



Regular Public and Closed Session of August 23, 2011

SANTA CRUZ HARBOR

Gateway to the Monterey Bay
National Marine Sanctuary

Santa Cruz Port Commission
MINUTES

Members Present:

Reed Geisreiter	Chairman	Toby Goddard	Commissioner
Dennis Smith	Vice-chairman	Jeff Martin	Commissioner
Bill Lee	Commissioner		

Regular Public Session

1. Pledge of Allegiance
2. Oral Communication

Discussion: Dave Harrison, Local No. 3 Operating Engineers representative, spoke on behalf of the former dredge crew. Mr. Harrison expressed his belief that the Port District's \$14,000 in legal fees associated with labor negotiations, will exceed the \$10,000 cost of what the former dredge crew proposed in their offers. He stated that he believes the costs of hiring a new dredge consultant and a new Port Engineer does little to cut District costs. He also noted that the litigation which will result, will further increase the District's legal costs.

Mr. Harrison also expressed concern that the District has hired a new engineer, whose salary he estimated at \$130,000/year. Additionally, he noted that the District is proposing to spend \$50,000 on survey equipment for the dredge operation, and \$175,000 on a consultant contract with Paul Gillen, not to mention looming pension liability with the Operating Engineers Trust Fund which he estimated to be in the \$1 million range.

Mr. Harrison commented that it does not make sense for the District to incur all of this financial liability to save approximately \$10,000, especially when the union would settle for 2% increases.

Commissioner Goddard thanked Port Director Ekers and Chairman Geisreiter for their additions to the article that ran in Sunday's edition of the Sentinel.

Consent Agenda

Commissioner Goddard requested that item #7 – Approve Draw from Comerica Line-of-Credit be pulled from the consent agenda.

3. Approval of Minutes
 - a) Special Public Session of July 12, 2011

- b) Special Public and Public Portion of Closed Session of July 26, 2011
 - c) Regular Public Session of July 26, 2011
 - d) Special Public Session of July 26 and 27, 2011.
4. Consideration of Approval of Month-to-Month Lease – 345 Lake Avenue, Suite G (G. Pepping, Coastal Watershed Council.
 5. Denial of Claim – C. Henton (\$4,510)
 6. Authorize Port Director to Execute Settlement Agreement (D. Gutierrez)

MOTION: Motion made by Vice-chairman Smith, seconded by Commissioner Martin, to approve consent agenda items 3a, 3b, 3c, 3d, 4, 5, and 6.
- *Motion carried unanimously*

7. Approve Draw from Comerica Line-of-Credit

Discussion: Commissioner Goddard questioned if the staff report was accurate in indicating that the Comerica line-of-credit would be used in conjunction with District reserve funds to pay for tsunami-related expenses. Commissioner Goddard stated that it is his understanding that the intention is to keep reserve funds at a certain minimum level to pay for large tsunami-related expenditures.

Port Director Ekers stated that the District's cash flow is constantly shifting, due to pending reimbursements from FEMA. She stated that she intends to pay tsunami related invoices without drawing the District's reserve funds below \$1 million or approximately 3-months' operating reserve.

Commissioner Goddard suggested that a policy governing the use of reserve funds, and establishment of minimum reserve levels should be evaluated at a future Port Commission meeting.

Motion made by Commissioner Goddard, seconded by Commissioner Martin, to authorize the Port Director to draw sufficient funds from the Comerica Bank \$2 million line of credit to cover payment to Bellingham Marine Industries, Inc., for the emergency reconstruction of U-dock project, while maintaining a balance sufficient to cover 3-months' operating reserves.
- *Motion carried unanimously*

Regular Agenda

8. Consideration of Appeal of Slip License Revocation (T. Magaard)

Discussion: Harbormaster Izenstark presented a timeline of his interactions with Mr. Thomas Magaard. Harbormaster Izenstark explained that beginning March 1, 2011, Mr. Magaard was permitted to berth his vessel in Santa Cruz Harbor on a temporary basis, until he was offered a permanent slip through the waiting list. After the tsunami of March 11, 2011, berthing limitations

forced staff to void all license agreements that were effective March 1, 2011 through April 1, 2011. Harbormaster Izenstark explained that Mr. Magaard was one individual whose license agreement was voided, but due to various factors, he was allowed to remain in the harbor on a temporary basis. Harbormaster Izenstark stated that he initiated a revocation process on Mr. Magaard's slip based on the fact that waiting list precedence is the only means of obtaining a slip in Santa Cruz Harbor. Other considerations were that Mr. Magaard was:

- Illegally living aboard his vessel
- Illegally living aboard his vessel with a dog

Harbormaster Izenstark explained that he received a letter from Mr. Magaard's attorney, Gretchen Regenhardt, claiming that Mr. Magaard's dog is prescribed as a service animal. Harbormaster Izenstark stated that the current Port District policy clearly specifies that no animals are to live aboard a vessel. He also reported that the District does not currently have a policy relating to service animals.

