

MINUTE ITEM

This Calendar Item No. 30
was approved as Minute Item
No. 39 by the State Lands
Commission by a vote of 3
to 0 at its 3/26/77
meeting.

CALENDAR ITEM

30.

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CONSIDERATION OF FIVE ENCROACHMENT AGREEMENTS
MISSION BAY, SAN DIEGO COUNTY

TRUSTEE: City of San Diego
1200 Third Avenue, Suite 1024
San Diego, California 92101

LOCATION: Granted tide and submerged lands in Mission Bay, San Diego County.

PURPOSE: To determine if 5 encroachment agreements for piers in Mission Bay are consistent with Public Resources Code Section 6702(b).

BACKGROUND: In 1926, the State Board of Harbor Commissioners for San Diego issued 50-year leases to Charles K. Johnson and F. T. Scripps, for the use of tidelands in Mission Bay. The leases were taken over by the City of San Diego in 1945 when the City received a legislative grant of tide and submerged lands which included the leased area. On September 19, 1960, the Crescent Beach Development Association, which is the assignee of the Johnson lease, and the lessees and assignees of F. T. Scripps, entered into a contract and lease amendment with the City for sharing the cost of certain tidelands dredging operations. It was agreed that upon expiration of the 50-year leases, the premises would be surrendered and vacated, "...and that the leased area will be reconstructed and restored to public beach conditions by the removal of structures by the lessees so that the people of the City of San Diego and the State of California can utilize the said premises as a public beach without interference from the lessees of any of them."

Said leases expired on June 1, 1976. Shortly thereafter, the San Diego City Council approved recommendations stating the intent of the City that all the piers except for two should be removed. Piers in poor condition were to be removed immediately; others, where feasible, were to be modified for public use and could remain until completion of the beach improvements planned by the City for that area. Five encroachment agreements were entered into for piers in good condition that could not be modified for public use.

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On November 4, 1976, the California Coastal Zone Conservation Commission, on appeal from the City, approved a permit for the proposed beach improvements described as "removal of piers and other obstructions on public tidelands and installation of trash receptacles, fire rings, safety barriers, and sign identifying public beach."

The permit was conditional upon 1) good faith effort by the City to have all piers in Crescent Bay removed by June 8, 1978, except for two piers serving the public, 2) submission of encroachment agreements and operating agreements to the State Lands Commission for a determination that the existing private developments are consistent with the provisions of Public Resources Code Section 6702(b), and 3) submission by the City by June 8, 1978, of a description of all remaining encroachments and a timetable for their removal. On January 5, 1977, the City entered into encroachment agreements with the owners of 5 piers, numbered 6, 7, 9, 10 and 11, and on January 18, 1977, submitted a request that the Commission make the desired determination.

FACTS SUPPORTING DETERMINATION:

According to a City Manager's Report, the 5 docks are usable only from private properties which are single family residences and the actual tide line generally extends up to the private property line. The docks, as modified, do not substantially interfere with the use of the beach and cannot be modified for public use.

Four of the agreements specify that the docks are to be removed on or before June 8, 1978. In the fifth agreement, the deadline may be extended by mutual agreement. Each applicant has on deposit with the City a copy of an insurance policy showing coverage for liability resulting from the presence of said structures. Each applicant has furnished the City with a performance bond or deposit to guarantee that the structures will be removed by the agreed date.

The agreements do not provide for any direct payment or compensation to the City. Permission to maintain the structures is subject to revocation upon 30 days written notice whenever the City Council should determine that the continued existence of the boat dock or portion thereof is contrary to or no longer in the

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public interest, health, safety and welfare.

Chapter 142, Statutes of 1945, granted tide and submerged lands, whether filled or unfilled, lying in or adjacent to Mission Bay or its entrance, to the City of San Diego, in trust. The lands were granted for the purposes of commerce, navigation and fishery, and also for the "establishment and maintenance of parks, playgrounds, bath-houses, recreation piers and facilities..."

CONSIDERATION OF PUBLIC BENEFIT:

Under Section 6702(b), the Commission is authorized to make a determination that a lease, contract, or other instrument is in accordance with the terms of the grant or grants under which title to the tide or submerged lands in question is held, that the proceeds are deposited in an appropriate fund expendable only for statewide purposes authorized by the grant, and that such lease, contract or other instrument is in the best interest of the State.

While the docks appear to be consistent with the trust purposes specified in the grant, the trustee is not currently receiving rental for the occupancy of the tidelands. In the absence of public use, therefore, the docks currently represent a private occupancy of public tidelands without adequate consideration and as such are not consistent with the terms of the grant.

EXHIBIT: A. Site Map.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ENCROACHMENT AGREEMENTS FOR PIERS NUMBER 6, 7, 9, 10, AND 11 IN MISSION BAY, SAN DIEGO COUNTY, ARE NOT CONSISTENT WITH THE TERMS OF THE GRANT, DO NOT PROMOTE A STATEWIDE PURPOSE AND ARE NOT IN THE BEST INTEREST OF THE STATE.
2. DETERMINE THAT BECAUSE OF THE ABOVE MENTIONED FINDINGS THE ENCROACHMENT PERMITS CONTAINED THEREIN DO NOT MEET THE REQUIREMENTS OF SECTION 6702(b) OF THE PUBLIC RESOURCES CODE.