



MINUTES
REGULAR MEETING
OF THE BOARD OF HARBOR COMMISSIONERS
MOSS LANDING HARBOR DISTRICT
7881 Sandholdt Road
MOSS LANDING, CA 95039
April 24, 2013 7:00 p.m.



A. CLOSED SESSION

The Board adjourned to closed session at 6:00 p.m. to discuss the following:

1. Confer with real property negotiators pursuant to Government Code §54956.8 regarding APN 413.022.003 (NH Restaurant Pad). Negotiating parties: General Manager and District Counsel.
2. Confer with real property negotiators pursuant to Government Code §54956.8 regarding parcel(s) currently used for E & F Dock access easements (MBARI). Negotiating parties: General Manager and District Counsel.
3. Confer with real property negotiators pursuant to Government Code §54956.8 regarding Moss Landing Commercial Park (formerly National Refractories). Negotiating parties: General Manager and District Counsel.
4. Consider personnel matters pursuant to Government Code §54957 – General Manager annual performance evaluation.
5. Confer with legal counsel and General Manager regarding one matters of potential litigation pursuant to Government Code § 54956.9(a): City of Salinas, et al, vs. County of Monterey, et al.

B. OPEN SESSION CALL TO ORDER - PLEDGE OF ALLEGIANCE

The meeting was called to order at 7:25 p.m. After the Pledge of Allegiance, roll was called.

Commissioners present:
Russ Jeffries - President
Yohn Gideon – Vice President
Vince Ferrante – Secretary
Frank Gomes, Jr. – Commissioner
Tony Leonardini - Commissioner

Staff present:
Linda G. McIntyre – General Manager
Mike Rodriguez – District Counsel
Marie Della Maggiore, Executive Assistant
Wendy Cumming, CPA

C. PRESIDENT’S REMARKS

President Jeffries stated that the Board had met earlier in closed session and that direction was given to the General Manager and District Counsel and no other reportable action was taken.

D. PUBLIC COMMENTS

No public comment.

Due to the number of financial related items and in consideration of the CPA’s time, President Jeffries brought Item 9 forward on the agenda.

G. TREASURER'S REPORT

9. Wendy Cumming gave the financial report for the month ending March 31, 2013. There were no significant changes or expenses. Marina revenues are right in line with budget and overall expenses are below budget by \$24K. Net ordinary operations are at a loss of \$73K due primarily to derelict vessel disposal costs; however reimbursement of some of those costs is anticipated. There were no additional comments or questions on the report. Year to date profit is \$307K even though we budgeted to be at a loss.

A motion was made by Commissioner Ferrante and seconded by Commissioner Gideon to accept the month ending March 31, 2013 financial report. The motion passed unanimously.

President Jeffries brought Item 19 forward on the agenda.

I. NEW BUSINESS

19. ITEM – Consider adopting the preliminary budget for FY 2013-2014.

a. Staff report – GM McIntyre gave the staff report.

b. Public comment – No public comment.

c. Board discussion – There was discussion of several line items and GM McIntyre and the Budget Committee members answered questions from the Board. To line item 107 which provides funds for pile replacement, Commissioner Gideon asked if we were planning on replacing more piles. Commissioner Gomes answered not at this time; they are funding future pile replacement phases. Commissioner Ferrante asked if it is anticipated that any of the bad debt in line item 71 in the amount of \$40,000 would be recouped. GM McIntyre gave an explanation of the ongoing collection process and said we just have to base it on past averages; you never know how successful collection efforts will be. President Jeffries commented that 16 or so years ago when he joined the Board, the amount budgeted every year for bad debt was \$100K with NO methods of collection in place. To line item 116 for \$20,000, Commissioner Leonardini commented that the committee is anticipating the need for a revision of the North Harbor Master Plan.

d. Board action – A motion was made by Commissioner Ferrante and seconded by Commissioner Gomes to adopt the preliminary budget for FY 2013-2014. The motion passed unanimously.

President Jeffries brought Item 21 forward on the agenda.

21. ITEM – Consider proposal by the Weist Law firm to pursue refinancing the District's existing long-term obligations with a lower interest mechanism.

a. Staff report – GM McIntyre gave the staff report.

b. Public comment – Cameron Weist of Weist Law Firm distributed some additional information about his firm and their services to the Board. He discussed their methods of analyzing District financing from both public and private level of market transactions. There was discussion of the municipal bond market and rates.

c. Board discussion – President Jeffries asked the Finance Committee to review the matter and bring it back to the Board with a recommendation. GM McIntyre requested authorization for District Counsel to review the issue of whether the District could legally enter into such a transaction and asked Mr. Weist to provide something in writing stating the District would be in compliance with Harbors and Navigation Code regulations

concerning financing for District Counsel review. Mr. Weist stated that prior to finalizing the bank will require the same legal confirmation. He said he will provide the GM with his existing research. Commissioner Gideon asked how this type of financing would affect the District's credit rating in the future. Mr. Weist replied that rating agencies such as Standard and Poors like to see management of debt and reserves, and proactive measures in refinancing. Commissioner Gideon asked if there would be a prepayment penalty in the new contracts; Mr. Weist stated it would depend on the terms of the agreement of whatever bank ends up making the best offer.

d. Board action – Staff directed to call references provided; Finance committee to meet and confer with GM; General Counsel to review legality and advise GM.

