

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

September 10, 2015

PRESENT:

Commissioner Newman
Commissioner Marks
Commissioner Wilson
Commissioner Higgins

ABSENT:

Commissioner Dale

President Marks called the Executive Closed Session to order at 6:03 p.m.

Ken Sawatzky said he has a major reservation regarding the Coast Seafoods Company lease. There are too many open-ended items. The lease does not seem to be in the public's best interest. The inflation clause does not value property effectively. He would like to see a rate of return comparable to the price of a truck garden. The Board should table the item even though the lease is on a timeline.

Commissioner Wilson asked Mr. Sawatzky if his main point is that the rate is too low or is there anything else. Mr. Sawatzky said tying up almost 200 acres with no commitment to develop in the future is an issue to him. Coast Seafoods Company should be forced to pay a good rate for those acres. He also objected to not forcing them to do so in a timely manner. There are major players coming in to a very profitable arena. He said he would not get into his concerns of conflict of interest at this time.

President Marks adjourned to Executive Closed Session at 6:12 p.m.

President Marks adjourned Executive Closed Session at 6:42 p.m.

President Marks called the regular meeting of the Board of Commissioners to order at 7:00 p.m.

President Marks led those present in the Pledge of Allegiance.

District Counsel reported on Closed Session as follows: Public Employee Performance Evaluation – Executive Director; Conference with Real Property Negotiators – Coast Seafoods Company Tideland Lease and Sven Kahle and GM Gabrych Family LP – No action taken on any of the items.

PUBLIC COMMENT

Julie Williams asked to speak on New Business - Consideration of Coast Seafoods Company Amended and Restated Tide and Submerged Land Lease. President Marks allowed Ms. Williams to speak on the item out of turn since she was unable to stay for the rest of the meeting. Ms. Williams said she represents the Northern California Association of Home Builders (NCHB) and read a letter to the Board regarding their concern of a conflict of interest with Commissioner Dale on the Board. She noted that while Commissioner Dale was not on the Board during the original contractual lease between the Harbor District and Coast Seafoods, he is now in a position to participate in a decision to modify, extend or renegotiate a contract, which constitutes involvement in the making of a contract under Section 1090 of the Government Code. NCHB requested the Board table the agenda item and not take any action until the matter is thoroughly vetted and resolved through due process in plain view of the public.

Pete Oringer thanked Commissioners Newman and Dale for their support of the Timber Heritage Association fundraiser. About 400 people enjoyed their albacore and oysters, among other food items. They helped make a successful event.

Karen Brooks announced the Waterfront Run and Fitness Fair. The proceeds will go to Humboldt Trails Council and to purchase new tennis shoes for children. Ms. Brooks asked for the Board to pull Consent Calendar Item (a) because she wanted clarification on the Board's voting during the April 9 meeting.

Kent Sawatzky said he has concerns regarding happenings in the community. He feels the Executive Director was brought to the Harbor District for a purpose – favoritism for oyster beds over the rest of the bay. Colluding and conspiring for oyster concerns in the bay; the bay should be used for multiple uses.

Jim Roberts said his dad owns a parcel in King Salmon. PG&E gave the Harbor District \$2 million and the District invested \$1.2 million into a homemade dredge. Now the District borrowed \$1.2 million from Coast Seafoods; where is the other \$800,000? When will King Salmon canal be dredged? Jack Crider should not get a raise. \$126,000 to take care of a marina is excessive. The District should stand up to PG&E to get the permit; they have not.

Nick Angeloff announced he is running for the 2nd Division District office. His impetus for running is to refocus the efforts of the Harbor District. The conflict of interest issued needs to be addressed. Shipping industry needs to be addressed; an economic driver is needed. Harbor, recreation and conservation are mandates; shipping will pay for recreation and conservation. The District will not have to rely on grants. He has been working with agricultural vendors in the Central Valley and they are not aware that Humboldt Bay is a deepwater port. Humboldt Bay needs to be established for the future.

CONSENT CALENDAR

COMMISSIONER HIGGINS MOVED FOR CONSENT CALENDAR ITEM (A) TO BE PULLED FOR DISCUSSION AND APPROVE THE REMAINDER OF THE CONSENT CALENDAR. COMMISSIONER WILSON SECONDED.

