

AGENDA
SPECIAL MEETING OF THE BOARD OF DIRECTORS
HUMBOLDT BAY DEVELOPMENT ASSOCIATION, INC.

DATE: June 20, 2024

TIME: 3:00 PM

PLACE: Join Zoom Meeting
<https://us02web.zoom.us/j/6917934402>

Meeting ID: 691 793 4402
One tap mobile
(669) 900-9128, 6917934402# US

1. Call to Order Special Session and Roll Call

2. 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 Directors. 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 or the Presiding Member of the Board. The three (3) minute time limit for each speaker may be enforced by the President of the Board or the Presiding Member of the Board.

3. Consent Calendar

- a) **Adopt Minutes for May 22, 2024 Special Board Meeting**

4. Business

- a) **Authorize an Agreement to Mutually Terminate Ground and Operating Leases Following Successful Completion of New Market Tax Credit Investments by and between the Humboldt Bay Harbor, Recreation and Conservation District and the Humboldt Bay Development Association**
- b) **Consider Approval of an Agreement for Administrative Services with the Humboldt Bay Harbor, Recreation and Conservation District for FY 2024-2025**
- c) **Adopt Budget for Fiscal Year 2024-2025**

5. Adjournment

**DRAFT MINUTES
SPECIAL MEETING OF THE BOARD OF DIRECTORS
HUMBOLDT BAY DEVELOPMENT ASSOCIATION, INC.**

May 22, 2024

PRESENT:

Richard Marks
Aaron Newman
Dale Unea
Leroy Zerlang

ABSENT:

Patrick Higgins

The Special Meeting of the Board of Directors was called to order at 3:03 PM

PUBLIC COMMENT: None

CONSENT CALENDAR

a) Adopt Minutes for March 20, 2024 Regular Board Meeting

DIRECTOR MARKS MOVED TO APPROVE THE CONSENT CALENDAR.

DIRECTOR NEWMAN SECONDED.

VOICE VOTE WAS CALLED, MOTION CARRIED.

AYES: MARKS, NEWMAN, UNEA, ZERLANG

NOES: HIGGINS

ABSENT: NONE

ABSTAIN: NONE

NEW BUSINESS

a) Adopt Audit Report for Fiscal Year 2022-2023

Item presented by District Staff.

The Board Discussed the item.

Chair Zerlang opened the item to public comment, no one commented.

Chair Zerlang moved the discussion back to the board.

DIRECTOR MARKS MOVED TO ADOPT THE AUDIT REPORT FOR FISCAL YEAR 2022-2023

DIRECTOR UNEA SECONDED.

VOICE VOTE WAS CALLED, MOTION CARRIED.

AYES: MARKS, NEWMAN, UNEA, ZERLANG

NOES: HIGGINS

ABSENT: NONE

ABSTAIN: NONE

b) Adopt Preliminary Budget for Fiscal Year 2024-2025

Item presented by District staff.

The Board Discussed the item.

Chair Zerlang opened the item to public comment, no one commented.

Chair Zerlang moved the discussion back to the board.

DIRECTOR NEWMAN MOVED TO ADOPT THE PRELIMINARY BUDGET FOR FISCAL YEAR 2023-2024.

DIRECTOR UNEA SECONDED.

VOICE VOTE WAS CALLED, MOTION CARRIED.

AYES: MARKS, NEWMAN, UNEA, ZERLANG

NOES: HIGGINS

ABSENT: NONE

ABSTAIN: NONE

c) Humboldt Bay Development Association Lease

Item presented by District Staff.

The Board Discussed the item.

Chair Zerlang opened the item to public comment, no one commented.

Chair Zerlang moved the discussion back to the board.

Discussion item only, no formal action was taken.