Commissioner Martin asked for clarification on whether Mr. Magaard was offered a permanent slip through the waiting list. Harbormaster Izenstark stated that Mr. Magaard had been on the verge of being offered a permanent slip through the waiting list. In the meantime, he was offered temporary berthing while waiting for a permanent slip assignment, prior to the tsunami.

Vice-chairman Smith asked how many license agreements were voided after the tsunami. Harbormaster Izenstark stated that approximately 10-20 license agreements were voided.

Ms. Regenhardt addressed the Commission and handed Port Director Ekers a packet of supplemental documents. Ms. Regenhardt stated that the harbor is a public facility and must comply with rules set forth by the Unruh Act. She explained that the Unruh Act, along with state and federal law, define that if a service animal is required, a person has the right to ask that the "no dog law" not be applied to them, though some conditions may be established.

In regard to certification, Ms. Regenhardt stated that it is not reasonable for the District to ask for documentation because Mr. Magaard's dog is not a certified guide dog, therefore making it not subject to certification. She explained that the dog is trained to respond to Mr. Magaard's needs.

Mr. Magaard addressed the Commission and explained that he went through the appropriate channels to ensure his vessel could be berthed at Santa Cruz Harbor. He stated that he informed Harbormaster Izenstark of his intent to live aboard, however admitted that he did not disclose that he owned a dog. He stated that because he has a prescription for the dog, he did not think it would be an issue.

Commissioner Goddard suggested that each aspect of Mr. Magaard's revocation be looked at individually. He stated that the process of slip issuance by harbor staff, illegal live aboard status, and living aboard with an animal are all individual aspects that should be addressed as separate issues.

Commissioner Lee expressed his belief that some of these issues should be postponed until legal counsel is present.

Commissioner Goddard asked for the criteria used in making the determination to allow Mr. Magaard to remain berthed after the tsunami. Harbormaster Izenstark stated that because Mr. Magaard's vessel was already in the harbor and was not a trailerable vessel, and harbor staff was under the impression that Mr. Magaard was not living aboard, that temporary arrangements could be made to allow him to stay.

Harbormaster Izenstark explained that once displaced boaters, including boaters with older waiting list dates, began inquiring about returning to the harbor, he realized that to keep the integrity of the waiting list, Mr. Magaard would have to find alternate berthing.

Commissioner Lee suggested that the staff report outlines the appropriate steps to move forward with this situation. Port Director Ekers explained that if the Commission wishes to refer this issue to the policy committee, then staff can accommodate Mr. Magaard temporarily, based on the guidelines suggested in the staff report.

Chairman Geisreiter acknowledged that there are several unanswered questions regarding whether the harbor is within its authority to act under various legal statutes and policies. He stated that he would be comfortable allowing Mr. Magaard to stay, only until such time that the committee has formulated a recommendation for the full Commission.

Vice-chairman Smith commented that if the dog is allowed in the harbor in this interim period, it should wear an appropriate identifying service dog vest at all times.

Commissioner Lee suggested that Mr. Magaard be allowed to stay on a temporary basis, and allow him thirty days to supply appropriate documentation of a prescription from an appropriate provider indicating his need for a service animal, vaccination documentation for the dog, liability insurance naming the District as additional insured and documentation determining whether the dog is a service dog or emotional support dog.

Port Director Ekers stated that counsel advised her to inform the Commission, if the letter from Mr. Magaard's chiropractor were made public, that Mr. Magaard's chiropractor previously confirmed that her licensing does not allow her to diagnose emotional health or prescribe emotional support

animals. Port Director Ekers explained that since the letter has been made public, she needs to call Mr. Maggaard's chiropractor and give her the opportunity to revoke the prescription. Port Director Ekers stated that Mr. Maggaard will need to get a prescription from an appropriate medical provider. She explained that an emotional support animal involves a disability diagnosis; service animals are different in that they are trained to perform specific tasks.

Port Director Ekers stated that a policy committee meeting will be convened to discuss related policy issues. If Mr. Maggaard reaches the 30-day limit on temporary berthing and policy issues are not resolved or if there are issues of non-compliance by Mr. Maggaard, Port Director Ekers suggested staff can confer with counsel, which may result in temporary or permanent placement of the dog elsewhere.

Commissioner Goddard stated that the integrity of the waiting list is the most important issue at hand. He expressed his belief that the dog is a side issue, and determining policy related to slip issuance in keeping with waiting list policies is more on point.

Commissioner Martin agreed there are policy issues that need to be discussed. He stated that making a decision without clear direction is difficult, and supports convening a policy committee meeting as soon as possible.

