

MINUTE ITEM

This Calendar Item No. 9
was approved as Minute Item
No. 9 by the State Lands
Commission by a vote of 2
to 0 at its 11/21/83
meeting.

MINUTE ITEM
9.

11/21/83
W 23188
Hadly/Horn

"DOCKMINIUM" CONCEPT INVOLVING THE
SALE OF BOAT SLIPS IN FORM OF
LEASEHOLD CONDOMINIUM ESTATES

During consideration of Calendar Item 9, attached,
Leo T. McCarthy suggested Resolution No. 1 be deleted from
consideration. Upon motion duly made and carried, Calendar
Item 9, Resolutions 2-4 were adopted by a vote of 2-0.

CALENDAR PAGE

MINUTE PAGE

2603

CALENDAR ITEM

09. 4

11/21/83
W 23188
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"DOCKMINIUM" CONCEPT INVOLVING THE
SALE OF BOAT SLIPS IN FORM OF
LEASEHOLD CONDOMINIUM ESTATES

I. General

In the past decade the "dockominium" concept involving the sale of boat slips in the form of leasehold condominium estates has emerged as an alternative to conventional long-term financing of marina projects. The purposes for which such financing or refinancing has been required include new construction, expansion, rehabilitation and debt restructuring. The legal rights and duties of slip owners and marina developers created in such projects depend on the manner in which a project is structured. Projects may vary greatly in their organizational and operational mode. Staff has reviewed a number of "dockominium" proposals in detail and has addressed a number of questions and concerns raised by them (i.e., questions regarding the public trust, long-term exclusive use, speculation on State lands, fair state compensation, developer and lessee accountability, on-site use of sales proceeds, user v. investor ownership, master lessee v. multiple owner relationship, subleasing control, etc.). These questions and concerns have been

A)
) Statewide
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-1-

CALENDAR PAGE	54
MINUTE PAGE	2604

addressed in a staff report STAFF ANALYSIS AND RECOMMENDATIONS RE "DOCKOMINIUMS" on file in the offices of the Commission. The staff report also sets forth detailed EVALUATION CRITERIA and procedures for staff review of proposed "dockominium" projects as well as specific CONDITIONS AND CONTROLS for the approval of such projects. Staff has also prepared Land Management "Dockominium" Review Criteria which is also on file in the Commission offices. The proposed staff review process as well as the specific Evaluation Criteria and Conditions and Controls set forth in the staff report are summarized below.

II. Recommendations

A. REVIEW PROCESS

The "dockominium" approach appears to be a viable alternative to conventional financing and should not be rejected simply because it varies from the conventional mode. Proposed projects should, however, be given approval only if after their review according to the EVALUATION CRITERIA summarized in Paragraph B below it can be shown that they will result in a net public benefit. The imposition of various CONDITIONS AND CONTROLS summarized in paragraph C below can assure that a beneficial result is achieved and that various State interests are protected.

B. EVALUATION CRITERIA

1. Project purpose. From the public's perspective does the proposed project have an acceptable and beneficial purpose? Construction of needed new berthing, rehabilitation of existing berthing and necessary debt restructuring could be acceptable purposes.
2. Public Access. Will the proposed project increase or decrease public access and use. Projects should, to as large an extent as possible, meet the use needs of boaters (slip renters, etc.) as well as non-boaters (fishermen, walkers, sightseers, etc.).
3. Term. Is the proposed project term of use no longer than necessary to accomplish the project purpose? The period of use should be as short as possible (e.g., generally 15 to 20 years) and excessively long-term exclusive use should be avoided.

