

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

July 9, 2008

PRESENT:

Commissioner Pellegrini
Commissioner Curless
Commissioner Wilson
Commissioner Hunter
Commissioner Higgins

President Hunter announced there was no Closed Session.

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

President Hunter asked John Driscoll to lead those present in the Pledge of Allegiance.

PUBLIC COMMENT

Dave Spreen stated he was concerned by the lack of response by the Harbor District to the 2006/07 Grand Jury. He gave the Board of Commissioners a written copy of his comments.

David Elsebusch handed out a copy of a letter he wrote to President Hunter regarding his concern the Harbor District is violating IRS regulations.

Melvin McKinney said he felt the Harbor District is not managing Woodley Island Marina properly because it allows unseaworthy vessels to take up moorage space that could be occupied by commercial boats. He said the management is incompetent and is not working for the good of the people. He also said another example of incompetence is the system at Woodley Island used to remove sewage from boats is not working and it should be fixed. Also Mr. McKinney said he has concerns with the grants for the Shelter Cove Breakwater Rehabilitation Project and the Redwood Marine Terminal and would like a full report on the status of the grants.

Todd VanHerpe said during the last Board of Commissioners meeting an audience member made an incorrect statement during public comment. He said after that meeting he spoke with the commenter and gave him the correct information. The comment was that the Harbor District did not do enough to encourage and assist new aquaculture leases. Mr. VanHerpe said several months ago his company, Humboldt Bay Oyster Company, applied to the Harbor District for an oyster mariculture lease and it was granted. He said the Harbor District is very supportive of the industry and he appreciates the help he has received from District staff. He reminded the Board of Commissioners that Devin Bartley, aquaculture coordinator for the State of California, had been to an earlier Board meeting and thanked the Board for their support of the aquaculture/mariculture industry and stressed the District's regulatory importance.

PUBLIC COMMENT RELATED TO THE DRAFT REDWOOD MARINE TERMINAL BUSINESS PLAN

David Elsebusch said it was astounding to see what has happened since the Harbor District acquired the Redwood Dock, a piece of "crap". Headwaters funded a study to assess the feasibility of rebuilding a functioning dock. He said unless the CEO and District Counsel have completed negotiations, there is no agreement on the table. It should be mandatory that any agreement be fully vetted for months in public. This issue is too important for a 3-2 vote and disgruntled people are coming out of the woodwork. People are concerned about a foreign interest owning the bay.

President Hunter said the advisory committee would study any agreement and present a final draft to the Board of Commissioners in an open meeting. He said the public will be given ample time to review the agreement prior to any Board action.

District Counsel stated in his experience with this Board of Commissioners, the Board has been tremendously open about discussing issues in public meetings even when they have the right to discuss and vote in Closed Session. He said the Harbor District is one of few entities that take extraordinary steps to keep the public informed and included.

Commissioner Wilson said he disagreed with the plan to negotiate an agreement with Goldman Sachs because the Redwood Marine Terminal Business Plan has not yet been approved by the Board of Commissioners and the Plan has not gone through the CEQA process. He said it is hard for him to look the public in the eye. He feels the Board of Commissioners should vet the process completely before taking action.

Commissioner Pellegrini asked District Planner at what point in this process is CEQA triggered and District Planner responded he would be giving a staff report later in the meeting. Commissioner Wilson stated it is not on this agenda to discuss. Commissioner Wilson said the public should have been informed of this type of staff report. CEO stated a staff report does not require public notice and does not normally necessitate discussion; but an action item on the topic can be set up for a future Board meeting.

President Hunter said that the Board has received many questions about the CEQA process and the District Planner is prepared to provide a staff report on CEQA. He said he preferred to hear a staff report at this meeting and then schedule a discussion item for a later meeting.

Commissioner Higgins suggested negotiations with Goldman Sachs topics be listed as non-action discussion items under Unfinished Business and then District Planner can speak about environmental review. He also said the Board needs a contract expert who has no stake in the business on the negotiating team because he feels Goldman Sachs is out to make a quick sale and cannot be trusted explicitly to craft a deal in the Harbor District's best interest. Commissioner Higgins said the Board has a huge fiduciary responsibility and should be able to discuss these issues under Unfinished Business. He said the Board needs an expert in this type of contract and without the guidance of someone knowledgeable in marine contract law he will object when time to vote.

