AGENDA
REGULAR MEETING OF THE BOARD OF COMMISSIONERS
HUMBOLDT BAY HARBOR, RECREATION AND CONSERVATION DISTRICT

DATE: February 26, 2015
TIME: 7:00 p.m. Regular Session
PLACE: Woodley Island Marina Meeting Room

The Meeting Room is wheelchair accessible. Accommodations and access to Harbor District meetings for people with other handicaps must be requested of the Director of Administrative Services at 443-0801 24 hours in advance of the meeting.

1. Call to Order Regular Session at 7:00 P.M. and Roll Call
2. Pledge of Allegiance
3. Public Comment

Note: This portion of the Agenda allows the public to speak to the Board on the various issues not itemized on this Agenda. A member of the public may also request that a matter appearing on the Consent Calendar be pulled and discussed separately. Pursuant to the Brown Act, the Board may not take action on any item that does not appear on the Agenda. Each speaker is limited to speak for a period of three (3) minutes regarding each item on the Agenda. Each speaker is limited to speak for a period of three (3) minutes during the PUBLIC COMMENT portion of the Agenda regarding items of special interest to the public not appearing on the Agenda that are within the subject matter jurisdiction of the Board of Commissioners. The three (3) minute time limit may not be transferred to other speakers. The three (3) minute time limit for each speaker may be extended by the President of the Board of Commissioners or the Presiding Member of the Board of Commissioners at the regular meeting of the District. The three (3) minute time limit for each speaker may be enforced by the President of the Board of Commissioners or the Presiding Member of the Board of Commissioners at the regular meeting of the District.

4. Consent Calendar:

Note: All matters listed under the Consent Calendar are considered to be routine by the Board of Commissioners and will be enacted by one motion. There will be no separate discussion of these items. If discussion is required, that item will be removed from the Consent Calendar and considered separately.

a. Consideration of approval of minutes from the Board Meeting of July 24, 2014.
b. Consideration of approval of minutes from the Board Meeting of August 14, 2014.

5. Communications and Reports
   a. Executive Directors Report
   b. Staff Reports
   c. District Counsel, District Planner and District Treasurer Reports
   d. Commissioner and Committee Reports
   e. Other

6. Non Agenda
7. Unfinished Business
8. New Business

b. Consideration of approval of Permit and Agreement to Operate Kayak Rental Services for Brian Saxton dba Humboats Kayak Adventures.
c. Consideration of accepting for filing application for Permit 15-02 for Chevron USA for the Chevron Eureka Marine Terminal Repair Project.
Agenda for February 26, 2015 Regular Board Meeting

d. Consideration of accepting the Grant Agreement with the California Natural Resources Agency for the Humboldt Bay Spartina Eradication Project.

e. Consideration of Lease Termination – Agrimarine.

f. Consideration of Exclusive Right to Negotiate with Sustainable World Solutions – Redwood Terminal 2 Water Treatment Plant.

g. Consideration of Exclusive Right to Negotiate with Sustainable World Solutions – Redwood Terminal 1 – Parcels 1 and 2.

h. Discussion/Presentation – Athena Greene, Inc. – Katie Kelly

9. Administrative and Emergency Permits

10. Adjournment
MINUTES (SUBJECT TO APPROVAL)
REGULAR MEETING OF THE BOARD OF COMMISSIONERS
HUMBOLDT BAY HARBOR, RECREATION AND CONSERVATION DISTRICT

July 24, 2014

PRESENT:
Commissioner Marks
Commissioner Wilson
Commissioner Higgins
Commissioner Newman

ABSENT:
Commissioner Dale

President Marks called the Executive Closed Session to order at 6:05 p.m.

President Marks adjourned the Executive Closed Session at 6:53 p.m.

President Marks called the regular meeting of the Board of Commissioners to order at 7:03 p.m.

President Marks asked Sebastian Elrite to lead those present in the Pledge of Allegiance.

District Counsel reported on the Executive Closed Session as follows: Status of negotiations with the Harbor District Labor Negotiator: no action taken; Status on Threatened Litigation: no action taken; Status on Conference with Legal Counsel: no action taken.

PUBLIC COMMENT:

Sebastian Elrite, Aqua-Rodeo Farms, said he mentioned at the previous Board meeting his concerns about the sizes of the Mariculture subleases. He asked if there is a way to break the parcels down more to be more affordable. Commissioner Wilson said the RFP was distributed, but it is not final yet. He said his advice is for the lessees to propose what they want and the District will try to accommodate. Commissioner Higgins asked if the meeting on August 15, 2014 would address these concerns. Director of Conservation said that meeting is a tour of the sites and interested parties should RSVP.

CONSENT CALENDAR: None

COMMUNICATIONS AND REPORTS

CEO REPORT:

- There is a new updated photo of the Pulp Mill property on Google Earth now,
- Redwood Terminal 2 Cleanup: Steve Calanog, USEPA, reported as of today approximately 1.83 million gallons of pulping liquors have been transported to Longview, WA, equaling 435 truckloads. There are 4 out of the 11 tanks left to empty. Shipping will continue to Kapstone Paper Company throughout August. The estimated completion date is set for October 1, 2014. Tank demolition will continue and the estimated completion date for that is January 2015. Sludge solidification has begun and hoping to complete that task by March 2015. President Marks said delays were expected, but the progress is great. The EPA has done a phenomenal job. Mr. Calanog said they have a great team with the Harbor District as their partner.
- CEO said the ocean outfall pipe was inspected. Director of Harbor Operations/Bar Pilot operated the Fire Boat, which saved the District approximately $5,000 in vessel costs. The four divers went down for an hour at a time; an impressive operation. The GPS coordinates used were extremely
accurate because they had inspected the pipe before. The divers decompressed for about a half hour after each dive. The operation was very successful, they had a perfect weather window and the condition of the pipe seemed to be better than anticipated. A presentation regarding the findings will be given to the Board soon.

- It is estimated by August 1, 2014, a Community Development Entity letter of commitment should be issued and the accounting firm should be hired to prepare a financial model. The New Markets Tax Credit (NMTC) closing process should begin with the CDE letter and investor announced by August 15, 2014. Phase 1 analysis of the pulp mill property and the financial analysis will have to begin without knowing the full process. The EPA and the Harbor District needs to finalize the cost sharing agreement. The Harbor District and the Regional Water Quality Control Board are working on completing a final draft of the Remedial Action Plan (RAP) by September 1, 2014. The RAP public comment period is 30 days starting October 1, 2014. The NMTC closing date is November 14th. Construction work will begin December 1, 2014. There will be approximately 18 months to finish the work.

**STAFF REPORTS:**

Director of Facility Maintenance:
- The dredge arrived in various pieces and was assembled by staff completely. The test drive was done at the dock site. Dredge is now resting comfortably in the boat yard at Fields Landing. The engine in it will get documented by a certified technician then will attempt to sell in Oregon and Washington; it is not California emissions-ready. Staff will continue to maintain the dredge and get it ready to run. It is a working man’s dredge; very easy to service. The dredge came with a work boat called the Bar Fly and it performs well also. A cutter welder also came with the dredge, which has the pipe for discharging and is in good working condition.

Director of Harbor Operations/Bar Pilot:
- The Corps of Engineers dredge finished just in time; dredged the entrance and bar to approximately 75% of project depth. They left as the vessel Crimson Polaris was entering the bay.
- Went on a tour of the Crimson Polaris; loading is going great; beyond expectations. They should be ready to head out this weekend.

**DISTRICT COUNSEL REPORT:** None.

**COMMISSIONER AND COMMITTEE REPORTS:**

Commissioner Newman:
- Has been commercial fishing in Shelter Cove.

President Marks:
- Has been involved in quite a few meetings.
- Went on a tour of the vessel Crimson Polaris. Director of Harbor Operations and Bar Pilot was put to work. He had to pilot the vessel to reposition due to the wind.

Commissioner Wilson:
- Had a meeting with John Driscoll, Representative for Congressman Jared Huffman.
- Met with representatives of Shatz Energy Lab regarding a study to look at a site for potential wave energy research.
Commissioner Higgins:
- Attended a meeting with EPA and had very productive discussions.
- Has been monitoring the Eel River and does not recommend swimming in it because it is getting low and algae is forming.
- Attended the Northern Nights Music Festival on the Eel River. Talked to a lot of young people about the river and how to take care of it.

UNFINISHED BUSINESS:

A. CONSIDERATION OF ADOPTION OF RESOLUTION 2014-09, A RESOLUTION ESTABLISHING FINDINGS RELATIVE TO THE PERMIT APPLICATION BY NORTH COAST REGIONAL LAND TRUST FOR THE MARTIN SLOUGH TIDE GATE IMPROVEMENT PROJECT, ELK RIVER, CALIFORNIA.

