

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

DATE: Tuesday, March 31, 2020

TIME: Special Session 5:00 P.M.
Executive Closed Session Immediately following Special Session

PLACE: Woodley Island Marina Meeting Room via Teleconference (712) 432-0220, Passcode 4430801#

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 at least 24 hours in advance of the meeting.

Limited seating will be available on site with consideration to social distancing guidelines.

1. Call to Order Special Session at 5:00 PM 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 act 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.

3. New Business

a) Receive Executive Director's Report

Recommendation: Staff recommends the Board: Receive a report and provide direction as necessary.

b) Receive Report and Receive Direction from the Board Regarding District Staffing, Administration, Procurement, and Setting Dates for Future Meetings in Response to COVID-19. (Roll Call Vote)

Recommendation: Staff recommends the Board: Receive a report and provide direction as necessary.

Summary: On March 11, 2020 Humboldt County Health Officer Teresa Francovich, MD declared a local health emergency. The Maritime Commerce and Commercial Fisheries are essential services. Staff will provide an update on the Harbor District operation and the Board will discuss and take action on items necessary to keep operations functioning during this emergency.

c) Approval of DG Fairhaven Lease Amendment

Recommendation: Staff recommends the Board Approve a lease amendment with DG Fairhaven for the use of the Harbor District's Ocean outfall discharge pipe. **(Roll Call Vote)**

Summary: The lease amendment authorized payments to be made monthly for the 12-month period beginning April 1, 2020 in lieu of the current annual advance payment.

4. Public Comment on Closed on Session Items

5. Adjournment

6. Move to Executive Closed Session

Agenda for March 31, 2020 Special Board Meeting

- a) CONFERENCE WITH REAL PROPERTY NEGOTIATORS. Terms of potential acquisition and/or lease of real property on the Samoa Peninsula, Humboldt County, with Assessor's Parcel Numbers, 401-112-021 and 401-112-024 California pursuant to California Government Code § 54956.8. District negotiators: Larry Oetker, Executive Director and Ryan Plotz, District Counsel. Negotiating party: California Marine Investments LLC. Under negotiation: price and payment terms.
- b) CONFERENCE WITH REAL PROPERTY NEGOTIATORS. Terms of potential acquisition and/or lease of real property on the Samoa Peninsula, Humboldt County, with Assessor's Parcel Numbers, 401-112-021 and 401-112-024 California pursuant to California Government Code § 54956.8. District negotiators: Larry Oetker, Executive Director and Ryan Plotz, District Counsel. Negotiating party: Green Cloud, Inc. Under negotiation: price and payment terms.
- c) CONFERENCE WITH REAL PROPERTY NEGOTIATORS. Terms of potential acquisition and/or lease of real property on the Samoa Peninsula, Humboldt County, with Assessor's Parcel Numbers, 307-101-002 California pursuant to California Government Code § 54956.8. District negotiators: Larry Oetker, Executive Director and Ryan Plotz, District Counsel. Negotiating party: Tod Reincke. Under negotiation: price and payment terms.
- d) CONFERENCE WITH LEGAL COUNSEL--EXISTING LITIGATION. (Paragraph (1) of subdivision (d) of Section 54956.9): Name of case: Humboldt Bay Harbor, Recreation and Conservation District v. Glasshouse Gardens, LLC, Humboldt Superior Court Case No. CV1901283.
- e) CONFERENCE WITH REAL PROPERTY NEGOTIATORS. Terms of potential purchase of real property with Assessor's Parcel Numbers 401-112-021, 401-112-030 on the Samoa Peninsula, Humboldt County, California pursuant to California Government Code § 54956.8. District negotiators: Larry Oetker, Executive Director and Ryan Plotz, District Counsel. Negotiating party: Jack Ferris. Under negotiation: price and payment terms.

7. Public Report, if any will be made available on the Harbor District website

8. Adjournment

COMMISSIONERS

1st Division

Larry Doss

2nd Division

Greg Dale

3rd Division

Stephen Kullmann

4th Division

Richard Marks

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
March 31, 2020

TO: Honorable Board President and Harbor District Board Members

FROM: Larry Oetker, Executive Director

DATE: March 27, 2020

TITLE: Receive Executive Director's Report

RECOMMENDATION: Staff recommends the Board: Receive a report and provide direction as necessary.

