

MINUTES
BOATING AND WATERWAYS COMMISSION MEETING
SOUTH LAKE TAHOE, CALIFORNIA
August 24, 2006

Pursuant to due and regular notice, the meeting of the Boating and Waterways Commission was called to order by Chairman Purdon, on August 24, 2006, at 8:32 A.M., at the Embassy Suites Hotel, 4130 Lake Tahoe Boulevard, South Lake Tahoe, California.

ROLL CALL

Commissioners Present: H.P. "Sandy" Purdon
 Lenora S. Clark
 Charles P. "Bud" Johnson
 Jon S. Fleischman
 Robert Y. Nagata

Commissioners Absent: Edward C. Reno III
 Warren E. Rupf

Department of Boating and
Waterways Personnel Present: Raynor Tsuneyoshi, Director
 David Johnson, Deputy Director
 Joy Fisher, Staff Counsel
 Steve Watanabe, Facilities Division Chief
 Dolores Farrell, Chief of Operations
 Debra DeVerter, Chief of Administration
 Harold Flood, Supervisor of Planning, Facilities Division
 Mike Sotelo, Associate Governmental Program Analyst
 Mary Just, Associate Governmental Program Analyst
 Margarita Sanchez, Administrative Assistant

CLOSED SESSION

Chairman Sandy Purdon convened the meeting and announced commencement of the closed session. Following completion of the closed session, Chairman Purdon continued the public portion of the meeting.

APPROVAL OF MINUTES

Chairman Purdon requested information about the effects of invasive species on the environment as stated on page nine of the minutes. He asked Mr. David Johnson to respond back to him with the information requested.

MOTION: It was moved by Commissioner Johnson and seconded by Commissioner Clark that the Boating and Waterways Commission minutes of the June 27, 2006, meeting be approved. The motion carried unanimously.

CHAIRMAN REPORT

Chairman Purdon indicated he has no report, but introduced and invited Mr. Hayden Sohm of Sierra District, State Parks, to address the Commission.

Public Comment

Mr. Sohm welcomed the Commission to South Lake Tahoe and thanked them and the Department of Boating and Waterways for the support they have given to State Parks. He said there are currently two big projects at Emerald Bay; the replacement of the existing pier at Boat Camp and the replacement of buoys fields. Mr. Sohm said that only through the technical assistance and funding from the Department can these projects be done.

Mr. Sohm stated that State Parks is in support of the educational initiative that the Department is working on and he is available to assist the Department in anyway.

DIRECTOR'S REPORT

Mr. Tsuneyoshi gave the Commission an update on mandatory education. He reported that the Department held two meetings in July and August and through the stakeholders it was determined the time is right to pursue legislation for 2007. Mr. Tsuneyoshi said about 40 people attended the July meeting which was held in Los Angeles and attendance included boaters, representatives of interest groups, accident victims, safety advocates, educators, marina operators, law enforcement personnel and government agencies. He stated the meeting included presentations on nationwide boater education laws and the impact they have on boating safety. Mr. Tsuneyoshi added that 80 percent of the participants said they strongly support a boat operator education requirement.

Mr. Tsuneyoshi mentioned that Mr. Bill Gossard of the National Transportation Safety Board spoke on the role his agency is playing in pushing for boater education in all states.

Mr. Tsuneyoshi added that the Sacramento meeting held August 17th moved the process forward with 54 participants and was focused on the many variables involved in developing a boater education law. He said after discussing various issues, an electronic voting system was used to evaluate support for each concept and the result was a framework for a bill that would require a safety education course and exam for all operators of motorized vessels of any horsepower and sailboats over eight feet long. Mr. Tsuneyoshi added that no one would be grandfathered in based on age or training. He stated the penalty for operating without certification would be an

infraction with a fine of \$50 to \$250 and would be waived if the violator takes a course within 60 days of the violation.

Mr. Tsuneyoshi reported the Department will use the laws already in effect in Oregon and Washington as the template and then overlay the findings of the two meetings and fit them into the proposed legislation.

Mr. Tsuneyoshi indicated the Department will be talking to boating groups to see which organization would be willing to sponsor the bill.

Mr. Tsuneyoshi presented the National Association of State Boating Law Administrators' California Officer of the Year award to Sergeant Jim Lambert of the Alameda County Sheriff's Office.

LEGISLATIVE REPORT

Mr. David Johnson reviewed the Legislative Report and gave the Commission an update of legislative matters concerning the Department. Copies of the Legislative Report were available to the public and Mr. Johnson was available to answer questions from the Commission members.

Mr. Johnson gave the Commission members a copy of SB 1127. He said the bill was amended on August 14, 2006, and states that \$20 million would be transferred from the Harbors and Watercraft Revolving Fund to the Salmon Fishing Aid Revolving Loan Program Account. The loan, he said, would be a zero percent loan to salmon fishermen and party boat operators who have been impacted by salmon fisheries closures. Mr. Johnson noted that there are some conditions one of which states, any unused funds of the \$20 million would revert to the Harbors and Watercraft Revolving Fund as of July 1, 2008. The second condition, he said, states the money that is used would be repaid within a five year period.

Mr. Johnson indicated for the FY 07/08 budget, the Department will be able to sustain the current budget levels, but for FY 08/09 there would be a potential negative impact on the Department's programs and projects. He reported that there are massive lobbying efforts done by many boating organizations, county and city agencies. Mr. Johnson noted that the Legislature has one week left in session and will return in January 2007.

Mr. Tsuneyoshi added that the Department did a boating needs assessment study which indicated that until the year 2020, there will be \$800 million needed in order to keep all of the boating infrastructures up to date. He stated \$55 to \$65 million a year should be spent in order to make the \$800 million needed and the Department is not able to spend anywhere close to that amount. Mr. Tsuneyoshi said most of the marinas are now 30 to 40 years old and are starting to show signs of wear and tear.

Chairman Purdon stated that the situation is even worse if you consider that 80 percent of the marinas in California are privately owned and only about \$3 million is available to the private sector.

Commissioner Clark stated it is strange that when the Department receives a request for information from a senator's office about the transfer/loan the Department stated it is not going to have an adverse effect on the Department until FY 08/09, while on the other hand the Director is saying that there are some unfunded obligations that the Commission has already voted to fund. It appears, she said, that this information should be made public, not only to the senator that requested the information, but to more senate and assembly staff in a campaign of information, so that they know how it is effecting the Department. Commissioner Clark said it appears to her that the Department can handle not only the \$27 million that is going to State Parks but also the additional \$20 million. Mr. Johnson replied that he did say there would be a potential negative adverse effect in FY 08/09 and there would have to be potential cuts in programs and projects in FY 08/09, because of the \$20 million transfer which is piggybacked on the \$27 million that is going to State Parks. He added that there is confidentiality to the budget process and the Department can only spend money for projects and programs if the Legislature allows the Department to do it. Mr. Johnson stated that the Department is now developing the budget for FY 07/08 which will be submitted to the Resources Agency and the Governor's office.

Public Comment

Mr. David Breninger, General Manager, Placer County Water Agency; member of the Association of California Water Agencies' Board of Directors; member of the Aqua's Legislative Committee, and Director of the Recreational Boaters of California (RBOC), stated that the fees collected from recreational boaters are being used inappropriately and siphoned to State Parks without any accountability on the use of the recreational boating funds and even though the public feels for the commercial salmon fishing industries, it is an inappropriate use of recreational boater's fuel tax revenues to take the money and transfer it to the commercial fishing and amusement boating needs. He said about \$125 million has been taken from the Department, over a number of years, and there needs to be a way to stop this from occurring. He stated the Department has colleagues in the recreational boating community who strongly oppose the effort of the current SB 1127 as well as the efforts by State Parks to continue, and without accountability, to take funds that cannot be proved to be used to support recreational boating needs.