Karen Brooks said she wanted to make clear for the benefit of the public that New Business Item A from the April 9, 2015 Board Meeting, Consideration of Exclusive Right to Negotiate with Humboldt Wholesale for Redwood Terminal 2 Warehouse, this is to establish an industrial grow on the Samoa Peninsula. Ms. Brooks said she wanted the minutes to reflect who voted and how in the April 9 meeting. Also the Humboldt Wholesale's ERTN 120 days expired and she said she has not seen any forward movement.

It was explained that when the minutes reflect "MOTION CARRIED WITHOUT DISSENT", it reflects that all Commissioners present voted to approve the motion. If the minutes state that all members were present for the meeting and a Commissioner did not recuse himself, then all Commissioners voted.

Executive Director stated that the Humboldt Wholesale project is not Coastal Dependent; therefore they could not move forward with the ERTN.

Commissioner Wilson clarified the Humboldt Wholesale lease project was for fertilizer import and processing, not establish an industrial grow.

Commissioner Higgins stated that since the minutes were not going to be amended, he would add item back in to his motion.

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

COMMUNICATIONS AND REPORTS

EXECUTIVE DIRECTOR'S REPORT:

- ❖ Shelter Cove meeting on October 22 with Resort Improvement District; David Smollet and Pat O'Shea
 - Fish Cleaning Station only - Access road & State lease are part of a grant; so a change cannot be effected.

- ❖ Grand Jury response is due September 19; the Grand Jury recommends a dedicated dredging reserve fund and for the District to pursue new revenues and economic development.
- ❖ Substation RF6 gas leaks costs approximately \$2,000/month
 - Orevolution camera scan in April 2015 showed 7 of 9 breakers leaked. The breaker sealing company could not give a guarantee for repair or costs. A new camera scan is needed for the guarantee at a cost of \$4,500. It is scheduled for September 15.
 - Kick off meeting with SHN on the Community Development Block Grant for the Redwood Terminal 2 (RT2) Revitalization of assets. The work will center on RT2 tenants and aquaculture waste water discharge to outfall/Dredge slurry water treatment and discharge to outfall/City of Eureka waste water discharge to outfall and Fairhaven and Samoa waste water discharge to outfall. (Danco)
 - Samoa Wood Pellets & United Energy Trading (UET) conference call. UET is satisfied with the environmental conditions of the site and are moving ahead with letter of intent to fund project. The Samoa Wood Pellet lease will come to the Board for consideration on Sept. 24.

STAFF REPORTS

Deputy Director:

- ❖ Met with HSU and Director of Facility Maintenance regarding project design and permitting for desalination study at Redwood Terminal 2.
- ❖ Represented District at multi-agency meeting in Santa Rosa regarding Coast Seafoods' proposed expansion project.
- ❖ Attended County Planning Commission hearing regarding acquisition of property to north of Redwood Terminal 2.
 - Exempt from Sub-Division Map Act
 - Planning Commission considered General Plan Conformance Review and Coastal Development Permit Issuance. The Planning Commission approved the project, with a conveyance of development rights until County staff makes findings consistent with General Plan Provisions for new development.
 - General Plan Provision categories: water supply, sewage disposal, access, fire, geologic, flood, noise, airport safety, water resources, biological resources and cultural and historic resources.
 - Options: 1) Appeal to Board of Supervisors or 2) work with County staff to identify the analysis that will be needed for likely uses (e.g., to deck wood products, vehicle use). Conduct analysis now to remove the conveyance of development rights for these anticipated uses. **Staff recommends the second approach and will move ahead unless otherwise directed by Commission at a future meeting**

Director of Harbor Operations:

- Dive completed on Outfall Line. Report and video should arrive soon.
- Leaving on September 23 to Seattle.
 - Meeting with the Marketing Coordinator from Holland America on September 24th
 - 5 Year Certification for Emergency Ship Handling Simulator and Bridge Recourse Management for Pilots
- No ships this month, California Redwood Co. has three ship loads of chips ready for export
- Writing a new Tariff for District Terminals
- Conducting a Parking Lot Occupancy Survey to determine the adequacy of public parking on new developments.

