

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

DATE: August 17, 2022

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 Regular Session 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 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.

4. Consent Calendar

- a) Adopt Minutes for July 20, 2022 Regular Board Meeting

5. Non-Agenda

6. Unfinished Business

- a) Restructure of Rental Agreement at RMT II
- b) Update on Samoa Peninsula Current and Long-Range Development Opportunities and the County's Enhanced Infrastructure Finance District

Agenda for August 17, 2022 Regular Board Meeting

- c) Update on New Market Tax Credit Loan Termination Timeline, Process, Preliminary Cost

7. New Business

- a) Consider Approval of an Earnest Money Funding Agreement and Grant of Assignment and Purchase Option with the Humboldt Bay Harbor, Recreation and Conservation District

8. Communications and Reports

- a) Executive Director's Report
- b) Staff Reports
- c) Board Reports

9. Adjournment

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

July 20, 2022

PRESENT:

Dale Unea
Richard Marks
Leroy Zerlang – arrived at 3:10 PM

ABSENT:

Patrick Higgins

The Meeting of the Board of Directors was called to order at 3:00 PM

PUBLIC COMMENT: None

ADDITION OF NEW BUSINESS ITEM 7A.

CONSENT CALENDAR

a) Adopt Minutes for May 15, 2022 Regular Board Meeting

DIRECTOR ZERLANG MOVED TO APPROVE THE CONSENT CALENDAR.

DIRECTOR UNEA SECONDED.

ROLL CALL VOTE WAS CALLED, MOTION CARRIED.

AYES: MARKS, UNEA, ZERLANG

NOES: NONE

ABSENT: HIGGINS

ABSTAIN: NONE

NON-AGENDA: None

UNFINISHED BUSINESS:

a) Restructure of Rental Agreement at RMT II

Item presented by L. Oetker, District Staff.

The Board discussed the item.

Item was opened to public comment; no one commented.

Discussion only, no formal action was taken.

b) Update on Samoa Peninsula Current and Long-Range Development Opportunities and the County's Enhanced Infrastructure Finance District

Item presented by L. Oetker.

The Board discussed the item.

Item was opened to public comment; no one commented.

Discussion only, no formal action was taken.

c) Update on New Market Tax Credit Loan Termination Timeline, Process, Preliminary Cost

Nothing new to report.

Item was opened to public comment; no one commented.

NEW BUSINESS:

a) Consider Adopting Resolution No. 2022-01, A Resolution Designating Appointment and Regular Meeting Schedule for Calendar Year 2022

Item presented by District Staff.

The Board Discussed the item.

Item was opened to public comment, no one commented.

DIRECTOR ZERLANG MOVED TO APPROVE THE CONSENT CALENDAR.

DIRECTOR UNEA SECONDED.

ROLL CALL VOTE WAS CALLED, MOTION CARRIED.

AYES: MARKS, UNEA, ZERLANG

NOES: NONE

ABSENT: HIGGINS

ABSTAIN: NONE

COMMUNICATIONS AND REPORTS

a) Executive Director's Report – None

b) Staff Reports – Staff reported on recent activities

c) Board Reports – Board members reported on recent activities

The meeting was adjourned at 3:30 PM

APPROVED BY:

RECORDED BY:

Patrick Higgins
Secretary
Humboldt Bay Development Association

Mindy Hiley
Director of Administrative Services
Humboldt Bay Harbor District

STAFF REPORT
DEVELOPMENT ASSOCIATION MEETING
August 17, 2022

TO: Humboldt Bay Development Association Board Members

FROM: Larry Oetker, Executive Director

DATE: August 11, 2022

TITLE: Consider Approval of an Earnest Money Funding Agreement and Grant of Assignment and Purchase Option

STAFF RECOMMENDATION: Authorize the President of the Board of the Humboldt Bay Development Association to sign the Earnest Money Funding Agreement and Grant of Assignment and Purchase Option Agreement.

SUMMARY: In an effort to support and facilitate the Humboldt Bay Harbor District's contemplated development of a heavy lift port in Humboldt Bay to support offshore, sustainable wind energy development, the Humboldt Bay Development Association entered into a Purchase Agreement with Samoa Pacific Group LLC in May 2022 to acquire approximately 35 acres of property generally described as APN 401-031-083. The Agreement will provide \$50,000 in funding for the deposit associated with this purchase from the Harbor District with an option to purchase the property within five years.

