

VENTURA PORT DISTRICT

BOARD OF PORT COMMISSIONERS MINUTES OF NOVEMBER 20, 2019



CLOSED SESSION

CALL TO ORDER:

The Ventura Board of Port Commissioners Regular Closed Session Meeting was called to order by Chairman Chris Stephens at 5:33PM at the Ventura Port District Administration Office, 1603 Anchors Way Drive, Ventura, CA 93001.

ROLL CALL:

Commissioners Present:

Chris Stephens, Chairman
Brian Brennan, Vice Chairman (arrived at 5:37PM)
Jackie Gardina, Secretary
Everard Ashworth
Michael Blumenberg

Commissioners Absent:

None

Port District Staff:

Brian Pendleton, General Manager
Todd Mitchell, Business Operations Manager
Jessica Rauch, Clerk of the Board

Legal Counsel:

Andy Turner
Elsa Sham

PUBLIC COMMUNICATIONS: Vikki Brock requested that her comments from the October 16th meeting be attached to the minutes and commented on items 4a and 4b. She also requested today's written comments be attached to the minutes, see attachment 1. Sam Sadove commented on item 4a, stating that he understands that the public will not see the results of the General Manager 360 Review, but would like a summary to be made available.

CONVENED TO CLOSED SESSION AT 5:40PM.

ADJOURNMENT: Closed Session was adjourned at 7:08PM.

OPEN SESSION

ADMINISTRATIVE AGENDA:

CALL TO ORDER:

The Ventura Board of Port Commissioners Regular Open Session Meeting was called to order by Chairman Chris Stephens at 7:10PM at the Ventura Port District Administration Office, 1603 Anchors Way Drive, Ventura, CA 93001.

PLEDGE OF ALLEGIANCE: By Commissioner Ashworth.

ROLL CALL:

Commissioners Present:

Chris Stephens, Chairman
Brian Brennan, Vice Chairman
Jackie Gardina, Secretary
Everard Ashworth
Michael Blumenberg

Commissioners Absent:

None

Port District Staff:

Brian Pendleton, General Manager
Todd Mitchell, Business Operations Manager
Gloria Adkins, Accounting Manager
Dave Werneburg, Marina Manager
John Higgins, Harbormaster
Joe Gonzalez, Facilities Manager
Robin Baer, Property Manager
Jennifer Talt-Lundin, Marketing Manager
Richard Parsons, Consultant
Jessica Rauch, Clerk of the Board

Legal Counsel:

Andy Turner
Elsa Sham

ADOPTION OF AGENDA

ACTON: Commissioner Brennan moved, seconded by Commissioner Gardina and carried by a vote of 5-0 to adopt the November 20, 2019 agenda.

APPROVAL OF MINUTES

The Minutes of the October 16, 2019 Regular Meeting were considered as follows:

Public Comment: Vikki Brock requested her written comments from the October 16th meeting be attached to the minutes.

ACTION: Commissioner Brennan moved, seconded by Commissioner Gardina and carried by a vote of 4-0-1 (Blumenberg abstained) to approve the October 16, 2019 Regular Meeting Minutes, attaching Ms. Brock's written comments.

PUBLIC COMMUNICATIONS: Vikki Brock commented on the dredging consultant position, Shellfish pledge, thanked Ms. Baer for the new Ventura Harbor Village occupancy levels report, which are now clear, asked that the new leasing policy come back to the Commission for approval, the amount of and need for a reduction in District litigation, and asked that her written comments be attached to the minutes (see attachment 2). Lynn Mikelatos thanked staff for being responsive to the different requests' from tenants.

CLOSED SESSION REPORT: Mr. Turner stated that the Board met in closed session; discussed and reviewed Real Property Items 1a – 1e on the closed session agenda. In addition, the Board discussed Item 3 and one case under Item 2. Staff was given instructions on how to proceed as appropriate on these matters and there was no action taken that is reportable under The Brown Act. Mr. Turner reported that the Commission will reconvene in closed session after the open session to complete the remaining items.

BOARD COMMUNICATIONS: Commissioner Ashworth reported on the Pacific Marine Fisheries Council (PMFC) meeting him and Mr. Pendleton attended in Costa Mesa. Commissioner Blumenberg met with Sharon Wagner from Congresswoman Brownley's Office in Washington DC to discuss dredging concerns. Also, him and his wife went to the Boatyard Pub over the weekend.

DEPARTMENTAL AND GENERAL MANAGERS REPORTS: Mr. Pendleton reported on the NOAA Sea Grant Site Review he attended this morning in San Diego. Ms. Talt-Lundin reported on the holiday activities and events occurring in Harbor Village.

LEGAL COUNSEL REPORT: None.

CONSENT AGENDA:

A) Approval of New Office Lease Agreement for Power & Process Engineers

Recommended Action: Voice Vote.

That the Board of Port Commissioners approve a new Office Lease Agreement between the Ventura Port District dba Ventura Harbor Village and Power & Process Engineers for the premises located at 1559 Spinnaker Drive #201 consisting of a total of 350 square feet for a one (1) year term.