COMMISSIONER HIGGINS MOVED FOR THE ADOPTION OF RESOLUTION 2014-09, A RESOLUTION ESTABLISHING FINDINGS RELATIVE TO THE PERMIT APPLICATION BY NORTH COAST REGIONAL LAND TRUST FOR THE MARTIN SLOUGH TIDE GATE IMPROVEMENT PROJECT, ELK RIVER, CALIFORNIA. COMMISSIONER WILSON SECONDED.

Director of Conservation said there are two linked items: the adoption of the item and then granting the permit. The project is to replace an existing tide gate. It will significantly improve fish passage. It qualifies for categorical exemption from the CEQA process because it is only replacing an existing structure. Maintaining the existing tidal regime is priority. He recommends that the Board adopts the resolution.

Commissioner Newman said he is supportive as a Board member of the North Coast Regional Land Trust, but he will be recusing himself.

Don Allen, Redwood Community Action Agency, said he was approached in 2001 about replacing the tide gates. It has taken 13 years to get to this point. He appreciates the consideration and thanked all the staff who worked on the project. Commissioner Higgins said Mr. Allen deserves gratitude for all of his hard work. This is good for whole system and good for the community.

MOTION CARRIED WITHOUT DISSENT, WITH COMMISSIONER NEWMAN RECUSED.

B. CONSIDERATION OF GRANTING PERMIT 14-01 TO NORTH COAST REGIONAL LAND TRUST FOR THE MARTIN SLOUGH TIDE GATE IMPROVEMENT PROJECT.

COMMISSIONER WILSON MOVED FOR THE APPROVAL OF PERMIT 14-01 TO NORTH COAST REGIONAL LAND TRUST FOR THE MARTIN SLOUGH TIDE GATE IMPROVEMENT PROJECT. COMMISSIONER HIGGINS SECONDED. MOTION CARRIED WITHOUT DISSENT.

NEW BUSINESS:

A. CONSIDERATION OF ACCEPTING FOR FILING PERMIT APPLICATION 14-04 TO EUREKA FOREST PRODUCTS FOR MAINTENANCE DREDGING OF THE SIERRA PACIFIC DOCK.

COMMISSIONER HIGGINS MOVED FOR THE APPROVAL OF FILING PERMIT APPLICATION 14-04 TO EUREKA FOREST PRODUCTS FOR MAINTENANCE DREDGING OF THE SIERRA PACIFIC DOCK. COMMISSIONER NEWMAN SECONDED.
Director of Conservation said this is the final step in the process for filing for the permit. The Board accepted the permit application for the same project a year ago, but a new round of sediment data was necessary, which has now been completed. Harbor District Staff recommended accepting the filing of this permit.

MOTION CARRIED WITHOUT DISSENT.

B. CONSIDERATION OF ACCEPTING FOR FILING PERMIT APPLICATION 14-05 TO THE HUMBOLDT BAY HARBOR DISTRICT FOR THE HUMBOLDT BAY REGIONAL INVASIVE SPARTINA ERADICATION AND NATIVE SALT MARSH RESTORATION PROJECT.

COMMISSIONER HIGGINS MOVED FOR THE APPROVAL OF FILING PERMIT APPLICATION 14-05 TO THE HUMBOLDT BAY HARBOR DISTRICT FOR THE HUMBOLDT BAY REGIONAL INVASIVE SPARTINA ERADICATION AND NATIVE SALT MARSH RESTORATION PROJECT. COMMISSIONER WILSON SECONDED.

Director of Conservation said this is the Spartina eradication work that has been ongoing for years. It is under a set of permits that authorized work on existing lands. The job now is to expand the work area. The District is doing its own permit process to finish the work with the Coastal Commission.

MOTION CARRIED WITHOUT DISSENT.

C. CONSIDERATION OF A 90-DAY EXTENSION TO THE EXCLUSIVE RIGHT TO NEGOTIATE WITH ENERGISTYCS, INC. FOR A PORTION OF REDWOOD TERMINAL 2 PARCEL A FOR PURPOSES OF A PELLET MILL OPERATION.

COMMISSIONER NEWMAN MOVED FOR THE APPROVAL OF A 90-DAY EXTENSION TO THE EXCLUSIVE RIGHT TO NEGOTIATE WITH ENERGISTYCS, INC. FOR A PORTION OF REDWOOD TERMINAL 2 PARCEL A FOR PURPOSES OF A PELLET MILL OPERATION. COMMISSIONER WILSON SECONDED.

CEO stated the initial 180 days have gone by quickly and recommends an additional 90 day extension to the Exclusive Right to Negotiate with Energistycs, Inc.

Kevin Leary, Energistycs Inc., said they are considering three different viable methods of financing. The financing is contingent on obtaining the applicable permits. Mr. Leary said they are finalizing terms with Sierra Pacific, Schmidbauer, South Coast Lumber, and Simpson. Representatives from Mitsubishi, who could be an offtake purchaser, is expected to be here mid-September. Currently they are working on completing a lease agreement, complete with permit requirements and should be done with the document soon.

Commissioner Higgins said he is very optimistic. He is impressed with their drive and attention to detail. It is within bounds of reason to reward hard work with a no cost extension. Mr. Leary thanked Commissioner Higgins. He said their biggest concern right now is obtaining their permit from the Coastal Commission. Commissioner Higgins acknowledged the projects being proposed on coastal dependant industrial land and a lot of the project will be indoors and with low pollution risk.

Commissioner Wilson said he hopes they have an expert on their team who is familiar with permits. Mr. Leary said Scott Foster is their primary permit expert.
President Marks said this is the perfect footprint for this type of project. Replacing coal with wood pellets would be a lot better for the environment; he is very supportive.

Mr. Leary said within 18 months they will be able to sell the pellets within California.

MOTION CARRIED WITHOUT DISSENT.

D. DISCUSSION OF PERSONNEL POLICIES UPDATE.

Director of Administrative Services said the Harbor District Staff has been working on revisions to update wording. Wording regarding step raises have been removed and replaced with performance evaluation raises. An employee’s sick leave will not be charged for a medical appointment during the work day; it will be paid time off. There will be an education incentive of $.25/unit raise upon receiving a passing grade.

CEO said the new positions and union negotiations will be discussed with the Board in the near future.

Commissioner Higgins said he is most pleased that staff was receptive and that raises will be awarded on an incentive based process; it is a better motivator for employees. Commissioner Higgins urged Staff to "Keep up the good work and thanks for these changes."

President Marks said when he was first elected he was put in a position to negotiate union issues. He said he is very happy that a consistent contract has been negotiated so that everyone can understand their roles and responsibilities. He is thrilled about the process.

ADMINISTRATIVE AND EMERGENCY PERMITS: None.

The Regular Meeting of the Board of Commissioners adjourned at 7:58 p.m.

APPROVED BY: [Signature]
Greg Dale
Secretary

RECORDED BY: [Signature]
Patricia Tyson
Director of Administrative Services
MINUTES (Subject to Approval)
REGULAR MEETING OF THE BOARD OF COMMISSIONERS
HUMBOLDT BAY HARBOR, RECREATION AND CONSERVATION DISTRICT

August 14, 2014

PRESENT:
Commissioner Dale
Commissioner Marks
Commissioner Wilson
Commissioner Higgins

ABSENT:
Commissioner Newman

President Marks called the Executive Closed Session to order at 6:04 p.m.

Larry Doss and Pete Oringer, Timber Heritage Association, addressed the Board prior to commencing Executive Closed Session. Mr. Oringer said the approval of an Exclusive Right to Negotiate for the purchase of the Redwood Marine Terminal Berth 1 Roundhouse Real Property will help their organization obtain grants and establish permanency, while preserving local history.

President Marks adjourned the Executive Closed Session at 6:53 p.m.

President Marks called the regular meeting of the Board of Commissioners to order at 7:05 p.m.

President Marks lead those present in the Pledge of Allegiance.

District Counsel reported on the Executive Closed Session as follows: Status of Conference with Real Property Negotiator: There was unanimous consent to direct CEO and District Counsel to respond to Timber Heritage Association regarding matters associated with the ERTN and there was no action taken on the Sale of the Boiler item; Status on Conference with Legal Counsel – Existing Litigation: no action taken.

PUBLIC COMMENT:

Kent Sawatzky said if the drought continues, one of the few areas with industrial property with water access. He suggested stockpiling five-years’ worth of water for municipalities. Some coastal dependent industrial property may be needed to be used as coastal dependent non-industrial on a temporary basis. Mr. Sawatzky also said he appreciated the Board's consideration of the Timber Heritage Association's ERTN. The Harbor District will enjoy good Karma by facilitating the transfer of ownership of the property in order for the THA to obtain grants.