DISCUSSION: The HBDA is a non-profit organization which was established by the Harbor District in 2016. The purpose of the HBDA is to "support and implement improvement in Samoa, California, and, in conjunction with other public agencies and nonprofit organizations, as appropriate, to promote the health and well-being of residents of Humboldt County through the environmental improvement and development of the Humboldt Bay Eco-Industrial Park Facilities".

The acquisition has been determined to be eligible for an exemption pursuant to CEQA Guidelines 15061.

ATTACHMENTS:

A Draft Earnest Money Funding Agreement and Grant of Assignment and Purchase Option

**EARNEST MONEY FUNDING AGREEMENT
AND
GRANT OF ASSIGNMENT AND PURCHASE OPTION**

THIS AGREEMENT (“Agreement”) is made effective as of August ____, 2022, by and between the HUMBOLDT BAY DEVELOPMENT ASSOCIATION, a non-profit public benefit corporation (“HBDA”) and the HUMBOLDT BAY HARBOR, RECREATION, AND CONSERVATION DISTRICT, a California special district (“District”). HBDA and the District may be referred to individually as a “Party” or collectively as the “Parties”.

RECITALS

The Parties enter into this Agreement in reference to the following Recitals of essential facts:

- A. The District was formed in 1970 to carry out its legislative purpose, which is for the acquisition, construction, maintenance, operation, development, and regulation of harbor works and improvements...for the development, operation, maintenance, control, regulation, and management of Humboldt Bay upon the tidelands and lands lying under the inland navigable waters of Humboldt Bay, for the promotion of national and international commerce, navigation, fisheries, and recreation thereon, and for the development and protection of the natural resources of the area;
- B. In or about 2016, the HBDA was incorporated a public benefit corporation to carry out its purpose, as set forth in its Articles of Incorporation, to “support and implement improvement in Samoa, California, and, in conjunction with other public agencies and nonprofit organizations, as appropriate, to promote the health and well-being of residents of Humboldt County through the environmental improvement and development of the Humboldt Bay Eco-Industrial Park Facilities;”
- C. In an effort to support and facilitate the District’s contemplated development of a heavy lift port in Humboldt Bay to support offshore, sustainable wind energy development, HBDA entered into an agreement with Samoa Pacific Group LLC in May 2022 (“Purchase Agreement”) to acquire the real property generally described as Humboldt APN 401-031-083 and particularly described as lot 135, as shown on Tract Map 665, recorded on August 18, 2021, in Book 25 of Maps, pages 127-141, in the Office of Recorder for the County of Humboldt, State of California (the “Real Property”);
- D. The Real Property is directly adjacent to the District’s existing property commonly referred to as Redwood Marine Terminal I, which fronts the Humboldt Bay;

- E. Pursuant to the terms of the Purchase Agreement, HBDA has the unqualified right to assign its rights under the Purchase Agreement upon notice to the seller thereunder;
- F. Pursuant to this Agreement, HBDA and the District desire to set forth the terms and conditions upon which the District may elect to take an assignment of the Purchase Agreement or purchase the Real Property, in either case upon its election.

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

1. Grant of Option. Subject to the terms and conditions of this Agreement, HBDA grants to the District an option, at the District's election, to:

- (a) take and assignment of the Purchase Agreement and to, thereafter, purchase the Real Property upon and subject to all terms and conditions of the Purchase Agreement ("Assignment Option"); or
- (b) purchase the Real Property from HBDA following HBDA's acquisition of the Real Property at the same purchase price as paid by HBDA under the Purchase Agreement ("Purchase Option").

The Assignment Option and the Purchase Option are collectively referred to as the "Option".

2. Consideration for the Option. In consideration for the Option, the District shall pay to HBDA the sum of fifty thousand dollars (\$50,000) ("Option Consideration") for HBDA to use at its earnest money deposit under the Purchase Agreement, provided:

- (a) If the District exercises the Assignment Option, the Option Consideration shall be assigned by HBDA to the District and applied to the purchase price payable by the District pursuant to the Purchase Agreement.
- (b) If the District exercises the Purchase Option, the Option Consideration shall be applied to the purchase price payable to HBDA.
- (c) If the District fails to exercise the Option, and HBDA does not purchase the Real Property pursuant to the Purchase Agreement, HBDA shall pay to the District any portion of its deposit returned to HBDA from escrow up to the full amount of the Option Consideration.
- (d) If the District fails to exercise the Option, and HBDA purchases the Real Property, the Option Consideration shall remain the property of HBDA.