President Jeffries brought Item 20 forward on the agenda.

20. ITEM – Consider the People's Moss Landing Water Desal Project request that the Moss Landing Harbor District assume position of Lead Agency for compliance with the California Environmental Quality Act (CEQA) and other environmental requirements.

a. Staff report – GM McIntyre gave the staff report.

b. Public comment – Mr. Paul Hart, attorney for the project, spoke to issue of why MLHD was being requested to assume the role of lead agency even though the City of Pacific Grove had previously agreed to act as the lead. He also said he had responded to all questions and requests made previously by the Board. There was discussion of funding for costs such as the EIR, staff time, services of general counsel, etc. Ms. Garcia, Business Manager for the project, said they are willing to start reimbursing all costs incurred to date. She stated she would ask Counsel Hart to provide the Board clarity of the definition of a lead agency. Pacific Grove City Councilman Fischer spoke to the position of the City of Pacific Grove and said to date all dealings with the project have been smooth. Pacific Grove may have a conflict with the Mayors JPA and is in support of another lead agency for the project. President Jeffries said he would ask for a public forum to be held should the District decide to go forward. Commissioner Ferrante asked if there were any plans for the project to serve North Monterey County areas; areas suffering from seawater intrusion. Ms. Garcia responded that the focus is currently on the Monterey peninsula because that is the area most affected by the taking of water from the Carmel River by Cal Am. Mr. Hart added that none of the proposed water projects include North County at this time but if the public demands it, it can be easily incorporated to expand the project. Harbor tenant Mark Tufts commented that he likes the idea of more water.

c. Board discussion – Commissioner Gomes commented that there are too many unanswered questions to make any decisions at this time. He added that he does not think the Board should take on the role of lead agency because it would change the direction of the function of the Board to an area in which they do not have enough expertise. He stated he wouldn't feel comfortable until he heard from the District's constituents about whether they supported or opposed the District taking on this role. The commissioners agreed that public meetings throughout the District would be desirable. The project representatives indicated they were planning to hold public informational meetings. GM McIntyre asked if they could provide proposed dates of the meetings so she can ensure the Commissioners have an opportunity to attend and hear directly from the public.

d. Board action – Item tabled to a future meeting.

At 9:08 p.m. President Jeffries called for a 10 minute break.

At 9:21 p.m. the Board returned to Open Session.

President Jeffries brought Item 22 forward on the agenda.

22. ITEM – Consider the request by a Harbor District Facilities Use Permit holder for an ABC beer/wine sales license for use on his eco-tourism business vessel.

a. Staff report – GM McIntyre gave the staff report.

b. Public comment – Brian Ackerman, Owner and Operator of Whisper Charters, introduced himself and spoke briefly about his charter business. He explained the process through which he is pursuing a license to sell alcohol during his chartered tours through the harbor and Elkhorn Slough. He has applied for a permit to sell beer and wine with the Alcoholic Beverage Control (ABC). ABC has an extensive checklist of steps before issuing a license such as this and they are asking him to provide a letter from the District stating there is no objection to the sale of beer and wine. His insurance company is willing to provide the proper coverage. Other charter outfits out of Santa Cruz and Monterey are allowed to sell beer and wine but it is done out over ocean waters.

c. Board discussion – District Counsel Rodriguez has reviewed codes and regulations and found no conflicts. Since selling alcohol within harbor waters would be setting a precedent, Commissioner Gomes asked for further investigation of how to handle. Staff was directed to contact other harbors with similar charter operators.

d. Board action – Tabled to a future meeting.

President Jeffries brought Item 24 forward on the agenda.

24. ITEM – Consider Adopting Resolution No. 13-08 declaring the District's Munson Patrol Vessel surplus and authorizing the sale of the vessel.

a. Staff report – GM McIntyre gave the staff report.

b. Public comment – Vicki Crow commented that she would like to see the District obtain a boat capable of going outside the jetties to assist vessels in trouble and thinks staff should be trained to do this. GM McIntyre explained that it has not been a necessary expense to this point and that training requirements are very in-depth, extensive and require constant retraining and recertification. She added the liability coverage for that type of service would be very costly. President Jeffries indicated slip fees would have to be substantially increased to pay for that service.

c. Board discussion - President Jeffries commented that this vessel was purchased at a time when a grant opportunity came up and at the same time North County Fire indicated they would operate the fire suppression equipment should the need arise. Shortly after purchase, the fire suppression equipment stopped functioning and North County Fire never took over the operation. The Board suggested auctioning the vessel first with a minimum acceptable bid and if not received, advertising the vessel for sale.

d. Board action – A motion was made by Commissioner Gideon and seconded by Commissioner Leonardini to adopt Resolution No. 13-08. The motion passed unanimously.