ACTION: Commissioner Brennan moved, seconded by Commissioner Gardina and carried by a vote of 5-0 to approve a new Office Lease Agreement between the Ventura Port District dba Ventura Harbor Village and Power & Process Engineers for the premises located at 1559 Spinnaker Drive #201 consisting of a total of 350 square feet for a one (1) year term.

B) Approval of 2020 Port Commission Meeting Schedule

Recommended Action: Voice Vote.

That the Board of Port Commissioners approve the 2020 Port Commission meeting schedule.

Public Comment: Vikki Brock suggested there be a second meeting in January (see attachment 2).

ACTION: Commissioner Brennan moved, seconded by Commissioner Gardina and carried by a vote of 5-0 to approve the 2020 Port Commission meeting schedule.

C) Consideration of Claim by Lawrence S. Schwartz

Recommended Action: Voice Vote.

That the Board of Port Commissioners reject a claim filed against the Ventura Port District on October 30, 2019 by Lawrence S. Schwartz and authorize the General Manager to execute and mail a Notice of Rejection.

ACTION: Commissioner Brennan moved, seconded by Commissioner Gardina and carried by a vote of 5-0 to reject a claim filed against the Ventura Port District on October 30, 2019 by Lawrence S. Schwartz and authorize the General Manager to execute and mail a Notice of Rejection.

STANDARD AGENDA:

1) Ventura Port District Goal Setting Workshop

Recommended Action: Voice Vote.

That the Board of Port Commissioners:

- a) Receive and file the report from Management Partners for the Goal Setting Workshop held on September 14, 2019;
- b) Provide direction to staff regarding two to five-year goals and improving communications between the Board, staff and stakeholders; and
- c) Approve the minutes of the September 14, 2019 Special Goal Setting Workshop.

Public Comment: Vikki Brock asked how the Commission and staff plan to meet the District goals 5 and 6 (see attachment 2). Sam Sadove clarified his public comment on the September 14th minutes.

Presentation by John Bramble, Special Advisor, Management Partners.

ACTION: Commissioner Brennan moved, seconded by Commissioner Gardina and carried by a vote of 5-0 to receive and file the report from Management Partners for the Goal Setting Workshop held on September 14, 2019; approve the minutes of the September 14, 2019 Special Goal Setting Workshop; and the board directed staff to return at the December meeting with two to five-year goals for the District and Harbor Village.

2) Approval of a Request for Proposals to Lease a Multi-Use Waterfront Opportunity for Visitor Serving Uses at 1567 Spinnaker Drive #100

Recommended Action: Voice Vote.

That the Board of Port Commissioners approve a Request for Proposals (RFP) to lease 1567 Spinnaker Drive #100 for visitor serving uses.

Public Comment: Tristan Thames presented the Commission with a petition to keep the carousel and stated he would like the opportunity to meet with staff and have an open discussion regarding his business and the role it can play in Harbor Village. Sam Sadove stated that the money allocated for this space would be better used on the vacant Blackbeard's space and staff should be speaking with the existing tenant. Anette Cortez asked the Commission what the needs are for the space.

Presentation by Todd Mitchell, Business Operations Manager.

ACTION: Commissioner Brennan moved, seconded by Commissioner Blumenberg and carried by a vote of 5-0 to approve a Request for Proposals (RFP) to lease 1567 Spinnaker Drive #100 for visitor serving uses.

3) Acceptance of \$96,800 CA Sea Grant Subaward Grant for Year 2

Recommended Action: Roll Call Vote.

That the Board of Port Commissioners authorize the General Manager to sign the *Cost Reimbursement Research Subaward Agreement* for \$96,800, which reflects the terms and conditions of the CA Sea Grant Subaward for Year 2.

Report by Brian Pendleton, General Manager.

Public Comment: Vikki Brock asked why the Commission is not deferring acceptance of the NOAA grant (see attachment 2).

ACTION: Commissioner Brennan moved, seconded by Commissioner Blumenberg and carried by a vote of 5-0 to authorize the General Manager to sign the *Cost Reimbursement Research Subaward Agreement* for \$96,800, which reflects the terms and conditions of the CA Sea Grant Subaward for Year 2.

RECONVENED TO CLOSED SESSION AT 8:48PM.

RECONVENED TO OPEN SESSION AT 9:51PM.

CLOSED SESSION REPORT: Mr. Turner stated that the Board met in closed session and was briefed by counsel on the 2 remaining litigation matters under item 2 on the closed session agenda, and the personnel matters under items 4a and 4b on the agenda. As to those matters, staff and counsel were given instructions on how to proceed as appropriate and there was no reportable action taken under the Brown Act.

ADJOURNMENT: The meeting was adjourned at 9:54PM.

The next meeting is Wednesday, December 18, 2019.



Jackie Gardina, Secretary

ATTACHMENT 1

PORT COMMISSION AGENDA - REGULAR MEETING – NOVEMBER 20, 2019

I request these be included in meeting minutes for closed and regular sessions

CLOSED SESSION AGENDA - PUBLIC COMMUNICATIONS

Include public comments from closed session in October 16, 2019 meeting minutes (Appendix B).

