

MINUTE ITEM

39

04/24/86
WP 6427
Maricle
Sekelsky

REQUEST OF RIVERBANK HOLDING COMPANY FOR EXEMPTION
FROM THE COMMISSION'S RIVER DEVELOPMENT MORATORIUM

During consideration of Calendar Item 39, attached, Mr. Skip Skidmore, Managing General Partner, Riverbank Holding Company, appeared to ask the Commission to approve a request for exemption from the Commission's river moratorium.

Mr. Steve Dee, representing the City of Sacramento, appeared to clarify the City's position, at this time, with respect to the Riverbank Holding Project.

The Commission felt that insufficient information was available to allow a decision on this item. Commission-Alternate Nancy Ordway suggested that this item be rescheduled for consideration at the May 22, 1986 Commission meeting, at which time staff will be presenting a status report on the Sacramento River Study.

Upon motion duly made by Commission-Alternate Ordway and seconded by Commission-Alternate O'Connell, action on Calendar Item 39 was deferred.

Attachment: Calendar Item 39.

CALENDAR ITEM

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REQUEST OF RIVERBANK HOLDING COMPANY
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Riverbank Holding Company ("Riverbank") has asked that the Commission consider its proposal for an expansion of its current marina facilities on the Sacramento River. The subject parcel lies within that portion of the Sacramento River currently under study by the Commission of cumulative environmental impacts of river development and is thus subject to the Commission moratorium on development of new or expanded facilities. Riverbank wishes to add 66 berths to their existing facility, and would like to begin construction as soon as possible. Riverbank initially contacted staff to discuss its tentative concept in December, 1985, and has met and talked with various staff members on several occasions since that date. Maps and drawings provided by Riverbank throughout the past four months have reflected design changes in the project. Riverbank formally submitted its project application with updated, detailed drawings to Commission staff on April 18, 1986. Riverbank would like Commission approval of their proposal in the form of an amendment to their existing lease, PRC 6427.1; or in the alternative, approval of such an amendment conditional upon certification of a negative declaration for the project.

The California Environmental Quality Act, Public Resources Code Section 21000, et seq., requires that before approving or carrying out any project, a governmental agency must first determine, pursuant to procedures set forth in the Act and the CEQA Guidelines, whether the project has any potential to have a significant impact on the environment, and to assure that such impacts are eliminated or substantially lessened. Because there has been no CEQA review of Riverbank's current proposal, the Commission may not take any action on the proposed project. Staff has advised Riverbank that these legal constraints, as well as the development moratorium, prevent the Commission from granting the project approval they seek this time.

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Riverbank would now like to begin its application process with the City of Sacramento, but has been advised by the City that it will not process an application for any project that would be inconsistent with the Commission's moratorium. Therefore, in the event the Commission will not approve the proposed expansion at this time, Riverbank seeks an exemption from the Commission's moratorium to enable it to begin the normal application process and CEQA review with the City of Sacramento.

BACKGROUND

Riverbank Lease PRC 6427.1

On May 31, 1983, the Commission approved an application by Riverbank Holding Company for a lease of a 0.093 acre parcel of tidelands and submerged lands in the bed of the Sacramento River near the confluence of the American River, for an accommodation dock for boat parking in conjunction with an upland restaurant on the Garden Highway.

On June 12, 1984, the Commission terminated that lease at the request of the applicant, and approved a replacement lease to the applicant, PRC 6427.1, of 5.272 acres of tidelands and submerged lands at the same location for a 175 slip marina, floating restaurant, a Harbor Master Office, boat sales office, debris deflector, and all related appurtenances. These marina facilities were to be built in conjunction with substantial upland development. The City of Sacramento, Lead Agency for the overall project under CEQA, prepared and certified an EIR and approved the project, subject to numerous conditions, including many designed to mitigate potentially significant environmental impacts identified in the EIR. For example, the City required provision of dockside pumpout facilities for handling vessel sewage wastes, waste oils, and bilge slops.

The current Riverbank lease, PRC 6427.1, has a term of 20 years, commencing August 1, 1984. Rent is to be calculated on a percentage of gross income basis, with a minimum annual rent, payable in advance, of \$4,000 for the first lease year, and \$15,000 per year thereafter, subject to a standard five year rent review. The lease requires a combined single limit liability insurance policy in the amount of \$1,000,000, and a surety bond of \$10,000.00. Construction authorized under the lease was to have been completed by November 1, 1985.