CONSENT CALENDAR

COMMISSIONER WILSON MOVED FOR THE APPROVAL OF THE CONSENT CALENDAR. COMMISSIONER HIGGINS SECONDED. MOTION CARRIED WITHOUT DISSENT.

COMMUNICATIONS AND REPORTS

CEO REPORT:

CEO wished Dan Berman, Director of Conservation, well in his new position as Trinidad City Manager and thanked him for his years of service to the Harbor District.
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- Redwood Terminal 2 Cleanup: Steve Calanog, USEPA, reported as of today approximately 2.3 million gallons of pulping liquors have been transported to Longview, WA, signaling 85% completion. Six tanks have been removed, 3 completely. It is estimated the completion of the liquor transfer will happen on September 5. Tank demolition is estimated to be complete by January 2015.

STAFF REPORTS:

Director of Harbor Operations/Bar Pilot:
- Three ships are scheduled to dock at Schneider dock within the next 45 days.
- By the end of next week, all the dredge equipment should be at the Fields Landing Boat Yard.

District Planner
- Two of three agencies have responded regarding the water trails permitting.
- Has been learning firsthand about Director of Conservation's responsibilities.
- The RFP for the bathymetric survey of 13 Humboldt Bay dock sites has been distributed.
- Developing the RFP for improvements at Redwood Terminal 2 using New Markets Tax Credits. Director of Facility Maintenance has been very helpful.

District Treasurer
- Has been working on the District’s year end accounting issues and readying for the annual audit.

DISTRICT COUNSEL REPORT: None.

COMMISSIONER AND COMMITTEE REPORTS:

Commissioner Dale:
- Reported it is an odd year for oyster seed growth – very slow.

President Marks:
- Travelled to Redway with CEO to make a presentation to the Garberville/Redway Rotary.

Commissioner Wilson:
- Said he happy to help THA to obtain grants, even if they are only leasing the Berth 1 property.

Commissioner Higgins:
- Eel River and Pt. Seward may disconnect causing ecological stress.
- Has been working on MLPA issues and fish management

UNFINISHED BUSINESS: None

NEW BUSINESS:

A. CONSIDERATION OF ADOPTION OF RESOLUTION 2014-10, A RESOLUTION REAFFIRMING THE HUMBOLDT BAY HARBOR, RECREATION AND CONSERVATION DISTRICT’S COMMITMENT TO CREATING JOBS AND SUSTAINABLE ECONOMIC GROWTH THROUGH HUMBOLDT BAY AND ITS HARBOR.

COMMISSIONER HIGGINS MOVED FOR THE ADOPTION OF RESOLUTION 2014-10, A RESOLUTION REAFFIRMING THE HUMBOLDT BAY HARBOR, RECREATION AND CONSERVATION DISTRICT’S COMMITMENT TO CREATING JOBS AND SUSTAINABLE
ECONOMIC GROWTH THROUGH HUMBOLDT BAY AND ITS HARBOR. COMMISSIONER DALE SECONDED.

District Counsel commended the Board for not rubber-stamping the resolution as other agencies did. This is a much more coherent and consistent resolution, closely aligned to what the Board adopted the first time around.

President Marks said the Humboldt Bay Working Waterfront Opportunities Committee was given counsel by three different counsels to come together united.

Kent Sawatzky applauded everyone – the resolution is heading towards the first plan, the creation of jobs overall. It is good to see the agencies working towards the same result.

Commissioner Wilson said he disagreed that the agencies are butting heads and said that at the staff and policy level, there was unity.

ROLL CALL VOTE WAS TAKEN:
COMMISSIONER NEWMAN - ABSENT
COMMISSIONER DALE – AYE
COMMISSIONER MARKS – AYE
COMMISSIONER WILSON – AYE
COMMISSIONER HIGGINS = AYE

MOTION CARRIED WITHOUT DISSENT.

B. CONSIDERATION TO AWARD 2014 REFUNDING REVENUE BONDS TO BBVA COMPASS BANK.

COMMISSIONER WILSON MOVED FOR THE APPROVAL OF AWARDING THE 2014 REFUNDING REVENUE BONDS TO BBVA COMPASS BANK. COMMISSIONER HIGGINS SECONDED.

Kent Sawatzky asked the Board if they were casting aside their safety net by no longer being required to keep the reserve fund as the former bonds required. He cautioned the Board to find another way to retain reserves.

MOTION CARRIED WITHOUT DISSENT.

C. CONSIDERATION TO ACCEPT AND DEPOSIT THE RETAINER FOR JPMCHASE, THE PROPOSED NEW MARKETS TAX CREDIT INVESTOR, IN THE AMOUNT OF $50,000 IN EXCHANGE FOR $3 MILLION IN NEW MARKETS TAX CREDITS ALLOCATION.

COMMISSIONER HIGGINS MOVED TO ACCEPT AND DEPOSIT THE RETAINER FOR JPMCHASE, THE PROPOSED NEW MARKETS TAX CREDIT INVESTOR, IN THE AMOUNT OF $50,000 IN EXCHANGE FOR $3 MILLION IN NEW MARKETS TAX CREDITS ALLOCATION. COMMISSIONER WILSON SECONDED.

Albert Lemus, Lowes Enterprises, told the Board if they invested $3.8M in Parcel A improvements and $2.5M in acquisition of Parcels B & C, for $6.3M investment the District would only borrow $3.5M. Therefore, the District would have a $10M asset and only $3.5M debt. There would be approximately $150,000 worth of costs associated with the process. As the facility is cleaned up and improved, more tenants will be attracted.
Kent Sawatzky said when a public agency borrows over $700,000, they must have a feasibility study done by a licensed engineer. Caution is justified. In the feasibility study it must state the designation of coastal dependent industrial and abide by all legal uses.

MOTION CARRIED WITHOUT DISSENT.

D. CONSIDERATION TO ACCEPT AND DEPOSIT THE RETAINER FOR THE CSCDA ALLOCATION $25,000 IN EXCHANGE FOR $9 MILLION IN NEW MARKETS TAX CREDIT ALLOCATION

COMMISSIONER DALE MOVED TO ACCEPT AND DEPOSIT THE RETAINER FOR THE CSCDA ALLOCATION $25,000 IN EXCHANGE FOR $9 MILLION IN NEW MARKETS TAX CREDIT ALLOCATION. COMMISSIONER WILSON SECONDED. MOTION CARRIED WITHOUT DISSENT.

E. CONSIDERATION TO ACCEPT LACO ASSOCIATES UPDATED PHASE 1 FOR PARCELS A, B AND C FOR $25,000.

COMMISSIONER HIGGINS MOVED TO ACCEPT LACO ASSOCIATES UPDATED PHASE 1 FOR PARCELS A, B AND C FOR $25,000. COMMISSIONER DALE SECONDED.

Kent Sawatzky said if the update on Phase 1 says you need a Phase 2, does this slow down the New Markets Tax Credit project? Commissioner Wilson replied Phase 2 has been done from the previous Phase 1; since much of the high ticket Phase 2 works has been done, clean up will be specifically documented.

CEO said the Water Board is aware of the data gaps and are following the progress.

COMMISSIONER HIGGINS AMENDED HIS MOTION AS FOLLOWS: TO ACCEPT LACO ASSOCIATES UPDATED PHASE 1 FOR PARCELS A, B AND C FOR $30,000. COMMISSIONER DALE ACCEPTED THE AMENDMENT. MOTION CARRIED WITHOUT DISSENT.

F. CONSIDERATION TO ACCEPT KELLY-O’HERN ASSOCIATES ALTA SURVEY PROPOSAL OF PARCEL A FOR $22,500.

COMMISSIONER HIGGINS MOVED TO ACCEPT KELLY-O’HERN ASSOCIATES ALTA SURVEY PROPOSAL OF PARCEL A FOR $22,500. COMMISSIONER WILSON SECONDED. MOTION CARRIED WITHOUT DISSENT.

G. CONSIDERATION OF LEASE TO MCKENNY’S INSULATION DIVISION OF 13,000 SF, WEST END OF REDWOOD TERMINAL 2 SHOP FOR TRUCK AND FOAM STORAGE.

COMMISSIONER WILSON MOVED FOR THE APPROVAL OF LEASE TO MCKENNY’S INSULATION DIVISION OF 13,000 SF, WEST END OF REDWOOD TERMINAL 2 SHOP FOR TRUCK AND FOAM STORAGE. COMMISSIONER DALE SECONDED.