I would first like to thank Jessica for clarifying that the Clerk of the Board needs a verbal request from the speaker to add written comments to the meeting minutes. I am requesting that my public comments from the October 16, 2019 closed session be included in the minutes to be approved during the regular session this evening. They are attached as Appendix B to this document that I will give to Jessica when I have finished speaking. I further request that my comments this evening on Item 4.a) and 4.b) be included in the meeting minutes for the November 20, 2019 closed session.

Item 4.a) Consideration of process for the 360 Evaluation of General Manager – As I stated during the October 16, 2016 closed session public comment,

It's important for the perceived legitimacy of the 360 as a meaningful exercise that it be a transparent and inclusive process. The goal here is to improve the working relationship with the new GM.

The 360 evaluation took place, though the Commissioners restricted participation to tenants so involved residents, like myself, were excluded. How will stakeholders be informed of the process for the 360 evaluation results and involved in the development process?

Item 4.b) Consideration of evaluation of status of independent contractor, Richard W. Parsons - With the Governor's signature of AB 5, which becomes effective January 1, 2020, I request notification of the District's decision regarding Richard Parsons employment status. As I stated during the October 16, 2019 closed session public comment when I handed out pages 8 and 10 (Appendix A) of the 2009-2010 Grand Jury Report that apply to Richard Parsons,

"I hope the District has developed a written transition plan for work that now must be done by employees. The District must be aware that anyone not meeting the new statutory requirements of an independent contractor, could not be compensated for work after 2019 unless hired as an employee. I know the Commissioners want to ensure they comply with existing laws and not invite additional litigation."

On Friday December 13th the last agenda will be released before AB 5 takes effect. As he no longer meets the criteria to be an independent contractor, this is the last opportunity to include a position for Richard Parsons for 2020.

Appendix A Ventura County 2009 – 2010 Grand Jury Final Report (select pages)

Ventura County 2009 – 2010 Grand Jury**Final Report**

- F-39.** The relationship of the District's Dredging Program Manager and that individual's other duties as the District's Project Manager (collectively, Project Manager) is documented by the District's Board agreement signed on September 28, 2005 and as amended on June 26, 2008 (Agreement).
- F-40.** The Agreement provides that the Project Manager is not an employee, partner, agent, or principal of the District, but is an independent contractor.
- F-41.** The Agreement provides that the Project Manager will serve as the District's Project Manager within the Harbor as directed by the District's General Manager.
- F-42.** The Agreement provides that the Project Manager will arrange such meetings needed to conduct the duties of the position at the offices of the District. The Agreement also provides the Project Manager with access to District files and permission to retain working copies of files, as well as providing the Project Manager with business cards, District stationery, secretarial support, and office space at the District's offices.

Conclusions

- C-01.** The District's adoption of a policy prohibiting serial or cumulative structuring of transactions to avoid monetary limits is commendable. Other jurisdictions, such as counties, have this policy explicitly articulated in PCC §20123.5 for counties. [Ref-08]
- C-02.** No single procurement action for the Refurbish Restrooms or the Dock Improvement works exceeded the General Manager's authority, that is, the \$10,000 or the \$25,000 authority to approve a contract or purchase, respectively. However, no records were found for either project to show whether the District received two proposals for contracts under \$10,000, or three proposals where feasible for purchases under \$25,000 as required by Board Policy. (F-20, F-26, F-27)
- C-03.** Two work files that were reviewed (Refurbish Restroom and Dock Improvements) contain work that falls within the guidelines for competitive bidding, based on District policy and the PCC, but were not competitively bid. (F-19, F-25)
- C-04.** The Refurbish Restroom and Dock Improvement work contained elements of work which could and should have been done at the same time to provide for efficient and economical execution of work in a competitive bidding environment. (F-20, F-21, F-26, F-27)
- C-05.** Both the Refurbish Restroom and Dock Improvement work show execution of work through individual procurement actions. (F-21, F-27)
- C-06.** The Refurbish Restroom and Dock Improvement work give the appearance of being performed in a manner to avoid the District's policy and PCC requirement to competitively bid certain types of work above a specified cost threshold. (F-20, F-26)

Ventura County 2009 – 2010 Grand Jury**Final Report**

- C-17.** The Agreement for the District's Project Manager appears to be defective. The Agreement provides that the District's Project Manager is an independent contractor for the District. The Agreement also contains elements of services and authority normally associated with an employee of the District, which may be in conflict with the Internal Revenue Service Publication 15-A of January 2006 criteria for differentiating between independent contractors and employees. (F-39 through F-42)

Recommendations

- R-01.** The District should significantly revise its administrative procedures for contracting and purchasing to provide adequate detail on the various types of procurement actions and limitations, clear documentation on the authority being used in procurement actions, checks and balances of procurement functions, and adequate oversight of staff. (C-02 through C-10, C-15)
- R-02.** The District should require ongoing training of staff regarding the basic requirements of the PCC, as well as on the recommended revised District Administrative policies. (C-09, C-10, C-16)
- R-03.** The Board should require an annual audit of major project expenditures to ensure compliance with the Board and PCC requirements. (C-02, C-09, C-13, C-16)
- R-04.** The Board should cause a review of all major projects completed over the last several years to evaluate the scope of apparent contracting irregularities noted in this review of three projects. (C-08, C-09, C-11, C-12, C-14)
- R-05.** The District Board should review the provisions of the Agreement regarding the District's Project Manager to ensure it meets the requirements of an independent contractor and the criteria specified by IRS Publication 15-A of January 2006. (C-17)