There have been a number of breaches of the current lease as follows:

- (1) The lease contemplates a marina capacity to accommodate 175 vessels. Docks have been constructed to include 158 slips and space with electrical outlets for 33 additional vessels, for a total capacity to accommodate 191 vessels.
- (2) Docks have been constructed beyond the westerly (upstream) limits of the lease premises, over unleased State-owned lands and into an area of State-owned lands leased to Lori Patching under the Commission PRC 5167.1. Riverbank has been aware that its facilities extend beyond its lease premises, and explains that construction within the unleased area and PRC 5167.1 was made necessary by design changes required by the Corps of Engineers. Riverbank further states that it has negotiated with Ms. Patching for a sublease for the use of her lease premises; although PRC 5167.1 requires Commission consent for such an arrangement, none has been requested. Nor have we received any evidence of an executed agreement between Ms. Patching and Riverbank for this use.
- (3) Construction of the permitted facilities was not completed by the specified deadline of November 1, 1985; for example, the Harbor Master Office and pumpout facilities will not be completed until May or June of this year.
- (4) Rent in the amount of \$15,000 due August 1, 1985, was not paid until April 18, 1986. Penalty and interest accrued as of that date totalled \$2,665.89.
- (5) Annual Reports detailing gross income for the first lease year were to have been filed with Commission staff by August 25, 1985. As of April 22, 1986, these reports had not been received.
- (6) Our records reflect that Lessee's insurance policy had expired as of March 1, 1986; as of April 22, 1986 Lessee had not provided certification of ongoing coverage.

Riverbank Village Marina

Riverbank Village, a partnership consisting of five partners, three of whom are principals in the Riverbank Holding Company, acquired the upland and existing marina facilities known as Riverbank Village Marina, immediately east of the Riverbank project, approximately one year ago. The Village Marina has been and continues to be operated without a Commission lease or permit.

The Village Marina occupies a portion of the area to be used for Riverbank's proposed expansion. Riverbank intends to remove the Village Marina docks, which are in poor condition, as part of its proposal to expand its Riverbank Marina facilities.

CEQA

Riverbank contends that any environmental concerns relating to its proposal have been adequately addressed, citing the 1982 Environmental Impact Report prepared by the City for the original Riverbank project. Staff does not agree. The analysis in that EIR was based upon a project design somewhat different from that eventually built, and did not include the now proposed expansion. Nor did it address the area to be occupied by the expansion, which will extend in front of the Bannon Island Nature Study area of the American River Parkway and closer to the mouth of the American River.

There have been no subsequent studies to compare the intensity of the proposed use relative to current use, or to evaluate potential environmental impacts of the proposal. Because formal applications for the proposed project have not yet been filed with all permitting agencies, there has not been a designation of a Lead Agency to direct compliance with CEQA. Staff of the City of Sacramento has indicated that although the proposed project may be designed so as to avoid any significant environmental impacts, the City, if designated as Lead Agency, would pursue normal processes to review the project, including early consultation with interested and responsible agencies to determine what documentation would be necessary to satisfy the requirements of CEQA.

The Commission Moratorium

At its meeting of June 12, 1984, during consideration of Riverbank's application for Lease PRC 6427.1, the Commission directed staff to impose a moratorium on proposed new development or expansions of existing facilities on the Sacramento River south to Walnut Grove and north to Verona.

This moratorium was precipitated by the Commission's concerns regarding the potential cumulative environmental impacts of the Riverbank project and others expected to arise in the near future. The Riverbank project was the last approved by the Commission prior to imposition of the moratorium. The moratorium will remain in effect pending completion of a study concerning the long range capacity of the Sacramento River relative to marina development and related uses. Staff expects to report to the Commission at its May, 1986 meeting on the status of that study and upon preliminary findings which have been made by the consultant which has been conducting the study.

Riverbank presently requests that the Commission find that its proposed expansion is exempt from the Commission moratorium on development of new facilities or expansions of existing facilities. In support of its position, Riverbank indicates that the additional sixty-six berths will simply replace berths currently in existence, though not under Commission lease, and berths which have been permitted but do not exist, and thus does not constitute an expansion of existing facilities.

Riverbank has illustrated its position in quantitative terms relative to numbers of slips and linear footage of docks, using abstract calculations which may or may not reflect comparative capacities. It is not clear that the proposed project, even if it were quantitatively equal to existing or permitted facilities, would be the same qualitatively. The proposal should be compared to existing uses relative to type, intensity, and impact of use.

STAFF RECOMMENDATION

STAFF RECOMMENDS THAT THE COMMISSION DECLINE TO CONSIDER RIVERBANK'S REQUEST FOR AN EXEMPTION FROM THE RIVER DEVELOPMENT MORATORIUM.