President Jeffries brought Item 25 forward on the agenda.

25. ITEM – Consider adopting Resolution No. 13-09 cancelling the May 22, 2013 Regular Board Meeting and rescheduling the May Regular meeting to Wednesday, May 29, 2013.

a. Staff report – Written report, no further comments.

b. Public comment – No public comments.

- c. Board discussion – No Board discussion.
- d. Board action – A motion was made by Commissioner Gideon and seconded by Commissioner Gomes to adopt Resolution No. 13-09. The motion passed unanimously.

President Jeffries brought Item 23 forward on the agenda.

23. ITEM – Consider a position on pending legislation: Assembly Constitutional Amendment 8 and Senate Constitutional Amendment 11 reducing the majority threshold to impose taxes from 2/3 to 55%.

- a. Staff report – Written report, no additional comments.
- b. Public comment – No public comments.
- c. Board discussion – Commissioner Ferrante, Board member of CSDA, commented on the support CSDA has shown for these amendments.
- d. Board action – A motion was made by Commissioner Gomes and seconded by Commissioner Leonardini to not write a letter in support of these bills and take appropriate action to notify CSDA of our opposition. The motion passed unanimously.

President Jeffries brought Item 26 forward on the agenda.

26. ITEM – Consider adopting Resolution No. 13-10 authorizing a contract with Larry Mallon for consultant services related to the DMMP.

- a. Staff report – GM McIntyre gave the staff report. She presented the proposal from Larry Mallon and a proposal from Sea Engineering, Inc.
- b. Public comment – No public comment.
- c. Board discussion – President Jeffries commented that the current consultant has taken too long to bring closure to the project and he cannot support renewing his contract. The Board agreed that the proposal from Mr. Mallon was incomplete and hard to understand.
- d. Board action – A motion was made by Commissioner Gomes and seconded by Commissioner Gideon to adopt Resolution No. 13-10 authorizing the General Manager to enter into an agreement with Sea Engineering, Inc. for consulting services in connection with the Dredge Materials Management Plan and maintenance dredging. The motion passed unanimously.

E. MANAGER'S REPORTS

1. Projects Status/Update – Written report. GM McIntyre added that the pile replacement project has been completed and the equipment is being removed. APC is leaving the crane and the skiff for the Coast Guard beacon and range marker replacement project.
2. Community Relations; Requests/Issues – Written report, no additional comments.
3. Summary of Permits Issued – Written report, no additional comments.
4. Meeting Announcements – Written report, no additional comments.
5. Assigned Liveboard Report – Written report, no additional comments.
6. Assigned Slip Income Report – Written report, no additional comments.
7. Incident Report – Written report, no additional comments.

F. CONSENT CALENDAR

8. Approval of the March 27, 2013 Regular Meeting Minutes. Commissioner Ferrante noted that Item 9, Approval of the January 16, 2013 Special Meeting Minutes should read "Approval of the February 27, 2013 Regular Meeting Minutes". A motion was made by Commissioner Gideon and seconded by Commissioner Gomes to approve the

minutes of the March 27, 2013 meeting with the correction noted. The motion passed unanimously.

H. COMMITTEE REPORTS

10. Finance Committee – No meetings reported.
11. Elkhorn Slough Advisory Committee – No meetings reported.
12. Special Districts/CSDA – Commissioner Jeffries reported that he and Commissioner Ferrante attended the Monterey County Special Districts meeting on April 16. Monterey County Supervisors Calcagno and Parker were the guest speakers.
13. Liveaboard Committee – No meetings reported.
14. Harbor Improvement Committee – No meetings reported. Commissioner Gomes commented that the pilings look good after being trimmed.
15. Real Property Committee I – No meetings reported.
16. Real Property Committee II – No meetings reported.
17. Ad Hoc Budget Committee – No meetings reported. Committee commented earlier in Item No. 19.
18. Meetings attended by Commissioners at District expense since the last regular Board meeting (Per AB 1234 requirements). – Commissioner Ferrante reported that he had attended meetings for CSDA Legislative Committee and Board of Directors in Sacramento.

J. COMMISSIONERS COMMENTS AND CONCERNS

Commissioner Gideon asked if the District could write letters supporting having a fisherman on the Sanctuary Advisory Board. Russ commented that Kathy Fosmark is on the Board and GM McIntyre added that she has already asked Ms. Fosmark if she would like a letter from the District supporting her reappointment to another term but Ms. Fosmark is not sure at this time.

K. ADJOURNMENT

President Jeffries adjourned the meeting at 10:20 p.m.

Respectfully submitted,

ATTEST:

Vince Ferrante, Secretary
Board of Harbor Commissioners

Linda G. McIntyre, Deputy Secretary
Board of Harbor Commissioners

SERVING COMMERCIAL FISHING AND RECREATIONAL BOATING SINCE 1947