President Hunter stated traditionally action items appear under Unfinished and New Business and he said he was concerned if he had put discussion items under these headings, there might be criticism the Board would be taking action.

Commissioner Curless suggested contacting maritime attorney Larry Mallon to assist with any negotiations with Goldman Sachs. Commissioner Higgins said he felt better knowing the District had Mr. Mallon available to assist with this issue. CEO stated the budget includes costs for services by Mr. Mallon.

Pete Oringer said maintaining local control is important and during contract negotiations many heads are needed at the table for perspective. He suggested a public study session would be beneficial and the Board should have a discussion of what "green" means to the community.

Dave Spreen read out loud and gave a letter to the Board, which outlines his questions and comments on the Business Plan.

Kermit Thobaben said at the last Board meeting only two Commissioners spoke about financial and environmental concerns. He said the public is overwhelmingly opposed to the Business Plan. Of course jobs are important and people would like to see the railroad return, but the public doesn't believe that will ever happen. There needs to be a better plan than one involving a \$35 million revenue bond because bond buyers want to see more revenue than that which is proposed. He said the plan is not financially realistic.

Joe James said he opposes the Goldman Sachs/RMT port-rail-container project. He said there are too many environmental issues and he is concerned about the number of trains which would travel through the Arcata Marsh and Old Town Eureka, the geological uncertainty of the Eel River Canyon, the military takeover of the harbor for homeland security, etc. He said there are too many awful, environmental, political and ecological consequences associated with this whole idea.

Mike Kellogg said he supports the project and the Business Plan. He said there is much information in the Business Plan regarding the number of containers that will be transported; but the number of trains required is determined by whether the containers are double-stacked and the length of the train and estimated that full terminal build-out at three trains per day in each direction.

Dave Berryman said John Frederick's My Word article in the Times-Standard gives credit to the Harbor District for having common sense. He asked if it was true Goldman Sachs said the project would be privately funded. He said all this hoopla about public investment and environmental apocalypse "doesn't wash anymore, kids."

Richard Whaley said he is tired of hearing about government agencies and their cockamamie schemes to make plans. He said the most famous one is when the Exxon oil drilling rigs were going to be built across the bay from the Hilton Hotel – that is about as dumb as you can get. He said any plan that depends on rail transport in and out of Humboldt Bay is ludicrous.

Bill Thompson said there are too many holes and suppositions in the Business Plan for any determination to be made.

Tom Brundage, a local consulting geologist said it is beyond his comprehension how this project has come this far and how people can consider this a feasible project with the amount of work and maintenance to be done on the railroad. He said he would write a letter to the Board of Commissioners.

Rob McBeth said he supports the Harbor District moving forward with the Business Plan. He said there is a long way to go before anything gets built, but don't close the process down now. If the project were built, it would open up opportunities for recreation and conservation projects and jobs.

Bill Losey said many good opportunities for this area have been thrown out. He said Union Pacific railroad is looking for places and opportunities for more railroad track. He urged the Harbor District to not be closed-minded by the eco-terrorists, but do not give away local control. The Board is on the right track, keep progressing.

Fred Chien said he supported the Business Plan and urged the Board to go forward. He said people are worrying about losing local control, but if the Board stops now, what control will they have. Keep monitoring the progress and open up opportunities.

Lawrence LaBranche said the Board's job is to look at all options. He said this area needs the railroad; businesses are clamoring for rail access. He encouraged the Board to move forward.

James Fickle, KMUD radio, said it is important to look at all the issues. Oil spills in the bay are a big concern, as well as other environmental, economic and geological issues. This is our bay, our fisheries, and our economics. Mr. Fickle said the Eel River Canyon route is geologically unstable and there is a reason the railroad is not in operation anymore. He said there is no easy way in or out of Humboldt County.

John Ford said he had worked in Richmond terminals and said one of the great things about bringing in container ships is that 75-100 people stay in port for each ship for 4-7 days, which would help out the local economy. He also asked if there was a way to get sweatshirts advertising "Redwood Marine Terminal".