Steve Scheiblaue, Harbor Master, City of Monterey, stated that most saltwater harbors have a good working relationship with their working commercial fishing organizations and individuals, and, to a large degree, there has been a lack of information here from those people. He said the Commission may want to know that the leaders of the salmon industry are beginning to oppose the proposed funding source. Mr. Scheiblaue stated Monterey and Santa Cruz Commercial Fishing Association have gone on record opposing taking the funds out of the Harbors and Watercraft Revolving Fund and it will be significant for the Legislature to hear this when they have the hearings.

Diane Isley, Vice President, California Association of Harbor Masters and Port Captains Association (CAHMPC), stated her association agrees with and supports Recreational Boaters of California's decision on this topic. She said CAHMPC had inquired about the use of \$18 million funds previously and was told by the Legislature the money is needed to be held in reserves for

the Department. The funds are being taken for the fishermen who actually do not pay into the gas fund. Ms. Isley stated CAHMPC does not support SB 1127.

Commissioner Fleischman said he is appreciative of any efforts today of trying to help oppose the legislation since Department staff is part of the Administration and has to play a subservient role to the wishes of the Governor. He stated he has spent the last two weeks on a “jihad” against this bill and has met with Senator Ackerman and informed him that there will be complaints from the Dana Point restoration project. Commissioner Fleischman added that he also met with 14 Legislators and let them know how the bill will impact them and their district. He also was able to speak with the Governor’s Chief of Staff; she was noncommittal on the bill. Commissioner Fleischman indicated the bill is no longer being looked at as non-controversial and is on the Governor’s radar screen.

CONSENT CALENDAR

Mr. Flood introduced and explained the Consent Calendar to the Commission. He informed the Commission that the Consent Calendar contains projects that the Commission has already approved that are phased-funded and are under \$3 million. Mr. Flood recommended that the Commission approve the consent calendar.

Chairman Purdon asked where in the Consent Calendar is the fund for abandoned vessels listed. Mr. Flood responded the abandoned vessels funds are part of the support budget process and are not considered by the Commission.

MOTION: It was moved by Commissioner Johnson and seconded by Commissioner Nagata that the Consent Calendar be approved as presented by Department staff. The motion carried unanimously.

CONSIDERATION OF PUBLIC GRANTS

Mr. Flood presented to the Commission for its advice and consent the following requests for public grants.

Caples Lake Boat Launching Facility

El Dorado Irrigation District has applied to the Department of Boating and Waterways for a public grant in the amount of \$1,600,000 to be used to construct a new boat launching facility at Caples Lake.

Caples Lake is located in Alpine County, approximately 30 miles southwest of Lake Tahoe and approximately 120 miles east of Sacramento.

Mr. Flood indicated the proposed project would entail the following: 1) construction of a new two-lane boat launching ramp, 2) installation of a boarding float, 3) addition of rock slope protection, 4) construction of an accessible boat loading platform, 5) construction of a new parking area, 6) construction of a new restroom, 7) installation of a new water distribution system, 8) construction of walkways, 9) site re-vegetation, and 10) a project sign and ancillary items.

Ms. Chich Goss, Assistant Director of Recreation, El Dorado Irrigation District, and Ms. Cheri Jagers, Hydroelectric License Coordinator, were available to answer questions from the Commission.

Ms. Goss thanked the Commission for considering the proposed project and added that the Department staff is the best State department to work with. Ms. Jagers also thanked the Commission for considering their project.

Mr. Flood informed the Commission that the proposed project is a joint project with the U.S. Forest Service.

Mr. Flood stated that staff recommended that the Commission consent to the \$1,600,000 public grant to the El Dorado Irrigation District to construct a new boat launching facility at Caples Lake.

Public Comment

Mr. Breninger stated that throughout the Sierras the public water districts and water agencies are able, through the Department, to provide the opportunities for use by boaters of the waterways. He said the El Dorado Irrigation District is always looking for ways to extend multipurpose uses of the reservoirs for flat water as well as white water uses. Mr. Breninger recommends that the Commission approve the grant.

Mr. Bill George, Vice President, Board of Directors, El Dorado Irrigation District, thanked the commission for considering this grant and extended the Board of Directors appreciation as well.

Commissioner Nagata asked if there was any opposition to this project by any group. Mr. Flood responded there has not been any opposition and he noted that the nearby resort owner is in support of this project, even though he has a boat ramp.

Commissioner Johnson asked to define Escalation of \$213, 000 as he read in the Feasibility Report. Mr. Flood responded it is built-in for inflation assuming the project will not be built this year because of permitting, etc. He said the Department includes an amount equal to four percent per year for a number of years to keep the funding level correct in the future when the project is built. Mr. Flood said it is simply an increase for inflation.

Commissioner Johnson said he noted at the proposed project site about 200-300 linear feet of old barrier filled with foam and asked who will pay for the removal. Ms. Goss responded that they are in the process of removing them and it is being paid by the El Dorado Irrigation District.

Commissioner Johnson asked why the Department is proposing to charge \$13 a launch when the private resort owner in the area is charging \$15 per launch. Mr. Flood responded that the Department did a study about five years ago throughout the state and \$13 was the average amount charged for launches. He said at that time the majority of the public launch ramps throughout the state did not charge any amount. Mr. Flood stated that the \$13 was put in as a base cost for all fees to be charged to launch and it was presented before the Commission at that time and was approved. He added the Department does allow increasing the fees for inflation, however, if it is determined by the local entity that they need more money for maintenance and operation, they can ask to have the fee increase and that request comes before the Commission for approval in addition to the annual CPI adjustments.

Commissioner Clark stated that there was a comment that the Department is partnering with the Department of Forestry. Mr. Flood responded that the U.S. Forest Service and the El Dorado Irrigation District are partners in the proposed project. Commissioner Clark asked if the partnering also includes funds. Mr. Flood said it does and the Department will structure the agreement to allow them to spend the funds, but the Department will oversee all the draws.

Commissioner Nagata asked if re-vegetation, as mentioned in the Feasibility Report, is another name for landscaping. Mr. Flood responded yes it is; it is going in and putting in natural vegetation after the project area has been disturbed.

MOTION: It was moved by Commissioner Clark and seconded by Commissioner Fleischman that the Boating and Waterways Commission approve the request from the El Dorado Irrigation District for a public grant of \$1,600,000 to construct a new boat launching facility at Caples Lake. The motion carried unanimously.

Beardsley Reservoir Boat Launching Facility

Tri-Dam Project has applied to the Department of Boating and Waterways for a public grant in the amount of \$1,676,000 to make improvements to the Beardsley Point Boat Launching Facility. This proposed project concerns phase I funding of \$155,000 for planning and engineering.

The Beardsley Reservoir Boat Launching Facility is located on the southeastern shore of Beardsley Reservoir, in Tuolumne County. The existing facility consists of a three-lane boat launching ramp, an 86 space vehicle/trailer parking area, a restroom, and picnic tables.

Mr. Flood indicated the proposed project would entail the following: 1) demolition of the existing 60' by 410' boat launching ramp, 2) construction of a new boat launching ramp, 3) installation of a boarding float, 4) installation of rock slope protection, 5) overlay of the existing parking area, 6) construction of a new restroom, and 7) drilling of a well and installation of a water distribution system, and 8) addition of signs.

Steve Felte, General Manager, was available to answer questions from the Commission.

Mr. Flood noted that Commissioner Clark had visited the proposed project site.

Mr. Flood and staff recommended that the Commission consent to the phase I, public grant in the amount of \$155,000 to Tri-Dam Project to make improvements to Beardsley Point Boat Launching Facility.