Director of Facility Maintenance:

- Conducting assessment of security needs at Woodley Island Marina, Fields Landing Boat Yard, and Redwood Marine Terminal 1 due to current incidents of vandalism.
- Redwood Marine Terminal 2
 - Increased patrolling
 - Adding alarm system to boiler tower
 - Installing "off limits" signage

District Planner:

- ❖ The Initial Study/Draft Mitigated Negative Declaration for the Redwood Terminal 2 Conditional Use/Coastal Development Permit is out for the 30-day comment period. Harbor District is the lead agency.
- ❖ Attended meetings with City of Eureka and County of Humboldt on the results of a study the City commissioned for the amount of Coastal Dependent Industrial uses of Redwood Terminal 2 as a part of the General Plan Update process. Still at staff level working its way through the hearing process.
- ❖ General Plan Update – Harbor District proposals are moving forward.
- ❖ Samoa Peninsula Fire District is having a reorganization hearing next week.

COMMISSIONER AND COMMITTEE REPORTS:

Commissioner Newman:

- ❖ Attended the Planning Commission meeting. Encouraged people to watch the videos of the meeting where the land transfer that Deputy Director reported on is on the agenda. Legal Counsel directed the Commission clearly, but it seems politics became a part of the game.

Commissioner Marks:

- ❖ Softball season – time for playoffs and tournaments.
- ❖ Participated in the phone call with United Energy Trading and Samoa Wood Pellets. It sounded encouraging that Samoa Wood Pellets would get their funding.
- ❖ Attended a Labor Day picnic; and as a former union president and union organizer, he was encouraged.
- ❖ Sent a Letter to the Editor of the Mad River Union outlining the District's positive advancements in the last four years.
- ❖ As a NCRA Director, he updated on the Rails to Trails project in Eureka and Arcata. The license for Eureka is moving ahead. NCRA received a proposal from a local builder to renovate the NCRA office at the Balloon Tract. The manufacturing project at Pacific Lumber Company property in Scotia is moving ahead and wants to make sure they do not encroach on the rail spurs. He read some items from the 1956 Western Railroader newsletter.

Commissioner Wilson:

- ❖ Attended a reception last night for the Coastal Commission. Toured with the Commission on the CORAL SEA around Humboldt Bay. He was the District's representative and spoke about projects on the bay. Timber Heritage Association representatives spoke on the land use changes for the Samoa Shops property. The City of Eureka representative also spoke on their projects.
- ❖ Perceived conspiracy for aquaculture – the staff work tirelessly to bring all business ventures forward to the Board. The conspiracy is one of the marketplace. United States exports 92% of its seafood. When the Economic Development Committee was convened, the aquaculture industry said they would develop all of Humboldt Bay possible for aquaculture – the market is there and ready. The Board is just doing their job to enable the growth of aquaculture on Humboldt Bay.

Commissioner Higgins:

- ❖ Said he is grieving over the death of Zeke Grader, who died on September 8. Mr. Grader was a battler for rivers and fishermen.
- ❖ Is the Managing Director for the Eel River Recovery Project – they are measuring the river's flow for more accurate information.
- ❖ Said the results of the Economic Development Committee, those which are viable, are being pursued and they are diverse.

Kent Sawatzky asked for a point of order regarding staff comments.

District Counsel said staff and Commissioner Reports cannot be a point of discussion.

President Marks denied Mr. Sawatzky's request.

OTHER: None

NON AGENDA: None

UNFINISHED BUSINESS: None

NEW BUSINESS

A. CONSIDERATION OF COAST SEAFOODS COMPANY AMENDED AND RESTATED TIDE AND SUBMERGED LAND LEASE.

The General Provisions of the Lease: 10-Year Lease with four five-year options; automatic extension to September, 2055 or until District's limited obligation note with Coast Seafoods is paid; rent increased based on increases in Consumer Price Index; Coast waived the fixed rent previously attached to the limited obligation note. The lease rates are as follows: \$100 / Acre for intertidal areas in production; \$15 / Acre for areas not in production and \$1 / Square foot of raft surface. The cost per acre falls in line with other shellfish companies leasing in Humboldt Bay.

