

MINUTE ITEM
This Calendar Item No. 37
was approved as Minute Item
No. 37 by the State Lands
Commission by a vote of 3
to 0 at its 10/23/86
meeting.

CALENDAR ITEM

37

A)
) Statewide
S)

10/23/86
W 9588
W 23636
Beutler

IMPLEMENTATION OF STATE LANDS COMMISSION
DREDGING POLICIES FOR EXISTING LEASES AND PERMITS

BACKGROUND:

At the September 25, 1986 regular meeting, the State Lands Commission accepted the recommendations of the staff report STATE LANDS COMMISSION MAINTENANCE DREDGING POLICIES and adopted suggested policies for a change in royalty structure for dredging spoils removed from state lands. As presented, the policy applies only to new permits. Existing permittees were advised that they could amend their current agreements on a go forward basis.

During testimony on the item, Ellen Jonck, representing the Bay Planning Coalition, requested that the new policies be applied to all existing permits as a blanket modification rather than having permittees request amendments on a case by case process. The Commission directed staff to evaluate this request and return with a report at the regular October meeting.

Several factors hinder the Commission in accommodating the request of the Bay Planning Coalition.

Legal Considerations

Existing leases are subject to contract law and cannot be unilaterally amended. All modifications must be with the express consent of both parties. For that reason the Commission does not have the ability to provide for a blanket modification of terms (even though the new terms may be more attractive than the old) without consulting with individual permit holders.

CALENDAR ITEM NO. 37 (CONT'D)

In addition, staff believes that it must be expressly stated that royalty policies can only be applied on a go forward basis. No refunds or rebates of royalties are obliged under the new policy.

Environmental Considerations

In general, a modification of the royalty alone will not trigger any additional documentation under the CEQA. Such an amendment to the Commission permit would be exempt, i.e. "no Project." However, if a permittee requests a specific change in its permit (for example a change in disposal site) in order to avail itself of the Commission's new policy, a new analysis by staff would be required to determine that the proposed disposal site or methods meet the requirements of the CEQA. Required review of any new potential impacts can only be accomplished on a case by case basis. For that reason staff believes a blanket application of the royalty policy is not feasible.

SUGGESTED ALTERNATIVE:

Staff agrees that a convenient process for amending royalty terms for existing permits could be accomplished with a notification process to all existing maintenance dredging permittees that includes an "expedited processing" amendment request. In cases where no new disposal sites are indicated such amendments could be routinely and quickly processed. Amendments that contemplate new disposal sites would require additional review and environmental determinations.

Staff believes that it would be appropriate to waive application fees for such amendments.

After staff review, the Commission will be presented with recommendations for amendments to existing maintenance permits.

AB 884: N/A.

OTHER PERTINENT INFORMATION:

1. 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 because the activity is not a "project" as defined by CEQA and the State CEQA Guidelines.

CALENDAR ITEM NO. 37 (CONT'D)

Authority: P.R.C. 21065 and 14 Cal. Adm.
Code 15378.

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 THE ACTIVITY IS NOT A PROJECT AS DEFINED BY P.R.C. 21065 AND 14 CAL. ADM. CODE 15378.
2. DIRECT STAFF TO PREPARE CORRESPONDENCE ALLOWING AN EXPEDITED PROCESSING OF AMENDMENTS TO MAINTENANCE DREDGING PERMITS TO FACILITATE APPLICATION PROCESSING AND TAKE ALL STEPS NECESSARY TO IMPLEMENT THE NEW COMMISSION POLICIES ON MAINTENANCE DREDGING.
3. AUTHORIZE WAIVER OF PROCESSING FEES FOR SUCH AMENDMENTS.