Mr. Felte stated that the Tri-Dam Project is a joint venture of the Oakdale Irrigation District and South San Joaquin Irrigation District and operates three dams. He said the proposed project is part of the FERC re-license process and is identified as an improvement to the facilities. Mr. Felte stated they are upgrading the day-use area which includes the picnic tables, the swimming areas, and the campground facilities.

Commissioner Clark reported that she viewed the proposed project site and met with the project manager. She stated they have plans for more projects to bring the area up to date and to make some improvements. Commissioner Clark recommends Commission approval.

Commissioner Nagata inquired about the ramp which will be 400 feet long with a 250 foot extension as indicated in the Feasibility Report. Mr. Flood responded that the existing ramp is about the same length and the extension would be an addition to allow boaters to get down in the water when there are lower water situations. Mr. Felte added that the extension will allow for fishermen to fish later and earlier in the year when the water is low. The area, he said, is heavily used by fishermen.

Commissioner Clark reported that during the site visit the facility was heavily used both by fishermen and recreational boaters.

MOTION: It was moved by Commissioner Fleischman and seconded by Commissioner Johnson that the Boating and Waterways Commission approve the request from Tri-Dam Project for a phase I public grant of \$155,000 to make improvements to Beardsley Point Boat Launching Facility. The motion carried unanimously.

Heron Point Boat Launching Facility

Stanislaus County has applied to the Department of Boating and Waterways for a public grant in the amount of \$1,500,000 to be used to make improvements to the Heron Point Boat Launching Facility on Woodward Reservoir. This request for funding concerns only phase I funding of \$200,000 for planning and engineering.

Woodward Reservoir is located in Stanislaus County 28 miles southeast of Stockton. The Heron Point Boat Launching Facility is located on the west side of the reservoir.

Ms. Terri Sanders, Manager, Stanislaus County, Department of Parks and Recreation, and Ms. Cathy Gomez, Grants Writer/Staff Services Coordinator, Stanislaus County, Department of Parks and Recreation were available to answer any questions from the Commission.

Mr. Flood reported that Commissioner Clark visited the proposed project site.

Mr. Flood indicated the proposed project would entail the following: 1) demolition of the existing one-lane ramp, 2) construction of a new two-lane boat launching ramp, 3) installation of a new boarding float, 4) addition of rock slope protection, 5) construction of a new parking area, 6) construction of a new restroom, 7) installation of a fish-cleaning station, 8) installation of a sewer and water system, 9) installation of an electrical system and lighting, 10) drainage, 11) construction of a kiosk, 12) landscaping/irrigation, and 13) a project sign, and directional signs.

Ms. Sanders presented the Commission with a new proposed project design of the Heron Point Boat Launching Facility. She indicated when the Stanislaus County applied for the grant there was a different concept in mind and recently an analysis of the overall plan for the facility at Woodward Reservoir was done and it was decided to expand the master plan with the south shore development. Ms. Sanders pointed out that Heron Point is a piece of a much larger project at the facility and when making improvements to the infrastructure, it was decided to move the main road and improving the infrastructure to allow for use of more space. She stated the original plan had a combination of camping, as well as boat launch facilities and day use area, which were in conflict with each other, and so it was decided not to mix the recreational opportunities and instead have it strictly as a fishing, boat launching, and a day-use type of facility. This was done recently and was not able to be included in the Feasibility Report. Mr. Flood added that staff has reviewed the proposed change and believes the new proposal is a better plan.

Commissioner Clark reported she visited the proposed project site and recommends approval.

MOTION: It was moved by Commissioner Clark and seconded by Commissioner Nagata that the Boating and Waterways Commission approve the request from Stanislaus County for a phase I public grant of \$200,000 to make improvements to the Heron Point Boat Launching Facility. The motion carried unanimously.

NEW BUSINESS

Proposed Regulation: Permits for Activities at Department of Boating and Waterways Owned Boat Launching Facilities.

Mr. Sotelo reviewed the proposed regulations on permits for activities at Department-owned boat launching facilities. The regulations, he said, will affect only two facilities in the State of California which are owned by the Department of Boating and Waterways; Long Beach Marina

and Coon Street Boat and Ramp Facility (Coon Street Facility) in Lake Tahoe. Mr. Sotelo indicated this was done at the request of the North Tahoe Public Utilities District (NTPUD) to permit a commercial activity that was occurring at the Coon Street Facility. The Department does not want unpermitted commercial activities to occur due to possible liability issues to the Department and State of California. Mr. Sotelo said there was nothing on the books that would regulate or permit the Department to require the person who was conducting commercial activities to request permission to set up a boat/kayak rental business on State-owned property. Mr. Sotelo stated the person was conducting a public commercial activity without the permission of the Department or its facility operator.

Mr. Sotelo stated the regulations were developed under the authority of the Harbors and Navigation Code which gives the Department the authority to manage facilities that are owned and operated by the Department. He said the model that was used to craft the proposed regulation was the California Highway Patrol regulation for providing permits on State property in Title 13 California Code of Regulations. Mr. Sotelo stated that the regulations set up definitions, conditions for application, terms of the permit, ability to deny permits, etc.

Chairman Purdon asked if these are proposed regulation changes. Mr. Sotelo replied yes, they are proposed regulations and are brought before the Commission for advice and comments. Mr. Sotelo added that there were no comments from any organizations or individuals during the comment period.

Commissioner Clark asked about the person who is conducting a for-profit enterprise on State property and how is the implementation of the proposed regulation going to affect the individual. Mr. Sotelo replied if the individual is conducting a commercial activity, he will be prohibited from conducting the activity on Department property. Commissioner Clark asked if during the comment period did the individual have any comments. Mr. Sotelo replied that there were no comments received from any parties.

Commissioner Fleischman asked if the person was notified specifically to let him know of the proposed regulation which may change the way he does business. Mr. Sotelo replied he was not certain but the North Tahoe Utilities District may have informed him. He added the individual was not on the interested party list.

Mr. Watanabe stated the individual is not operating this year. The regulations, he said, have taken time to get to this point and the reason the regulations were proposed is the first place is due to the individual conducting the activity last summer; this year he is not operating on State property.

Mr. Johnson informed the Commission that the Department feels that the public boat launching facility is for public purposes and the boating public uses the facility for parking, car trailer parking, launching and boarding dock. He said it is incompatible to have a private enterprise business on a public boat launching facility that is not built or designed for commercial enterprise.

Commissioner Clark asked if the reason for this proposed regulation is due to not having any regulation in place when the individual started operations on state property and if approved would stand for any other land owned by the Department. Mr. David Johnson replied that this is correct.

Commissioner Fleischman stated that he vehemently disagrees with the philosophy being espoused by staff on this measure. He said he is in favor of creating a permitting process that would allow the Department the discretion to decline for-profit ventures from being able to operate on a boat launching facility, but the Commission's core mission is to be able to provide services to the boating community and if the Department finds that somebody wants to provide services that would allow more people to use the waterways and our facility provides the best place to be able to do that, then we lose sight of the core mission.

Commissioner Fleischman stated that for-profit is not a bad word and it does not mean we can not charge them rent and we can require them to get whatever insurance that is necessary to protect the Department from liability.

Commissioner Fleischman stated the Department should evaluate anyone who wants to provide a service to boaters and base it on one question; does this enhance boating experience and make it easier for people to use the waterways. If it does, he said, then the Department should have a way for them to do it and for the staff to be able to consider it and not create a policy that simply says if you want to make money do not put your sign or business here.

Mr. Johnson informed the Commission that the new proposed regulations would prohibit for-profit operations on the two boat launching facilities that the Department owns. He added that the facility in Lake Tahoe is very small in terms of parking, turn around areas and the area that is used by the boaters. Mr. Johnson said the Department feels that there could be potential conflicts with private enterprise in the area.

Chairman Purdon stated that problem could be taken care of by the permit process, so that if there was a legitimately, appropriate, for-profit business, for the size and scope of the ramp that would service the public and may or may not be for-profit, it would have an avenue to get a permit.