Responses**Responses Required From:**

Board of Commissioners, Ventura Port District (R-01 through R-05)

References

- Ref-01.** California Public Contract Code §20750-20753
<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pcc&group=20001-21000&file=20750-20753>
- Ref-02.** District Adopted budget of FY06-07(CIP page 5 of 5) approved on May 10, 2006 (Agenda item number 5)
<http://www.venturaharbor.com/files/6.pdf>

Appendix B Public Comments for October 16, 2019**PORT COMMISSION AGENDA - REGULAR MEETING - OCTOBER 16, 2019**

Request these be included in meeting minutes for closed and regular sessions

CLOSED SESSION AGENDA - PUBLIC COMMUNICATIONS

Item 4.a) 360 Assessment Review for GM – There are only 15 days left to complete this and be in compliance with the contingency for hiring the current GM. According to the minutes of the April 18, 2019 meeting the offer to Brian Pendleton for the General Manager position was contingent on “a 360 leadership evaluation be completed by an outside consultant in the first 6 months of the General Manager’s employment.” When will the 360 assessment take place and what stakeholders will participate? Because of all the problems the Lessees have had in the last five months, it would help if individuals from the tenant community participate in the process, including Master Tenants, harbor businesses, and some residents. There are a number of us who are willing to participate if requested. It’s important for the perceived legitimacy of the 360 as a meaningful exercise that it be a transparent and inclusive process. The goal here is to improve the working relationship with the new GM.

Item 4.b) Independent Contractor Review Richard Parsons - With the Governor’s signature of AB 5, which becomes effective January 1, 2020, I hope the District has developed a transition plan for work that now must be done by employees. The District must be aware that anyone not meeting the new statutory requirements of an independent contractor, could not be compensated for work after 2019 unless hired as an employee. The 2009-2010 Grand Jury Report (handout) suggested that Parsons did not qualify as an independent contractor. See F-39 through F-42, C-17, and R-05 regarding Parsons. The District filed no response with the Grand Jury to justify or explain Parsons’ status as an independent contractor. Parsons ended his tenure as GM the Port District in 1996. With the hiring of Todd Mitchell, the dredging work can be handled by an employee. And according to AB 5, Parsons does not have the professional credentials or licensing to qualify as an independent contractor for capital projects management. I know the Commissioners want to ensure they comply with existing laws and not invite additional litigation.

Item 1.

d) Property:

Negotiating Parties:

Under Negotiation:

1567 Spinnaker Drive #100

Brian Pendleton, Todd Mitchell, Timothy Gosney

Tristian and Sharon Thames dba Ventura Village
Carousel, Inc.

Month to Month Lease (Verbal Report)

Ventura Village Carousel is a top family attraction in Ventura – and the Port District still wants to remove it after it has been here since 1970. Suggest money and time would be better spent working with the existing tenant to innovate and create concepts that would serve Ventura families and children. Where else in the harbor can children do something alone.

ATTACHMENT 2

PORT COMMISSION AGENDA - REGULAR MEETING – NOVEMBER 20, 2019

I request these be included in meeting minutes for the regular session

Approval of October 16th Meeting Minutes – I would first like to thank Jessica for clarifying that the Clerk of the Board needs a verbal request from the speaker to add written comments to the meeting minutes. I request that my public comments from the October 16, 2019 closed and regular sessions be included in the approved October 16, 2019 meeting minutes. They are attached as Appendix B to my closed session Public Comments (which I have provided to the Clerk of the Board) and to Appendix A of this document that I will give to Jessica when I have finished speaking.

The minutes under public communications read: "Vikki Brock commented on the Shellfish pledge and business plan, the Ventura Harbor Village occupancy levels report, the amount of and need for a reduction in District litigation, and Parcel 5 & 8." This does not accurately reflect what I said or provided to the Clerk of the Board in paper form following my public comments (Appendix A) on October 16, 2019.

REGULAR SESSION AGENDA - PUBLIC COMMUNICATIONS

RWP Dredging Management – Page 12 of the agenda packet states "The Dredging Program Manager's activities...", and is submitted by Richard W Parsons, who is the "Dredging and Special Projects Consultant" and not a 'program manager', which would be an employee position.

Shellfish Pledge and Business Plan for District – Who has signed the Shellfish Pledge? Apparent conflict of interest continues to apply. The District has already been warned about gift of public funds. This is why a business plan is indispensable. Without signing the Shellfish Pledge (presented Sept 4th, Sept 14th, Oct 2nd, and Oct 16th, as stated in handout Appendix B Shellfish Pledge Chronology and Timeline) the case for a gift of public funds is strengthened.

