Fleischman that the Boating and Waterways Commission consent to the phase I grant of \$83,000 to the San Luis Obispo County to make improvements to the Lopez Lake Boat Launching Facility. The motion carried unanimously.

CONSIDERATION OF PUBLIC LOAN

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

Sacramento Marina South Basin

Request for a Department of Boating and Waterways phase II loan of \$5,150,000 to the City of Sacramento to make improvements to the South basin of the Sacramento Marina. The total amount of the loan would be \$6,500,000.

The Sacramento Marina is located two miles from downtown Sacramento in Miller Park on the east bank of the Sacramento River. This facility consists of the North and South basins.

Mr. Flood indicated the proposed project would entail the following: 1) demolition of existing berths (except 30 existing concrete berths which will be extended) and construction of a reconfigured system containing 171 slips, 2) berth covers, including a portion of the north basin, 3) installation of gangways, 4) replacement of dock utilities, 5) dredging, and 6) addition of three fuel dispensers.

Ms. Barbara Bonebrake, Director of Convention, Culture & Leisure and Ms. Michelle Heppner, Marina Manager, were available to answer questions from the Commission.

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

Commissioner Purdon asked if the slip rates are at market rate for the area. Ms. Heppner responded that the slip rates are a little under the market rate. Commissioner Purdon asked if there is a waiting list. Ms. Bonebrake responded that there are several combinations of waiting lists and some are as old as 1996. Commissioner Purdon inquired if he had a 40' boat, how long would he have to wait for a slip. Ms. Heppner responded that the wait depended on the size of the boat, and that a 40' boat would take about five years which is why there is need for renovation.

Commissioner Purdon asked for an estimate on the number of people on the waiting list. Ms. Heppner responded that there are about 150 people on the list.

Commissioner Johnson asked what gain would there be in 40' slips. Ms. Heppner stated that there will be about 85 slips which is about half the waiting list.

Commissioner Clark asked if the reconfiguration of the marina is to repair and to adjust to what the demographics are requiring now in slips. Ms. Heppner responded yes, and that feasibility studies have been done to look at what the needs of boaters are, what sizes of boats the boating community is buying, and to have year round occupancy. Commissioner Clark commented that throughout the delta there are larger boats and marinas with smaller slips that cannot accommodate them.

Commissioner Purdon asked if he had a slip in the marina and then sells his boat to a friend, can the friend also have the slip. Ms. Heppner replied yes, the marina does allow it at this time, but it is a policy that the marina is looking into possibly changing.

Commissioner Fleischman stated that there is a concern that public dollars are used to fix up marinas and then subsidizing people who have slips who then pass it along to their friends. Commissioner Purdon asked how the City will accomplish raising the slip rates.

Ms. Heppner responded that recently they went before the city council and obtained a 6% berth increase for the next five years and they would come back to the council with a proposal on certain policies and concerns. She added that she may work with the Marina Advisory Council and will express some of the Department's concern to them. Commissioner Purdon asked if the Marina Council is made up of slip owners. Ms. Heppner responded that it is made up of a combination of individuals including slip owners.

Mr. Tsuneyoshi asked if the contract mandates that a minimum rate is charged that would be sufficient to service the debt. Mr. Flood responded yes, and the contract also includes that they increase their rates annually based on CPI.

Commissioner Nagata asked if the City of Sacramento's current loan is in good standing. Mr. Flood replied that it is. Commissioner Nagata stated that according to the feasibility report, the collateral for this loan is a lease and "DBW can require the City to lease the marina to DBW." He asked if the Department has to pay rent when we require them to lease it to us. Mr. Flood responded that no, that the way the lease is written, we can have them lease it to us and we can hire them back at no cost to run it for us.

Commissioner Nagata noted that the loan was reduced due to increasing costs and there will be a reapplication for a restroom and utility installation loan. He also noted that in the years 2007-2009 the repayment is very thin. Mr. Flood stated that the City of Sacramento is working on the application and trying to get it into the 06/07 fiscal year budget in the amount of \$450,000. Commissioner Nagata asked that for 2007 the feasibility report show the projection of a \$7,000 cushion. Mr. Flood responded that this assumes rates and expenses stay the way they are now. However, the city is in the process of raising rates.