The meeting was adjourned at 3:10 PM

APPROVED BY:

RECORDED BY:

Dale Unea
Secretary
Humboldt Bay Development Association

Mindy Hiley
Director of Administrative Services
Humboldt Bay Harbor District

COMMISSIONERS

1st Division

Aaron Newman

2nd Division

Greg Dale

3rd Division

Stephen Kullmann

4th Division

Craig Benson

5th Division

Patrick Higgins

Humboldt Bay
Harbor, Recreation and Conservation District
(707)443-0801
P.O. Box 1030
Eureka, California 95502-1030



STAFF REPORT
HARBOR DISTRICT MEETING
June 22, 2024

TO: Honorable Board President and Development Association Board Members

FROM: Chris Mikkelsen, Executive Director

DATE: June 3, 2024

TITLE: Authorize an Agreement to Mutually Terminate Ground and Operating Leases Following Successful Completion of New Market Tax Credit Investments by and between the Humboldt Bay Harbor, Recreation and Conservation District and the Humboldt Bay Development Association

STAFF RECOMMENDATION: Staff recommends the Board Authorize an Agreement to Mutually Terminate Ground and Operating Leases Between the Humboldt Bay Harbor, Recreation and Conservation District and the Humboldt Bay Development Association effective June 30, 2024.

SUMMARY: In March of 2016, the Humboldt Bay Harbor District (District), in partnership with the Humboldt Bay Development Association (HBDA), invested in and entered into a New Market Tax Credit (NMTC) loan fund for ongoing site clean-up and capital improvements of the vacant former Evergreen Pulp Mill. Such an agreement required the District and HBDA to enter into certain credit and lease agreements to carry out the intended improvements to which both parties have faithfully performed and successfully completed all of its respective obligations and wish to terminate those certain agreements.

DISCUSSION: Whereas certain resulting actions left the District as a tenant of HBDA and HBDA as a debtor of the District, and whereas HBDA has faithfully performed all of its obligations and covenants of those certain credit and lease agreements, and whereas the District has faithfully performed all of its obligations and covenants of those certain credit and lease agreements, and whereas the parties entered into an agreement to Stay Rent and Loan Payments to allow time to consideration of a wind-down, the parties now have set forth this Agreement to Mutually Terminate Ground and Operating Leases Following Successful Completion of New Market Tax Credit Investments.

ATTACHMENTS

- A. Agreement To Mutually Terminate Ground and Operating Leases Following Successful Completion of New Market Tax Credit Investments**

**AGREEMENT TO MUTUALLY TERMINATE
GROUND AND OPERATING LEASES
FOLLOWING SUCCESSFUL COMPLETION OF
NEW MARKET TAX CREDIT INVESTMENTS**

THIS AGREEMENT TO MUTUALLY TERMINATE GROUND AND OPERATING LEASES is made effective as of June 30, 2024 (“Effective Date”), by and between the Humboldt Bay Harbor, Recreation, and Conservation District (“District”), a California special district, and the Humboldt Bay Development Association (“HBDA”), a California non-profit corporation. The District and HBDA may be referred to individually as a “Party” or collectively as the “Parties”.

RECITALS

WHEREAS, the District is special district formed pursuant to Appendix 2 of the California Harbors and Navigation Code;

WHEREAS, HBDA is a duly formed and operating public benefit corporation, focused on promoting development in and around Humboldt Bay for the benefit of the local community;

WHEREAS, in order to facilitate the rehabilitation of certain real property owned by the District on the Samoa Peninsula, the District caused HBDA to be formed and thereafter partnered with HBDA to obtain New Market Tax Credits loan funds in the principal amount of \$8,680,000.00 (“Loan”), which funds were used to rehabilitate portions of the District’s property;

WHEREAS, reference is made to that certain Credit Agreement (“Loan Agreement”) dated as of March 9, 2016, by and among New Markets Community Capital XVII, LLC, a Delaware limited liability company (“NMCC”), as lender, CNMC SUB-CDE 69, LLC, a Delaware limited liability company (“CNMC”), as lender, and HBDA, as borrower, dated March 9, 2016, under which HBDA entered into that certain Leasehold Deed of Trust, Security Agreement, Assignment of Rents and Fixture Filing dated March 9, 2016, in favor of NMCC and CNMC (collectively referred to herein as the “Leasehold Mortgage”);

WHEREAS, in order to facilitate the receipt of the loan funds, the District leased certain real property to HBDA by way of that Ground Lease dated March 9, 2016, for a period of 65 years (the “Ground Lease”); in turn, to allow the District to possess, manage, and rehabilitate the property, HBDA sub-leased the real property to the District by way of that Operating Lease dated March 9, 2016 (the “Operating Lease”);

