

VENTURA PORT DISTRICT

BOARD OF PORT COMMISSIONERS MINUTES OF JUNE 17, 2020



CLOSED SESSION

CALL TO ORDER:

The Ventura Board of Port Commissioners Regular Closed Session Meeting was called to order by Vice Chairman Brian Brennan at 5:32PM at the Ventura Port District Administration Office, 1603 Anchors Way Drive, Ventura, CA 93001 and via Zoom meeting.

ROLL CALL:

Commissioners Present:

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

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 via Teleconference
Elsa Sham via Teleconference

PUBLIC COMMUNICATIONS: Sam Sadove, owner of Ventura Harbor Marine Associates, LLC., commented that Items 1(b) and in part 1(a) as presented violate the Brown Act. The way they are worded is confusing and the public would have no way of knowing what these items refer to since there is never a "reportable action."

CONVENED TO CLOSED SESSION AT 5:39PM.

ADJOURNMENT: Closed Session was adjourned at 6:48PM.

OPEN SESSION

ADMINISTRATIVE AGENDA:

CALL TO ORDER:

The Ventura Board of Port Commissioners Regular Open Session Meeting was called to order by Vice Chairman Brian Brennan at 7:00PM at the Ventura Port District Administration Office, 1603 Anchors Way Drive, Ventura, CA 93001 and via Zoom Meeting.

PLEDGE OF ALLEGIANCE: By Vice Chairman Brennan.

ROLL CALL:

Commissioners Present:

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

Commissioners Absent:

None.

Port District Staff:

Brian Pendleton, General Manager
Todd Mitchell, Business Operations Manager
Jessica Rauch, Clerk of the Board
Gloria Adkins, Accounting Manager
Jennifer Talt Lundin, Marketing Manager
John Higgins, Harbormaster via teleconference
Joe Gonzalez, Facilities Manager via teleconference
Richard Parsons, Project Manager via teleconference
Dave Werneburg, Marina Manager via teleconference
Ruby Emery, Marketing and Events Coordinator via teleconference
Susan Bogue, Film/Event Liaison via teleconference

Legal Counsel:

Andy Turner via teleconference
Elsa Sham via teleconference

ADOPTION OF AGENDA

ACTION: Commissioner Blumenberg moved, seconded by Commissioner Brennan, and carried by a vote of 5-0 to adopt the June 17, 2020 agenda, moving Item 5 to be heard third on the agenda.

APPROVAL OF MINUTES

The Minutes of the June 3, 2020 Regular Meeting were considered as follows:

ACTION: Commissioner Gardina moved, seconded by Commissioner Stephens, and carried by a vote of 5-0 to approve the June 3, 2020 Regular Meeting Minutes.

PUBLIC COMMUNICATIONS: Jean Getchell had several questions and concerns about the CalMatters article about the Ventura Shellfish Enterprise Project and asked her comments be included in the minutes (attachment 1).

Sam Sadove, owner of Ventura Harbor Marine Associates, LLC., asked if the staff and the Board were intending to extend the rent abatement and deferment program. If so, he asked that notice be given to the tenants no later than June 24th. He also reported that significant damage was done by a boater to his haul-out dock, putting it out of service for two days. Thirdly, he recently learned that the Army Corps terminated the application regarding the Shellfish project back in February. There was no reporting to the public on this and stated it would be best if this item was not limited to closed session.

CLOSED SESSION REPORT: Mr. Turner stated that the Board met in closed session; discussed and reviewed all items on the closed session agenda. On Item 1, the Board gave direction to staff as to the Rent Abatement Program. As to Items 2 and 3, the Board received a report from staff and Counsel and gave direction as how to proceed. No action was taken that is reportable under The Brown Act.

BOARD COMMUNICATIONS: Commissioner Blumenberg got an impromptu tour of Just 4 Dreamers and it was great to see the business recovering well.

STAFF AND GENERAL MANAGER REPORTS: None.

LEGAL COUNSEL REPORT: None.

