MINUTE ITEM

This Calendar Item No. 37
was approved as Minute Item
No. 37 by the State Lands
Commission by a vote of 2
to 0 at its 6/29/82
meeting.

MINUTE ITEM
37

6/29/82
W 21809
Horn

During consideration of Calendar Item 37, attached, Commission Alternate Dave Ackerman, requested the effect of the proposed action in Calendar Item 37. Mr. Jan Stevens, Deputy Attorney General, indicated the recommendations proposed in Calendar Item 37 would merely conform the Commission's criteria form to language that the courts employed in the Lyon/Fogerty Decision.

Mr. Ackerman respectfully dissented. Upon motion duly made by Commission Alternate Susanne Morgan and seconded by Chairman Cory, the resolution in Calendar Item 37 was approved by a vote of 2-0.

Attachment: Calendar Item 37.

CALENDAR ITEM

37

6/29/82
W 21809
Horn

APPROVAL OF MODIFICATION
TO APPLICATION LISTS AND CRITERIA

At its April 27, 1982 meeting (Minute Item 12) the Commission adopted application lists and criteria for projects requiring Commission approval pursuant to Chapter 1200, Statutes of 1977 (AB 884). Part of the application requirements consists of forms for private recreational piers (PRC Section 6503, 6503.1) State Lands Commission Form 51.4(A) and (B).

Staff has revised the existing form to incorporate language regarding the outcome of the Lyon/Fogerty lawsuits. Existing Paragraph 13 of the Terms and Conditions, which is:

> "This paragraph applicable only if Permit involves non-tidal, navigable waters.
>
> The sovereign ownership claim of the State of California of the lands underlying non-tidal, navigable waters extends landward to the ordinary high-water mark. This Permit is not to be deemed as an admission by the lessor or the lessee as to the boundary between private and State-owned lands. This Permit is being entered into by both parties without prejudice to their respective claims of ownership."

is being replaced with the following:

> "Private owners of uplands on nontidal navigable waters own to the ordinary low water mark unless their deed provides otherwise. The area lying between the ordinary high and ordinary low water marks of the bed of such waters is subject to the public trust for commerce, navigation, fishing, recreation, and preservation.
>
> Private upland owners may utilize lands between low and high water in any manner not incompatible with public trust needs in the property."

Other minor modifications were made to the form, however, these changes are editorial in nature.

Staff is recommending that the Commission adopt the proposed form revision as such is set forth in form 51.4(A) (Revised

June 1982), (no changes are necessary to form 51.4(B)) on file in the principal office of the Commission and incorporated herein by this reference.

Government Code Section 65942 and Section 1082 of the State Administrative Manual provide that application lists and criteria may be modified as often as necessary provided that adequate notice and opportunity to comment is given. This agenda item has provided notice of the proposed modification to the subject form. To date, staff has received no comments on the proposed form modification.

AB 884: N/A.

IT IS RECOMMENDED THAT THE COMMISSION:

1. DETERMINE THAT AN ENVIRONMENTAL DOCUMENT HAS NOT BEEN PREPARED FOR THIS ACTIVITY AS SUCH DOCUMENT IS NOT REQUIRED UNDER THE PROVISIONS OF P.R.C. 21065 AND 14 CAL. ADM. CODE 15037 AND 15060.

2. DETERMINE THAT THE NOTICE PROVISIONS OF STATE ADMINISTRATIVE MANUAL SECTION 1082 HAVE BEEN MET.

3. ADOPT MODIFICATIONS TO FORM 51.4(A), SUBSTANTIALLY AS SET FORTH IN THE FORM ON FILE IN THE PRINCIPAL OFFICE OF THE COMMISSION AND BY REFERENCE MADE A PART HEREOF AND AUTHORIZE STAFF TO TRANSMIT SAME TO THE STATE OFFICE OF PLANNING AND RESEARCH.