Commissioners Newman and Wilson comprise the Board's committee and they determined a reasonable fee as follows: Intertidal Culture Areas: Coast's annual harvest level is approximately 43,256 oysters / acre. For this area, rent is based on the Fish and Game Commission's policy of \$100 / acre / year for production between 20,000-90,000 oysters / acre / year. Lease Area without Culture: District staff is unaware of any precedent for lease values within tidelands that are leased for mitigation. The District Commission Committee identified a reasonable rate of \$15 / acre / year. Raft Culture: Fish and Game Commission leases do not require additional rent for rafts within a lease area. However, for rafts, the District Commission Committee identified a recommended rate of \$1 / square foot / year. Coast's current lease rate: consist of \$12,000 base rent + \$0.42 / gallon shucked product and \$0.06 / dozen whole shellfish harvested. Between 2012 and 2015 Coast paid a total annual average of **\$21,671**. The new lease rate based on current culture is **\$35,879**. The new lease rate based on the expansion of culture consistent with current permitting efforts is **\$58,477**.

COMMISSIONER HIGGINS MOVED FOR THE APPROVAL OF COAST SEAFOODS COMPANY AMENDED AND RESTATED TIDE AND SUBMERGED LAND LEASE.
COMMISSIONER NEWMAN SECONDED.

Commissioner Wilson said initially the rates seemed low in general, but now he understands the District is the highest on the West Coast. The issue is these are unpermitted sites. There is a huge capital expense amortized over time. A few months ago, the City of Eureka renewed a tideland lease at \$12 per acres total on areas in production. There was no controversy. The District has definitely increased the rate, but is still inexpensive. The difference is in the tens of thousands of dollars – not a big dent in a company if it is a profitable venture.

Commissioner Newman said the rates seem low, but there are a lot of variables to be successful.

Commissioner Wilson said the value to the District will be large when the pre-permitting is complete.

Commissioner Higgins said Coast Seafoods Company has been paying lease fees on all property leased since 1093 on only part of what is usable. This is a competitive price; innovative to increase fee structure on rafts.

Monte Provolt said Coast Seafoods is not here making their case. Looks like the Board is doing their dirty work. He asked the Board to take Ms. Williams' comments seriously and said she was treated rudely. This contract is being made in violation of Government Code Section 1090 and is void. Payments are void and not future payments should be made. Take this issue seriously. Commissioner Dale should resign.

Kent Sawatzky said he echoed Mr. Provolt's words. No Request for Proposals was put out for bid. He said he would be willing to pay twice and can facilitate two years' of payments. He requested

an RFP be put out instead of granting Commissioner Dale the business. Allow the public to bid. Leaving too much of the table. There is a conflict of interest here.

Debbie Provolt asserted a conflict of interest exists by virtue of Greg Dale being on the Board of Commissioners. If issuing a permit, it is appropriate for Commissioner Dale to leave the room. IF Greg Dale was a lesser employee with Coast Seafoods, he holds a managerial position. The Board needs to look into and understand Government Code 1090. The Attorney General interpretation is that a contract made in violation of Government Code 1090 is void and must be returned with no future. Coast Seafoods could not collect on the loan; it is void and now a gift to the District. This is all part of the same transaction.

Nick Angeloff said his main concern is the \$1.2 million loan with Coast Seafoods, which is also included in the agreement. There is a perception of a conflict of interest with a sitting Commissioner as an employee of Coast Seafoods. In the pre-permitting project, there are comments in the Environmental Impact Report by Greg Dale. Put off the decision; take your time.

Jim Roberts said he disagreed with the 20-year deal. It does not make sense. Leaving money on the table. The annual lease does not even pay Jack Crider's salary. There is no separate accounting for anything.

Karen Brooks referred to Section 3.5 of the agreement regarding payments on the Coast Seafoods note. Why is the loan with Coast Seafoods? The Harbor District has dug a hole for itself. It seems like there is a relationship and this offer was not offered to others. The District is in a corner and desperate. District Counsel could be sued. The District is giving Coast Seafoods an unfair advantage because the note is attached to the lease; need to unravel this situation.

Duane Rigge, former City Manager of Fortuna and Blue Lake, has personal experience with a conflict of interest violation and it is a serious matter; consequences are huge. Putting the agency and selves at risk. The Board needs more information before a decision is made. He has seen the State take radical action in these situations and he would hate to see the Board and District go through that.