BACKGROUND:

1. There has been demolition of unused structures at Redwood Marine Terminal II. For some demolished material, toxicity testing has been required prior to disposal. Over the course of the last week, substantial progress was made removing material from the site, thus improving site aesthetics and safety. Specifically, three truck loads of contaminated material were removed and brought to the Kettleman Hill's Landfill. Remaining "clean" material is segregated in piles and being spread in areas of the site from where it originated. This is being completed under the supervision of SHN and based on the Water Quality Control Board Remediation Plan.
2. Harbor District staff submitted a letter to the US Army Corps of Engineers requesting that in addition to focusing dredging efforts on the bay entrance, they dredge within the Eureka Channel adjacent to the Woodley Island Marina. US Army Corps of Engineers staff has been receptive to this request and it is likely that this area will be dredged in 2020. The primary purpose of this dredging is to ensure that the US Coast Guard vessel which is docked at Woodley Island Marine will be able to arrive and depart regardless of tide. There are added benefits to Woodley Island Marina and City of Eureka facilities that are adjacent to the Eureka Channel.
3. On March 27, 2020 certain Harbor District employees voted to become part of the Operating Engineers Local Union 3, AFL CIO.
4. Other updates will be made at the meeting

DISCUSSION:

District staff requests that the District Board of Commissioners receive the Executive Director's report and provide direction as appropriate.

COMMISSIONERS
 1st Division
 Larry Doss
 2nd Division
 Greg Dale
 3rd Division
 Stephen Kullmann
 4th Division
 Richard Marks
 5th Division
 Patrick Higgins

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STAFF REPORT – HARBOR DISTRICT MEETING
March 31, 2020

TO: Honorable Board President and Harbor District Board Members

FROM: Larry Oetker, Executive Director

DATE: March 27, 2020

TITLE: Receive Report and Receive Direction from the Board Regarding District Staffing, Administration, Procurement, and Setting Dates for Future Meetings in Response to COVID-19. (Roll Call Vote)

RECOMMENDATION: Staff recommends the Board: Receive a report and provide direction as necessary. Receive a report regarding changes to District staffing, proposed future meetings and Brown Act requirements

BACKGROUND:

Staffing

With the Coronavirus situation, the Harbor District continues to remain in operation at a reduced capacity and while practicing safe distancing and other precautions.

Front Office: The front office is closed to the public but is staffed by at least one person Monday through Friday. Deputy Director Adam Wagschal and Director of Administrative Services Mindy Hiley are working from home during the days they are not in the office. Each management staff has a laptop and is able to access our common shared server and we are regularly checking in. Our Office Assistant has requested a reduced two day per week schedule at this time.

Facilities Maintenance: Director of Facilities Management Chris Mikkelsen and Marina Manager Cory Mooers are overseeing the seven day per week operations of the maintenance department with each working 4 ten-hour days as opposed to the standard 5 eight-hour days. This ensures that we have someone on staff every day but increases the number of days they are able to shelter in place with their families. The Maintenance crews continue to work according to the following schedule for next week.

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Facilities							
Michael	Michael		Robert T.	Robert T.	Michael	Michael	Michael
Robert T.			Max	Max	Max	Vacation	Vacation
	Rick		Rick	Rick	Rick	Rick	
	Scott		Scott	Scott	Scott	Scott	
	Robert P.		Robert P.	Robert P.	Robert P.	Robert P.	
Facilities Supervisor							
Chris	Chris	Chris	Chris	Cory	Cory	Cory	Cory
Office	Mindy	Britni	Cory	Britni	Cory		

WIM Facilities 7:30 to 4:00
RMT I & II Office 8:00 to 5:00 * Chris / Cory 4 -10 hr. days
LIBRARY

This revised schedule continues to be monitored and is subject to change depending on the ever-changing circumstances and needs for some staff to take sick leave.

Future Meetings

Staff recommends that we keep the upcoming regularly schedule April 23, 2020 Board meeting and scheduling a Special Meeting on Tuesday, April 9, 2020 in order to give the public advance notice of our meeting schedule.

Brown Act

The Executive Director attended a state-led webinar regarding implementation of the Brown Act during the Coronavirus situation. The Executive Director will provide a summary of the webinar and the Board may elect to modify certain policies in light of the Coronavirus situation.

DISCUSSION:

District staff requests that the District Board of Commissioners receive the staff report and provide direction as appropriate.