3. Further Consideration for the Option. As additional consideration for the Option, the District shall, at its cost and expense, perform all necessary or desired due diligence under the Purchase Agreement, subject to the approval of HBDA.

4. Exercise of Option. Provided the District is not in default under this Agreement, the Option may be exercised by the District by delivering to HBDA written notice of the exercise (“Exercise Notice”), which shall state that the Option, as applicable, is exercised without condition or qualification, prior to the expiration of the following time periods:

(a) as to the Assignment Option, no later than ten (10) calendar days prior to the close of escrow under the Purchase Agreement;

(b) as to the Purchase Option, on or before five years following the close of escrow by HBDA under the Purchase Agreement.

5. Purchase Agreement. Upon the proper and timely exercise of the Purchase Option, the Parties shall execute a written purchase agreement containing the following materials terms, among other commercial reasonable and standard terms as would be typical of an agreement to purchase vacant land:

(a) Purchase Price. The Purchase Price shall be the same as stated in the Purchase Agreement plus applicable holding costs incurred by the HBDA.

(b) Escrow. Escrow shall be handled by Humboldt Land Title Company with no less than a 60-day escrow period;

(c) Condition of Title. The District’s review and approval of the condition of title;

(d) CEQA and NEPA. The District shall have the right to complete any required environmental review prior to closing;

(e) Due Diligence. The District shall have a limited right to conduct due diligence to determine if any material changes occurred to the Real Property following HBDA’s acquisition of the Real Property.

6. Representations and Warranties. Each Party makes the following representations and warranties to the other Party:

(a) The persons who have executed this Agreement have been authorized to do so by the Party on whose behalf the Party is signing. All documents to be delivered under this Agreement will be executed by an authorized person. Each Party has a good and legal right to enter into this Agreement and to perform all covenants of that Party contained in this Agreement.

(b) None of the warranties, representations, or statements made by any Party in this Agreement contain any untrue statements of material fact or omit a material fact necessary in order to make the statements not misleading. All representations and warranties of any Party shall be true on and as of the closing date with the same force as though made on and as of the closing date.

7. No Default by HBDA. HBDA shall exercise all reasonable diligence to ensure that it does not commit any act or omission that would constitute a default under the Purchase

Agreement. Further, in the event of HBDA's default, HBDA shall exercise diligence in curing the default during any applicable cure period.

8. Duty to Cooperate and Keep Informed. Each Party shall reasonably cooperate with the other Party in its performance under this Agreement and shall keep the other informed of any notices or material information received concerning the Real Property or that would affect the rights granted herein.

9. Time of Essence. Time is of the essence for this Agreement.

10. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

11. Amendment. This Agreement may not be amended or altered except by a written instrument executed by the Parties.

12. Partial Invalidity. Any provision of this Agreement that is unenforceable or invalid or the inclusion of which would adversely affect the validity, legality, or enforceability of this Agreement shall be of no effect, but all the remaining provisions of this Agreement shall remain in full force.

13. Exhibits. All attached exhibits are incorporated in this Agreement by this reference.

14. Integration. This Agreement contains the entire agreement between the parties, and expressly supersedes all previous or contemporaneous agreements, understandings, representations, or statements between the Parties respecting the Option.

15. Governing Law. The validity, meaning, and effect of this Agreement shall be determined in accordance with California laws.

16. Construction. Section headings are solely for the convenience of the Parties and are not a part of and shall not be used to interpret this Agreement. The singular form shall include the plural and vice versa. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties have prepared it.

17. Further Assurances. Whenever requested by the other Party, each Party shall execute, acknowledge, and deliver all further conveyances, agreements, confirmations, satisfactions, releases, powers of attorney, instruments of further assurance, approvals, consents, and all further instruments and documents as may be necessary, expedient, or proper to complete any conveyances, transfers, sales, and agreements covered by this Agreement, and to do all other acts and to execute, acknowledge, and deliver all requested documents to carry out the intent and purpose of this Agreement.

SIGNATURE PAGE FOLLOWS THIS PAGE

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

FOR THE DISTRICT:

FOR HBDA:

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____