Kent Sawatzky asked if McKenny’s Insulation Division was a legal use of the property. He said the rate at $.20 sf is half the price of private rates and cautioned the Board to not undercut private business.
President Marks said this is the perfect footprint for this type of project. Replacing coal with wood pellets would be a lot better for the environment; he is very supportive.

Mr. Leary said within 18 months they will be able to sell the pellets within California.

MOTION CARRIED WITHOUT DISSENT.

D. DISCUSSION OF PERSONNEL POLICIES UPDATE.

Director of Administrative Services said the Harbor District Staff has been working on revisions to update wording. Wording regarding step raises have been removed and replaced with performance evaluation raises. An employee’s sick leave will not be charged for a medical appointment during the work day; it will be paid time off. There will be an education incentive of $.25/unit raise upon receiving a passing grade.

CEO said the new positions and union negotiations with be discussed with the Board in the near future.

Commissioner Higgins said he is most pleased that staff was receptive and that raises will be awarded on an incentive based process; it is a better motivator for employees. Commissioner Higgins urged Staff to “Keep up the good work and thanks for these changes.”

President Marks said when he was first elected he was put in a position to negotiate union issues. He said he is very happy that a consistent contract has been negotiated so that everyone can understand their roles and responsibilities. He is thrilled about the process.

ADMINISTRATIVE AND EMERGENCY PERMITS: None.

The Regular Meeting of the Board of Commissioners adjourned at 7:58 p.m.

APPROVED BY:                            RECORDED BY:

______________________________       ________________________________
Greg Dale                           Patricia Tyson
Secretary                            Director of Administrative Services
HUMBOLDT BAY HARBOR, RECREATION AND CONSERVATION DISTRICT

PERMIT AND AGREEMENT TO OPERATE KAYAK RENTAL SERVICES

This Permit and Agreement is executed in triplicate at Woodley Island Marina, Eureka, California, between HUMBOLDT BAY HARBOR, RECREATION AND CONSERVATION DISTRICT, hereinafter referred to as "District", and BRIAN SAXTON, individually, DBA, HUMBOATS KAYAK ADVENTURES hereinafter referred to as "Humboats".

WHEREAS, Humboats desires to operate the Humboats Kayak Adventures as a kayak rental, tour and lesson business from the Woodley Island Marina; and

WHEREAS, on or about February 04, 2015 Brian Saxton made written application to renew the Permit to operate the business Humboats Kayak Adventures at Slip Number 02, Float A at the Woodley Island Marina; and

WHEREAS, Ordinance Number 9, Section 6.78, of the District prohibits any commercial endeavor or charter service for hire, subparagraph (a), without a special permit from the District.

AFTER REVIEW AND CONSIDERATION thereof by the Board of Commissioners of the District of the application of Humboats hereinafter referred to:

THE PARTIES, THEREFORE, AGREE AS FOLLOWS:

1. District shall permit Humboats, an independent contractor, to operate the business Humboats Kayak Adventures for the purpose of rentals, tours and lessons from Woodley Island Marina. For the purpose of this Permit and Agreement, Humboats commercial endeavor shall be referred to as "Kayak Rental Service". Diving or diving instruction from or on said vessels shall not be allowed and shall be prohibited at all times.

2. As described in Exhibit A, Berthing Permit and Rental Agreement for Woodley Island Marina, a copy of which is attached hereto and incorporated by reference as Exhibit "A" hereto; Humboats is permitted to use Slip Number 02, Float A, at the Woodley Island Marina for their vessels and barge.

3. As described in Exhibit B, Woodley Island Marina Storage Application, Humboats is permitted to use two (2) storage spaces in the Woodley Island Marina Storage Yard.

4. The term of this Permit and Agreement shall be for one (1) year commencing March 01, 2015, and terminating on February 29, 2016. District or Humboats
may terminate this Permit and Agreement by giving sixty (60) days written notice of termination to the other party. District may terminate this Permit and Agreement with Humboats with or without cause or reason by giving Humboats sixty (60) days written notice of termination and Humboats shall terminate their Kayak Rental Service sixty (60) days from the date of personal service of said written notice of termination or sixty (60) days from the date of deposit or the written notice of termination deposited, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail, and addressed to Brian Saxton, 1745 Roberts Way, Arcata, CA 95521.

In the event Humboats is in default of any of the provisions of the Berthing Permit and Rental Agreement for the Woodley Island Marina, a copy of which is attached hereto as Exhibit "A", and Humboats' Berthing Permit is terminated pursuant to said Agreement, this Kayak Rental Service Permit and Agreement shall terminate forthwith on the date of termination of Humboats' Berthing Permit and Rental Agreement without the requirement of the hereinabove set forth sixty (60) day notice of termination provisions.

5. In addition to the monthly/yearly rental payable by Humboats to the District pursuant to the Berthing Permit and Rental Agreement for the Woodley Island Marina, a copy of which is attached hereto as Exhibit "A", Humboats shall pay District the sum of Two hundred fifty dollars ($250.00) per year for this Permit to carry on a Kayak Rental Service pursuant to this Agreement. All rates may be changed pursuant to paragraph 3 of the Berthing Permit and Rental Agreement for Woodley Island Marina which provides that the District may change or increase the rates by giving thirty (30) days notice.

6. Humboats shall pay District all fees described in the agreement and as detailed in Exhibit A and Exhibit B of the agreement on an annual basis.

7. On or prior to the date of the Agreement, to wit: March 01, 2015 Humboats shall purchase and maintain throughout the term of the Permit and Agreement, Commercial General Liability insurance covering Humboats' operation of their Kayak Rental Service operation pursuant to the terms of the Permit and Agreement. Said insurance policy of "protection and indemnity insurance" insuring Humboats from liability for bodily injury, death, or property damage as a result of their Kayak Rental Service operation and shall name District as an additional insured and provide District with a Certificate of Insurance stating the amount of the insurance and proof that the District is an additional named insured, and the agreement of said insurance company that District shall be notified forthwith of the event of non-payment of the premium or termination of said insurance policy. The amount of insurance shall be One Million dollars ($1,000,000.00) per occurrence. In the event said liability insurance policy is cancelled or terminated, Humboats
shall forthwith cease and stop their Kayak Rental Service for hire operation at District's premises at the Woodley Island Marina and shall not resume operations until said liability insurance policy is fully reinstated and in full force and effect.

8. Humboats shall prior to commencing operation of their Kayak Rental Service obtain any and all necessary permits and licenses applicable to Humboats operation.

9. Humboats agrees that neither the Humboldt Bay Harbor, Recreation and Conservation District, nor its Board of Commissioners, nor any Officer of the District shall be liable to any extent for the injury or damages to any person or property or for the death of any person arising out of or connected with Humboats' Kayak Rental Service operation and Humboats shall indemnify and hold harmless District, its Commissioners, and Officers free and harmless from any liability for any such injury, death or damages. In addition, Humboats agrees to hold harmless, indemnify, and hold District non-responsible for any of Humboats' Kayak Rental Service operations according to the provisions of paragraphs 11, 13, and 19 of the Berthing Permit and Rental Agreement for Woodley Island Marina, a copy of which is attached hereto as Exhibit "A" and incorporated by reference as though set forth in full.

10. Humboats at all times shall comply and shall obtain compliance of Lessee's family, agents, employees, business visitors, and invitees of all laws, ordinances, rules and regulations, including Ordinance No.9, the Woodley Island Marina Rules and Regulations, California Boating Law and those of federal and state government.

11. Humboats at all times shall ensure that walkways and finger piers are not obstructed in any manner. No tires, ropes, canvas, or other material shall be nailed or attached to finger piers, docks, and piles without the written approval of the District. Vessels underway within the marina limits shall be for the purpose of mooring, entering or leaving a berth. Cruising between piers and under gangways is strictly prohibited. Humboats may place a sign on the vessels the size of which must be approved by the District's Chief Executive Officer. Humboats may place a directional sign for incoming traffic onto the Marina at a location and the type and size sign which is approved by the Chief Executive Officer of the District, which shall reasonably conform in size, shape, and colors of the signs heretofore existing on the Woodley Island Marina.

12. This Permit and Agreement is not transferable or assignable by Humboats without approval in writing by the District. Any transfer of assignment or
attempted transfer or assignment of this Permit by Humboats shall be null and void.

13. This Permit and Agreement is non-exclusive and District retains the right to enter into agreements with and grant permits to other persons or business for the same purposes as set forth in this Permit and Agreement.

14. The covenants and conditions herein contained shall apply to and bind the heirs, legal representatives, successors, and assigns of all of the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.

15. Time is of the essence of this Permit and Agreement and of each and every covenant, term, and condition, and provision hereof.