Paul Pellegrini said he supported the Business Plan.

Todd VanHerpe said he was disappointed the community has become so polarized with not a lot of room in the middle. He said it feels like you have to pick a side, a team, to go with. He said he is in support of Option B and will be one of the strongest environmental advocates to protect his oyster beds in North Bay. Local control is important, but when you see kids leaving the area for better paying jobs you realize selling t-shirts and kayaks is not the way to go. If his children stayed to run the oyster farm, that would be great; but if they left the area then so be it. He said his oyster farm is a gem in Humboldt Bay and the oysters grown in Humboldt Bay rival no where else. Protecting the life he loves is important and the Business Plan has options for aquaculture, cogeneration plant and other opportunities. Mr. VanHerpe said he would be steadfast in his environmental concerns.

Susan Penn said the Business Plan banks most of the dollars on cruise shipping and she has done some research into other West Coast ports. Astoria has 10 cruise ships per year, but they have been at it for a while. The Board should look realistically at what is expected. She said the Business Plan is not "businessy" enough for \$30 million.

Melvin McKinney said when you dredge the bay to 50' all the way to the dock, which is what will be needed for this project you allow more water in the bay causing more erosion. He said the Corps of Engineers tells him this is not a sustainable bay. He said the Business Plan does not address local business, those businesses that

could set up in Humboldt Bay, and the commercial fishing industry needs more places to park their boats. Look at home to see what you have.

Paul Pellegrini said the commercial fishermen are not dissatisfied with Woodley Island Marina. He said it's not the people who are paying moorage on derelict boats that are an issue; it's the ones not paying moorage on derelict boats taking up valuable spaces that are the main problem. Mr. Pellegrini said he feels most people who use the harbor and live in Eureka are supportive of the Business Plan.

Pete Oringer said he echoes the words of Mr. McBeth and Mr. Chien that the Business Plan is a visioning document and there is no direction yet. He said Plan B offers a good direction. People are nervous about private investment, but there have been public/private partnership investments here for years. He urged the Board to be careful about how the contract with Goldman Sachs is written; but there is a chance now for a direction, there are lots of choices to be made, but direction can be changed if needed.

Joe McDonald said he drives truck and doesn't particularly care if the railroad is running or not. He said the reason the railroad is probably not up and running is because there is nothing to ship from here, not because of geological concerns. The railroad operated for over 100 years and overcame landslides and weather damage during that time. Mr. McDonald said whether its trucks or trains, it doesn't matter – it's all about jobs and that's what is needed for Humboldt County. He said it is too bad that almost every new industry wanting to come to Humboldt County gets turned away and there goes the jobs; but people are more than willing to welcome \$10/hr. jobs from a hamburger stand.

Andy Colonna said he hates to see the county divided between "us" and "them". He said it is important to let the process work and people will have an enlightened view of problems and solutions. He reminded everyone that "environment" means "surroundings", there's no reason to get riled up by the mention of the word. Mr. Colonna said the Federal Code of Regulations states an EIS has to contain a cost-benefit analysis, a clear delineation of alternatives and their impact on the environment.

Kaye Strickland said both the Eel River Canyon and Highway 101 were rendered unusable in 1964 by weather damage. The railroad was repaired months before the highway. She said she is not in favor of giving away the bay and the dock and wants to make sure any project is environmentally sound.

Commissioner Higgins said he would like on the agenda for next meeting a report on how bonds work. He said he was hoping the information would be included in the Business Plan, but is not. He also said he was hoping the Business Plan would contain specific businesses likely to contract, but the information is very general.

CEO stated the consultants are contracted for a specific number of meetings and bringing them back to a Board meeting to discuss how bonds work would decrease those contracted meetings. Commissioner Higgins responded if the Board of Commissioners is to approve the Business Plan, the Board should know how the issuing of bonds works. CEO reminded the Board they did not contract with TranSystems for marketing activity. Commissioner Higgins stated he felt there is "no meat on the bones" referring to the Business Plan; the framework is skeletal. He said the assumption is there are plenty of businesses, but he needs to know what they are. CEO suggested District Treasurer answer Commissioner Higgins' question about bonds at the next Board meeting.