STANDARD AGENDA:

1) Approval of Proposed Addition to the Ventura Port District Procurement and Purchasing Policy

Recommended Action: Roll Call Vote.

That the Board approve the proposed addition to the Ventura Port District Procurement and Purchasing Policy for use in situations where Federal funding is provided.

Report by Legal Counsel, Andy Turner.

ACTION: Commissioner Stephens moved, seconded by Commissioner Gardina and carried by a vote of 5-0 to approve the proposed addition to the Ventura Port District Procurement and Purchasing Policy for use in situations where Federal funding is provided.

2) Appointment of New Audit Liaison

Recommended Action: Roll Call Vote.

That the Board of Port Commissioners appoint an audit liaison to work with staff and White Nelson Diehl Evans LLP throughout the FY2019-2020 financial audit process.

Report by Accounting Manager, Gloria Adkins.

ACTION: Commissioner Stephens moved, seconded by Commissioner Brennan and carried by a vote of 5-0 to appoint Michael Blumenberg as audit liaison to

work with staff and White Nelson Diehl Evans LLP throughout the FY2019-2020 financial audit process.

3) Approval of the FY2020-2021 Harbor Village Leasing Strategy

Recommended Action: Roll Call Vote.

That the Board of Port Commissioners approve the FY2020-2021 Harbor Village Leasing Strategy.

Report by Business Operations Manager, Todd Mitchell.

ACTION: Commissioner Blumenberg moved, seconded by Commissioner Brennan and carried by a vote of 5-0 to approve the FY2020-2021 Harbor Village Leasing Strategy.

4) Approval of the FY2020-2021 Harbor Village Marketing Strategy – Recovery and Visitation Plan

Recommended Action: Roll Call Vote.

That the Board of Port Commissioners approve the FY2020-2021 Harbor Village Marketing Strategy – Recovery and Visitation Plan.

Report by Marketing Manager, Jennifer Talt Lundin and Marketing and Events Coordinator, Ruby Emery.

ACTION: Commissioner Stephens moved, seconded by Commissioner Gardina and carried by a vote of 5-0 to approve the FY2020-2021 Harbor Village Marketing Strategy – Recovery and Visitation Plan.

5) Approval of the FY2020-2021 Preliminary Budget and Five-Year Capital Improvement Plan

Recommended Action: Roll Call Vote.

That the Board of Port Commissioners review, discuss and approve the Fiscal Year 2020–2021 Ventura Port District Preliminary Budget and Five-Year Capital Improvement Plan.

This item was moved to be heard third on the agenda.

Report by General Manager, Brian Pendleton, Business Operations Manager, Todd Mitchell and Accounting Manager, Gloria Adkins.

Public Comment: Sam Sadove, owner of Ventura Harbor Marine Associates, LLC., stated that the projection of only a 5% decrease in revenues is optimistic. He also thinks the planning on deferment of various capital projects is prudent with some exceptions. He agrees with Commissioner Gardina that some prudent expenditures would be warranted to help maintain or increase business activity. He suggests reinstating the signage program and look at eliminating or reducing marketing consultants. Mike Lebecki is opposed to the idea of paid parking at Harbor Village and the beaches.

ACTION: Commissioner Blumenberg moved, seconded by Commissioner Ashworth and carried by a vote of 5-0 to approve the Fiscal Year 2020–2021 Ventura Port District Preliminary Budget and Five-Year Capital Improvement Plan.

6) Ventura Port District Operations Update as it Relates to COVID-19

Recommended Action: Informational.

That the Board of Port Commissioners receive an update on:

- a) The COVID-19 Ventura Harbor Rental Abatement and Deferment Program; and
- b) Status of Ventura Port District operations.

Report by General Manager, Brian Pendleton.

ACTION: **The Board of Port Commissioners received an update on the COVID-19 Ventura Harbor Rental Abatement and Deferment Program and status of Ventura Port District operations.**

ADJOURNMENT: The meeting was adjourned at 10:28PM.

The next meeting is Wednesday, July 1, 2020.