Mr. Watanabe stated that the NTPUD operates the facility for the Department and operates the adjacent State Park. He said there is a licensed concessionaire at State Beach renting canoes and kayaks and they have a concession agreement with NTPUD. Mr. Watanabe said the individual was coming in and infringing upon the licensed concessionaire's business, of which NTPUD receives a portion of the gross receipts.

Chairman Purdon stated that the concessionaire is a for-profit entity. Commissioner Fleischman responded that this would be a reason to decline a permit, but a nonprofit entity should not be treated differently than a for-profit entity. Mr. Watanabe responded that originally when NTPUD talked to the Department about the issue, they wanted the ability to have a for-profit apply for a permit and be able to use and set up business on the Department's property; he said he is not aware if other regulations precluded the ability for a private enterprise to be able to apply.

Commissioner Fleischman stated he is concerned that other boating facilities around the state will look at these proposed regulations and the regulations will set a precedent. Ms. Fisher responded that when NTPUD first approached the Department, their complaint was they were having difficulty obtaining assistance with the law enforcement agencies in the Tahoe area because the Department did not have any kind of regulation precluding this kind of activity. The Department, she said, then researched the regulations and statutory law and discovered that the California Highway Patrol, which would be the logical entity to enforce this regulation, had a statewide regulation which the Department modeled the proposed regulation after.

Ms. Fisher stated the activity that the Department will regulate will be activities which may include some incidental commercial efforts, for example, art shows where the artist may have some of the art work for sale, but the primary purpose for the art show is to display the art works of local artists. She said the way the regulation ended up dwelling primarily on noncommercial activities was because the Department followed a regulation which is currently on the books.

Ms. Fisher recommended that the proposed regulation go forward as is and that the Department continue to study the need for adopting a regulation similar to the one State Parks now has which would give the Department ability to consider for-profit proposals. She added that State Parks' regulation is much more complicated than the one the Department is trying to put into effect now. Ms. Fisher restated the primary purpose for the regulation is to enable the Department to go to law enforcement and say we have a regulation on the books and we need their assistance to enforce it.

Commissioner Nagata stated in the proposed regulation under Definitions there is "Commercial Activity" and "Noncommercial Activity" and asked if it means both are prohibited without a permit, since there is no real definition to both terms. He added a person using a restroom is considered a noncommercial activity. Ms. Fisher responded that it is correct and there is a definition for both terms, but that a person using a restroom would be excluded from both definitions and no permit would be required for that activity.

Chairman Purdon asked if it is possible right now for any entity, profit or nonprofit, to apply for a permit and stated it should not matter if the entity is there for-profit or nonprofit. Ms. Fisher responded that NTPUD notified the Department that they were having a particular problem with a particular vendor and that the Highway Patrol and another law enforcement agency were unable to resolve the problem.

Chairman Purdon asked why the process applies only to nonprofit and not to a for-profit organization. Ms. Fisher responded that the regulation process was based on the existing language used by the Highway Patrol.

Commissioner Fleischman stated that some other boating facilities around the state will be explaining to their constituents' group that they modeled their policy on the regulation that the Commission approved, and in reality we based our policy on somebody else's policy.

Commissioner Fleischman said it seems like a good idea not to use profit or nonprofit as criteria for getting a permit and the permit can still be declined. Ms. Fisher responded it would be a very

big change to the regulation because if the Department allows for-profit entities to apply for a permit, then the Department would have to state the criteria under which the permit will be granted or denied. She added if the entity were doing commercial activity, then there would have to be regulations that would evaluate whether they would be in competition with another for-profit entity within so many hundred feet and how much they would pay the Department for use of the area.

Chairman Purdon asked if that criterion is also used for nonprofit. Ms. Fisher said it is not used for nonprofit.

Commissioner Fleischman asked what if a nonprofit kayak company comes in and makes no money and forms a nonprofit foundation for the purpose of allowing kayakers to use the water directly competing with the for-profit, will it get approval for a permit? Ms. Fisher responded that under this regulation, they would not be approved because the regulation would approve only entities that want to use the facilities for a one time only program and not an ongoing program. Commissioner Fleischman brought up the example of an art gallery that wants to do a one day show and they are a for-profit entity; they will be excluded under this criteria. Mr. Tsuneyoshi responded that the Department has a contract with NTPUD and they are responsible for operating the Department's launch ramp area and if the Department gets involved with the permitting process, then we will be going around the authority of NTPUD.

Chairman Purdon stated that this proposed regulation is setting a precedent. Mr. Tsuneyoshi stated that the Department has only two ramps in California which this regulation will affect.

Chairman Purdon asked if NTPUD would change their regulation to allow for a permit process. Mr. Watanabe responded that NTPUD initially wanted to have the discretion to have people apply for a permit with them and then they would determine if a permit would be issued. Mr. Johnson stated the formal proposal along with the text of the regulation was sent to NTPUD and they had made no comment on the proposed regulation language.

Commissioner Fleischman stated that to set up a regulation that excludes people based on the intent of their business venture, whether to make money or not, is the wrong criteria to be using.

Commissioner Nagata asked if the purpose of this regulation is to prevent trespassers and without this somebody could put their business right in the middle of the boat launch ramp area and no one could move them and boaters could not use the launch ramp. Mr. Tsuneyoshi responded that is exactly what happened.

Chairman Purdon stated he is for this regulation but would like to make sure no one is excluded.

Mr. Johnson informed the Commission that the purpose of this hearing is for the Commission to provide advice to the Department on the proposed regulations and no vote is required. He said staff will go back and have a discussion on this.

Chairman Purdon asked if the Department will go to NTPUD to see if they would accommodate some of the concerns the Commission has. Mr. Johnson responded that NTPUD was sent the

current written proposed regulations and several telephone calls were made to them over the last 12 months and no comment was received from them. Commissioner Fleischman responded that NTPUD would not have any problems with this regulation since it would not impact them but will impact potential businesses that would not know this regulation is taking place. Chairman Purdon asked that Department staff redo the regulation and bring it back to the Commission at another meeting.

Commissioner Nagata asked about the permit procedure and if he could go to a Highway Patrol office and open a business stand there and they could not remove him because it is public property and there are no regulations for the property. Mr. Johnson responded if they did not have a regulation that would be true.

Ms. Fisher said the problem was that NTPUD and the Highway Patrol felt that the kind of activity that was going on was improper and was illegal trespassing, but they were having trouble getting the District Attorney's approval to take the case to court. She said the District Attorney's office said the Department had no regulation for which a notice could be posted which stated that a permit was required. Ms. Fisher stated that the proposed regulation is merely to take care of the kinds of enforcement problems the Department has run into. She said a second regulation could be developed that would enable the Department to be able to have criteria that would allow commercial entities that want to operate a business on an ongoing basis on the Department's property so businesses can have an avenue to have permission to do that, but it will take some time to develop. Ms. Fisher said in the meantime the Department needs some kind of permit process on the books so the Department does not run into the enforcement problems as it has now.

Commissioner Johnson said if the proposed regulation is for NTPUD only, then you could take "Commercial" and "Noncommercial" out and post everywhere that a permit is required from the Department before anyone can operate there. Ms. Fisher responded if it is not allowed to have the words "Commercial" in the regulation, then the commercial entities who apply for a permit could not be precluded from getting the permit and there would be no basis for denying them.

Commissioner Fleischman asked what the current process is for evaluating a nonprofit or noncommercial entity and what criteria are used to approve or not approve a permit application. Ms. Fisher responded in the proposed regulation it states the criteria for issuance of a permit. She read that section of the proposed regulation to the Commission.