CONSENT CALENDAR

Commissioner Higgins requested one correction and one deletion from the minutes of June 26, 2008.

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

CEO REPORT

- ❖ 4TH of July – Woodley Island was closed to traffic around 9:30 p.m. because there was no more parking. Dockmaster reported there were no incidents and everyone had a great time.
- ❖ 7/7: CEO chaired a port security meeting.
- ❖

- ❖ 7/8: Director of Conservation chaired a meeting to develop the next phase of the application for the \$900,000 wetland estuary grant due at the end of August.
- ❖ 7/8: Commissioner Wilson, Director of Conservation and CEO attended a water trail meeting with RCAA representatives.
- ❖ 7/9: Director of Maritime Commerce coordinated a conference call between several cruise ship ports to discuss marketing itineraries to cruise lines.
- ❖ Humboldt Bay Management Plan Advisory Committee appointments are out for recruitment. The deadline is August 15th.

Commissioner Wilson asked CEO if a response to the 2006/07 Grand Jury Report was sent. CEO responded a letter was sent about 1 ½ years ago. Commissioner Wilson asked if there was a legal responsibility to respond as a Board. District Counsel stated the entity is required to respond to the judge supervising the Grand Jury.

Commissioner Wilson said obviously there would be a cost associated with engaging an outside attorney to review the loan with NCRA, a recommendation by the Grand Jury. District Counsel stated the Grand Jury is a committee of lay people, not legal counsels. Also within the Harbor District Enabling Legislation is the clear authority for the Harbor District to give, not just loan, money if it is in the District's best interest. One of the mandates in the Enabling Legislation is to promote commerce.

Commissioner Higgins asked CEO about correspondence to Darren Polhemus regarding a water quality issue in Shelter Cove. CEO explained the waiver process as it relates to the District's Shelter Cove property.

DISTRICT COUNSEL REPORT

District Counsel stated he was instructed by the Board of Commissioners to respond to a complaint from David Elsebusch which states the Harbor District is in violation of IRS regulations when payments for services are made to the firms of District Counsel, District Treasurer and District Planner and not to the person individually. District Counsel said this complaint pre-dates his service to the Board of Commissioners. David Elsebusch continually alleges illegal activity in paying the corporation and not the individual. This issue has been reviewed by District Counsel, former District Counsel, current District Treasurer who is a CPA, at least 2 auditors and District Counsel's personal accountant, all of who have concluded there is no basis to Mr. Elsebusch's complaint. Even the statute provided by Mr. Elsebusch in his complaint has no relevance to the issue.

Mr. Elsebusch alleges it is improper to not withhold federal taxes from payments to District Treasurer, District Counsel and District Planner. These individuals are not employees and the Harbor District complies with IRS regulations by issuing 1099 forms to the corporation.

District Counsel stated many different professionals over several years have given the same opinion; there is no violation. Mr. Elsebusch is not an accountant or an attorney. Mr. Elsebusch's expertise in legal opinions is questionable absent his legal authority.

David Elsebusch responded District Counsel should not go out of his way to denigrate and accuse people of being less than competent; he used poor judgment and is out of order. District Counsel apologized to Mr. Elsebusch stating that was not his intention, but to advise the Board to give greater weight to a trained professional's opinion over that of a layperson who has no expertise in law or accounting. Mr. Elsebusch also said his basis for the complaint is not as a professional, but as a citizen who has consulted the IRS and he said they encouraged him to file a complaint for fraud because the professionals are employees and not independent contractors and that is what he is going to do. Commissioner Pellegrini said she thought that was a good idea because then a final determination will be made and the subject will be put to rest.

STAFF REPORT

CEO stated District Planner's report on CEQA stems from many recent questions from the Board and the public on when the CEQA process starts as it pertains to the Redwood Marine Terminal.

District Planner stated the Harbor District must have a certified environmental document before the Board of Commissioners approves the Redwood Marine Terminal Project and it is important to know at what point a project will be approved in order to know when the requirement for a CEQA review is activated. District Planner

said receiving and filing the Feasibility Study does not constitute approval by the Board; receiving and filing the Business Plan also does not constitute approval by the Board.