Commissioner Purdon stated that he is not comfortable with this project and that management needs to get a grip on the rules and regulations of the marinas and that having the slip holders dictate what the policy is for renting slips is not a good idea. He added that having a council of slip holders and boaters to discuss the activities and the policy of things that are non financial is fine, but as long as there is a waiting list, then there are boaters that cannot boat and it is not fair to the public. Commissioner Purdon said the City of Sacramento is asking for a public loan and the public is not being well served with the policies that are currently in place. He added that he will vote against this project.

Ms. Bonebrake stated that the Marina Advisory Council is purely an advisory council and is made up of several boat owners as well as other representatives from the community. She added that the council is not the fiscally responsible agency. Ms. Bonebrake said that the Sacramento City Council is the responsible agency and that the City Council has set this up as an enterprise fund and is expected to pay all of its operating cost, debt cost and capital cost from this fund.

Ms. Bonebrake said the City Council is in favor of having market rates and covering its expenses. She stated that there have been changes this last year relative to the management of the marina and they are looking at all policies including how far boats hang out, the turnover, subleasing policies and they are committed to come back to the City Council by the fall of this year with the changes in policies.

Commissioner Purdon stated he is comfortable that the City of Sacramento can pay the debt but is concerned with the gap between what the market rate is and for what is being done just to pay the debt service. He added that the citizens of California own this property because it is a municipal property so they are losing the difference between market and what it is just to pay the debt service and that is unfair to the public.

Commissioner Clark asked that the Commission discuss market rates later under “New Business.”

Commissioner Fleischman stated that it may be better to move the discussion to this part of the agenda before the Commission considers the loan.

Commissioner Purdon stated that there are enough questions on this project that it would be appropriate to make a motion to request that this project be delayed until the next meeting so there can be clarification on some of the things discussed here.

MOTION: It was moved by Commissioner Purdon to have the Sacramento Marina agenda item moved to the next Commission meeting. Motion failed for want of a second.

MOTION: It was moved by Commissioner Clark and seconded by Commissioner Nagata that the Boating and Waterways Commission consent to the phase II loan of \$5,150,000 to the City of Sacramento to make improvements to the Sacramento Marina-South Basin. Commissioners Sharpe, Clark, Johnson and Nagata voted “yes.” Commissioners Purdon and Fleischman voted “no.” The motion passed.

CONSIDERATION OF PRIVATE LOAN

Ms. Just presented to the Commission for its advice and consent the following request for a private loan.

Sausalito Marine Center

Request for a Department of Boating and Waterways Recreational Marina Loan of \$1,400,000 to Zack’s Inc. for improvement to the Sausalito Marine Center. Sausalito Marine Center is located on San Francisco Bay in the City of Sausalito in Marin County.

Ms. Just indicated the proposed project would entail the following: 1) replacing/repairing planking on the floating docks and installing new dock/utility boxes, 2) paving of a 40,000 square foot parking area for 22 single car spaces, and dry boat storage for 40 boats,

3) converting the existing canvas shop (675 square feet) into a harbormasters office/maintenance shop, 4) improving and increasing the area of the existing fixed decking area from 14,000 square feet to 27,000 square feet (kayaks will be dry stored on a portion of this decking area), and 5) improving the existing 9,000 square foot warehouse, including structural improvements, insulation, heating, the addition of 29 storage lockers, an owners office space on the second floor, rehabilitation of the existing restrooms, the addition of new restrooms (adjacent to the existing restrooms on the first floor of the warehouse), utilities, the addition of exterior stairs, an exterior walkway, and landscaping.

Ms. Just reported that Commissioner Clark visited the proposed project site.

Mr. Eben Gossage, Principal Officer, was available to answer questions from the Commission.

Ms. Just stated that staff recommended that the Commission consent to the \$1,400,000 Recreational Marina Loan to Zack's Inc.

Ms. Just mentioned that staff proposes that the Department will be a third deed of trust holder, not in second position as the feasibility report states. She reported that the Department was made aware recently of some information regarding an existing second deed of trust, and is in the process of verifying this. Ms. Just indicated that there is a provision in the agreement with the holder of the second that does not allow subordination to any loan that puts the loan-to-value over 50%. She indicated that staff is still recommending approval of the loan with the Department being in third position, contingent upon the verification of all the provisions within the contract and the existing second deed of trust. Ms. Just indicated there is sufficient equity in the collateral based on the appraised value.