MOTION: Motion made by Commissioner Lee, seconded by Vice-chairman Smith to extend temporary berthing to Mr. Maggaard for a period of 30 days, as long as temporary berthing space is available and no other violations of Port District policies occur, contingent upon Mr. Maggaard providing the District with appropriate documentation of liability insurance in the amount of \$500,000 naming the Port District as additional insured, a prescription from an appropriate medical provider stating the need for a service animal, documentation determining whether the animal is a service dog or an emotional support dog and current vaccination records. It is understood that Mr. Maggaard's vessel may be relocated as needed by the Harbormaster, for best management of the harbor. Additionally, Mr. Maggaard's dog must wear an appropriate identifying service dog vest at all times in the harbor area.
- *Motion carried; Commissioner Goddard voting NO*

9. Authorize Port Director to Execute an Agreement with Pacific Constructors, Inc., for Dredge Program Consulting (NTE \$175,000)

Discussion: Port Director Ekers reported that Paul Gillen of Pacific Constructors, Inc., has been working with District staff in the capacity of a consultant since June, at which time she executed a \$25,000 services agreement within the scope of her authorization. She stated that Mr. Gillen and his company Associated Pacific Constructors, Inc., performed the pile replacement project

within the harbor and is the low bidder for the V-dock replacement project, scheduled to begin in September.

Mr. Gillen is working on plans for performing needed maintenance on the dredge and has also found candidates for all of the temporary positions available on the transitional dredge crew. She stated that Mr. Gillen has been an integral part in working with staff to develop a new approach to the dredging program.

Topics covered at the recent dredging committee meeting were discussed. Commissioner Lee and Commissioner Martin informed the Commission that the option of installing a degasser on "Seabright" is a higher priority than proposed acquisition of a multi-beam sonar system, at this time.

Dave Harrison, Local No. 3 Operating Engineers representative, stated that he was in attendance at the dredging committee meeting. He expressed his belief that based on the discussion, Mr. Gillen may not be the most qualified candidate for the consultant position. Mr. Harrison asked the Commission to deny the execution of the agreement and allocate the funding to rehire the former dredge crew.

Commissioner Goddard asked if this agreement has undergone legal review. Port Director Ekers stated that counsel has reviewed the document. She stated that this is a draft copy and there may be language changes to the executed agreement, however the scope of work and price are accurate.

MOTION: Motion made by Commissioner Goddard, seconded by Commissioner Lee to authorize Port Director to execute an agreement with Pacific Constructors, Inc., for dredge program consulting (NTE \$175,000)
- *Motion carried unanimously.*

10. Approval of Cash / Payroll Disbursements – June, 2011

MOTION: Motion made by Commissioner Martin, seconded by Vice-chairman Smith to approve the cash / payroll disbursements for July 2011, in the amount of \$608,250.49
- *Motion carried unanimously.*

11. Port Director's Report

Port Director Ekers reported as follows:

Labor Negotiations: At the request of Local No. 3 Operating Engineers (OE3), District staff and counsel met to discuss a new proposal by OE3, which suggests a 3.5 to 3.8% increase. Port Director Ekers reported that the District will respond to OE3 in the appropriate time frame.

U-dock Update: Port Director Ekers informed the Commission that U-dock is scheduled to be complete on Thursday, August 25, 2011. She stated that a ribbon cutting ceremony for the will be held Friday, August 26, 2011, at 2 PM.

V-dock Updated: Port Director Ekers reported that the anticipated start date for demolition on V-dock has been postponed to September 19, 2011. She stated that notice will be given to slip renters.

Electrical Upgrade: Docks on the east and west side of the south harbor are anticipated to undergo electrical upgrades to meet current codes and standards. This work is expected to be done at the same time as dock replacement.

12. Harbormaster's Report

Harbormaster Izenstark reported as follows:

Aerators: Aerators in the north and south harbor have been turned on for the last couple of days. There have been large schools of anchovies in the harbor, which contribute to low oxygen count readings.

13. Delinquent Accounts over 90 and 120 days

The 120-day delinquent list has been reconciled with the Department of Boating and Waterways funding. The 60-day delinquent list has grown slightly. A notice of impending lien will be sent to these delinquent slip renters.

14. Comparative Seasonal Revenue Graphs *(There was no discussion of the revenue graphs)*

15. Crime / Incident / Citation Report – July 2011 *(There was no discussion of Crime / Incident / Citation Report)*

16. Facilities Manager Report *(There was no discussion of Facilities Manager Report)*

17. O'Neill Sea Odyssey Annual Report *(There was no discussion of O'Neill Sea Odyssey Annual Report)*

18. Written Correspondence

- a) Letter from Santa Cruz Paddleboard Union, to Harbor Staff
- b) Letter from Port Director Ekers, to m. Bernal, City Manager
- c) Letter from Port Director Ekers, to S. Mauriello, County Administrative Officer

19. Port Commission Review Calendar *(There was no discussion of Port Commission Review Calendar)*

20. Follow-Up Items *(There was no discussion of Follow-Up Items.)*

21. Announcement of Closed Session Pursuant to Government code (Ralph M. Brown Act) Section 54957.

Type of Meeting: Closed Session

22. Public Employee Performance Evaluation
Title: Port Director

Type of Meeting: Public Session

23. Action and Vote Disclosure after Closed Session Pursuant to Government code Section (Ralph M. Brown Act) Section 54957.1

Chairman Geisreiter announced there was no reportable action taken in closed session.

Chairman Geisreiter adjourned the regular public session at 9:55 pm.

APPROVED:



Reed Geisreiter, Chairman