Jackie Gardina, Secretary

ATTACHMENT 1

Jean A. Getchell
1743 Santa Ynez Street
Ventura, CA 93001
(831) 392-6596

June 16, 2020

Board of Port Commissioners
Ventura Port District
1601 Anchors Way Drive
Ventura, CA 93001

Sent Electronically
to All Recipients.
Signed Original
Personally Delivered
to Clerk of the Board.

SUBJECT: STATUS OF PERMIT APPLICATION WITH U.S. ARMY CORPS OF
ENGINEERS FOR USE OF FEDERAL SEA BOTTOM, VIOLATION OF THE
BROWN ACT, AND ASSOCIATED ISSUES

Chairman Stephens and Commissioners:

Status of Permit Application with U.S. Army Corps of Engineers (USACE) for Siting 2,000
Acres of Aquaculture in Federal Waters: *Withdrawn*

Given the amount of work and expenditures made on this project, as well as the stated intent to sub-lease twenty (20), one-hundred acre (100 ac) parcels for shellfish farming, I wondered if the USACE had granted approval for the District to sub-lease acreage to other entities. Without authorization to sub-lease, any permit approval would limit the Port District, itself, to entering into the shellfish business. I am not aware that the District has announced its interest in entering directly into the shellfish business or if it has demonstrated the financial wherewithal to develop the capital assets or provide the operating capital. If the District has developed such plans, please provide details.

To determine the status of my question, on May 26 I contacted Dr. Aaron Allen, Chief, North Coast Branch of the Regulatory Division of the Los Angeles District of the USACE. I asked him to confirm the status of the District's request for USACE approval to sub-lease twenty (20) one-hundred acre (100 ac) parcels of the Federal Authorized Sea Bottom. He replied as follows:

As indicated in our letter dated February 18, 2020, the application is currently withdrawn pending the receipt of the requested additional information. The additional information was requested in our letter dated January 15, 2020. When we receive the requested information, we will continue processing the application. (Underlining added for emphasis.)

Information Required from the District to Allow USACE Permit Application Review to Proceed
As the January 15 letter specified, the USACE will consider the District's permit application as "withdrawn" until it receives two items:

- 1) A draft navigational risk assessment, and
- 2) Resolution of issues raised by LAFCO, which could be achieved by State legislation or the State Attorney General.

I trust that District Counsel has informed your Commission that resolution of the second item will not be possible by an Advisory Opinion of the California Attorney General. In accord with Government §12519, these opinions are available to specific California constitutional officers and others, but it does not include a Special District. Ventura County Counsel is entitled to request an opinion. However, he argued at the public hearing on October 16, 2019, which was held to consider the District's project, that other provisions of the Government Code prohibited a special district from activities outside California. As a result, only special legislation would exempt the District's shellfish project from prohibitions against operating outside California.

Inasmuch as legislation is not enacted until signed by the Governor or overridden by a 2/3 vote of the Legislature, the USACE may not reactivate and begin to review the District's permit application for quite some time, likely more than a year from now.

For your reference, I have attached the January 15 and February 18, 2020 letters Dr. Allen sent to District General Manager, Brian Pendleton. After I received these letters through a FOIA request from the Los Angeles District, Dr. Allen clarified on June 10 that:

The Port District has requested the ability to sub-lease to other entities as part of their application. We have informed the Port District that there are several potential issues associated with the proposed sub-leasing component of their project. However, we will not make a final decision regarding the proposed sub-leasing until we complete our decision document for the proposed project.

What are the Potential Issues?

With the financial shortfall that is being experienced by the District and the anticipated lengthy delay in providing a complete application to the USACE, why hasn't the Port District disclosed the potential issues? What additional resources might be required to address these issues? What risk do these issues pose to the project objectives?

Government Code §54956.8: No Basis to Discuss the Shellfish Project in Closed Session

The Commission invokes Government Code §54956.8 to authorize discussion of the District's shellfish project in Closed Session. That section serves an important purpose by keeping negotiations regarding the purchase, sale, exchange or lease of real property confidential and undiscoverable by others, notably the other party to the transaction or a competing bidder.