Commissioner Higgins said it is not out of the norm to continue a relationship with a partner like Coast Seafoods. Negotiations have been done with good faith. This is an election issue and he values Commissioner Dale as a colleague.

Commissioner Newman asked for advice from District Counsel.

District Counsel stated whether or not a conflict of interest exists, it is a personal obligation, an individual decision, of each Commissioner; not up to the Board to decide. He is not aware of Commissioner Dale at any time participating in discussions of Coast Seafoods' transactions. The Board can take action.

Commissioner Wilson said this is a renewal; the District does not put renewals out on the street for Requests for Proposals. The highest bidder does not win; the most qualified does. The lease rates are being raised higher than elsewhere; he feels the Board is on sound footing. Regarding the connection with the loan, the line of credit is at 3% interest. Coast Seafoods is losing money, the public is benefitting. Also, the loan leveraged \$8.5 million more of cleanup of the pulp mill property. We have a cleaner and safer Humboldt Bay. Coast Seafoods did that because the reputation of a clean bay is important to their business. Recreation and shipping are also dependent on a clean bay. The public got a great deal, huge benefit. The return on financing for the public is huge.

Debbie Provolt handed the District Counsel information on the Government Code 1090 Conflict of Interest.

President Marks said he worked in the pulp mill for 30 years and there was deep danger when the plan shut down cold. Three million gallons above-ground liquors were stored. Tanks leaked

and there was imminent danger to the Bay. He feels it is important in his position on the Board to keep the Bay safe. If the Bay gets wiped out, Humboldt County is in trouble.

MOTION CARRIED WITHOUT DISSENT.

B. CONSIDERATION OF MODIFYING THE AGREEMENT WITH REDWOOD COMMUNITY ACTION AGENCY (RCAA) TO ALLOW RCAA TO CONTINUE SERVING AS SPARTINA DENSIFLORA ERADICATION PROJECT COORDINATOR BY EXTENDING THE AGREEMENT UNTIL SEPTEMBER 10, 2017 AND INCREASING THE AGREEMENT'S BUDGET BY \$167,500.

Deputy Director reported in 2014 RCAA was awarded the position of Spartina eradication coordinator. RCAA has been proficient in this position. District has been awarded \$180,000 from Natural Resources Agency. \$12,500 will be the District's portion for Administration and Project Management.

He recommended the Board consider \$167,500 to RCAA for continued Spartina control and extension to September 10, 2017.

COMMISSIONER HIGGINS MOVED FOR THE APPROVAL OF MODIFYING THE AGREEMENT WITH REDWOOD COMMUNITY ACTION AGENCY (RCAA) TO ALLOW RCAA TO CONTINUE SERVING AS SPARTINA DENSIFLORA ERADICATION PROJECT COORDINATOR BY EXTENDING THE AGREEMENT UNTIL SEPTEMBER 10, 2017 AND INCREASING THE AGREEMENT'S BUDGET BY \$167,500. COMMISSIONER WILSON SECONDED.

Karen Brooks asked for an explanation of how this benefits the public and is there monitoring for subduction in light of sea level rise.

Deputy Director responded this is a continuation of the ongoing Spartina eradication in the marshes of Humboldt Bay. Follow up treatment is required. There is ongoing monitoring of post treatment. The involved agencies are constantly seeking new funding to control new areas. Maintenance will be carried into perpetuity. Native vegetation is occurring in these areas. There is some question about subduction; there will be some initial loss, but then the marshes return.

Pete Oringer asked about coordination between the different agencies and areas yet to be identified.

Deputy Director responded there are monthly meetings with the Wiyot Tribe, Harbor District, Coastal Commission, City of Arcata and Humboldt Bay Wildlife Refuge. They are constantly reprioritizing what is next. During most weeks, treatment is on the Refuge and City of Arcata marshes. A grant is being sought for work on Indian Island, but nothing yet. Private lands are not being treated. Freshwater Slough to McDaniel Slough, Mad River Slough and South Bay are all receiving lots of treatment.

Executive Director stated the funding is slowing and priority is being given to areas already treated to keep the seed populations down.