WHEREAS, pursuant to the Ground Lease, at commencement of the lease term, HBDA made a lump sum payment to the District in the amount of \$3,906,000.00, which HBDA received through the Loan;

WHEREAS, pursuant to the Operating Lease, the District was obligated to pay monthly rent to HBDA in the amounts set forth in Exhibit B to the Operating Lease, which rent payments HBDA used to make payments on the Loan;

WHEREAS, in accordance with the Credit Agreement and the New Market Tax Credit program, HBDA has successfully completed its obligations owed to NMCC and CNMC, and each assigned to Chase NMTC Samoa Investment Fund, LLC, a Delaware limited liability company (“Samoa LLC”), their collective interest in the Leasehold Mortgage, as more particularly set forth in that Assignment of Leasehold Deed of Trust dated March 10, 2023 (“Assignment”), and recorded as Document Number 2023-005958 in the Official Records of Humboldt County on May 10, 2023;

WHEREAS, pursuant to that NMTC Exit Agreement dated March 10, 2023 (“Exit Agreement”), and the Fund Interest Purchase Agreement dated March 10, 2023, the District holds a 100% membership interest in Samoa LLC;

WHEREAS, pursuant to that Release of Leasehold Deed of Trust, Security Agreement, Assignment of Rents and Fixture Filing dated March 10, 2023 (“Release and Reconveyance”), and recorded as Document No. 2023-005959 in the Official Records of Humboldt County on May 10, 2023, Samoa LLC fully released and reconveyed to HBDA its interest in Leasehold Mortgage following the Assignment;

WHEREAS, Samoa LLC, having completed its obligations and purposes under the above-referenced documents, was dissolved as an entity by way of that Certificate of Cancellation dated May 9, 2023;

WHEREAS, pursuant to that Agreement to Stay Loan and Rent Payment Obligations dated October 12, 2023, as amended by written agreement dated March 31, 2024, between the District and HBDA (collectively, the “Stay Agreement”), HBDA relieved the District of its obligations under the Operating Agreement to make payments of monthly rent and, in turn, the District relieved HBDA of its obligations under the Loan Agreement to make payments on the Loan through June 30, 2024;

WHEREAS, in light of the fact that HBDA has successfully completed its obligations owed to NMCC and CNMC and such lenders have assigned to Samoa LLC all right, title and interest in the Loan, the District and HBDA desire to provide for the orderly dissolution and winding up of the Ground Lease and Operating Lease and discharge any remaining debt obligations under the Loan.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Termination of the Ground Lease. The District and HBDA mutually agree that, as of 11:59 PM (local time) on June 30, 2024, the Ground Lease shall terminate and be of no further force and effect, except that any terms or conditions in the Ground Lease that are expressly stated to survive the expiration or sooner expiration of the Ground Lease shall remain effective. The Parties agree that HBDA will execute and the District may record in the Official Records of Humboldt County a memorandum providing notice of the termination of the Ground Lease in the form attached hereto as *Exhibit A*.

2. Termination of Operating Lease. The District and HBDA mutually agree that, as of 11:59 PM (local time) on June 30, 2024, the Operating Lease shall terminate and be of no further

force and effect, except that any terms or conditions in the Operating Lease that are expressly stated to survive the expiration or sooner expiration of the Operating Lease shall remain effective. The Parties further agree and acknowledge that any payments of rent (or other monetary obligations) due under the Operating Lease that were stayed by way of the Stay Agreement shall be fully discharged and deemed waived by HBDA.

4. Agreement to Cooperate. The District and HBDA agree to cooperate with one another to effect the termination of the Ground and Operating Lease, including, without limitation, (i) providing notice to any sublessees of the subject property; (ii) assisting in the preparation of audit reports for any unaudited fiscal years during the term of the Operating Lease; (iii) assisting in the preparation of any outstanding tax returns; and (iv) such further things as may be necessary to effectuate the intent of this Agreement.