He said it is important to remember the main point is that if whatever Goldman, Sachs is marketing on behalf of the Harbor District has a significant environmental impact, and then CEQA must be done beforehand.

Commissioner Higgins asked if a binding agreement with Goldman, Sachs would trigger CEQA review. District Planner said signing a Letter of Intent would not, but if Goldman, Sachs were funding part of a project, CEQA would be necessary.

District Counsel asked if the agreement with Goldman, Sachs is that they find a party interested in proposing a project to the Board and they bring that party and the project back to the Board of Commissioners to find out if the Board is interested in pursuing the project, then is that the time CEQA would be triggered? District Planner responded the Board of Commissioners would be considering whatever Goldman, Sachs brings to the Board as an application; and like all other applications, it would require CEQA review.

Commissioner Pellegrini said Aldaron Laird spoke at the Humboldt County Board of Supervisors meeting and stated the Harbor District is violating CEQA law. District Planner stated the Board of Commissioners is not in violation of CEQA law.

Commissioner Higgins said it doesn't seem likely Goldman, Sachs would sign an agreement without binding the Harbor District to some course of action and wouldn't that engage CEQA. District Planner responded it might, but CEQA's main concern is to activities that affect the environment, not to the business relationship between the Harbor District and Goldman, Sachs.

Dave Spreen asked why the Board of Commissioners is not looking at all possible business alternatives, why just one. District Planner said with respect to a proposed project, CEQA requires the Harbor District to look at potential alternative uses in case there is an alternative use having less impact on the environment, which then the lead agency would have to choose that alternative. Mr. Spreen asked how the alternative is chosen. District Planner stated a management committee of the lead agency, consisting partly of consultants working on the project, would meet and discuss the alternatives.

Dave Berryman asked if other ports had been consulted to see what problems they have encountered and how they have solved them. District Planner said that he would not be the person to do this, but he presumed the design team and consultant would want to talk to other ports with similar situations.

Andy Colonna asked if NEPA would apply. District Planner stated NEPA would apply to a federal agency (i.e. Corps of Engineers) having to grant a permit for the Redwood Marine Terminal project.

Todd VanHerpe asked what if the determination was made there was no significant environmental impact and he disagreed. District Planner stated prior to approving the environmental document for the project, the Board of Commissioners would hear public comment to make sure all the impact is captured prior to approval.

Commissioner Wilson said he wanted to point out the fact that NCRA is going to appeal the Novato lawsuit to Federal Court so they would not be covered under CEQA and he takes issue with that fact.

Commissioner Higgins asked how the Harbor District makes sure the NCRA is in compliance with CEQA. District Planner said if NCRA doesn't need any Harbor District permits, and then the District has no hold over them.

COMMISSIONER REPORTS

Commissioner Pellegrini

- ❖ Said there is much erroneous information about the relationship of the erosion in the bay to the dredging and water flow. She said sediment, gravel, sand and silt from the Eel River now flows into the bay. Also, she said with respect to the restoration and repair of the Eel River Canyon, today's technology far exceeds that of decades ago when the rail was repaired, making repairs easier and faster.
- ❖

- ❖ Read a Friends of the Eel River publication regarding NCRA and the easement and right of way through the Eel River Canyon.
- ❖ 7/23 @ 1:30 p.m. the Ordinance 9/17 Committee will meet, walk the docks at Woodley Island Marina and gather information.

Commissioner Curless

- ❖ 7/14-20 the Fortuna Rodeo will be held.

Commissioner Wilson:

- ❖ Attended a water trails meeting with RCAA representatives and Director of Conservation. The committee is compiling a list of potential projects around the bay.
- ❖ Stated virtually every school district in California is losing students and schools are closing.
- ❖ 7/24: initial plans on water trail improvements will be on display at the Humboldt Bay Aquatic Center from 4 – 6 p.m.
- ❖ Attended a cocktail party on the Madaket and was reminded of the derelict boats in the marina.
- ❖ Asked about putting the Board packets on the website to conserve paper.
- ❖ Would like a representative of the County of Humboldt to make a presentation to the Board on the General Plan update concerning alternatives relative to land use around Humboldt Bay.