Government Code §54956.8

Notwithstanding any other provision of this chapter, a legislative body of a local agency may hold a closed session with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local agency to grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

The shellfish project involves no purchase, sale, exchange or lease of real property. In addition, no price and terms of payment are being negotiated by the District. Had the Legislature intended to authorize discussion of another item like a permit application in Closed Session, it would have included the term in the legislation. Even if a “permit application” were authorized to be discussed, which it is not, the USACE has withdrawn the District’s permit application as a result of the District’s failure to provide required information. There isn’t an active permit application to discuss.

Years of Brown Act Violations and Seven Violations Since Dr. Allen’s February 18, 2020 Letter that Notified the District that Its Application Had Been Withdrawn

Instead, Section 54956.8 has been used as a ruse to keep the harbor businesses, other governmental agencies and the public from knowing the facts about the shellfish project, the uncertainty of the project being implemented, and its continued financial burden on the Port District and its revenue sources. To correct this pattern and practice, the Commission should give notice to the public that until the Governor signs the special legislation required to site the shellfish project in Federal Waters, the project cannot be implemented. Without enactment of the special legislation, the USACE will not review the District’s permit application. Until the USACE issues the required permit, there will be no project. In addition, the District should explain why any additional work (other than the Navigational Risk Study required by the USACE) should be undertaken until the USACE permit is issued.

Project Alternative(s) If USACE Approval to Sub-Lease Is Denied

While there is no certainty that the USACE permit application will ever include the required information for the Federal Government to consider approval of the basic permit, the permit may eventually be issued. However, the “several potential issues associated with the proposed sub-leasing” cited by Dr. Allen pose an additional regulatory hurdle. What plan, if any, has the Port District developed in the event sub-leasing is not approved?

Project Alternatives Developed for Review by NOAA, USACE and the California Coastal Commission

Has the District addressed the comments made by Diane Windham of NOAA, the USACE and the Coastal Commission, which were specified in the May 13 CalMatters article published in the *Ventura County Star*? The article quoted their serious concerns about an offshore project, and NOAA specified that it would prefer a small project that could be evaluated and monitored to ensure that significant impacts to the environment did not develop. To that end, has the District developed a project alternative that the regulatory agencies might more likely approve, a project that could reflect, for example, phased development? Otherwise, is the District prepared for project denial and the loss of six years of work and great cost to other District activities that have funded the shellfish project?

ATTACHMENT 1

I hope the Commission is listening to the regulators' concerns. It should insist that the project be one that can obtain project approval and be overseen to ensure protection of the environment. The regulators' concerns cited in the CalMatters article do not bode well for a two-thousand acre offshore project. If the Commission submits only a two-thousand acre project for approval, denial should be no surprise.

Sincerely,

A handwritten signature in black ink, appearing to be 'JAG' with a long horizontal stroke extending to the right.

cc: Dr. Aaron Allen, Ph.D.

Enclosures: January 15, 2020 Letter to Ventura Port District
February 18, 2020 Letter to Ventura Port District

ATTACHMENT 1



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT
60 SOUTH CALIFORNIA STREET, SUITE 201
VENTURA, CALIFORNIA 93001-2598

January 15, 2020

SUBJECT: Request for Resolution to Continue Processing Permit Application

Brian Pendleton
Ventura Port District
Ventura, California 93001

Dear Mr. Pendleton:

This letter concerns your Department of the Army Permit application (Corps File No. SPL-2017-00093-BLR) which proposes to construct a 2,000 acre aquaculture facility in navigable waters outside state boundaries (in Federal waters) in association with the Ventura Shellfish Enterprise Project. The project would be located offshore from the Ventura Harbor, near the city and county of Ventura, CA (latitude: 34.241891, longitude: -119.292983).

