MINUTE ITEM

This Calendar Item No. 17
was approved as Minute Item
No. 17 by the State Lands
Commission by a vote of 3
to 0 at its 9/25/86
meeting.

MINUTE ITEM

17

09/25/86
W 23636
Beutler

STATE LANDS COMMISSION
MAINTENANCE DREDGING POLICIES

During consideration of Calendar Item 17, Ms. Ellen Johnck, Executive Director of the Bay Planning Coalition, appeared in support of staff recommendations. Ms. Johnck inquired whether the new provisions contained in the Dredging Report would apply to all existing leases and what would be the process for implementing those provisions. Ms. Johnck also requested that royalties from the Steckler Pacific permit which were placed in an escrow account pending resolution of the Commission's dredging policies, be returned to the permittees.

Executive Officer Dedrick indicated that staff would report back to the Commission at the October meeting on the matters raised by Ms. Johnck.

Upon motion duly made and carried, the resolution in Calendar Item 17 was approved, as presented, by a vote of 3-0.

Attachment: Calendar Item 17.

CALENDAR ITEM

A)
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17

09/25/86
W 23636
W 9588
Beutler

STATE LANDS COMMISSION
MAINTENANCE DREDGING POLICIES

At their June 26, 1986 meeting, the State Lands Commission authorized the staff to circulate and receive comments on the Draft Preliminary Report, State Lands Commission Maintenance Dredging Policies. Copies of the report were distributed to sixteen interested individuals and agencies. In addition, all existing dredging permittees received notification that the report was available.

The primary focus of the report is to determine an equitable formula in the setting of fees and charges for dredging when it is conducted in conjunction with other lease or permit activities. In developing this, staff examined existing policy and practice as well as legal requirements.

After report distribution, staff received three written comments and several phone calls requesting clarification of items or supporting the conclusions of the report. Comments are included as an appendix to the report. Where appropriate, staff incorporated suggested changes into text. Other comments are addressed in the appendix.

A variety of suggestions to improve existing maintenance dredging policy evolved from the study. Some involve only procedural changes. Where possible those changes have or will be made by staff. Other changes would require further action by the Commission or some other body such as the Legislature, the Attorney General, or the Office of Administrative Law.

(NON-SUBSTANTIVE REVISION 10/03/86)

SUMMARY OF REPORT RECOMMENDATIONS

The report recommends 10 items reaffirming, implementing or changing policy. Those items are listed and followed with appropriate comments.

1. THE OVERIDING CONSIDERATION IN DETERMINING DREDGING ROYALTIES WILL BE THE BENEFIT OF DREDGING TO THE PUBLIC TRUST.

2. DREDGING FOR THE PUBLIC BENEFIT MAY BE ELIGIBLE FOR A WAIVER OF ROYALTIES IF THE PUBLIC BENEFIT OUTWEIGHS THE VALUE OF THE SPOILS.

   This is existing policy.

3. WHERE POSSIBLE STAFF WILL CONSOLIDATE THE APPLICATION PROCESS FOR MAINTENANCE DREDGING AND MARINA, PIER, OR OUTFALL LEASES. DREDGING ROYALTIES WILL BE INCORPORATED INTO THE MASTER LEASE FEE.

   Staff implemented a process for consideration of new leases that allows maintenance dredging to be incorporated as part of the same project. Staff is requesting a change to the standard lease documents and application forms to better incorporate the new policy. The Office of the Attorney General will review new forms and the Commission must approve any new format.

   Existing lessees may request that their current documents be amended or, they may continue with the previous practice of applying for dredging permits as needed. All new leases or negotiated renewals will follow the new procedure.

4. DREDGING OCCURRING OFF LEASE PREMISES WILL CONTINUE TO BE TREATED UNDER SEPARATE PERMIT. WHERE APPROPRIATE, APPLICANTS WILL BE OFFERED AN OPPORTUNITY TO NEGOTIATE LEASES AND ASSOCIATED DREDGING AS ONE PROJECT.

   The process will be the same as outlined in recommendation 3.

5. CEQA AND RESOURCE UTILIZATION WILL CONTINUE TO BE PRIMARY CONSIDERATIONS OF THE COMMISSION IN ALL DREDGING ACTIVITIES. THIS MAY INCLUDE A REQUIREMENT FOR SPOILS DISPOSAL IN SPECIFIED LOCATIONS.

Staff thoroughly considers CEQA prior to making any recommendation to the Commission. Requirements for alternative disposal sites may be considered as mitigation or as a responsibility of agencies to best utilize (within economic restraints) the resource. The Commission maintains authority for such requirements under existing law.

6. STAFF RECOMMENDS THAT THE EXECUTIVE OFFICER OF THE COMMISSION FORWARD INFORMATION ON "SAND RIGHTS" TO THE RESOURCES AGENCY AND REQUEST THAT THEY CONSIDER A COORDINATED STUDY OF THE MATTER INCORPORATING CONCERNS OF ALL AFFECTED AGENCIES.