MOTION CARRIED WITHOUT DISSENT.

C. CONSIDERATION OF CONTRACT WITH HARBOR DISTRICT EXECUTIVE DIRECTOR JACK CRIDER.

Executive Director stated the contract is based on a successful evaluation given August 27th. It is a one- year contract May 1, 2015 to April 30, 2016. Salary is \$126,000, which includes a 5% raised (2% CPI & 3% merit). Four weeks of vacation- Flexible schedule that allows 10 days on- 4 days off. Standard benefit package. At will status, contract maybe terminated with or without cause at any time. No severance package.

COMMISSIONER HIGGINS MOVED FOR THE APPROVAL OF CONTRACT WITH HARBOR DISTRICT EXECUTIVE DIRECTOR JACK CRIDER. COMMISSIONER NEWMAN SECONDED.

Commissioner Higgins said he could not be more pleased. Cleaning up the pulp mill and trucking the liquors to Washington was Executive Director's vision. He said he hopes the District can retain Jack Crider as long as possible.

Commissioner Wilson said this is the District's standard management contract with a raise based on performance. The District is successful because of Jack's transparency, diligence and hard work.

Commissioner Newman said one of his first errors in judgement was that Jack Crider was too good to be true, but he is.

President Marks said Executive Director has a great ability to multi-task. He is open to the public at any time. Staff is doing a great job under his leadership.

Jim Roberts said the current Board does the exact opposite of what the public wants. Commissioner Higgins and Jack Crider danced around the room when the District received the PG&E check. Where is it? The District is more in debt now. Where is the money coming from for his raise?

MOTION CARRIED WITHOUT DISSENT.

D. CONSIDERATION OF APPROVAL OF PAY SCHEDULE FOR HARBOR DISTRICT PERSONNEL.

Director of Administrative Services reported CalPERS requires a Publicly Available Pay Schedule stating the pay rate for agency employees with the following requirements: Approved and adopted by employer's governing body during a public meeting; Identifies the position title for every employee position; Shows the pay rate for each identified position; Indicates the time base (i.e. hourly, monthly, annually, etc.); Posted at employers office or available for public review during business hours; Indicates an effective date/date of revisions; Retained by employers and available for public inspection for not less than five years; and Does not reference another document in lieu of disclosing the pay rate.

COMMISSIONER HIGGINS MOVED FOR THE APPROVAL OF PAY SCHEDULE FOR HARBOR DISTRICT PERSONNEL. COMMISSIONER NEWMAN SECONDED. MOTION CARRIED WITHOUT DISSENT.

E. DISCUSSION OF DRAFT TERMINAL TARIFF.

Director of Harbor Operations stated he is in the process of updating the tariff portion of District Ordinance 16. Not all new; parts are updated and re-written using today's standards and he used a combination of different ports' tariffs to re-write the District's Tariff. General Rules & Regulations have been listed. A new schedule of Dockage rates for deep draft vessels (ships) has been added. Wharfage rates and demurrage have been defined. New pilotage rates and labor service rates have been added. (Stevedoring Standard on the West Coast). Also added are new service charges such as fresh water hook up rates, electrical fees, gangway fee and security fees. Pellet fees need to be added.

Executive Director said that California Association of Port Authorities membership also has to approve the tariff. The official tariff will be before the Board for approval within the next couple of meetings. Dockage fees have been way under market price.

Kent Sawatzky said he hates to say this but the District is wasting their time. The District now has bad Karma. Anything the District touches will fail. Jack Crider is a fantastic Executive Director and he appreciates Commissioners Marks and Newman. But the Board is wasting their time.

Karen Brooks said updating the tariff is good and proactive. She recommended staff have an incentive to shippers to bring more ships in; i.e. lower fees for future shipping.

Commissioner Higgins said the potential pellet shipper will be using Redwood Terminal 2. Shipper will be here; commodities will be here.

ADMINISTRATIVE AND EMERGENCY PERMITS: None

The Regular Meeting of the Board of Commissioners adjourned at 9:11 p.m.

APPROVED BY:



Patrick Higgins, Vice President
For Greg Dale, Secretary

RECORDED BY:



Patricia Tyson
Director of Administrative Services