The workshop consensus was that shellfish could no longer be the top priority. I'm hopeful that a full accounting will be available before staff returns with a proposed fiscal budget for 2020. At the Oct 2nd meeting Commissioner Mike requested having an agenda item regarding a business plan for the shellfish, and it has still not appeared on the agenda.

Occupancy Levels – Thanks to Robin Baer for providing occupancy numbers and a legend that are very understandable and complete. I emailed her and in less than 48 hours she provided the requested information that appears in the staff report for this meeting. This is an example of the transparency and responsiveness to a stakeholder request.

New leasing policy for Harbor Village – We request at least a 60-day notice, which was first requested on March 20, 2019, of when Commission will vote on a new leasing policy for the Harbor Village so tenants are able to review it. Appendix C contains staff report and Commissioner comments on this item from the March 20, 2019 meeting minutes of the March 20, 2019.

Future approach by Commission and staff to reduce potential of unnecessary litigation – I see that there are more cases for the closed session. What is the approach and how will it be implemented?

I request the actual verbatim of these comments be included in the minutes for the November 20, 2019 meeting.

STANDARD AGENDA:

Consent Agenda Item B – Approval of 2020 Port Commission Meeting Schedule

Page 44 of the agenda packet states that "Regular Meetings are held the first and third Wednesday of every month (excluding August) at 7:00PM, with Closed Session before. Regular Meetings are for approval of Consent and Standard Agenda Items." I see that the first Wednesday of January falls on New Year's day so there is only one January meeting on the third Wednesday. There are five Wednesdays in the month of January. Surely there is enough regular business to make an exception to the first and third Wednesday rule, especially when November and December have only one meeting per month. I suggest that the meeting schedule for January be revised to meet on the second and fourth Wednesdays for 2020.

Standard Agenda Item 1 - Ventura Port District Goal Setting Workshop:

As I looked over the Goal Setting workshop materials, on page 51 of the agenda packet I saw the list of Ventura Port District goals. Given the amount of ongoing litigation, tenant concerns and employee morale, how do the Commission and staff plan to meet goals 5 and 6:

5) Build respectful, productive, and mutually beneficial business relationships with our tenants, public agencies, elected officials and the community.

6) Provide exceptional public service and transparency at all levels within the organization through effective leadership, training, mentoring, and oversight. This promotes accountability, increased public trust, and a more efficient, effective and public focused organization.

Standard Agenda Item 3 - Acceptance of \$96,800 CA Sea Grant Subaward Grant for Year 2

On page 120 of the agenda packet, the Fiscal Impact states: "The grant requires a cost-share in the amount of \$136,105 for Year 2. The cost-share is achieved through a combination of volunteer contributions of time and District expenditures for the VSE project."

With the existing real property vacancies, backlog in lease execution, three significant exposures to litigation, the new General Manager's prior major and detail-specific role in the shellfish project and his failure to delegate his prior role to his staff successor, and the new requirements of AB 5, why isn't the Commission deferring acceptance of the NOAA grant? This is not the time for the Commission to be devoting staff resources to such a project. Moreover, until two issues are decided in the District's favor, it would be irresponsible to accept it:

- 1) Until special legislation is enacted to allow the project to be sited in Federal waters the project could not be implemented. Even if special legislation is enacted, it couldn't take effect until 2021; and
- 2) Until the US Army Corps of Engineers approves sub-leasing by the District to future shellfish farmers, the proposed project could not be implemented.

These issues should be resolved before the Commission diverts more resources that are currently needed to get the District up to speed in work that has been put aside to work on shellfish. Does the District have any information that would respond to these two issues?

Use of the name "Ventura Shellfish Enterprise" requires written consent from California Shellfish Enterprise C4013266. Without this specific written consent, the District should not be using the VSE name. See letter from the Secretary of State (Appendix D) regarding this issue.

Appendix A Public Comments for October 16, 2019

PORT COMMISSION AGENDA - REGULAR MEETING - OCTOBER 16, 2019

Request these be included in meeting minutes

PUBLIC COMMUNICATIONS

Shellfish Pledge and Business Plan for District - the workshop consensus was that shellfish could no longer be the top priority. Will there be a work plan for the transition and / or deferral of timelines; along with an accounting of all staff and resource expenses to date? I'm hopeful that it will be scheduled before staff returns with a proposed budget for fiscal 2020. District has been warned about gift of public funds and without a business plan that justifies the investment it is not an investment it is just an appropriation of funds. There is evidence that – this is why a business plan is indispensable as it protects the District and that commissioners sign the pledge. Without signing the Shellfish Pledge (presented Sept 4th and Sept 14th) the case for a gift of public funds is strengthened. Last meeting Commissioner Mike requested having an agenda item this meeting regarding a business plan for the Shellfish, and it is not on the agenda. There is no license approved or offered by VSE, so why are you continuing to use the name (VSE-Flyer-Info-1).

Occupancy Levels – appreciate the info for June – September 2019, however it is still not detailed enough – please include space leased and not open for business in the figures as this will accurately represent the occupancy of the Harbor Village.

Future approach by Commission and staff to reduce potential of unnecessary litigation – see that there are more cases for the closed session. What is the approach and how will it be implemented?