Commissioner Fleischman asked why the same criteria that have been established for nonprofit cannot exist for commercial, since commercial versus nonprofit terms are accounting terms and you can conduct any activity that one would associate as a commercial activity as a nonprofit entity, the only difference is how the entity files with the Internal Revenue Service. He said he does not want the Department to get in the business of deciding what kind of business is appropriate or inappropriate on public lands. Commissioner Fleischman stated that the criteria that is already there is sufficient for commercial or private ventures. Ms. Fisher responded that a separate permitting process is needed for ongoing commercial activities. Ms. Fisher said this proposed regulation is for the purpose of establishing the limit of public usage to one-day or two-day special activities and to establish a way for those activities to be regulated and enforced.

She added in order to establish a regulation which establishes who should have the right to run a business on public property, there would have to be different kinds of criteria and that has not been addressed in this regulation.

Commissioner Fleischman said any nonprofit business can apply and there are no regulations that state what kind can or cannot apply. He said if he was with the Sierra Club and he wanted to come in for one day and have a for-profit sale of products that benefit the Sierra Club, under this regulation he could apply and would be approved, but if he had that same product and wanted to come in for one day and sell it, he would be excluded. Commissioner Fleischman stated that the Department is making a judgment call as to who is making money rather than making a judgment call as to what the activity is.

Commissioner Fleischman stated if the Department wants to regulate an activity, then it should state that and not state that one entity can come and do the same activity that another entity can not do this is the wrong way to pursue public policy in this regard. Mr. Tsuneyoshi asked Commissioner Fleischman what wording or recommendation can he give so that his concerns are addressed. Commissioner Fleischman responded that he can e-mail the changes, but it would primarily exclude the section that prohibits commercial activity and leave in all the other criteria that say it has to be for one day. He added that profit versus nonprofit is the right way to get to the goals that the Department is trying to pursue. Ms. Fisher responded that the Department is regulating public property for public uses; charging them processing fees and not rent.

Commissioner Johnson asked if the Sierra Club came in and wanted to sell trees, etc. on a permanent basis would they be rejected. Ms. Fisher responded that the Sierra Club's activity would have to be noncommercial and that is defined as being an expression of ideas or causes of a religious, artistic, political, charitable, educational or cultural nature. She said if the primary purpose was to sell the trees, then they could not get a permit, but if the primary purpose was to express the goals and the ideals of the Sierra Club, then they could get a permit.

Commissioner Johnson stated his concern of setting a precedent with the proposed regulation.

Commissioner Clark stated there was a need that prompted this proposed regulation and it may suit the situation for now but there may be more work needed by Department staff and it may take some time to do it.

Chairman Purdon stated Department staff should think about the bigger picture and try to make it generic enough to include the many different entities that may enhance the boating experience for the public. He asked staff to come back with another rendition of the proposed regulation.

Public Comment

Ms. Sanders, Manager, Stanislaus County Parks, stated that most cities and counties have facilities rental agreements or facilities rental permits and many have nonprofit rates and for-profit rates for one-day activities. She said ongoing activities would be a concessionaire agreement, which she and other cities and counties have in place. Ms. Sanders said it may be the type of regulation the Department may want to look at and is already in existence.

Commissioner Johnson added that another place to look at is the boat shows which are commercial and for-profit and there is a lot of money made by the entity that authorizes the permit.

Commissioner Fleischman reported that the Department should look at the other facilities that already have these types of regulations in place rather than looking to the Highway Patrol and what they do. He said the Department should look at other boat launch facilities that are owned by other boating agencies and not reinvent the wheel.

Marina Berthing-Equal and Reasonable Access

Mr. Johnson reported that the Director met in August 2, 2006, with Legislative staff; Nettie Sablehouse, Staff Member, Senate Rules Committee; Bill Craven, Chief Consultant of Senate Resources and Water Committee and Keely Martin-Bouser, Consultant, Senate Budget Committee. He said the topic of discussion was about favoritism at marinas. Mr. Johnson said the individuals had received complaints on this issue from Santa Barbara, Ventura, Marina del Rey and San Diego. Mr. Johnson said one of the problems, according to the legislative staffer, is one in which a boat owner in a marina sells his boat along with the slip and the harbor master turns a blind eye to the new owner using the slip, thus circumventing the waiting list that has been established for getting a berth. Another problem, he said, occurs when a boat owner in a marina sells his boat and takes extra money for providing the slip to the new boat owner, again circumventing the waiting list and the person would be making a profit from the use of a public facility. Mr. Johnson indicated that at the next budget meeting, which will be sometime in March or April, the Department of Boating and Waterways will be asked by the Legislature what has been done on this issue.

Mr. Johnson reported that the issue is complicated, for example, if someone uses a waiting list, one may wait a generation to get a slip and the reason is people game the system. He said, for example, a boat owner may suddenly enter into a partnership with someone else and it is not known if the partnership is legitimate or not and the harbor master then has to investigate to see if it is legal or not. Mr. Johnson said many city councils and boards of supervisors have looked into this issue and have adopted regulations.

Mr. Johnson reported that Department staff recommends that a consultant be hired to prepare a comprehensive analysis of this issue. He stated that Bill Craven is looking into doing some legislation on this issue.

Public Comment

Mick Kronman, Harbor Operations Manager, City of Santa Barbara, stated that Santa Barbara with its south facing beaches and Mediterranean climate has very desirable marinas to berth boats in the entire west coast. He said for many decades the demand has exceeded the supply for berths and so every nook and cranny of the harbor including an addition of 75 slips in Marina One have been built. Mr. Kronman reported that for about 30 years there has been a waiting list system in conjunction with a transfer system and if they had a waiting list system only, then most

of the transactions would go underground. He said if you told a boat owner that when he sold his boat they would have to leave the slip and the berth would go to the next person on the waiting list, then you would have individuals who would form side partnerships and they would create side contracts, etc., in order to get around it.

Mr. Kronman said the City of Santa Barbara has a set of regulations which are very complex and detailed to protect the interest of the people on the waiting list because there are a multitude of ways that individuals will try to circumvent the process and try to bump each other on the waiting list by circumventing the rules and regulations relative to how a waiting list is accessed and how the transfer process works. Mr. Kronman stated that in Santa Barbara they do not get involved with the sale of berths, the sale of public resources is not permitted and the inheritability of slips in the municipal codes is not permitted also. He said the city has no relationship with people who transfer slips and money is transacted on the side between private parties as part of the transaction for transferring into the slip, but the city does apply a transfer fee of \$175 a foot in order to recoup and to keep down fees, etc. Mr. Kronman stated if the city disallowed people to transfer a slip with the sale of a boat, then it would go underground and it would deny the state of taxes, deny the marina of 6% of the operating budget, and wreak havoc for brokers, and brokers' relationship with the waterfront administration. He concluded that it is a noble idea in a sense of being an egalitarian equal access approach to the assignment of berths where demand exceeds supply, but it simply does not work in the real world to not have a system where you allow the transfer of berths along with the sale of a boat.

Mr. Kronman said most harbor masters will say that local administrations of these affairs reflect the local needs and the unique circumstances. He said the systems have developed over time in decades of experience in wrestling with this issue and have found out that what will work in Santa Barbara is different than what will work in Monterey, Santa Cruz or San Diego.

Mr. Kronman said trying to make boating available to people on the waiting list remains a number one priority but at the same time allowing for individuals to transfer berths when they sell their boats in the harbor remains allowable as well.