16. Humboats is hereby notified by the District that this Permit and Agreement to Operate Kayak Rental Services in conjunction with the Berthing Permit and Rental Agreement for the vessels for the Woodley Island Marina or property interests created herein, if any, may be subject to a possessory interest tax or property taxation if created pursuant to Sections 107 to 108 of the California Revenue and Taxation Code and that Humboats and/or the party in whom the possessory interest is vested may be subject to the payment of property taxes levied upon such interests. Humboats agrees and acknowledges that they have actual notice pursuant to Section 107.6 of the California Revenue and Taxation Code that Humboats may be required to pay a possessory interest tax as a result of this Permit and Agreement to operate Kayak Rental Services in conjunction with the Berthing Permit and Rental Agreement for the vessels for Woodley Island Marina. Humboats hereby acknowledges that they have actual knowledge of the existence of a possessory interest tax and has read the provision of Section 107 to 108 of the California Revenue and Taxation Code. Humboats agrees to and shall pay all possessory interest taxes levied any governmental agencies by reason of this Permit and Agreement to Operate Kayak Rental Services and their Berthing Permit and Rental Agreement for their vessels, for Woodley Island Marina.
EXECUTED on, February 26, 2015 by authority of the Board of Commissioners of the HUMBOLDT BAY HARBOR, RECREATION, AND CONSERVATION DISTRICT.

RICHARD MARKS, President
Board of Commissioners
HUMBOLDT BAY HARBOR, RECREATION, AND CONSERVATION DISTRICT

Brian Saxton, individually, DBA HUMBOATS KAYAK ADVENTURE, as Permittee in this Permit and Agreement hereby accepts and agrees to all terms and conditions herein above set forth.

Dated: _______________, 2015

By BRIAN SAXTON

PERMITTEE:
Humboats Kayak Adventure
Brian Saxton
1745 Roberts Way
Arcata, CA 95521
Brian Saxton
1745 roberts way
Arcata, Ca 95521

February 04, 2014

Attn: Board of Commissioners
Humboldt Bay Harbor, Recreation and Conservation District
601 Startare Dr.
Eureka, Ca 95501

Dear Board of Commissioners:

This is to express interest in renewing my Business Operating permit on Woodley Island for Humboats Kayak adventures for 2015. As this was my first year as the owner operating Humboats Kayak Adventures at the marina, my initial permit was for one year of operation. I feel we had a very successful season at Humboats, and would like to renew my permit for years to come. I love the location, and couldn't be happier with the services provided here on Woodley Island. I would like to continue to offer kayak rentals and tours on Humboldt Bay, and I ask for the Board of Commissioners' permission to operate a business in 2015. Thank you very much for your consideration. If you have any questions, don't hesitate to give me a call at anytime.

Sincerely,

[Signature]

Brian Saxton
Owner, Humboats Kayak Adventures
(707 443-5157 or 415 606-7702)
HUMBOLDT BAY
HARBOR, RECREATION AND CONSERVATION
DISTRICT
P.O. BOX 1030
Eureka, California 95502
(707) 443-0801
(707) 443-0800 fax

Date Filed

<table>
<thead>
<tr>
<th>General Information</th>
<th>For Commission Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.) Name &amp; Address of Developer, Project Sponsor and Legal Owner</td>
<td>A. Application No. 15-02</td>
</tr>
<tr>
<td>Chevron USA</td>
<td>Application Type:</td>
</tr>
<tr>
<td>3400 Christie Street</td>
<td>Franchise</td>
</tr>
<tr>
<td>Eureka, CA 95501</td>
<td>Permit</td>
</tr>
<tr>
<td>2.) Address of Project and Assessor’s block, lot and Parcel Number</td>
<td>Lease</td>
</tr>
<tr>
<td>3400 Christie Street, Eureka, CA 95501</td>
<td>B. Date Received by Harbor District</td>
</tr>
<tr>
<td>APN 007-071-08 &amp; -13</td>
<td>C. Date Accepted for filing by BOC</td>
</tr>
<tr>
<td>3.) Name, Address and Telephone No. of Person to be contacted concerning this</td>
<td>D. Date of Public Notice</td>
</tr>
<tr>
<td>Project</td>
<td>E. Date of Acceptance EIR or Negative Declaration</td>
</tr>
<tr>
<td>Corey Matson, Pacific Affiliates</td>
<td>F. Date of Public Notice</td>
</tr>
<tr>
<td>990 W. Waterfront Drive</td>
<td>G. Date of Public Hearings</td>
</tr>
<tr>
<td>Eureka, CA 95501</td>
<td>H. Date of Approval</td>
</tr>
<tr>
<td>707-445-3001x209</td>
<td>Disapproval</td>
</tr>
<tr>
<td>4.) Attach list of names and addresses of all adjoining property owners</td>
<td>Conditional</td>
</tr>
<tr>
<td>5.) List and Describe any other related Permits &amp; Other Public Approvals required</td>
<td>Approval</td>
</tr>
<tr>
<td>for this Project, including those required by City, Regional, State &amp; Federal</td>
<td>I. Expiration Date</td>
</tr>
<tr>
<td>Agencies. CA Coastal Commission Permit</td>
<td>Comments</td>
</tr>
<tr>
<td>6.) Existing Zoning District N/A</td>
<td></td>
</tr>
<tr>
<td>7.) Proposed Use of Site (Title of Project for which this form is filed)</td>
<td></td>
</tr>
<tr>
<td>Chevron Eureka Marine Terminal Repair Project</td>
<td></td>
</tr>
</tbody>
</table>
Describe in detail the proposed project:

Chevron is proposing the removal of four abandoned concrete floats, which are currently beached in various locations surrounding Humboldt Bay, as mitigation for potential impacts to native eelgrass habitat incurred during the Chevron Terminal Dock Repair Project. The buoyant concrete floats are deemed hazardous to vessels, structures and sensitive habitats within Humboldt Bay due to their potential of dislodging. The proposed course of action is to remove the floats by boat during extreme events of high tide. A Harbor District boat will be used to free each float from sediment and tow it to a travelift located in the Fields Landing boat yard. From the boat yard, the floats will be transported to Kernen Construction in Blue Lake, CA for recycled use.
Answer all questions completely on a separate sheet of paper. If the question does not apply to your project, so indicate by marking N.A. If you have questions, please contact the Harbor District Office.

**Project Description**

8. Site Size
9. Square Footage
10. Number of floors of construction
11. Amount of off-street parking provided
12. Attach plans
13. Proposed scheduling
14. Associated projects
15. Anticipated incremental development
16. If residential, include the number of units, schedule of unit sizes, range of sale prices or rents, and type of household size expected.
17. If commercial, indicate the type, whether neighborhood, city or regionally oriented, square footage of sales area, and loading facilities
18. If industrial, indicate type, estimated employment per shift, and loading facilities.
19. If institutional, indicate the major function, estimated employment per shift, estimated occupancy, loading facilities, and community benefits to be derived from the project.
20. If the project involves a variance, conditional use or recognizing application, state this and indicate clearly why the application is required.

Are the following items applicable to the project or its effects? Answer yes or no. Discuss all items answered yes.

21. Change in existing features of any bays, tidelands, beaches, lakes or hills, or substantial alteration of ground contours.
22. Change in scenic views or vistas from existing residential areas or public lands or roads.
23. Change in pattern, scale or character of general area of project.
24. Significant amounts of solid waste or litter.
25. Change in dust, ash, smoke, fumes or odors in vicinity.
26. Change in ocean, bay, lake, stream or ground water quality or quantity, or alteration of existing drainage patterns.
27. Substantial change in existing noise or vibration levels in the vicinity.
   A. During Construction
   B. During Project Utilization
28. Site on filled land or on slope of 10% or more.

29. Use of disposal or potentially hazardous materials, such as toxic substances, flammable or explosives.

30. Substantial change in demand for municipal services (police, fire, water, sewage, etc.)

31. Substantially increase fossil fuel consumption (electricity, oil, natural gas, etc.).

32. Relationship to larger project or series of projects

ENVIRONMENTAL SETTING:

33. Describe the project site as it exists before the project including information on topography, soil stability, plants and animals, and any cultural, historical, or scenic aspects. Describe any existing structures on the site and the use of the structures. Attach photographs of the site. Snapshots or polaroid photos will be accepted.

34. Describe the surrounding properties, including information on plants and animals and any cultural, historical, or scenic aspects. Indicate the type of land use (residential, commercial, etc.) intensity of land use (one-family, apartment houses, shops, department stores, etc.) and the scale of development (height, frontage, set-back, rear yard, etc.) Attach photographs of the vicinity. Snapshots or polaroid photos will be accepted.