Parcel 5 – grassy lawn area represents only area designated for people who can't afford or have a lot of money to spend. It is a day use property – families, dogs, people sitting on blankets/benches – that are a high priority for the Coastal Commission.

Parcel 8 – given projection on sea level rise and storm surge, this parcel may be subject to damage and until the District has determined the cost of capital maintenance and whether the District has determined funding to handle this, there should be no development on that property until the District can determine what the risks of sea level rise and storm surge will be on that property.

STANDARD AGENDA:

2) New Concept Design for 1567 Spinnaker Drive #100 for Visitor Serving Uses (20 minutes)

Ventura Village Carousel has been here since 1970 and is an iconic family attraction in Ventura – and the Port District still wants to remove it. Suggest money and time would be better spent working with the existing tenant to innovate and create concepts that would serve Ventura families and children.

Appendix B Shellfish Pledge Chronology and Timeline

Shellfish Pledge Timeline and Chronology

On the following dates and venues I presented and requested that Ventura Port District Commissioners sign the Shellfish Pledge.

 11/6/2019

September 4, 2019 Port District Commission Meeting

- During public communications period of the Port District meeting provided each Commissioner and General Manager with a copy of the shellfish pledge request and asked that they each sign it (Attachment A).

September 5, 2019

- Emailed copy of signed pledge letter to Mayor LaVere and City Council Members.
- Sent pdf version of shellfish pledge request and public communications to Jessica Rauch, Clerk of the Board, for inclusion in meeting minutes.

September 6, 2019

- Emailed Andy Turner (Port District Counsel) and asked which Commissioners had signed the pledge. Did not receive a response.

September 14, 2019 Port District Goal Setting Workshop

- Opening comments during the Port District goal setting asked for Commissioners to sign the pledge (comments attached Attachment B).

October 2, 2019 Port District Commission Meeting

- During public communications period of the Port District meeting asked which Commissioners signed the Shellfish Pledge that was distributed at the September 4th meeting and the September 14th goal setting workshop.

October 16, 2019 Port District Commission Meeting

- During public communications period of the Port District meeting asked for Shellfish Pledge to be signed, as well as work plan for the transition and / or deferral of timelines; along with an accounting of all staff and resource expenses to date (see Attachment C).

Attachment A

September 4, 2019

Board of Port Commissioners
 Ventura Port District
 1603 Anchors Way Drive
 Ventura, CA 93001

Personally Delivered
 and
 Sent Electronically

SUBJECT: VENTURA PORT DISTRICT SHELLFISH PROJECT: ISSUES AND REQUEST FOR
 PLEDGE FROM COMMISSIONERS TO AVOID CONFLICT-OF-INTEREST

During the past several years, Ventura Harbor business owners and commercial fishermen have expressed concerns about several issues related to the District's shellfish project. This letter describes three issues and includes a request for transparency and right action.

- Multi-Million Dollar Expenditures to Be Covered by District Lease Revenue

The current District budget increased appropriations of District funding to the shellfish project to about half a million dollars. The funding to cover these expenditures comes primarily from lease payments made by harbor tenants. The only other source of dependable revenue is Possessory Use Tax, all of which is used to support the Harbor Patrol.

No financial planning has been done to determine if the shellfish project is feasible for the District. There has been no accounting or forecast of the funding required for District employee costs, services and supplies, or capital costs during pre-construction, construction, or post-construction. This includes both cash expenditures and the "in-kind" labor contribution that has diverted District staff from other work. This information should be provided. Commissioner Ashworth stated in the February, 2019 edition of *The Log* that "the District would spend \$2-3 million to put the permits in place." Has the Commission already committed to spending that amount?

- Cost to Other District Programs

As a result of the funding being allocated to the shellfish program and District staff time diverted from other activities, essential functions are being "pushed onto the back burner". The most obvious impact of the extraordinary focus on shellfish has been the failure of management to develop and manage its assets in an effective manner. This includes:

- Failure to develop Parcels 5 and 8 and the visitor-serving attractions and revenue that would have been produced by the two projects.
- Failure to develop the former Blackbeard's Restaurant that has been empty for more than two years. In addition, this mismanagement likely produced a significant settlement to the developer who was interested in renovating the property.

- o Loss of the Coffee Dock and Post in Harbor Village. This litigation also resulted in settlement.
- o Long-term vacancies in Harbor Village that have executed leases but have not opened for business, and other properties that are simply vacant.

- Conflict-of-Interest by Official Action That Would Produce Reasonably Foreseeable Gain or Advantage

The Port Commission has been voting to allocate District funding and staff time to the shellfish project. The project would develop shellfish permitting regulations, which once approved by the U.S. Army Corps of Engineers (USACE), would apply to projects in Federal Waters. As a result, anyone with working knowledge of the regulations being developed would enjoy an advantage over others. Others would have to become familiar with the new regulations to develop a "level playing field". That being the case, it would be appropriate for each Commissioner to choose one of the following to provide transparency and to avoid conflict-of-interest:

- 1) Sign a pledge to not enter the shellfish business in any capacity for at least twelve months following USACE approval of the shellfish permitting regulations being developed by the Port District's shellfish project; or,
- 2) Refrain from voting on any Commission agenda item that has any relation to the shellfish project, including the District's annual budget and any budget amendments associated with the shellfish project. In addition, no Commissioner could participate in the District's shellfish project if he / she plans to enter the shellfish business within twelve months of USACE approval of the referenced shellfish permitting regulations.