   During the circulation of the report staff received comments regarding resource utilization and particularly "sand rights." It was suggested that the Commission study the complex problem of the impacts of dredging on coastal areas and beaches. Under separate cover, staff also received a paper "SAND RIGHTS, A LEGAL SYSTEM TO PROTECT THE SHORES OF THE SEA." Those comments are included in the report appendix. Given the variety of agencies that oversee dredging, coastal, and flood management, staff believes that the Commission may not be the appropriate body to review the matter.

7. STAFF FINDS THE CURRENT FLAT RATE ROYALTY FOR SPOILS DOES NOT REFLECT DEMAND OR THE MARKET AND RECOMMENDS CHANGES IN FEE STRUCTURE AS FOLLOWS:

   - ROYALTIES FOR SPOILS PLACED IN LOCATIONS OTHER THAN APPROVED UNITED STATES ARMY CORPS OF ENGINEERS DISPOSAL SITES WILL BE A PERCENTAGE OF ACTUAL MARKET VALUE FOR COMPARABLE SPOILS.

   - STAFF WILL DETERMINE MARKET RATES THROUGH A GEOGRAPHICAL COMPARISON OF CURRENT COMMERCIAL ACTIVITY.

   - ROYALTIES FOR SPOILS PLACED IN UNITED STATES ARMY CORPS OF ENGINEERS APPROVED DISPOSAL SITES WILL BE WAIVED.

   - APPLICANTS MAY APPLY FOR A WAIVER OF ROYALTIES WHERE THERE IS AN OVERRIDING PUBLIC BENEFIT IN THE PLACEMENT OR REMOVAL OF SPOILS.

This policy will apply only to new leases and permits. Current permittees may negotiate amendments to their existing agreements. Any amendments would be presented to the Commission for review and certification.

Waiver of royalties for spoils placed in United States Army Corps of Engineers approved disposal sites is made under the theory that there is no economically viable alternative for disposal.

8. STAFF WILL DEVELOP GUIDELINES FOR MORE EFFECTIVE ENFORCEMENT OF DREDGING REGULATION. THEY MAY INCLUDE MORE STRINGENT PENALTIES FOR CONTRACT VIOLATIONS.

At the June 26, 1986 regular meeting the Commission authorized development of an enforcement unit. That unit will work with dredging staff in achieving compliance with permit terms and bring unpermitted activity under contract. As a result of enforcement activity there are currently no delinquent accounts.

In addition to the above, staff may develop recommendations for legislation and/or new administrative law. The Commission would review any such proposals before presentation to the Legislature or the Office of Administrative Law.

9. STAFF RECOMMENDS LEGAL RESEARCH OF THE AUTHORITY OF THE ARMY CORPS OF ENGINEERS TO OPERATE WITHOUT PERMITS OR TO FAIL TO COMPENSATE THE STATE WHEN GAIN IS RECEIVED FROM DREDGE SPOILS.

Litigation would require involvement by the Office of the Attorney General as well as Commission sanction. Staff will provide further information to the Commission after investigation of alternatives.

10. STAFF WILL, TO THE EXTENT POSSIBLE, COMPUTERIZE ALL BILLING, REPORTING, AND MARKET REVIEW. AUTOMATION WILL ALSO INCLUDE A METHOD TO ALLOW CROSS REFERENCE OF LEASES AND DREDGING ACTIVITY.

Automation may require new equipment or access to existing equipment in other divisions. Purchases would be subject to the budget process. Other agencies may be consulted to offer guidance in bringing computer assistance to the existing process.

SUMMARY

Staff believes the report recommendations provide a balanced approach in the setting of royalties for maintenance dredging. Under those guidelines vital environmental and resource requirements are met while still permitting economically viable dredging projects.

AB 884: N/A.

OTHER PERTINENT INFORMATION:

1. Copies of the report, attachments, and written correspondence are on file at the main office of the State Lands Commission.

2. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Adm. Code 15061), the staff has determined that this activity is exempt from the requirements of the CEQA under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The staff believes there is no possibility that this project may have a significant effect on the environment.

   Authority: 14 Cal. Adm. Code 15061(b)(3).

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO 14 CAL. ADM. CODE 15061 BECAUSE THERE IS NO POSSIBILITY THAT THE ACTIVITY MAY HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT. (14 CAL. ADM. CODE 15061(b)(3))

2. APPROVE THE STAFF REPORT STATE LANDS COMMISSION MAINTENANCE DREDGING POLICIES AS EDITED AFTER PUBLIC REVIEW AND ACCEPT FOR THE RECORD ALL WRITTEN COMMENTS REGARDING THE REPORT.

3. ADOPT THE RECOMMENDATIONS OF THE REPORT STATE LANDS COMMISSION MAINTENANCE DREDGING POLICIES AS OUTLINED AND SUBJECT TO APPROVAL OF OTHER NOTED AGENCIES.