Commissioner Hunter:

- ❖ Attended a meeting in Fort Lauderdale, Florida.

Commissioner Higgins:

- ❖ Moving forward with Director of Conservation on the marine protected area project. He said it is a multifaceted effort. MPA's will be completed on the California coast by 2012.

ADVISORY COMMITTEE REPORTS

Commissioner Wilson reported he and President Hunter met to discuss the Redwood Marine Terminal Business Plan timeline. He said the subject is on many public agency agendas for discussion in the next month and suggested the extension of the comment period to August 28th.

Commissioner Pellegrini asked what the negatives to the extension would be. Commissioner Higgins said the consultants would not be able to respond before the end of September. CEO stated the item is on the City of Arcata's Council agenda for July 16th, well within the time period; Headwaters has asked for only a progress report; City of Eureka representatives have attended all Board of Commissioners meetings where this item has been discussed and the comment period deadline is July 26th. He said it would be a disservice to the people who have worked hard to send in their comments within the original timeframe. Discussion continued and the Board of Commissioners agreed to extend the deadline to August 28th. A media release will be issued stating the extended comment period.

President Hunter stated the negotiating committee on the Goldman, Sachs agreement met and will continue to meet until they have something definitive to bring to the Board of Commissioners.

The Board discussed putting the Redwood Marine Terminal Business Plan and the Goldman, Sachs agreement on future agendas as Unfinished Business discussion items. It was agreed these items would appear as discussion items only under Unfinished Business.

OTHER: None

NON-AGENDA: None

UNFINISHED BUSINESS

A. CONSIDERATION OF SECOND READING AND ADOPTION OF FY 2008/09 BUDGET.

CEO stated this is the same budget that was presented at the Board's June 26th meeting.

COMMISSIONER PELLEGRINI MOVED FOR THE ADOPTION OF FY 2008/09 BUDGET.
COMMISSIONER CURLESS SECONDED.

Commissioner Higgins stated he gave his concerns in writing to the Commissioners. He said there is too much invested in the harbor side without return and hoped for tangible business clients to be part of the Business Plan in order to get some idea of future revenue opportunities.

President Hunter asked what the Business Plan had to do with the budget. Commissioner Higgins said the District cannot continue to run in the negative, should cut losses and change its direction. He said the District also needs to build funds for future dredging.

Commissioner Pellegrini said it is ironic how in the past this Board has been accused of putting too much emphasis on conservation and recreation. Commissioner Higgins said the bay dredging in 2000 was expensive and the District is still paying for it. Commissioner Pellegrini stated the community demanded the dredging of the bay entrance and channels.

Commissioner Higgins stated the Business Plan has lack of substance and the District should cut its losses, change direction and abandon the Redwood Marine Terminal project.

Discussion continued in this way until Commissioner Curless called for the question.

David Elsebusch said he would like to comment on the budget, but President Hunter said since the question had been called for the public would not have an opportunity to speak. Mr. Elsebusch uttered some expletives towards President Hunter and left the meeting.

President Hunter called for the vote.

MOTION CARRIED WITH COMMISSIONERS WILSON AND HIGGINS DISSENTING.

NEW BUSINESS

A. CONSIDERATION OF RECEIVING AND FILING PERMIT APPLICATION 08-03 TO COAST SEAFOODS FOR SHELLFISH CULTURE FEASIBILITY STUDY.

COMMISSIONER HIGGINS MOVED TO RECEIVE AND FILE PERMIT APPLICATION 08-03 TO COAST SEAFOODS FOR SHELLFISH CULTURE FEASIBILITY STUDY. COMMISSIONER WILSON SECONDED.

CEO reported this application is the outgrowth of a nine-year permit effort for Coast Seafoods on an existing operation and is basically a study to explore the possibility of growing oysters above the 1.5' tidal elevation.

MOTION CARRIED WITHOUT DISSENT.

ADMINISTRATIVE AND EMERGENCY PERMITS: None

The Regular Meeting of the Board of Commissioners adjourned at 9:58 p.m.

APPROVED BY:

RECORDED BY:

Signature on File
Roy Curless
Secretary

Signature on File
Patricia L. Tyson
Director of Administrative Services