-----------------Questions 35; 36 and 39 MUST BE ANSWERED-----------------

35. How will the proposed use or activity promote the public health, safety, comfort, and convenience?

36. How is the requested grant, permit, franchise, lease, right, or privilege required by the public convenience and necessity?

37. Financial statement:
   A. Estimated cost of the project.
   B. How will the project be financed.

38. Describe fully directions necessary to arrive at project site.

39. Will the Applicant agree that as a condition of the permit being issued to Applicant, to indemnify and hold harmless the Humboldt Bay, Harbor Recreation and Conservation District from any and all claims, demands, or liabilities for attorneys’ fees obtained from or against demands for attorney’s fees, costs of suit, and costs of administrative records made against District by any and all third parties as a result of third party environmental actions against District arising out of the subject matter of this application and permit, including, but not limited
to, attorney's fees, costs of suit, and costs of administrative records obtained by or awarded to third parties pursuant to the California Code of Civil Procedure Section 1021.5 or any other applicable local, state, or federal laws, whether such attorneys' fees, costs of suit, and costs of administrative records are direct or indirect, or incurred in the compromise, attempted compromise, trial, appeal, or arbitration of claims for attorneys' fees and costs of administrative records in connection with the subject matter of this application and permit?

NOTE

The District hereby advises the Applicant that, under California Public Resources Code Section 21089, the District when a lead agency under the Environmental Quality Act of 1970, as amended, pertaining to an Environmental Impact Report (EIR) or a Negative Declaration may charge and collect from the Applicant a reasonable fee in order to recover the estimated costs incurred by the District in preparing an Environmental Impact Report (EIR) or Negative Declaration for the project and the procedures necessary to comply with the provisions of the public resources code on the Applicants project. In the event your project contains an analysis of issues pertaining to the Environmental Quality Act of 1970, as amended, for which District staff is not competent to independently review, or District requires the same in preparation of an Environmental Impact Report (EIR) or Negative Declaration for the project, the District may retain a reviewing consultant to evaluate the content of the Administrative-Draft EIR and Final EIR or Negative Declaration with respect to these issues. The cost of such reviewing consultant services shall be borne by the Applicant.

CERTIFICATION: I hereby certify that the statements furnished above and in the attached exhibits present the data and information required for this initial evaluation to the best of my ability, and that the facts, statements, and information presented are true and correct to the best of my knowledge and belief.

Dated: 2/10/15

For __________________________
Eelgrass Mitigation Float Removal
Humboldt Bay Harbor, Recreation and Conservation District Questionnaire

8. N/A
9. N/A
10. N/A
11. N/A
12. N/A
13. Removal efforts will take place in the spring of 2015 during extreme events of high tide.
14. This project is associated with the Chevron Terminal Dock Repair Project, as mitigation for potential eelgrass habitat impacts.
15. N/A
16. N/A
17. N/A
18. N/A
19. N/A
20. N/A
21. Yes, the concrete floats will no longer be present within Humboldt Bay.
22. Yes, from vantage points where the floats are visible, the scenic views or vistas will be improved upon.
23. Yes, project will improve the aesthetic character of the general area by removing the four floats from the shorelines.
24. Yes, all material removed is expected to be concrete and will be transported to Kern Construction in Blue Lake, CA for recycled use.
25. No
26. Yes. A temporary increase in turbidity may occur in the immediate vicinity of each float during the dislodging phase of removal.
27. A. No
   B. No
28. No
29. No
30. No
31. No
32. Chevron is proposing the float removal project as mitigation for the potential impacts to eelgrass habitat from the Chevron Terminal Dock Repair Project.
33. Four beached concrete floats currently exist in various locations along the Humboldt Bay shoreline. Two are on Stinky Beach south of Elk River (Figure 1 and Figure 2), one in South Bay and the fourth is located in a slough on the northeastern tip of Indian Island. The floats are currently embedded in sediment, however, have the potential to become dislodged during high tide or a storm event.
34. Humboldt Bay is used for worldwide commerce, commercial and recreational fishing, and conservation (Humboldt Bay National Wildlife Refuge). In addition, Humboldt Bay possesses Native American historical and cultural resources.
35. Upon safe removal, the floats will no longer pose a threat to vessels, structures and sensitive habitats within the Humboldt Bay.
36. The event of a float becoming dislodged has the potential to cause either direct or indirect adverse effects to the public.
37. A. $8000
   B. Chevron will pay for the project.
38. Due to the nature of this project, sites will be accessed via Humboldt Bay. A Harbor District boat will be utilized to access each site during extreme events of high tide. As previously mentioned, two floats are on Stinky Beach south of Elk River, one is in South Bay and the fourth is located in a slough on the northeastern tip of Indian Island.
39. Yes, Chevron agrees to the stated condition.
Photographs of site

Figure 1: One of two floats located at Stinky Beach

Figure 2: Second float located at Stinky Beach
Project Description

As mitigation for potential impacts to eelgrass habitat caused by construction activities associated with the repair project at the Chevron Dock, Chevron is proposing to remove four known rogue concrete floats that are scattered throughout Humboldt Bay. Currently, there are two floats at Stinky Beach south of Elk River, one in South Bay and one in a slough on the northeast tip of Indian Island. All the floats were beached and have become lodged in the ground. When mobilized, the floats are a hazard to marine traffic, structures and could eventually become beached in sensitive habitat.

Figure 1 - Float beached at Stinky Beach

Figure 2 - Float beached at Stinky Beach
Float Removal

Float removal will take place during extreme high tides to utilize the buoyancy of the floats to aid in their removal. The floats are currently stuck in mud and once broken loose will float. A rope will be used to tie the float off to a Harbor District boat, which will be used to break the float loose from the mud allowing it to float. It will then be towed to the Fields Landing boat yard. The Harbor Districts’ travelift will be used to hoist the floats out of the water and place them on a flatbed trailer for transport.

Figure 3 – Travelift at Fields Landing
Figure 4 - Fields Landing boat yard

Float Disposal

The floats will be transported to Kernen Construction's Blue Lake facility. According to Tim Petrusha (Harbor District), all the previous floats that have been removed from the bay have been of concrete construction (no foam for flotation). Kernen will crush the concrete for reuse as base rock.

Best Management Practices

The following BMP's are to be implemented during removal of the concrete floats:

- Fueling of construction equipment shall occur on shore, offsite, a minimum of 100 feet from the Mean Higher High Water line of Humboldt Bay.
- Fuels, lubricants, and solvents shall not be allowed to enter the waters of Humboldt Bay.
- Hazardous materials management equipment, including oil containment booms and absorbent pads, shall be available immediately. Equipment shall be kept on the vessel performing the work in an easily accessible location.
- A registered first-response, professional hazardous materials clean-up/ remediation service shall be locally available on call to respond within two hours of being notified of a spill.
- Any accidental spill shall be rapidly contained and cleaned up.
- All equipment shall be free of leaks and in good working order.
- All construction materials and debris originating from the project shall be stored and/ or contained in a manner that precludes their uncontrolled entry and dispersion to the waters of Humboldt Bay. Any debris from construction activities that should inadvertently enter the bay shall be removed from the bay waters immediately. All debris shall be properly disposed of and recycled if possible.
GRANT AGREEMENT
State of California - The Natural Resources Agency

Grantee Name: Humboldt Bat Harbor, Recreation & Conservation District
Project Title: Humboldt Bay Spartina Eradication
Agreement Number: E03113-0
Authority: Streets and Highways Code Section 164.56
Program: Environmental Enhancement and Mitigation

PROJECT DESCRIPTION

Eradication of Spartina densiflora from approximately 250 acres of tidal marsh habitat in Humboldt Bay.

A detailed Project Scope and activities, project schedule and Project Budget are described and attached hereto as Exhibit A.

Grant funds are to be used to contribute to mitigation of the environmental effects of transportation facilities.

TERMS AND CONDITIONS OF GRANT

Special Provisions

1. Upon completion of detailed Project design, plans and specifications, Grantee shall provide to the State for review and approval a revised detailed Project Budget, Project Scope and detailed site plan. If Project includes habitat restoration or landscaping, Grantee shall provide a planting palette demonstrating how native vegetation will be used in the Project. Approval by the State of such plans and specifications, or any other approvals provided for in this Agreement, shall be for scope and quality of work and shall not relieve Grantee of the obligation to construct and maintain the facilities, or carry out any other obligations required by this Agreement, in accordance with applicable law or any other standards ordinarily applied to such work or activity.

