

MINUTE ITEM

25

05/22/86
PRC 6427
Maricle
Sekelsky

REQUEST OF RIVERBANK HOLDING COMPANY FOR EXEMPTION
FROM THE COMMISSION'S RIVER DEVELOPMENT MORATORIUM
REGARDING PROPOSED EXPANSION OF RIVERBANK MARINA

During consideration of Calendar Item 25 attached, the
Commission heard testimony from the following:

Mr. Kip Skidmore
Riverbank Holding Company.

Mr. Tom Wesley, Attorney
Riverbank Holding Company.

Mr. David Shore
City Councilman

Mr. Steve Dee
Planning Department
City of Sacramento.

After extensive testimony, Executive Officer Dedrick requested
that Riverbank Holding Company withdraw its application and
submit a new application after completion of the River Study.
Mr. Skidmore officially withdrew Riverbank's application.

Commission-Alternate O'Connell stated that the Commission had
no objection to the City of Sacramento proceeding with its
environmental process without prejudicing any subsequent
decisions the Commission makes.

Upon motion made by Commission-Alternate Ordway and seconded by
Acting Chairwoman Elizabeth Rasmussen, action on Calendar
Item 25 was deferred until the August 28 Commission meeting.

Attachment: Calendar Item 25.

CALENDAR ITEM

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WP 6427
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J. Sekelsky

REQUEST OF RIVERBANK HOLDING COMPANY FOR EXEMPTION FROM THE
COMMISSION'S RIVER DEVELOPMENT MORATORIUM REGARDING
PROPOSED EXPANSION OF RIVERBANK MARINA

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; or in the alternative, approval of such an amendment conditional upon certification of a negative declaration for the project.

The California Environmental Quality Act, P.R.C. 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

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may not take any action to approve the proposed project. Staff has advised Riverbank that these legal constraints, as well as the development moratorium, preclude the Commission from granting approval of the proposed project, if at all, at this time.

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

On May 31, 1983, the Commission approved an application by Riverbank Holding Company for a lease of a 0.093-acre parcel of tide 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 July 12, 1984, the Commission terminated that lease at the request of the applicant, and approved a replacement lease to the applicant, PRC 6427, of 5.272 acres of tide 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, 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

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liability insurance policy in the amount of \$1,000,000, and a surety bond of \$10,000. 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. The lease provides that Lessee must comply with the rules and regulations of any governmental entity having lawful authority over Lessee's activities. Lessee's existing project is subject to the terms of Corps Permit No. 8503, which prohibits mooring of boats on the outside docks of the project. Boats have been so moored in violation of the Corps' permit on each of staff's visits to the site.
3. 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. Riverbank has been aware that its facilities extend beyond its lease premises, and explains that construction within the unleased area and PRC 5167 was made necessary by design changes required by the United States Army Corps of Engineers. (See also below, Additional Information.)
4. 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 have not yet been completed.
5. 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. The penalty and interest was paid on May 7, 1986.

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6. Annual Reports detailing gross income for the first lease year were to have been filed with Commission staff by August 25, 1985. As of May 13, 1986, these reports had not been received. (See also below, Additional Information.)
7. Our records reflect that Lessee's insurance policy had expired as of March 1, 1985; Lessee did not provide certification of ongoing coverage until April 23, 1986.

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 popularly known as Village Marina, immediately east (downstream) 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 proposed to be used for Riverbank's 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 EIR 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 would 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

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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 July 12, 1984, during consideration of Riverbank's application for Lease PRC 6427, 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 was intended to prevent further potential negative impacts to the river, pending completion of a study concerning the long range capacity of the Sacramento River relative to marina development and related uses.

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 66 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 nor may not reflect comparative capacities. It is not clear that the proposed project, even if relative capacities could be shown to be equal (which they have not), would not impact the environment of the river. The proposal should be compared to existing uses relative to area type, intensity, and impact of use.

CALENDAR ITEM NO. 25 (CONT'D)

Additional Information

On May 7, 1986, staff received a letter from Thomas C. Westley, one of the principals of Riverbank, requesting that the following issues be considered by the Commission at its May meeting.

1. A request for Commission approval of a sublease of a portion of the lease premises described in Commission Lease PRC 5167 to Laraine Patching, dba Virgin Sturgeon. Mr. Westley included with his letter a copy of a partially handwritten document which included, in part, an agreement that Virgin Sturgeon would sublease a portion of its lease premises to Riverbank. This document was dated October 9, 1984, was expressly subject to Commission approval, and bears the signatures of Kip Skidmore and Roger Scott for Riverbank, and Laraine C. Patching for The Virgin Sturgeon, Inc. Ms. Patching has indicated to staff that she does not have a sublease agreement with Riverbank.

Without a formal agreement between Ms. Patching and Riverbank setting forth the terms of a sublease, staff cannot recommend Commission action to approve such use at this time.

2. A request for modification of Riverbank's Lease PRC 6427 to include that parcel of State-owned land westerly (upstream) of that lease, upon which Riverbank has constructed a portion of its marina facility without Commission permission. Mr. Westley explains that Riverbank was unaware that there was an unleased parcel between its lease and Ms. Patching's lease upon which it was trespassing.

Staff has not received an application from Riverbank for such a lease amendment, and therefore has insufficient information upon which to base a recommendation to Commission on this issue at this time.

3. A request for a letter of agency to the City of Sacramento, required by the City as part of any application for a project involving State-owned property. Such a letter would constitute consent by the Commission to Riverbank filing a project application with the City.

4. A statement that as of July 31, 1985, the Riverbank Marina had generated no gross income, and therefore the Riverbank management felt that it was unnecessary to comply with requirements of the lease to complete forms to report gross income for the first lease year.

IT IS RECOMMENDED THAT THE COMMISSION:

1. DENY RIVERBANK'S REQUEST FOR AN EXEMPTION FROM THE RIVER DEVELOPMENT MORATORIUM.
2. DENY RIVERBANK'S APPLICATION FOR ITS PROPOSED EXPANSION PROJECT, PENDING RESULTS OF THE COMMISSION'S MORATORIUM AND RIVER STUDY AND CORRECTION BY RIVERBANK OF EXISTING BREACHES OF LEASE PRC 6427.