Commissioner Nagata asked that the collateral be explained again. Mr. Flood responded that the feasibility report states that the Department will be getting a second deed of trust. He added that the owner, Mr. Gossage, has checked with the second deed of trust and they do not want to subordinate and their paperwork indicated that they do not have to. Mr. Flood stated that the Department would not be in second position but fourth, behind ourselves, so we would be technically in third position. He added that the total debt ahead of the Department is \$2.6 million plus \$400,000 for the second deed of trust.

Mr. Flood stated that the Department staff recommends approval contingent upon the verification that the second deed of trust cannot be subordinated and cannot be for more than \$400,000, which will be done next week.

Commissioner Nagata asked if someone in the Department is reading all the documents. Mr. Flood responded that yes, all the documents are read and verified.

Commissioner Fleischman asked if it is a normal procedure to approve a loan when all the documents are not in order. He added the Department should have everything in order and ready for approval before the Commission meetings. Mr. Flood responded it is normal to have everything ready for hearing, but because this project is a private marina and not a public one, the time frames are generally faster. He added that the Department tries to

accommodate private borrowers as much as possible and is asking the Commission to conditionally approve the project now, contingent on verifying the total lien amount of the existing second. This would allow the project to begin at least two months earlier.

Mr. Flood stated a private marina owner does not have to go before a city council to get subsequent approvals, so he can start construction as soon as the documents are in place.

Commissioner Fleischman asked if the motion on this agenda should indicate contingent approval. Mr. Flood responded that it should because staff did not have time to change the feasibility report.

Commissioner Purdon asked who the landlord is and if there is a long waiting list.

Mr. Gossage responded he is the owner and the waiting list is not long. He added that there is a \$500 fee to have one's name on the list.

MOTION: It was moved by Commissioner Fleischman and seconded by Commissioner Clark that the Boating and Waterways Commission consent to the Recreational Marina Loan of \$1,400,000 to Zack's Inc., for improvements to the Sausalito Marine Center, contingent upon the collateral issues being worked out to the satisfaction of the Department of Boating and Waterways staff. The motion carried unanimously.

NEW BUSINESS

Berthing Rates

Ms. Fisher spoke to the Commission on the topics of berthing rates and "gift of public funds." She read from two memorandums addressed to the Boating and Waterways Commission. Ms. Fisher stated the memorandum dated December 22, 2004, was requested by Commissioner Clark and the memorandum dated February 25, 2005, was in response to an issue that was raised by Commissioner Purdon that would not have been covered by the first memorandum.

Ms. Fisher stated that Commissioner Purdon raised an issue as to whether giving a loan of public funds to a local public agency for construction of a small craft harbor may constitute a gift of public funds to boat owners, if the public entity charges less than market rate slip fees. She said the Department and Commission are mandated by law to concern themselves only with making sure that slip rates are sufficient to repay the loan. Ms. Fisher added that in the past there was a requirement that the Commission and the Department play a dual role in that the Department was required to look at whether or not slip fees were sufficient to repay the loan and to make sure that the slip fees were not exorbitant. Ms. Fisher reported that the requirement to determine whether fees are exorbitant in the Department's public loan program has been taken away by the Legislature and now the only concern with slip fees is whether they are sufficient to repay the loan. She stated that the provision which required the

Department to look at whether or not slip fees were at market rate was abolished by the Legislature and no longer part of the law or a Department function.

Ms. Fisher informed the Commission that to determine whether slip fees that are below market rate constitute a gift of public funds one would have to look into whether or not there is an enforceable claim against the money that is being given which will determine that it is not a gift but a loan that is going to be repaid. She added that not only does the principal of the loan have to be repaid, but it has to be repaid with interest.

Ms. Fisher stated that even if the money were not a loan and the Department gave money to an entity, if it were used for a public purpose, then there would be no unconstitutional gift of public funds. She added that the Legislature has broad discretion to decide what is a public purpose and they decided that the money should be used so that all individuals who wish to boat would benefit by equal and reasonable access to boating facilities.

Commissioner Nagata commented that as long as there is a public purpose, there is never a problem of the money being a gift of public funds. He said people can go to any state parking lots that have lower rates than private lots, and people get a benefit, but it is for the public.