Mr. Kronman concluded by saying that in 2002 the County Grand Jury undertook the same kind of investigation that the legislators are interested in relative to why there isn't a waiting list system and why people are allowed to transfer berths in a municipal operated marina. He read a paragraph which is part of a summary that the City provided to the foreman of the Grand Jury and the presiding judge in 2002: "Waterfront department's staff believes that although the current policy of slip permit transfers is not perfect, it should be continued. The oversimplified perspective that a no-transfer policy 'solves the challenge of providing the general public with improved access to slips in Santa Barbara Harbor is unfounded.' In fact, such a policy would likely drive slip and vessel partnerships/ownerships totally underground, boat owners would encounter escalating difficulties selling boats since potential buyers would have no place, at least in Santa Barbara to berth them. People would become very creative and likely engage in subterfuge to prohibit slips from reverting to city control and in turn the city would lose valuable revenues it currently earns from the slip transfer process."

Mr. Kronman stated they have found a balance between rigorous attention toward the waiting list, which has gone down from 212 to 58 in the past seven years at the same time continuing to allow the transfer of berths when people sell boats in the harbor. Through this process, he said,

he has been able to generate funds in the amount of 6% of the operating budget which is an important contributing factor to the capital projects, parking rates, slips, etc.

Chairman Purdon asked what the slip rate is in his harbor. Mr. Kronman responded that the slip rates range from \$6 to \$9 a foot.

David Breninger, Director, Recreational Boaters of California, said it was not clear whether the discussion today is on public marinas or private marinas. He said a waiting list tends to give people some thought that they have some justifiable right to them, especially if money was put down as a deposit. Mr. Breninger stated that as described in the transfer system that he is aware of and is predominately used, first it is looked upon the boat that is occupying the slip and not necessarily the owner of the boat; there could be a variety of reasons why boat ownership might change for title purposes. He said if arrears occur or someone takes the boat out completely, then you have a true opening and the system is in place whether for the waiting list or for someone who is already in the marina looking to move up in boat size. Mr. Breninger stated that it provides opportunity to readjust the needs for the existing boaters in the area. He added that he is aware that, with public agencies, there has to be some equity and, therefore, a policy would have to be developed which would address when a waiting list should be kept when it comes into effect, and when a transfer system comes into the picture.

Steve Scheiblaue stated as an ex-harbor master for Santa Cruz Port District for nearly 20 years, he had operated a very strict waiting list-only system and no berth transfers were allowed. He said for the last 12 years he has been the harbor master for the City of Monterey which confronted this problem about nine years ago and has developed council policy to deal with both the waiting list question and the transfer questions. Mr. Scheiblaue said the question on how to fairly supply slips to the public is very complex and there are no single best answers. One approach, he said, is the waiting list system, which he is not a fan of, but enforces it very strictly. Mr. Scheiblaue said the estimated cost of enforcing it was about \$200,000 a year in staff and legal time. The series of ordinances that was adopted to deal with all the different games that people play to make the system work is very thick. He gave examples, such as, people having partnerships; selling 99.9 percent of a vessel; unreported purchase agreements where the title never change; either documented or California registrations never changes for the 10-15 years of the contract period; and cases of impersonation. Mr. Scheiblaue stated that the waiting list system is not an ultimately effective way of delivering these services to the public and it can be defeated. In the case of Santa Cruz, he said, it was about as effective as it can be and probably 80% to 85% of the transactions were done legally, but there were people so good at the gaming of it, that the opportunity was there to be defeated.

Mr. Scheiblaue stated when you have the long wait for berth transfers, then you up the stakes so high that people are willing to be creative about avoidance of the rules or are willing to take a risk that the penalty will not be so great and try to circumvent it. He said if the waiting list is about one to three years for berths then the waiting list can work, but when you get to a ten-fifteen-twenty-year wait, then people will be pressed to be creative. Mr. Scheiblaue reported that Monterey has a waiting list of 15-20 years. He added, for the waiting list system to work, it has to have a lot of regulations associated with it and has to be enforced.

Mr. Scheiblauber spoke on berth transferring and said if there is no demand in the area then there is no problem, but it becomes complex when you have a big supply problem because of the value that is associated with the ability to transfer the berth. The value, he said, can be substantial and is established in blue-sky value when the boat sells; people are buying and selling berths or bringing derelict vessels and selling them for an inflated value. Mr. Scheiblauber added that transfer systems also need to have regulations and strict enforcements.

Mr. Scheiblauber reported that there are the mixed systems, which Santa Barbara has, and Monterey has a slightly different version of it. He said the mixed system is a regulated waiting list system that regulates both the waiting list and slip transfers, making sure that slips that are delivered to the waiting list are assigned to the waiting list but also the transfers are regulated by making sure that the transferred vessels are operating and seaworthy, and the boat is required to stay in the berth for at least 30 months, so this avoids situations of people getting rid of the boat. Mr. Scheiblauber stated that they charge market rates when people transfer berths so this creates a system where the two systems run parallel and compliment each other. He said this is a slow and cheaper way for getting a berth through the waiting list and there is also a rush-order way which is more expensive. Mr. Scheiblauber said people will pay the higher market rate until they come up on the waiting list so they may be paying that rate for a very long time and this puts a dent in any ability to capture blue sky value from the berth transference from the sellers. He said this system has been very effective and the money is used to provide almost free parking, and other amenities using the extra funds from the market rate. Monterey does exempt commercial boats provided they show evidence of commercial activity.

Mr. Scheiblauber concluded by saying it boils down to having a vision, that the entity with private owner or a public owner entity needs to have a goal in mind on how they are going to deliver these facilities to the public and the need to have regulations and the will to enforce them. He added he thinks this would be very hard to legislate on a statewide basis. Mr. Scheiblauber stated the Department's report should be very comprehensive and needs to provide policy makers with an analysis of policy issues and also provide a detailed handbook of tools for managers to deal with some of the games that get played.

Chairman Purdon called for a break at 11:11 a.m.; the meeting resumed at 11:22 a.m.

Linda McIntire, General Manager and Harbor Master, Moss Landing Harbor, thanked Department staff for the support and assistance with a project that is under construction. She said at Moss Landing they do allow transfer of slips with the vessel but the owner of the vessel has to hold the slip for one year before they are allowed to transfer, otherwise it may create a cottage industry. Ms. McIntire informed everyone that she has assigned slips available for permanent assignment for anyone who wants to experience Moss Landing. She said her concern for the vessel owners in her harbor would be if a purchaser of a vessel, who was transferred a slip, paid a certain fair market value for the vessel and that would be substantially reduced if some legislation were to come along and make that transaction no longer viable. Ms. McIntire indicated there are two ways to obtain an assigned slip, either by being on a waiting list or by purchasing a vessel from an existing assigned slip holder, and if that assigned slip holder wishes to transfer the slip they can. The assigned slip holder may wish to keep that slip and put a different vessel in it. She indicated there has been a lot of thought, effort and energy put into this

issue as indicated today and the Moss Landing Board, which is an elective Board of Harbor Commissioners, have put a lot of thought and energy into the ordinances they pass. She would prefer not to have government regulate every single thing that marinas do.

Commissioner Clark asked if she has a transfer fee system. Ms. McIntire responded that there is no transfer fee. They simply require ownership for a year before they are allowed to transfer to another vessel owner.

Mr. Tsuneyoshi asked how long the waiting list is. Ms. McIntire responded she has availability of 20 slips in the 40' area which were occupied by commercial fishing vessels.

Chairman Purdon asked what the range of slips fees is. Ms. McIntire responded that the transient slip fees are the highest which is \$.75 a foot, per day, \$8.08 per foot for the temporary slips and \$5.87 per foot for permanent, for any size.