By choosing one or the other, Commissioners would provide transparency and assure the City Council and harbor business owners that their official actions would not promote personal financial gain or unfair advantage.

Sincerely,



cc: Mayor LeVere
City Council Members
B. Pendleton, Ventura Port District

Attachment B

Public Comments for Ventura Port District Goal-Setting Workshop September 14, 2019

Good afternoon Commissioners, Counsel, Staff, Council Members Heitmann and Brown, ladies and gentlemen. I am Vikki Brock, a harbor resident for the past 11 years. For those of you planning to take notes, there are handouts on the back table that track and provide detail of the comments I plan to present this afternoon. My comments will focus on a requested pledge by Commissioners and three issues that I think must be addressed to ensure the viability and vitality of the District.

- *First, the Pledge Letter that Sam Sadove and I presented to Commissioners on September 4, 2019 noted that the Commission has been using harbor business' leasehold revenue to fund the shellfish project. It also explained that the shellfish permitting regulations being developed by the Port District's shellfish project are to be approved by the U.S. Army Corps of Engineers, the Lead Agency for certain development projects in Federal Waters; and that once approved, the regulations would govern the permitting of all shellfish projects in Federal Waters.*

As a result, I am restating our request that any Ventura Port Commissioner planning to enter the shellfish business in any capacity sign a pledge not to enter the shellfish business for at least one year after the permitting regulations are approved - to demonstrate transparency and avoid any inference of conflict-of-interest or unfair advantage. As to potential breach of any signed pledge, I suggest that payment be required to the District for all shellfish-related income earned during breach. Please see the September 4 letter for additional details.

- *The three issues linked to this Pledge Letter that a second handout describes are:*
- *Port Commission governance requires Commissioners to set and communicate policy rather than becoming involved in staff work; develop an annual strategic plan with objectives and milestones; and ensure transparent, accurate and complete reporting of information to stakeholders.*
- *Port District staff must implement Board policy while complying with applicable legal requirements; manage the development of business/financial plans and accounting of current and future programs; administer leases in an equitable and mutually productive manner, ensure respectful and consistent treatment of staff members, all while working effectively with other public and private entities.*
- *A cooperative working relationship between the District and harbor lessees must be strengthened to maximize productivity of the harbor, decrease the significant amount of litigation against the District and increase the financial stability of the District.*

Overarching these issues is a fundamental question: "What are the District's measures of success, and what values are expressed in its metrics?"

I will close with a question to the Commissioners: "What values will your goals reflect and what actions are you prepared to take to address these significant issues?"

Please include these handouts in the workshop minutes. Thank you.

Vikki Brock 805-676-4200

September 14, 2019 Ventura Port District Goal Setting Workshop

Attachment C

Public Communications October 16, 2019 Port District Meeting (asked to be included in meeting minutes).

Shellfish Pledge and Business Plan for district - the workshop consensus was that shellfish could no longer be the top priority. Will there be a work plan for the transition and / or deferral of timelines; along with an accounting of all staff and resource expenses to date? I'm hopeful that it will be scheduled before staff returns with a proposed budget for fiscal 2020. District has been warned about gift of public funds and without a business plan that justifies the investment it is not an investment it is just an appropriation of funds. There is evidence that – this is why a business plan is indispensable as it protects the district and that commissioners sign the pledge. Without signing the Shellfish Pledge (presented Sept 4th and Sept 14th) the case for a gift of public funds is strengthened. Last meeting Commissioner Mike requested having an agenda item this meeting regarding a business plan for the Shellfish, and it is not on the agenda. There is no license approved or offered by VSE, so why are you continuing to use the name (VSE-Flyer-Info-1).

Appendix C Leasing Policy

**VENTURA PORT DISTRICT
BOARD COMMUNICATION****STANDARD AGENDA ITEM 4**

Meeting Date: March 20, 2019

TO: Board of Port Commissioners
 FROM: Oscar Peña, General Manager
 Brian Pendleton, Deputy General Manager
 SUBJECT: Proposed Lease Management Policy for Ventura Harbor Village

RECOMMENDATION:

That the Board of Port Commissioners receive an informational report concerning a proposed Lease Management Policy for Ventura Harbor Village.

SUMMARY:

This is a new idea being brought forth at this time as an "Information Only" item, and staff requests guidance and direction from the Board as to whether or not this is a policy concept that the Board could endorse. If so, staff could return at a subsequent meeting with the recommended policy for Board consideration.

BACKGROUND:

In an effort to assist District staff in its lease negotiations with master lessees in the harbor, the Board of Port Commissioners adopted a "Master Lease/Option Negotiation and Administration Policy" in 2003. That Policy outlines the procedures for obtaining, amending and administering the ground leases in the harbor, which constitute the "backbone" of the District's revenue flow. The existence of that policy, along with the specification of lease terms the Board requires to be in its ground leases, has provided meaningful guidance to staff in its master lease operations and, at the same time, lets prospective master lessees know what to expect when they "come knocking on the District's door."

