

MINUTE ITEM

1/26/77
BWC

35. FUND IN LIEU OF BOND - W 5125.1.

The attached Calendar Item 35 was withdrawn from the agenda.

Attachment: Calendar Item 35 (2 pages)

CALENDAR ITEM

35.

1/77
W 5125.1
EWC

FUND IN LIEU OF BOND

DISCUSSION:

We now have 85 active Use Permits and Non-commercial Leases which, upon expiration will either require removal of the structure or releasing under the new proposed General Permit. We also now have 556 Recreational Pier Permits (now void due to the recent Attorney General Opinion regarding their rent-free nature) which, between now and 1985, will need removal or releasing in the General Permit format. In addition, we have an estimated 1,400 trespassing piers (not counting buoys) which in the next few years will have to be brought under General Permit as well.

The surety bonds for these lessees will be a significant element of concern both to State lands Division (as workload) and to the lessees (as a considerable cost). The purpose of this proposal is to diminish both, while providing sufficient protection for the State. To reiterate, this proposal would apply to recreational, private uses; commercial and industrial uses would continue to require the usual forms of surety bonds.

For the usual minimum private pier or boat-house, a minimum bond of \$500, while not being sufficient to cover the actual estimated cost of removal, is the smallest amount that can reasonably be expected to deter the permittee from breaching the terms of the permit. Even for a \$500 bond, the permittee has to put up nearly that in security. The usual alternative, of an in-lieu savings deposit with the State holding the passbook, is equally difficult to elicit; money is hard to come by for this purpose in the case of most of our permittees of this type.

Therefore, a special fund is recommended: an interest-bearing account, fed by voluntary one-time payments for each lease period of one year's rental (no less than \$50), which will be available for paying the cost to remove derelict piers and pilings, not just those under lease, but those that are not, and that are hazards to navigation now, on a statewide basis. Staff experience shows less than 1% of such leases

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require "calling" the bond for pier removal. However, there are hundreds of old, abandoned pilings and other derelict structures requiring clean-up to minimize risk of lawsuits over tort liability. As yet, other methods to effect such cleanup have been fruitless.

Most such deposits will be \$50, which, it is true, is not much of a deterrent to walking away from one's responsibilities. But practically speaking, the pier is an asset to any lake or riverfront property and the permittee will want to maintain that value; he will not walk away from it unless he is bankrupt. In that case, even with a \$500 savings account or bond, we are left with making up the difference necessary to remove it by requesting a budget augmentation (which rarely happens) and we are no better off than we are right now.

As the predicted rate of 75% voluntary acceptance of this alternative to a bond, an average of \$50 per permittee, and at 200 permits per year, the fund should be at \$7,500, in the first year, enough to consider contracts for derelict removal.

The staff proposes a ten-year program of hazard removal substantially reducing the hazard problem and cleaning up many miles of shoreline. The staff plans to work with agencies such as the Department of Navigation and Ocean Development, the Attorney General's Office and others in identifying hazardous derelicts. Such projects would be proposed individually for Commission approval.

IT IS RECOMMENDED THAT THE COMMISSION:

1. DETERMINE AN EIR HAS NOT BEEN PREPARED FOR THIS ACTIVITY AS SUCH REPORT IS NOT REQUIRED UNDER THE PROVISION OF PRC 21065, 14 CAL. ADM. CODE 15037.
2. AUTHORIZE STAFF TO: A. SET UP A SPECIAL INTEREST-BLARING ACCOUNT FOR THE REMOVAL OF DERELICT AND HAZARDOUS STRUCTURES FROM NAVIGABLE WATERS UNDER THE JURISDICTION OF THE COMMISSION; AND B. PREPARE PROCEDURES TO OFFER THE ALTERNATIVE TO LESSEES AND PERMITTEES, WHERE APPROPRIATE, OF PAYING A FEE, IN LIEU OF SURETY BOND, IN AN AMOUNT EQUAL TO ONE YEAR'S RENTAL, BUT NOT LESS THAN \$50, SUCH FEE EXPRESSLY NOT RELIEVING SAID LESSEE OR PERMITTEE OF THE OBLIGATION TO REMOVE THE STRUCTURE PURSUANT TO THE TERMS OF THE LEASE.