Commissioner Nagata asked that now that it is known that the market rate for berthing is not a criteria for making a loan, if the Commission uses it as a factor, is the Commission abusing its office. Ms. Fisher responded that there are some legitimate reasons the Commission can refer to the market rate. She said, for example, if the Department took a look at a loan and determined that the entity was in fact prepared and willing to charge market rate, but in order for the loan to be feasible and be repaid in full, they would have to charge 10%, 15% or 20% higher than market rate, then the conclusion the Department would reach would be that the loan was infeasible and in that case it is perfectly legitimate to consider whether or not market rate loans can be made.

Commissioner Nagata asked if the entity made the threshold and there is sufficient revenue to cover the loan, the Department could not force them to increase their rates beyond that, otherwise that could be abuse of this office. Ms. Fisher responded that would be correct.

Commissioner Purdon stated that he agreed about the loan issue, but that his question was not regarding the loans, but the differential between what creates the waiting list that disenfranchises a lot of people from boating. He said with the loans one could charge whatever it takes just to pay back the loan and it would be fine and as long as you do that, there is no gift of public funds. Commissioner Purdon asked when there are waiting lists, whether it is a public marina, a municipal marina or a private marina on a public leasehold, it means that the market rate is not being charged. He added that if there is a waiting list, that means that the market is out there to rent those slips, but because the rents are so cheap, then people are not moving out of them. Commissioner Purdon said the market should dictate the vacancies; there should be a market input into what creates the vacancies.

Ms. Fisher responded that people who could afford to pay more than is being charged are not having the opportunity to do so because the slips are already taken by people who are paying

less, but she added that both of those groups of people are members of the public and there is nothing in the law that would require the more affluent members of the public to be favored over the less affluent members of the public.

Commissioner Clark commented that the boating assessment needs survey and profile that was developed by the Department of Boating and Waterways speaks to the fact of how many boaters there are out there, how many marinas there are, and how many slips are available, and it shows a definite need and a lack of availability to accommodate all of the boaters out there irrespective of how much is being charged for slips. She added that whether more is being charged or less does not drive accommodating all the boaters out there. Commissioner Clark stated that the numbers of boaters are increasing every year in California and there are a shrinking number of available slips due to the fact that they are in disrepair, are silted in, etc. She said she requested a white paper from Ms. Fisher after the last commission meeting because there was a lot of conversation at the meeting about the market rate. Commissioner Clark stated that as a Director of Recreational Boaters of California, they were responsible for the language that used to be in the law that said the rate should be reasonable and not exorbitant, so that a greater number of boaters in the state of California would have access and that they were not denied access because they were not able to pay a higher rate for the slips. She added that she recognized that with AB 2665 that language was taken away and the Commission is only to concern itself with the repayment of the loan and that they are able to provide maintenance.

Commissioner Purdon responded that the problem is that just as many people are being disenfranchised and cannot get into boating because of the long waiting list. He added his definition of exorbitant is anything above market. Commissioner Clark responded that there would be a waiting lists irrespective of the price one is charging based on how many boaters there are and how the quantity of slips.

Ms. Fisher stated that Commissioner Purdon's statement on what is exorbitant and what is market rate and what is the difference between the two is a good one. She added that it is a question that has to be settled by the courts, but with respect to public marinas, it is no longer an issue. However, as to private marinas there is still that issue, as pointed out in the second memo.

Mr. Tsuneyoshi stated that in his travels, there is a demand that exceeds the available slips, but it is becoming increasingly impossible to find land that can be developed into additional marina facilities. He added that most of the existing marinas, private and public, are looking to reconfigure their marinas in order to meet the demands of the public for larger slips. Mr. Tsuneyoshi said in Florida, the private marina owners sell their property and dock space to individuals who then convert it to condominiums and eliminate several slips and only keep enough slips for the condominium apartments. He added this has also happened in Marina Del Rey.

Ms. Fisher added that the legislature has expressed its intent that there be a certain kind of price control with respect to private marinas.

Commissioner Purdon asked if that intent differentiates between a private marina that is truly private and a private marina that is subleasing from a government agency. Ms. Fisher responded that it does not.

Commissioner Purdon stated that the private marina owner is paying a percentage of the slip rent to the government agency, so the lack of increasing the slips to market rate means the government receives less money. Ms. Fisher responded that there are three kinds of entities, the public entities, which existing law only allows for a determination whether or not berthing fees sufficient to repay the loan, interest and operation and maintenance. She added that there are private owners who borrow from the Department and they make up a second group. Ms. Fisher said that with the private owners the legislature has expressed an intent that their profit be limited to a "reasonable" profit. She added there are private marina owners who do not utilize public funds and they are free to charge anything they want.