2. As conditions precedent to the State's obligation to make any funding available pursuant to this Agreement, Grantee shall first provide evidence satisfactory to the State of an agreement between Humboldt Bay Harbor District and property owners that:

   a. Grants permission to Humboldt Bay Harbor District to access and develop the project on City of Arcata, and U.S. Fish & Wildlife Service property.

   b. Outlines the responsibilities for operations and maintenance of the Project for a minimum of twenty (20) years for all improvements on subject properties under this Agreement.
General Provisions

A. Definitions

1. The term “Acquisition” means obtaining a fee interest or any other interest, including easement, leases, and development rights.

2. The term “Agreement” means this Grant Agreement.

3. The term “Application” means the individual application form, its required attachments for grants pursuant to the enabling legislation and/or program and any applicable materials supplied by applicant to the Natural Resources Agency prior to award.

4. The term “Application Guidelines” means the Environmental Enhance and Mitigation (EEM) Grant Program Grant Guidelines and Application.

5. The term “Development” means improvement, rehabilitation, restoration, enhancement, preservation, protection and interpretation or other similar activities.

6. The term “Fair Market Value” means the value placed upon the property as supported by an appraisal that has been reviewed and approved by the California Department of General Services (DGS).

7. The term “Grant” or “Grant Funds” means the money provided by the State to the Grantee in this Agreement.

8. The term “Grant Agreement” means a contractual arrangement between the State and grantee specifying the payment of funds by the State for the performance of specific EEM project objectives within a specific project performance period by the grantee.

9. The term “Grantee” means an applicant who has a signed agreement for Grant Funds.

10. The term “Interpretation” means visitor-serving amenities that communicate the significance and value of natural, historical and cultural resources in a manner that increases the understanding and enjoyment of these resources, or other similar activities.

11. The term “Other Sources of Funds” means cash or in-kind contributions that are required or used to complete the project beyond the Grant Funds provided by this Agreement.

12. The term “Payment Request Form” means Form RA212.

13. The term "Project" means the Acquisition or Development activity described in the application as modified by Exhibit A to be accomplished with Grant Funds.

14. The term “Project Budget” means the State approved cost estimate included as Exhibit A to this Agreement.

15. The term "Project Scope" means the description or activity for work to be accomplished by the EEM Project.

16. The term “State” means the Secretary for Natural Resources or his/her representatives, or other political subdivision of the State.

B. Project Execution
1. Subject to the availability of funds in the Streets and Highway Code, the State hereby grants to the Grantee a sum of money (Grant Funds) not to exceed the amount stated on the signature page in consideration of and on condition that the sum be expended in carrying out the purposes as set forth in the description of Project in this Agreement and its attachments and under the Terms and Conditions set forth in this Agreement.

2. Grantee shall furnish any and all additional funds that may be necessary to complete the Project.

3. Grantee shall complete the Project in accordance with the Project Performance Period set forth on the signature page, unless an extension has been formally granted by the State and under the Terms and Conditions of this Agreement. Extensions may be requested in advance and will be considered by State, at its sole discretion, in the event of circumstances beyond the control of the Grantee, but in no event beyond May 1, 2018.

4. Grantee shall at all times ensure that Project complies with the California Environmental Quality Act (CEQA) (Public Resources Code, Division 13, commencing with section 21000, et. seq., Cal Code Regs tit. 14, section 15000 et. seq.) and all other environmental laws, including but not limited to obtaining all necessary permits. Grant Funds will not be disbursed before the close of the period for legal challenge under CEQA.

Grant Funds for planning and document preparation may be available sooner if included in the grant Project Scope (Exhibit A) and approved by the State. CEQA compliance shall be completed within one (1) year from the Grant Agreement start date, unless an extension is granted by the State.

Changes to the scope resulting from CEQA compliance are permitted provided the State determines that the project continues to meet all objectives of the Environmental Enhancement Mitigation Grant Program and is consistent with the intent cited in the original Application.

If a grantee's project is disapproved on grounds related to the Natural Resource Agency's CEQA determination, the grantee shall have the option of either: (1) reimbursing the Natural Resources Agency for all State-reimbursed preliminary costs (e.g., planning, design, etc.), or (2) relinquishing any planning/design documents, including all copies, reproductions, and variations resulting from said funding, without a license to use or otherwise retain in any form.

5. Projects must comply with Labor Code Section 1771.8 regarding the payment of prevailing wages and the labor compliance program as outlined in the Labor Code Section 1771.5 (b).

6. Grantee certifies that the Project does and will continue to comply with all current laws and regulations which apply to the Project, including, but not limited to, legal requirements for construction contracts, building codes, environmental laws, health and safety codes, and disabled access laws. Grantee certifies that, prior to commencement of construction; all applicable permits and licenses (e.g., state contractor's license) will have been obtained.

7. Grantee shall provide access by the State upon 24-hours' notice to determine if Project work is in accordance with the approved Project Scope, including a final inspection upon Project completion.

8. Prior to the commencement of any work, Grantee agrees to submit in writing to the State for prior approval any deviation from the original Project Scope per Exhibit A and the Application. Changes in Project Scope must continue to meet the need cited in the original application or they will not be approved. Any modification or alteration in the Project as set forth in the Application on file with the State must be submitted to the State for approval. Any
modification or alteration in the Project must also comply with all current laws and regulations, including but not limited to CEQA.

9. Grantee shall provide for public access and/or educational features where feasible.

10. Grantee must have (1) fee title, (2) leasehold, or (3) other interest to Project lands and demonstrate to the satisfaction of the State that the proposed Project will provide public benefits that are commensurate with the type and duration of the interest in land. Any acquisition of Project lands by Grantee following award shall not involve eminent domain proceedings or threat of eminent domain proceedings.

11. Grantee shall promptly provide photographs of the site during and after implementation of Project at the request of the State.

C. Project Costs

1. Any Grant Funds provided to Grantee under this Agreement will be disbursed for eligible costs, on a reimbursement basis, as follows, but shall not exceed in any event the amount set forth on the signature page of this Agreement:

   a. Approved direct management costs or construction and Development costs. Up to ten percent (10%) of the reimbursement amount will be held back and issued as a final payment upon completion of the Project.

   b. Remaining Grant Funds shall be paid up to the total amount of the Grant Funds or the actual Project cost, whichever is less, upon completion of the Project, receipt of a detailed summary of Project costs from the Grantee found to be satisfactory by the State, and the satisfactory completion of a site inspection by the State.

2. Payment Documentation:

   a. All payment requests must be submitted using a completed Payment Request Form. This form must be accompanied by an itemized list of all expenditures that clearly documents the check numbers, dates, recipients, line-item description as described in the Project Budget approved by the State and amounts. Each payment request must also include proof of payment such as receipts, paid invoices, canceled checks or other forms of documentation demonstrating payment has been made.

   b. Any payment request that is submitted without the required itemization and documentation will not be authorized. If the payment request package is incomplete, inadequate or inaccurate, the State will inform the Grantee and hold the payment request until all required information is received or corrected. Any penalties imposed on the Grantee by a contractor, or other consequence, because of delays in payment will be paid by the Grantee and is not reimbursable under this Agreement.

3. Grant Funds in this award have a limited period in which they must be expended. Grantee expenditures funded by the State must occur within the time frame of the Project Performance Period as indicated in this Agreement.

4. Except as otherwise provided herein, the Grantee shall expend Grant Funds in the manner described in the Exhibit A approved by the State. The total dollars of a category in the Project Budget may be increased by up to ten percent (10%) through a reallocation of funds from another category, without approval by the State. However, the Grantee shall notify the State in writing when any such reallocation is made, and shall identify both the item(s) being increased and those being decreased. Any cumulative increase or decrease of more than ten percent (10%) from the original budget in the amount of a category must be approved by the State. In any event, the total amount of the Grant Funds may not be increased, nor may any
adjustments exceed the limits for management costs as described in the Application Guidelines.

D. Project Administration

1. Grantee shall promptly provide Project reports and/or photographs upon request by the State. In any event Grantee shall provide the State a report showing total final Project expenditures with the final payment request and required closing documents.

2. Grantee shall make property and facilities acquired or developed pursuant to this Agreement available for inspection upon request by the State.

3. Grantee shall use any income earned by the Grantee from use of the Project to further Project purposes, or, if approved by the State, for related purposes within the jurisdiction.

4. Grantee shall submit all documentation for Project completion, including a notice of completion as applicable and final reimbursement within ninety (90) days of Project completion, but in no event any later than May 1, 2018.

5. Final payment is contingent upon State verification that Project is consistent with Project Scope as described in Exhibit A, together with any State approved amendments.

6. This Agreement may be amended by mutual agreement in writing between Grantee and State. Any request by the Grantee for amendments must be in writing stating the amendment request and reason for the request. The Grantee shall make requests in a timely manner and in no event less than sixty (60) days before the effective date of the proposed amendment.