4. Compensation. Can the State be assured fair monetary consideration for its site value contribution to a proposed project? The State can be fairly compensated and "speculation" can be controlled by:
 - (a) imposing an appropriate rental formula based on such factors as projected and actual gross slip rental income, gross slip sales and subsequent slip appreciation (e.g., 10-12 percent of gross revenues);
 - (b) requiring periodic slip rental and sales reports (e.g., annual); and
 - (c) requiring periodic rent review and adjustment (e.g., every five years or sooner).
5. State's ownership. Does the proposed project impart sufficient and accurate notice of the State's ownership of lands underlying the project and of the requirement for a lease or permit? The fact of the State's ownership and lease requirement as well as a copy of a lease or lease form showing key terms such as use period, renewal, rent, rent review, etc., should be clearly set forth in the project package.
6. Repair and replacement. Are there assurances that berthing facilities will be properly maintained and if necessary replaced? The possibility of facilities not being properly maintained and becoming a liability to the State must be avoided.
7. Master lessee. Is the State assured of a one-on-one master lease relationship with a single person or entity? Having to deal with numerous individual slip owners would be unacceptable to the State.
8. Subleasing, transfer and encumbrancing. Does the proposed project impose appropriate controls on sublease transfer and encumbrancing? While subleasing, sublease transfer and encumbrancing should be permitted they should be done only according to terms and conditions approved by the State.

C. CONDITIONS AND CONTROLS

1. That proceeds from slip sales be used predominantly on-site to enhance State lands utilized in the project according to an acceptable and beneficial public purpose.
 - a. require an acceptable purpose with public benefit;
 - b. require escrowing of project sale proceeds or performance bond to insure achievement of the project purpose; and
 - c. require developer/lessee to remain a surety.
2. That a proposed project term be no longer than necessary to accomplish the purpose.
3. That boater public access be enhanced.
 - a. require percentage of total units to be reserved for rentals and accommodation berthing.
 - b. require a rental pool open to the general public on a first-come, first-served basis.
4. That non-boater public access for purposes such as scenic viewing, walking, fishing, wildlife habitat, etc., be provided when desirable, practical and feasible.
5. That an appropriate rental formula (e.g., percent of gross revenue) be imposed along with periodic rent re-evaluation and reporting requirements.
 - a. require escrowing of rental due or a performance bond;
 - b. require reporting by declaration; and
 - c. require inspection of books and records.
6. That the proposed project give sufficient and accurate notice of the State's ownership interest and leasing requirement (as well as key terms and conditions of such leasing) to all prospective purchasers/sublessees.

- a. require State review and approval of project organizational and operational documents.
 - b. require use of State-approved sublease, sublease transfer and encumbrancing forms.
7. That berthing facilities be properly repaired and maintained.
- a. require a repair and replacement reserve fund and/or performance bond,
 - b. require a repair and replacement plan and annual reporting.
8. That the State has to deal with only one party or entity in a master lease relationship.
- a. require slip owner association in form of corporation,
 - b. require appointment of managing agent regarding all moorage business,
 - c. recognize no individual slip owner right to deal with State.
9. That lessee be permitted to sublease, and to allow transfer and encumbrancing of subleases but only according to terms and conditions approved by the State.
- a. require State approval of sublease, sublease transfer and sublease encumbrancing forms.
 - b. require the reporting of initial and subsequent sublease sales and transfers.

AB 884: N/A.

IT IS THEREFORE RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THIS ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF CEQA BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY P.R.C. 21065 AND 14 CAL. ADM. CODE 15378.

CALENDAR ITEM NO. 09 (CONTD)

2. ACCEPT FOR CONSIDERATION THE STAFF ANALYSIS AND RECOMMENDATIONS REGARDING "DOCKOMINIUMS" ON FILE IN THE COMMISSION OFFICES AS SUMMARIZED IN PARAGRAPHS B AND C OF THIS CALENDAR ITEM.
3. ACCEPT FOR CONSIDERATION THE LAND MANAGEMENT "DOCKOMINIUM" REVIEW CRITERIA ON FILE IN THE COMMISSION'S OFFICES.
4. DIRECT STAFF TO SOLICIT COMMENTS AND HOLD PUBLIC MEETINGS ON THESE MATTERS AND SUBMIT FOR APPROVAL A DOCKOMINIUM POLICY AT A FUTURE COMMISSION MEETING.

Revised 11/18/85.

-6-

CALENDAR PAGE	59
MINUTE PAGE	2609