In response to our 30 day public notice (dated August 27, 2019) the Corps received a letter from the Ventura County Local Agency Formation Commission (LAFCO) dated September 16, 2019. You provided a response to all the substantive public notice comment letters on November 15, 2019. Within the combined response you included a general response (response B2-1) as well as a separate letter addressing LAFCO's concerns from your special counsel (DeeAnne Gillick, letter dated November 15, 2019). The Corps Regulatory Division Chief (David Castanon), the Ventura team lead (Antal Szijj) and the senior project manager (Theresa Stevens) also met with you, your special counsel (Robert Smith), and your consultant (Laurie Monarres) on November 19, 2019 to discuss the proposed project, remaining issues, and a potential path forward. Prior to this meeting, Dr. Stevens had discussed concerns about issues raised by LAFCO with Ms. Monarres, and stated that review of the matter by Corps Office of Counsel would be requested. Also prior to this meeting, Mr. Smith conducted a phone conference with Corps Staff Counsel (Tiffany Troxel) on October 28, 2019. During this phone conference it was acknowledged that resolution of this matter via the state legislature or state Attorney General may be required.

In response to our public notice, the Corps also received a letter from the U.S. Coast Guard (USCG) dated November 1, 2019, which requested that a navigational risk assessment be completed prior to the Corps final action on the project. Due to the Corps statutory authority under section 10 of the Rivers and Harbors Act (33 U.S.C. 403) to evaluate impacts on navigation associated with structures and work in navigable waters and the recognized expertise of the USCG on navigation issues, the Corps needs at least a draft navigational risk assessment to be completed and submitted to the U.S. Coast Guard. Without this important information documenting the potential impacts to navigation, we cannot complete our required public interest evaluation. Because navigation is central to our review of your application, it would not be a

-2-

good use of our limited staff resources to continue processing your application without at least a draft of the navigational risk assessment.

Although you have provided to us the letters, legal opinions and legal citations regarding the claims made by LAFCO, it remains unclear whether the Ventura Port District has the authority under state law to construct permanent structures in navigable waters outside state boundaries as would be required for the proposed Ventura Shellfish Enterprise project.

Therefore, I have made a preliminary determination that in order to continue processing your permit application, the above draft navigational risk assessment and documented resolution of your dispute with LAFCO must be provided. Documentation from LAFCO, the LAFCO Board or a higher level state entity that the dispute has been resolved would be sufficient for the Corps to continue processing your application.

The Corps respectfully requests resolution of these matters in the next 30 days. If the requested information cannot be submitted within 30 days, the Corps will withdraw your permit application. When you do provide the requested information, the Corps will resume review of your previously submitted permit application.

If you have any questions, you may contact me at (805) 585-2148 or aaron.o.allen@usace.army.mil or Theresa Stevens, Ph.D. at (805) 585-2146 or via e-mail at theresa.stevens@usace.army.mil.

Sincerely,

ALLEN.AARON.
O.1232270795

Digitally signed by
ALLEN.AARON.O.1232270795
Date: 2020.01.15 07:44:28
-08'00'

Aaron O. Allen, Ph.D.
Chief, North Coast Branch
Regulatory Division

Cc: Kai Luoma, Executive Director, Ventura County Local Agency Formation Commission
Lieutenant Commander Isaac Mahar, U.S. Coast Guard District 11 Waterways Management,
Los Angeles-Long Beach



ATTACHMENT 1

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT
60 SOUTH CALIFORNIA STREET, SUITE 201
VENTURA, CALIFORNIA 93001-2598

February 18, 2020

SUBJECT: Withdrawal of Permit Application

Brian Pendleton
Ventura Port District
Ventura, California 93001

Dear Mr. Pendleton:

I am responding to your application (File No. SPL-2017-00093) for a Department of the Army permit to install structures or conduct work in, over, under or affecting navigable waters of the U.S., in association with the Ventura Shellfish Enterprise project in the Pacific Ocean near the city of Ventura, Ventura County, California.

Our files indicate you have not provided the additional information we requested in our letter dated January 15, 2020 to continue processing your application. Therefore, your application is considered withdrawn. If you wish to re-establish evaluation of your project, please submit the items described in our January 15, 2020 letter.