Commissioner Clark stated that is the case with public marinas that are borrowing public funds because that money is borrowed at a lower interest rate than they would be borrowing if they had a conventional loan.

Commissioner Johnson added that in southern California there have been complaints about the Long Beach public marinas having low rates and five miles away in Huntington Harbor the rates are \$12 to \$15 per foot and in Newport Bay it is \$20 to \$25 per foot and that is supply and demand. He added there are a lot more boaters than there are slips and there is no place to build. Commissioner Johnson stated another issue is that boats are being sold and slips are not being built.

Commissioner Fleischman asked if any of this can be used as a factor to make a determination. He added there are more places in California that can utilize the very limited funds that we have than we have funds to give. Commissioner Fleischman said a situation such as the St. Francis Yacht Harbor in San Francisco, where there is a group of people who have an extremely low berthing rates but want a brand new facility that is paid for with Department funds because they do not want to raise the rates so that other people could rent there. He added that the same people are there forever. Commissioner Fleischman stated that he would rather fund an entity that has a model that tends to get more people into slips. Ms. Fisher responded that the Department might consider discussing with potential borrowers the issue of selling slips which limits boaters.

Commissioner Fleischman stated if marinas offer slips at such a low rate, then you will find boaters will keep the slips just to keep it, because it is so cheap and this should not be done with taxpayers' money. Commissioner Fleischman said he would rather spend money on a marina that has an economic policy that causes turnover and increases more opportunity for everyone to have slips, especially now, when there are more boats than there are slips.

Ms. Fisher stated that the legislature indicates that the Department can consider whether the rates are sufficient to produce gross revenues adequate for payment of all installments of principal and interest on money owed the state as they come due and all expenses of operations, maintenance, and repair of the small craft harbor facilities and any additional sums as may be required by the Department for any sinking fund, reserve fund, or other

special fund established for the further security of the loan. She said that is the only authorization that the legislation gives the Department with respect to berthing fees.

Commissioner Fleischman asked what happens when there are limited resources and many applicants, somebody has to choose between them using different criteria. Ms. Fisher responded one would have to look at something other than the berthing fees and the Department has regulations.

Mr. Flood responded that the Department's regulations provide ranking criteria and at the moment the Department is making sure the marinas can take care of themselves financially.

Commissioner Purdon asked as a public agency, do we have an obligation to the public to make sure they are getting their proper returns. Mr. Flood responded that what you have here is an oligopoly. The supply is artificially low because there are no new places to construct marinas. The cost of putting new slips in is high and putting in new marinas cannot be done because there are no new places. He said the waiting list is not a good indication of demand and is only as good as those boaters who have the ability to pay for the slips. If you force a marina to raise rates, you force out one segment of the population.

Commissioner Clark stated that no matter how you say it, you can not create more slips, whether you move the people that are paying low rent out or move somebody in that is willing to pay higher rent, you still have people that are not going to get a slip. Mr. Flood responded that yes, there will be boaters who will not get a slip because boating is growing somewhere between 1.2 and 2.6 percent a year and is growing faster than California's population. He added that there are alternatives such as dry storage.

Ms. Fisher stated in order to enfranchise the Commission's vision as to what would be the best way for the market to operate into the law then we would need to go to the Legislature to seek legislative change. She added that at one time there was a requirement in the statutory law that the Department examine the rates to make sure they were at market rate and that kind of requirement could be instituted in the law again if the Legislature saw fit to do so, but under the current law, the hands of the Department and the Commission are tied and they must obey the mandates of the law only to examine berthing rates to determine whether or not they are to repay the loan with interest and to maintain the facility property.

Commissioner Purdon asked if the Boating and Waterways Commission is capable of making regulations that might address this issue. Ms. Fisher responded that no, because the purpose of the regulations is to interpret and make specific statutory law; the regulations themselves can't override the statutory law.

PUBLIC COMMENT

Brian Roney, Castaic Municipal Water District, thanked the Commission for extending his second phase grant. He said his district has been very active and introduced legislation last year that asked that the Governor appoint a commissioner to the Boating and Waterways Commission that represents or an employer representative of a public agency operating a

fresh water lake. Mr. Roney said he had asked the Department for funding for enforcement issues, but was not eligible for grant money because he was within the confines of Ventura County and Ventura County does not qualify.