**FIRST AMENDMENT TO THE AMENDED AND
RESTATED OUTFALL AGREEMENT**

THIS FIRST AMENDMENT TO THE AMENDED AND RESTATED OUTFALL AGREEMENT (this “Amendment”) is entered into this ___ day of March, 2020 (the “Effective Date”) by and between Humboldt Bay, Harbor, Recreation and Conservation District, a California public entity (“District”), and DG Fairhaven Power LLC, a Delaware limited liability company (“DG”), sometimes herein referred to each individually as a “Party” and collectively referred to as “Parties”.

RECITALS

WHEREAS, the Parties entered into that certain Amended and Restated Outfall Agreement dated December 4, 2014 (the “Agreement”), under which DG is authorized to discharge Conforming Effluents (as defined in the Agreement) through the District’s Outfall Line, as more particularly set forth in the Agreement;

WHEREAS, the Term of the Agreement is described in Section 4 of the Agreement and provides for an Initial Term, which expired on March 31, 2018, and the right of DG to exercise twelve consecutive one year option terms (each an “Extension Term”) as more particularly set forth in Section 4 of the Agreement;

WHEREAS, Section 5 of the Agreement sets forth the consideration payable by DG to the District for the Initial Term and each Extension Term, and further provides that the consideration payable for each Extension Term shall be paid, in advance, before the first day of each Extension Term, and further provides that the District shall not be obligated to refund any prepaid consideration in the event DG elects to terminate the Agreement prior to the expiration date;

WHEREAS, for the Extension Term commencing on April 1, 2020 and expiring on March 31, 2020 (the “2020-2021 Extension Term”), the consideration due and payable by DG to the District is \$86,151.25 (the “2020-2021 Consideration”);

WHEREAS, DG has requested and the District has agreed to modify Section 5 of the Agreement to provide for the following: (i) during the 2020-2021 Extension Term, DG shall pay the 2020-2021 Consideration in twelve (12) equal monthly installments of \$7,179.27, in advance, on the first of each month commencing with April 1, 2020; (ii) in the event that DG or its successor elects to exercise the Extension Term commencing April 1, 2021, and any subsequent Extension Terms thereafter, the requirement to pay the full amount of the consideration, in full and in advance, as set forth in Section 5 of the Agreement, shall be in full force and effect;

WHEREAS, the Parties desire to amend the Agreement as set forth below.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficient of which is hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals.** The foregoing “Recitals” as are hereby incorporated by this reference.

2. **Payment of Consideration for the “2020-2021 Extension Term”.** During the 2020-2021 Extension Term (i.e., April 1, 2020 through and including March 31, 2021), and notwithstanding anything in the Agreement to the contrary, DG shall pay the 2020-2021 Consideration (i.e., \$86,151.25) to the District in equal monthly installments of \$7,179.27, in advance, on the first day of each month commencing with April 1, 2020.

3. **Termination.** In the event that the Agreement is terminated by DG in accordance with the Agreement, DG shall be relieved of the obligation to pay any remaining 2020-2021 Consideration that would otherwise be due and payable pursuant to Section 2 of this Amendment on the first day of the next calendar month following the date of termination. DG shall not be relieved of the obligation to pay the full monthly installment of the 2020-2021 Consideration for the entire month in which the date of termination falls or otherwise be entitled to a refund of any prepaid 2020-2021 Consideration.

4. **Amendment Limited to 2020-2021 Extension Term.** This Amendment is limited to the 2020-2021 Extension Term (i.e., April 1, 2020 through and including March 31, 2021). Nothing in this Amendment shall operate to amend Section 5 of the Agreement regarding the amount of consideration due or the amount or timing of payment for any Extension Term commencing April 1, 2021 or thereafter in the event exercised by DG.

5. **Board of Commissioner Ratification.** This Amendment shall be of no force and effect unless and until approved by the Board of Commissioners of the Humboldt Bay, Harbor, Recreation and Conservation District in accordance with California law. Any acceptance by the District of a partial payment of the 2020-2021 Consideration prior to Board ratification shall not operate as a waiver of this section or of any require in the Agreement to pay the 2020-2021 Consideration in full and in advance.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first written above:

DG FAIRHAVEN POWER LLC

By: _____

Name: _____

Its: _____

HUMBOLDT BAY, HARBOR, RECREATION AND CONSERVATION DISTRICT

By: _____

Name: _____

Its: _____