Brad Gross, Harbor Master, City of San Francisco Marina, said his marina does have a waiting list and transfer rules. He indicated the rules for Santa Cruz, Santa Barbara, and Monterey are very intricate and his is only one paragraph, but the system works for his marina. Mr. Gross said he has parallel systems that do allow the transfer of a berth to the new owner, but those transfers are not automatic and need to be approved by the harbor master or the marina manager. He stated that in his facility, the boat needs to meet the same criteria as any new vessel coming into the harbor for the first time so the boat needs to be operational, a true vessel and not modified. Mr. Gross stressed the complexity of changing any of the programs and the administration of any of the programs; each one of the areas has looked at the transfer rules over and over. Mr. Gross said the board of supervisors and commission has looked at it in detail and tends to be the third rail of what is happening in the facility. He said he does utilize the wait list and assigns boats off the wait list and the transfer rule works very well for his facility. Mr. Gross indicated that he had a 498 person waiting list but then he raised the fees for the waiting list and now there are only 125 people on the list. He said if the waiting list gets above to 200-300 people, the fees will be raised again. Mr. Gross added the transfer fees were also raised and making the fee to transfer a boat up to a level that the marina can enjoy some of the revenue that used to be going in another direction. He concluded that legislation such as this will drive this process completely underground and everyone will lose on the revenue, not just the marina operators but the state will lose out on the tax revenues. Mr. Gross stated if there is legislative enacted then the state, will not see the sale of an 80' motor yacht in Santa Barbara Harbor again or a 110' foot slip or boat in San Francisco; the attorneys and successful boat owners will figure out a system to benefit them and all the revenues will be lost.

Diane Isley, Vice President, California Association of Harbor Masters & Port Captains, Inc., stated she spent the last year fighting for funds from the state and supports having a consultant to study the issue, however, it is another added expense. She asked if any time was spent on the validity of the complaints coming in from the public. Ms. Isley said when she heard of this issue she made a couple of telephone calls and received Santa Barbara's policy that has been in place, and wonders whether if the Department calls the other four facilities to see what is in place and that this might satisfy the Legislature that the issue is being handled and not try to reinvent the wheel. Mr. Tsuneyoshi responded that the Senate Rules Committee is the one the Department

has to convince and not the Boating and Waterways Commission. He added that the response to the Committee should correctly reflect the conditions out in the private and publicly owned marinas. Ms. Isley stated she would like clarity on whether it will include the private and public marinas. Mr. Tsuneyoshi responded that the report will look at the whole picture.

Linda Breninger, Commodore, Ox Bow Yacht Club, stated that while listening to all the comments made today, it appears the discussion is about public, not private, marinas. She said the harbor master has talked about ocean access. The delta has access to the ocean but has a different problem. Ms. Breninger stated that she has two boats where the transfer of the slip came along with the sale of the boat, which was very important to her. She has not heard of any money transferring on the side to make this happen, but with the approval of the marina, one could transfer, so that when you purchase a boat you know that you have a slip. Ms. Breninger added that it is important because of the size of the slip, but in the delta roof on the slips is another issue, so a boat does not always fit in every 40' slip, one has to make sure that the radar arch and radar will clear as you go into your slip. She said you cannot just put your boat into another slip, the slip has to fit your boat; but on the ocean the sky is the limit.

Ms. Breninger informed the Commission that the problem is there are not enough marina slips in California. She said there need to be permits made to build additional marinas with additional slips. Ms. Breninger suggested that instead of the money being siphoned off to the salmon fishermen, she noted she has a background for commercial fishing and is not without feeling for the fishermen, but the recreational boaters of California have put the money into the fund and it should go toward marinas and to projects that will benefit the recreational boaters of California.

Ken Johnson, Executive Vice President, California Marine Parks and Harbors Association, stated that clearly in the report there needs to be a section that discusses the issue of not having enough marinas in California. He said if the report goes back to the legislature, then it should be noted that the money should not be taken away from an effort that needs to be done. Mr. Johnson stated there are slips that are empty in many of the marinas, for example, there are 20' slips that are taking up space and nobody is in them. He said the marinas need to be redone and only through the Department's program can this be accomplished and only if the Department continues to get the funding it needs. Mr. Johnson stated if there is to be a report done, which he supports, it clearly needs to include this issue.

Commissioner Fleischman stated the biggest challenge is the fact that the public sector is involved in the marina slip business and the reality is that the slips are owned by the people and basically become the possession and property of individuals. He added if the slips are public slips then the only equitable solution is to have a period of time when an individual can have a slip and then another one can come in and the first one can be placed back on the bottom on the waiting list.

Commissioner Clark asked if the Department is assembling information to provide an analysis that will be a report back to the legislator. Mr. David Johnson responded that the issue has just come up in the last few months and the initial staff recommendation was to do a comprehensive written analysis and submit it to the legislature so they can analyze it in detail.

Chairman Purdon stated that he is a fan of eliminating government businesses that compete with private enterprises, so he is not keen on public marinas. He said families, the public in general, should have better access and the opportunity to go boating. Chairman Purdon added because there is long waiting lists it eliminates many individuals to enjoy boating. He is concerned that the public marinas are not charging market rates for the slips as the private sector does, so there is an argument that there is a gift of public funds being evolving in the complex issue of market rate versus what a public marina would charge. Chairman Purdon stated if the individuals who run public marinas will admit that if they were able to charge the market rate for the slips, most of their problems will be eliminated. He said the general public who owns the land where public marinas are being cheated out of certain amount of revenue that should go into the general funds of the government entities.

Chairman Purdon advised the Department to hire a consultant or have a workshop to develop some sense of what is said today. He added that he is not in favor of legislation, but guidelines from the Department re needed to help harbor masters throughout the state in both public and private marinas on what might be some concepts on transfer and waiting slips.

Commissioner Fleischman asked if a consultant is hired that he or she takes the opportunity to meet with the Chairman to understand the Commission's input and concerns about this issue. He added he would like the Commission to see the draft report and to be able to add the Commissions or individuals thoughts to the report so that it is presented with the conclusion of the document when it is given to the Senate Rules Committee.

Commissioner Nagata asked if the Department can invite the consultant who will do the report to the next meeting. Mr. David Johnson responded that the timetable or specific details have not been done at this time and would like to hold off until the project has been initiated.

MOTION: It was moved by Commissioner Nagata and seconded by Commissioner Clark that the Boating and Waterways Commission recommends that the Department of Boating and Waterways hire a consultant to conduct a study on equal and reasonable access of marina berths and that a draft of the report be brought back to the Commission for comment before it is concluded. The motion carried unanimously.

OLD BUSINESS

Department of Pesticide Regulation-Anti-Fouling Paints

Mark Rentz, Deputy Director, California Department of Pesticide Regulation, gave background and update on marina anti-fouling paints. Handout titled "Department of Pesticide Regulation" "Strategy to Address Marine Antifouling Paints," was given to the Commissioners and available to the public.

Mr. Rentz reported that the San Diego Regional Water Quality Control Board (Control Board) adopted a total maximum daily load for the Shelter Island Yacht Basin to address dissolved copper in the basin. The Control Board, he said, is purposing 81% percent reduction of copper loading due to passive leaching associated with anti-fouling paints and a 28% reduction loading due to underwater hull cleaning in the yacht basin. Mr. Rentz informed the Commission that the Control Board creates the Total Maximum Daily Load (TMDL) and implementation plan, and then they pass it on to the State Water Resources Board for approval.

Mr. Rentz reported on June 2006, the California State Lands Commission adopted a resolution which calls upon the U.S. EPA, the State Water Resources Control Board, and the California Department of Pesticide Regulation to assign the highest priority to their efforts to determine the scope of the potential environmental impacts of copper-based paints, and to take appropriate actions, which could include but not be limited to a phased elimination of the use of such paints in California.

Mr. Rentz stated the Department of Pesticide Regulation (DPR) in consultation with the State Water Resources Control Board (SWRCB) and in discussion with Department of Boating and Waterways staff came to the conclusion that there was not sufficient information at this time to make the decision as to whether there should be a statewide action taken. He said they developed a statewide anti-fouling paint monitoring study which is going on this summer.