Thank you for participating in our Regulatory Program. If you have any questions, please contact Theresa Stevens, Ph.D. at (805) 585-2146 or via e-mail at theresa.stevens@usace.army.mil. Please help me to evaluate and improve the regulatory experience for others by completing the customer survey form at http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey.

Sincerely,

ALLEN.AARON
O.1232270795
Digitally signed by
ALLEN.AARON.O.1232270
795
Date: 2020.02.13 11:33:19
-08'00'

Aaron O. Allen, Ph.D.
Chief, North Coast Branch
Regulatory Division

Jean A. Getchell
1743 Santa Ynez Street
Ventura, CA 93001
(831) 392-6596

June 17, 2020

Board of Port Commissioners
Ventura Port District
1601 Anchors Way Drive
Ventura, CA 93001

Sent Electronically
to All Recipients.
Signed Original
Personally Delivered
to Clerk of the Board.

SUBJECT: ADDENDUM: STATUS OF PERMIT APPLICATION WITH U.S. ARMY
CORPS OF ENGINEERS FOR USE OF FEDERAL SEA BOTTOM,
VIOLATION OF THE BROWN ACT, AND ASSOCIATED ISSUES

Chairman Stephens and Commissioners:

Violation of Government Code §54954.5, Closed Session Item Description

In addition to what I submitted in my letter of June 16 regarding Government Code §54956.8, which specifies what real property transactions may be discussed by a local agency's legislative body with its negotiator in Closed Session, please note that the District has also failed to comply with Government Code §54954.5 (b). Its requirements include:

GOVERNMENT CODE

TITLE 5. LOCAL AGENCIES [50001 - 57607]

(Title 5 added by Stats. 1949, Ch. 81.)

DIVISION 2. CITIES, COUNTIES, AND OTHER AGENCIES [53000 - 55821]

(Division 2 added by Stats. 1949, Ch. 81.)

PART 1. POWERS AND DUTIES COMMON TO CITIES, COUNTIES, AND OTHER AGENCIES [53000 - 54999.7] (Part 1 added by Stats. 1949, Ch. 81.)

CHAPTER 9. Meetings [54950 - 54963]

(Chapter 9 added by Stats. 1953, Ch. 1588.)

54954.5.

For purposes of describing closed session items pursuant to Section 54954.2, the agenda may describe closed sessions as provided below. No legislative body or elected official shall be in violation of Section 54954.2 or 54956 if the closed session items were described in substantial compliance with this section. Substantial compliance is satisfied by including the information provided below, irrespective of its format.

ATTACHMENT 1

(b) With respect to every item of business to be discussed in closed session pursuant to Section 54956.8:

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property: (Specify street address, or if no street address, the parcel number or other unique reference, of the real property under negotiation)

Agency negotiator: (Specify names of negotiators attending the closed session) (If circumstances necessitate the absence of a specified negotiator, an agent or designee may participate in place of the absent negotiator so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

Negotiating parties: (Specify name of party (not agent))

Under negotiation: (Specify whether instruction to negotiator will concern price, terms of payment, or both)

Inasmuch as "price, terms of payment, or both" have never been specified by the District when providing public notice of the District's intent to discuss its shellfish project in Closed Session (because price and terms of payment have never been involved in these Closed Session discussions), the District has never complied with this requirements of the Brown Act. Until the U.S. Army Corps of Engineers requires negotiation of price or terms of payment or both for a lease or sale of its Federal Sea Bottom to the District and the District complies with the requirements of Sections 54954.5 and 54956.8, the District may not discuss its shellfish project in Closed Session.

Because neither the National Oceanic and Atmospheric Administration nor the California Coastal Commission is likely to enter into a purchase, sale, exchange or lease of real property with the District, Section 54956.8 could not be invoked to justify any discussion in Closed Session of their concerns about the District's shellfish project.

Thank you for the opportunity to provide this Public Comment.

Sincerely,

A handwritten signature in black ink, appearing to be 'JAS' followed by a horizontal line.

cc: Dr. Aaron Allen, Ph.D.