7. Grantee must report to the State all sources of other funds for the Project.

E. Project Termination

1. Prior to the completion of Project construction, either party may terminate this Agreement by providing the other party with thirty (30) days’ written notice of such termination. The State may also terminate this Grant Agreement for any reason at any time if it learns of or otherwise discovers that there is a violation of any state or federal law or policy by Grantee which affects performance of this or any other grant agreement or contract entered into with the State.

2. If the State terminates without cause the Agreement prior to the end of the Project Performance Period, the Grantee shall take all reasonable measures to prevent further costs to the State under this Agreement. The State shall be responsible for any reasonable and non-cancelable obligations incurred by the Grantee in the performance of the Agreement prior to the date of the notice to terminate, but only up to the undisbursed balance of funding authorized in this Agreement.

3. If the Grantee fails to complete the Project in accordance with this Agreement, or fails to fulfill any other obligations of this Agreement prior to the termination date, the Grantee shall be liable for immediate repayment to the State of all amounts disbursed by the State under this Agreement, plus accrued interest and any further costs related to the Project. The State may, at its sole discretion, consider extenuating circumstances and not require repayment for work partially completed provided that the State determines it is in the State’s best interest to do so. This paragraph shall not be deemed to limit any other remedies available to the State for breach of this Agreement.

4. Failure by the Grantee to comply with the terms of this Agreement or any other Agreement under the Streets and Highway Code may be cause for suspension of all obligations of the State hereunder.
5. Failure of the Grantee to comply with the terms of this Agreement shall not be cause for suspending all obligations of the State hereunder if, in the judgment of the State, such failure was due to no fault of the Grantee. At the discretion of the State, any amount required to settle at minimum cost any irrevocable obligations properly incurred shall be eligible for reimbursement under this Agreement.

6. Because the benefit to be derived by the State, from the full compliance by the Grantee with the terms of this Agreement, is the for the purposes as stated in the application for the people of the State of California, and because such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished by the State by way of Grant Funds under the provisions of this Agreement, the Grantee agrees that payment by the Grantee to the State of an amount equal to the amount of the Grant Funds disbursed under this Agreement by the State would be inadequate compensation to the State for any breach by the Grantee of this Agreement. The Grantee further agrees therefore, that the appropriate remedy in the event of a breach by the Grantee of this Agreement shall be the specific performance of this Agreement, unless otherwise agreed to by the State.

F. Hold Harmless

1. Grantee shall waive all claims and recourse against the State, including the right to contribution for loss or damage to persons or property arising from, growing out of or in any way connected with or incident to this Agreement, except claims arising from the gross negligence of State, its officers, agents and employees.

2. Grantee shall indemnify, hold harmless and defend State, its officers, agents and employees in perpetuity against any and all claims, demands, damages, costs, expenses or liability costs arising out of the Project, including Development, construction, operation or maintenance of the property described in the Project description which claims, demands or causes of action arise under Government Code Section 895.2 or otherwise, including but not limited to items to which the Grantee has certified, except for liability arising out of the gross negligence of State, its officers, agents or employees. Grantee acknowledges that it is solely responsible for compliance with items to which it has certified.

3. Grantee and State agree that in the event of judgment entered against the State and Grantee because of the gross negligence of the State and Grantee, their officers, agents or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Neither party shall request a jury apportionment.

G. Financial Records

1. Grantee shall maintain satisfactory financial accounts, documents and records for the Project and to make them available to the State for auditing at reasonable times. Grantee shall also retain such financial accounts, documents and records for three (3) years after final payment and one (1) year following an audit.

2. Grantee agrees that during regular office hours, the State and its duly authorized representatives shall have the right to inspect and make copies of any books, records or reports of the Grantee pertaining to this Agreement or matters related thereto. Grantee shall maintain and make available for inspection by the State accurate records of all of its costs, disbursements and receipts with respect to its activities under this Agreement.

3. Grantee shall use applicable Generally Accepted Accounting Principles, unless otherwise agreed to by the State.
H. Use of Facilities

1. The real property (including any portion of it or any interest in it) may not be sold or transferred without the written approval of the State of California, acting through the Natural Resources Agency, or its successor, provided that such approval shall not be unreasonably withheld as long as the purposes for which the Grant was awarded are maintained.

2. Grantee shall maintain, operate and use the Project in fulfillment of the purpose funded pursuant to this Grant for a minimum 20 YEARS, consistent with the Land Tenure/Site Control requirements included in the Application Guidelines. The Grantee, or the Grantee's successor in interest in the property, may assign without novation the responsibility to maintain and operate the property in accordance with this requirement only with the written approval of the State. Grantee may be excused from its obligations for operation and maintenance of the Project site only upon the written approval of the State for good cause. "Good cause" includes, but is not limited to, natural disasters that destroy the Project improvements and render the Project obsolete or impracticable to rebuild.

3. Grantee shall use the property for the purposes for which the Grant was made and shall make no other use or sale or other disposition of the property. This Agreement shall not prevent the transfer of the property from the Grantee to a Public Agency, if the successor Public Agency assumes the obligations imposed by this Agreement.

4. If the use of the property is changed to a use that is not permitted by the Agreement, or if the property is sold or otherwise disposed of, at the State's sole discretion, an amount equal to (1) the amount of the Grant (2) the Fair Market Value of the real property, or (3) the proceeds from the sale or other disposition, whichever is greater, may be reimbursed to the State. If the property sold or otherwise disposed of is less than the entire interest in the property funded in the Grant, an amount equal to either the proceeds from the sale or other disposition of the interest or the Fair Market Value of the interest sold or otherwise disposed of, whichever is greater, shall be reimbursed to the State.

5. The Grantee shall not use or allow the use of any portion of the real property for mitigation without the written permission of the State.

6. The Grantee shall not use or allow the use of any portion of the real property as security for any debt.

I. Nondiscrimination

1. The Grantee shall not discriminate against any person on the basis of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave in the use of any property or facility acquired or developed pursuant to this Agreement.

2. The Grantee shall not discriminate against any person on the basis of residence except to the extent that reasonable difference in admission or other fees may be maintained on the basis of residence and pursuant to law.

3. The completed Project and all related facilities shall be open to members of the public generally, except as noted under the special provisions of this Agreement or under provisions of the Streets and Highway Code.

J. Application Incorporation
The Grant Guidelines and the Application and any subsequent changes or additions to the Application approved in writing by the State are hereby incorporated by reference into this Agreement as though set forth in full in this Agreement.

K. Severability

If any provision of this Agreement or the application thereof is held invalid, that invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are severable.

L. Waiver

No term or provision hereof will be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing and signed on behalf of the party against whom the waiver is asserted. No consent by either party to, or waiver of, a breach by either party, whether expressed or implied, will constitute consent to, waiver of or excuse of any other, different or subsequent breach by either party.

M. Assignment

Except as expressly provided otherwise, this Agreement is not assignable by the Grantee either in whole or in part.

N. Disputes

If the Grantee believes that there is a dispute or grievance between Grantee and the State arising out of or relating to this Agreement, the Grantee shall first discuss and attempt to resolve the issue informally with the Agency Grants Administrator. If the issue cannot be resolved at this level, the Grantee shall follow the following procedures:

1. If the issue cannot be resolved informally with the Agency Grants Administrator, the Grantee shall submit, in writing, a grievance report together with any evidence to the Deputy Assistant Secretary for Bonds and Grants for the Natural Resources Agency. The grievance report must state the issues in the dispute, the legal authority, or other basis for the Grantee’s position and the remedy sought. Within ten (10) working days of receipt of the written grievance report from the Grantee, the Deputy Assistant Secretary shall make a determination on the issue(s) and shall respond in writing to the Grantee indicating the decision and reasons therefore. Should the Grantee disagree with the Deputy Assistant Secretary’s decision, the Grantee may appeal to the Assistant Secretary for Administration and Finance for the Natural Resources Agency.

2. The Grantee must submit a letter of appeal to the Assistant Secretary explaining why the Deputy Assistant Secretary’s decision is unacceptable. The letter must include, as an attachment, copies of the Grantee’s original grievance report, evidence originally submitted, and response from the Deputy Assistant Secretary. The Grantee’s letter of appeal must be submitted within ten (10) working days of the receipt of the Deputy Assistant Secretary’s written decision. The Assistant Secretary or designee shall, within twenty (20) working days of receipt of Grantee’s letter of appeal, review the issues raised and shall render a written decision to the Grantee. The decision of the Assistant Secretary or designee shall be final.

O. Audit Requirements

Grant projects are subject to audit by the State annually and for three (3) years following the final payment of Grant Funds. The audit shall include all books, papers, accounts, documents, or other records of the Grantee, as they relate to the Project for which the Grant Funds were granted.