5. Loan Forgiveness. In consideration for HBDA's agreement to terminate the Operating Lease, thereby relieving the District of the obligation to make further payments of rent under the Operating Agreement, the District agrees that, as of June 30, 2024, and conditioned upon HBDA making one final payment on the Loan to the District in the amount of \$39,166.19 on or before June 30, 2024, any remaining debt owed by HBDA to the District under the Loan shall be deemed discharged in full.

6. Authority. Each Party hereto represents and warrants to the other that the individual executing this Agreement has the requisite authority to execute this Agreement and that the approval of this Agreement has complied, in all respects, with any obligations of law.

[SIGNATURE PAGE FOLLOWS THIS PAGE]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized person of each party hereto as of the date first above written.

HUMBOLDT BAY DEVELOPMENT
ASSOCIATION, INC., a California nonprofit public
benefit corporation

By: _____
Name: _____
Its: _____

HUMBOLDT BAY HARBOR, RECREATION
AND CONSERVATION DISTRICT, a California
public entity

By: _____
Greg Dale
President

Exhibit A

PREPARED BY AND
WHEN RECORDED RETURN TO:

RYAN T. PLOTZ

THE MITCHELL LAW FIRM, LLP
426 FIRST STREET
EUREKA, CA 95501

MEMORANDUM OF TERMINATION OF GROUND LEASE

This Memorandum of Termination of Ground Lease (this “Memorandum”) is entered into as of June 30, 2024, by and between the Humboldt Bay Harbor, Recreation, and Conservation District (“District”), a California special district, and the Humboldt Bay Development Association (“HBDA”), a California non-profit corporation. Landlord and Tenant entered into that certain Ground Lease dated March 9, 2016 (the “Lease”) with respect to that real property particularly described on Exhibit A hereto and incorporated herein.

By way of that certain AGREEMENT TO MUTUALLY TERMINATE GROUND AND OPERATING LEASES dated and made effective as of June 30, 2024, the parties hereto desire to execute this Memorandum for the purpose of giving record notice of the fact of the mutual termination of the above described Lease as of 11:59 PM on June 30, 2024, as provided for therein in lieu of recording the Agreement itself and is not intended to modify, limit or otherwise alter the terms, conditions and provisions of the Agreement.

This Memorandum shall extend to and be binding upon the parties hereto and their legal representatives, heirs, successors and assigns.

[Signatures on following page]

Executed as a sealed instrument as of the date first above written.

HUMBOLDT BAY DEVELOPMENT
ASSOCIATION, INC., a California nonprofit public
benefit corporation

By: _____
Name: _____
Its: _____

HUMBOLDT BAY HARBOR, RECREATION
AND CONSERVATION DISTRICT, a California
public entity

By: _____
Greg Dale
President

[INSERT NOTARY ACKNOWLEDGMENTS]

EXHIBIT A

[INSERT LEGAL DESCRIPTION FROM GROUND LEASE]

AGREEMENT FOR SERVICES

Between

Humboldt Bay Harbor, Recreation and Conservation District
and Humboldt Bay Development Association, Inc.

Whereas the Humboldt Bay Harbor, Recreation and Conservation District (Harbor District), has complied with all federal, state, and local laws regarding business permits and licenses of any kind that may be required to carry out the said business and the task to be performed under this agreement.

Whereas, Humboldt Bay Development Assn, Inc. (HBDA) intends to contract with the Harbor District for assistance with accounting services, THEREFORE, IN CONSIDERATION OF THE FOREGOING REPRESENTATIONS, AND THE FOLLOWING TERMS AND CONDITIONS, THE PARTIES AGREE:

1. **SERVICES TO BE PERFORMED.** HBDA engages the Harbor District to perform on-going general accounting duties, preparation of interim financial statements, attendance at Board Meetings, participation in annual audit, and compliance reporting for New Market Tax Credits as well as other administrative and clerical duties.
2. **TERM OF CONTRACT.** This contract is for a one-year period beginning July 1, 2024 and ending June 30, 2025.
3. Services will be charged on a quarterly basis.
4. **TERMS OF PAYMENT.** HBDA shall pay the Harbor District \$1,600 annually in quarterly installments for satisfactory work done during each quarter of the fiscal year.
5. **INSTRUMENTALITIES.** The Harbor District shall supply materials and supplies to cover the designated tasks, unless HBDA staff direct otherwise. All original records shall remain the property of HBDA.
6. **GENERAL SUPERVISION.** The Harbor District retains the sole right to control or direct the manner in which the services described herein are to be accomplished. Subject to the foregoing, HBDA reserves the right to inspect, to stop work, to prescribe alterations and generally review the work to ensure its conformity with that specified herein.
7. **NO PAYROLL OR EMPLOYEMENT TAXES.** No payroll or employment taxes of any kind shall be withheld or paid with respect to payments to the Harbor District.
8. **NO WORKER'S COMPENSATION.** No worker's compensation insurance has been or will be obtained by HBDA on account of any Harbor District representatives.
9. **CONFIDENTIALITY.** During this project, the Harbor District will receive confidential information. The Harbor District will ensure the confidentiality of such information, which shall be disclosed only on a "need to know" basis. Harbor District staff will work directly with HBDA Board President, HBHRCD Executive Director, or any individuals/groups they may authorize.
10. **TERMINATION.** This agreement may be terminated by either party for cause, at any time, with thirty-day written notice.

Agreed to on this _____ day of June 2024, Eureka, California.

Humboldt Bay Harbor, Recreation and
Conservation District

Humboldt Bay Development Assn, Inc.

BY: _____

BY: _____

Chris Mikkelsen
Executive Director

Leroy Zerlang
President

Humboldt Bay Development Association, Inc.
Profit & Loss Budget Overview
July 2023 through June 2024

	Jul 23	Aug 23	Sep 23	Oct 23	Nov 23	Dec 23	Jan 24	Feb 24	Mar 24	Apr 24	May 24	Jun 24	TOTAL
Income													
Interest Income	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Rental Income	0.00	0.00	0.00	0.00	0.00	0.00							0.00
Total Income	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Expense													
Depreciation Expense	0.00	0.00	0.00	0.00	0.00	0.00							0.00
Interest Expense													
Cnmc Sub-Cde 69	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Loan Amortization	0.00	0.00	0.00	0.00	0.00	0.00							0.00
New Markets Comm Cap Xvii	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
NMCC fee reserve	0.00	0.00	0.00	0.00	0.00	0.00							0.00
Total Interest Expense	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
NMTC Transaction Cost							0.00	0.00	0.00	0.00	0.00	0.00	0.00
Operating Expenses													
General & Admin													
Bank Charges/Fees	75.00	75.00	75.00	75.00	75.00	75.00	75.00	75.00	75.00	75.00	75.00	75.00	900.00
Licenses & Fees	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	100.00	100.00
General & Admin - Other	0.00	0.00	400.00	0.00	0.00	400.00	0.00	0.00	400.00	0.00	0.00	400.00	1,600.00
Total General & Admin	75.00	75.00	475.00	75.00	75.00	475.00	75.00	75.00	475.00	75.00	75.00	575.00	2,600.00
Legal & other prof fees													
Audit fees	0.00	0.00	4,250.00	0.00	0.00	0.00	0.00	4,000.00	0.00	0.00	0.00	0.00	8,250.00
Tax Preparation	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,400.00	1,400.00
Legal & other prof fees - Other							0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total Legal & other prof fees	0.00	0.00	4,250.00	0.00	0.00	0.00	0.00	4,000.00	0.00	0.00	0.00	1,400.00	9,650.00
Operating Expenses - Other							0.00	0.00	0.00	0.00	0.00	0.00	0.00
Total Operating Expenses	75.00	75.00	4,725.00	75.00	75.00	475.00	75.00	4,075.00	475.00	75.00	75.00	1,975.00	12,250.00
Total Expense	75.00	75.00	4,725.00	75.00	75.00	475.00	75.00	4,075.00	475.00	75.00	75.00	1,975.00	12,250.00
Net Income	-75.00	-75.00	-4,725.00	-75.00	-75.00	-475.00	-75.00	-4,075.00	-475.00	-75.00	-75.00	-1,975.00	-12,250.00