Mr. Roney asked the Commission to consider two items, one that all public boating facilities that are eligible for grant money, be eligible for all improvements. He stated that he is not eligible for some funding for improvements because he is not on the State Water Project. Mr. Roney indicated that if he was on the State Water Project he would be able to get a sign entrance road or an entrance kiosk and other things. He stated the second item to consider is the report to the Legislature from the Department of Parks and Recreation on the use of the Motor Vehicle Fuel Account and Harbors and Watercraft Revolving Fund for fiscal year 03/04. He added that last year the Department of Parks and Recreation took \$27 million from the Department's funding and used it for non-boating related expenses. Mr. Roney stated he would like the money returned to the Department so it could be available for grant funding. He stated that the report listed Carlsbad State Beach as a boating related expense but it has no launch ramp, no docks, and no boating activity. Mr. Roney urged the Commission to ask for an audit of the expenditure of these funds because they do not meet the intent of the Legislation of this funding.

Chairman Sharpe stated that this matter is referred to Department for handling.

Mr. Johnson reported that the prior and present administrations have proposed the \$27 million transfer to Parks and Recreation. He added that proposed budget matters are confidential.

Mr. Brad Gross, President of California Harbor Masters, acknowledged Chairman Sharpe for his dedicated work in the Commission over the years.

Mr. Gross said he operates one of the largest public marinas in the San Francisco Bay area and would encourage the Commission to continue its discussion. He said this discussion could help some of the municipal marina operators formulate policies and come up with some different rules. Mr. Gross stated the Department has a set of guidelines that are used for design of boating facilities which he uses to design facilities and it would not be unreasonable to have similar guidelines for operating, setting policies and setting berthing fees. He said it would be beneficial to a municipal marina operator to have guidelines that they can take to their commissions, councils and board of supervisors. Mr. Gross said working with the public municipalities, we can set policies as managers and bring to our commissions, councils and board of supervisors, but they tend to succumb to the word of the public and that is the difference the private operators do not have. He said guidelines set by the Boating and Waterways Commission would assist many. Mr. Gross said maybe a committee could be established to recommend some of these guidelines and he would volunteer to assist. He stated that a municipal marina operator was absent from these discussions and he would like to ensure that if these discussions continue, that there is a voice from a municipal marina operator.

Mr. Gross, speaking as the Harbor Master for the San Francisco Marina, assured the Commission that he is working on a fee increase that will double the fees in six years and no

funds will be coming from the Department of Boating and Waterways until the fees go up. He said the Commission is correct in that the marinas fees are low but none of the facilities that he knows of are subsidized by their cities. Mr. Gross stated that the marinas are enterprise zones and generate their own funding to repay loans.

COMMISSIONER ANNOUNCEMENTS

Chairman Fleischman asked if it is appropriate to designate a Chair Pro Tem who would become the Acting Chairman since Vice Chairman Rupf may not be reappointed to the Commission.

Ms. Fisher responded that since there is no agenda item for election of officers on the Agenda, Mr. Tsuneyoshi could open the next commission meeting and the Commission could elect officers at that time.

After discussion there was a motion made.

MOTION: It was moved by Commissioner Johnson and seconded by Commissioner Nagata that Commissioner Purdon be Chair Pro Tem until the next Commission meeting where a chairman and vice chairman will be elected at that time. The motion carried unanimously.

Commissioner Johnson read an editorial from the *Log* that stated one of the reasons that the duties of the Commission could be folded into the Department of Boating and Waterways is that the Commission does not do very much. He further read that the Commission does not have a whole lot of power and in fact they are an advisory commission. Commissioner Johnson said we need to un-tarnish the public concept that the Commission is an advisory commission and really doesn't do very much.

Commissioner Fleischman said as a commission we need to maintain our own public relations.

Commissioner Purdon stated that he took the editor of the *Log* to lunch and discussed the article with him.

Mr. Johnson indicated that the next commission meeting is scheduled for May 13, 2005.

Chairman Sharpe announced and led a moment of silence for Mr. Doug Parsons and Mr. Bill McGrath.

ADJOURNMENT

The Chair adjourned the meeting at 10:38 A.M.

Raynor Tsuneyoshi, Secretary

Attachment