Mr. Rentz indicated the anti-fouling paint monitoring study will collect water and sediment samples from 24 marinas across the state and 4 of the sites will be in fresh water, 4 in brackish water, and 16 in salt water and all will be sampled three times throughout 2006. He added that the study will also include biocides, such as, zinc and Irgarol. Mr. Rentz stated the sampling should be completed by the end of summer or early fall and will have a report completed that will be submitted to the SWRCB. He added he can brief the Commission on the report when it is done. The report, he said, will determine whether other actions are needed or not.

Mr. Rentz reported that DPR is in the process of initiating another regulatory process in late 2006 or early 2007 issuing a notice to begin the re-evaluation process of anti-fouling paints. He added this will give the opportunity to meet with the registrant and other interest parties, like marina mangers and harbor masters, etc., to get any additional data, research studies or any information that they can bring.

Chairman Purdon asked for the timeline on getting a copy of the report that the Commission can read. Mr. Rentz responded that the report may be available sometime in the first half of 2007, but he will provide the Department a draft copy and can come before the Commission to explain any part of the report.

Mr. Tsuneyoshi stated that several states as well as Europe are watching California on how we are handling the copper bottom paint issue. Mr. Rentz responded that he is aware of this and that he learned quickly on how everyone looks towards California on many issues.

Commissioner Clark stated as Vice President of Recreational Boaters of California, the organization applauds the process and monitoring being done on the study and of getting the true science before making a decision as far reaching as the issue may become. She said her

organization had petitioned the State Water Board as well as the regional water boards before they were getting ready to apply the new TMDL. Commissioner Clark added that RBOC wanted the report to be based on good sound science and looks forward to the report.

Letter Supporting Audit of State Parks

Mr. Johnson stated that at the last Commission meeting, Brian Roney, Parks Services Manager, Casitas Municipal Water District, sent a letter in March 2006 to Senator Morrow requesting a Legislative audit on how the Department of Parks and Recreation uses boater's monies and there was a motion to add a letter from the Commission to Brian Roney's request. He added that Commissioner Clark at that time asked for background information on how much boater's money was going to State Parks. Mr. David Johnson included the information requested by Commissioner Clark and a draft letter from the Commission to Michael C. Genest, Director of the Department of Finance, in the agenda booklet.

Mr. Johnson indicated it would be more appropriate if the Department of Finance does the audit and not the Bureau of State Audits as requested by Brian Roney. He added that State Parks generates revenues by day use, parking, and launch fees paid by boaters and their annual report does not describe the revenue stream. Mr. Johnson stated that the Department would like to know how much money is generated from this.

Commissioner Fleischman indicated since the Commission is appointed by the Governor and approved by the Senate, the request for an audit should go to the Governor and then the Governor could forward the request to the Department of Finance. Mr. Johnson said that would be appropriate.

MOTION: It was moved by Commissioner Fleischman and seconded by Commissioner Johnson that the Boating and Waterways Commission request an audit of State Parks, as delineated in the draft letter prepared by the Department of Boating and Waterways, and that the letter be sent to the Governor of California. The motion carried unanimously.

Commissioner Fleischman added that a copy of the letter be sent to the appropriate Chairman and Vice Chairman of the policy committees in the Legislature. Mr. Johnson responded that the committee would be the Assembly and Senate Budget Committees but that it may add another political dimension to it.

Commissioner Clark asked if the members of the Commission could get a copy of the State Parks Report to the Legislature. Mr. Johnson responded that he will mail a copy to all members.

Boating Needs Assessment Report

Mr. Flood indicated the Commission had asked for a presentation on the Boating Needs Assessment Study. He reported that the study was done in 2002 and is available on the

Department's website. Mr. Flood gave the Commission a compact disk that contained the Boating Needs Assessment Study.

Mr. Flood reported that the State of California needs an average of 722 launch ramp lanes over the next 20 years with the estimated cost of \$72 million dollars with an increase of \$3.6 million per year in spending for the Department to cover the needs. He added needed parking for the launch ramps would be 23,000 spaces at \$46 million. Mr. Flood indicated that wet storage needed statewide would be about 9,378 to 21,227 new slips, depending on the region, and the cost would be \$294.6 million with an average of \$14.7 million to 33.6 million per year in spending cost.

Chairman Purdon asked how much of the wet storage could be financed outside of the Department. Mr. Flood responded that financing outside the Department could be done if commercial loans are available, but when the study was done, they searched out commercial lenders and found about two in the state and they were only interested in projects that were large and not interested in small recreational projects.

Chairman Purdon thanked Mr. Flood for his presentation.

Public Comment

Doug Hipsley, Past President, RBOC, reported that he has been involved with State Parks as a volunteer at Emerald Bay State Park and that there may have been problems at the top level but down to the lower level, the Department and State Parks are working together and doing an outstanding job. Mr. Hipsley reported that the Department, Tahoe Regional Planning Agency and RBOC are on the same page with regards to the five miles an hour speed limit on Emerald Bay, but the boat sticker program for all boats that go out on Lake Tahoe is an issue that is still being worked on. He thanked the Department and the Commission for the work done in Emerald Bay.

Lou Long, Past Commodore, South Lake Tahoe Yacht Club, thanked the Department of Boating and Waterways for the buoy field that is going to be installed in Emerald Bay this fall.

Steve Scheiblaue stated there has been a reduction of fishing opportunities on the coast and in the last ten years there has been increasingly conservative set of fishing regulations for the benefit of the resources but in addition to that, there is the Marina Life Protection act that is going to close areas. Mr. Scheiblaue added that 18 percent of the coast will be protected in the sense that there will be either complete fishing restrictions or severe fishing restrictions. He said 60 percent of the hard bottom rocky structure which are good places to fish will be gone and will force the fishing pressure in the remaining 40 percent. Mr. Scheiblaue reported that 60 percent of the commercial and recreational people he polled stated the number one reason to pay berth rent was to fish. He said Santa Cruz has a zero waiting list and empty slips, in part to the lost of fishing opportunities. Mr. Scheiblaue informed the Commission to be aware of this issue as it has implications for boating in California.

Mr. Scheiblaue reported that the Monterey Sanctuary draft management plan will likely be released in September and will include a fishing component, invasive species issues and the

PWC issue. He said in regards to the invasive species, the Sanctuary is seeking a very broad federal authority to prevent and managed invasive species which is a change to the designation document to give them the authority and will make it easier to set specific rules through the easily federal rule making process. Mr. Scheiblaue asked the Department and Commission to pay close attention to this and what it may mean to recreational boating. Mr. Tsuneyoshi reported he will talk to Department staff on doing an economic impact study on this issue.

Commissioner Fleischman asked that the Commission be made aware of when the Monterey Sanctuary draft management plan becomes available. He added that if there is no Commission meeting scheduled then one should be set in order that the Commission can take an official stand on the report and make public comments.

Commissioner Clark stated in light of the \$27 million that is continuing to grow and go to State Parks, and the fact that it appears to be open season on the Department of Boating and Waterways, then the Commission should take some action to start giving information to the Legislators and different departments so that they will know that the Department's money is not just sitting in reserves and is needed to continue to fund projects.

Commissioner Fleischman stated since this Commission does not have a staff that can put together documents and to set up lobbying trips, etc., then the Commission meeting should meet near the Capitol and then set meetings with the key people in the Legislature. Commissioner Fleischman added that the Commission can then provide material and present information to the legislatures. He added that notice can then be sent to all constituent groups to join the Commission on this public information and awareness campaign.

Chairman Purdon asked the Department staff to set the meetings.

COMMISSIONER ANNOUNCEMENTS

Mr. David Johnson reported that for the next Commission meeting staff will contact the Commissioners with a date and place for the meeting.

ADJOURNMENT

Chairman Purdon adjourned the meeting at 12:30 P.M.

Original signed by:

Raynor Tsuneyoshi, Secretary