In recent months, District Legal Counsel and staff have worked on, updated and revised the three basic lease forms utilized in Ventura Harbor Village ("VHV"). Since that project was recently completed, it occurred to staff that adoption of a lease management policy for the short term leases, those with an initial term of 5 years or less, in VHV might make some sense for the same reasons as the Master Lease policy described above.

Several years ago District Legal Counsel recommended such a policy and a draft policy was prepared. However, since the VHV lease forms were recently updated, both staff and legal counsel felt that now might be an opportune time to present the idea of a VHV leasing policy to the Board of Port Commissioners and to seek the Board's guidance as to whether or not this is a concept the Commissioners could endorse.

Under this policy, the Board would be granting the General Manager leasing authority for prospective VHV leases so long as the lease terms negotiated do not deviate materially from the standard lease forms in use in the Village and the District is spending no more than \$25,000. This dollar threshold is consistent with the General Manager's approval authority for other District contracts. If a VHV lease requires material modifications to the standard lease form, or more than \$25,000 in District funds will be expended, the policy as contemplated would require Board of Port Commissioners' approval and authorization. Otherwise, under the policy the General Manager is given broad leasing authority for the short term VHV leases, which means the lease would be up for renewal or renegotiation on a regular and recurring basis, giving the District the opportunity to update the lease and bring the rental rates to market. In

ATTACHMENT 2

addition, a summary of the lease terms the Board requires in all VHV leases is will be summarized in the policy.

It is also staff's belief that adoption of this policy would expedite Board deliberations on leasing matters so as to lessen the need for Closed Session discussion of most VHV leases. The General Manager could report on VHV leasing decisions during his/her report in the Public Session.

Further, as with the Master Lease policy, this concept would provide the General Manager, and his or her staff, with guidance as to what has to be in the leases and at the same time would provide prospective tenants advance notice of the lease terms the District will require in any VHV lease.

FISCAL IMPACT:

None.

ATTACHMENTS:

None.]

Commissioner comments from March 20, 2019 approved meeting minutes:

- Commissioner Getchell – Asked how can we equably deal with an entity like Coastal Marine Biolabs, who is a non-profit and provides public education, in contrast to a profitable organization and keep them here?
- Commissioner Ashworth – Sees a lot of efficiencies with a standardized lease; thinks the thresholds make perfect sense and staff should move forward with what they are suggesting, however, reviewing leases in closed session and on the consent agenda is a useful tool.
- Commissioner Brennan – He concurs with Commissioner Ashworth's comments.
- Commissioner Gardina – Sees the efficiencies behind it, but wonders when granting discretion to the General Manager if it's being exercised within a broader strategic plan and priorities set by the Board. Has the Board set forth a larger leasing strategy and leasing priorities so that that discretion is being exercised within that context?
- Commissioner Stephens – Consider an appeal process from a tenant if they feel the lease negotiation or lease offer was not appropriate. Also, doesn't think the Board needs to approve tenant equipment replacements that are over the \$25,000 threshold.
- Public Comment: Sam Sadove said you need to be cognizant of the financial requirements for the tenants themselves in terms of your terms of lease. Mr. Cooper asked if the District will be governing leasing at the Portside development. We request at least 60-day notice of when Commission will vote on it so are able to review it.

Appendix D Secretary of State letter regarding Ventura Shellfish Enterprise



Secretary of State
Business Programs Division

1500 11th Street, 3rd Floor
Sacramento, CA 95814

Business Entities
(916) 657-5446

October 28, 2019



This is in response to your request for a name availability search or reservation.

RE: VENTURA SHELLFISH ENTERPRISE

The name appears to be available for reservation. Although the name is available for reservation, use of the name in a filing with the Secretary of State will require written consent from CALIFORNIA SHELLFISH ENTERPRISE C4013256.

General Information

Limited Liability Companies - The name of a limited liability company must end with the words "limited liability company" or the abbreviation "LLC" or "L.L.C." The words "limited" and "company" may be abbreviated to "Ltd." and "Co.," respectively. In addition, the name of a limited liability company cannot contain the words "bank," "trust," "trustee," "incorporated," "inc.," "corporation," or "corp.," and shall not contain the words "insurer" or "insurance company" or any other words suggesting that it is in the business of issuing policies of insurance and assuming insurance risks.

Limited Partnerships - The name of a limited partnership must end with "Limited Partnership" or the abbreviation "LP" or "L.P." A foreign limited liability limited partnership (LLLP) name must contain "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P." and may not contain the abbreviation "LP" or "L.P." In addition, the name of a limited partnership cannot contain the words "bank," "insurance," "trust," "trustee," "incorporated," "inc.," "corporation" or "corp."

Your payment, if any, is enclosed. If you have any questions or need additional information, please contact this office at (916) 657-5446.

Name Availability Unit
Business Programs Division

NA REG (EST 01/2007)
RKS