



BOARD OF PORT COMMISSIONERS

MARCH 17, 2021

STANDARD AGENDA ITEM 3

VENTURA SHELLFISH ENTERPRISE NEXT STEPS

**VENTURA PORT DISTRICT
BOARD COMMUNICATION**

STANDARD ITEM 3
Meeting Date: March 17, 2021

TO: Board of Port Commissioners
FROM: Brian D. Pendleton, General Manager
Andy Turner, Legal Counsel, Lagerlof, LLP
Robert Smith, Special Legal Counsel, K&L Gates
SUBJECT: Ventura Shellfish Enterprise Next Steps

RECOMMENDATION:

That the Board of Port Commissioners direct the General Manager to:

1. Provide support for the establishment of a Southern California Aquaculture Opportunity Area proximate to Ventura Harbor by NOAA;
 - a. Provide all studies, reports, data gathered as part of the VSE project to NOAA;
 - b. Complete all tasks required for completion of the Ventura Port District's Sea Grant as may be amended in concurrence with California Sea Grant by August 31st, 2021
2. Formally withdraw Ventura Port District applications for the VSE project from the U.S. Army Corps of Engineers and California Coastal Commission;
 - a. Seek opportunities to collaborate with the aquaculture industry to establish sustainable aquaculture farms that can land product in Ventura Harbor;
 - b. Authorize continued advocacy efforts at federal, state and local levels for the establishment of sustainable aquaculture farms in the Santa Barbara Channel proximate to Ventura Harbor.

SUMMARY:

The General Manager submitted the VSE Operations Plan to state and federal regulators as directed by the Board in Fall 2020. Since then, the Port District has engaged in further discussions with environmental NGOs, state, and federal agencies to discuss project siting. The current U.S. Army Corps of Engineers (Corps) application for the VSE project, which reflects a federal waters siting, is still on-hold. This is despite substantive efforts to work with the state legislature to resolve the jurisdictional conflict with Ventura LAFCo. In the meantime, NOAA has identified Southern California as one of two proposed Aquaculture Opportunity Areas (AOA). If successful, the AOA process could facilitate expedited permitting for aquaculture projects in Federal waters. Further, NOAA is considering an alternative that would identify potential aquaculture sites located in the Santa Barbara Channel, partially based upon the science and data collected for the VSE project.

While the Board could consider alternatives to the recommendations, such as relocating the project to State waters to resolve the LAFCo jurisdictional conflict and some environmental NGO concerns, the State is not accepting aquaculture applications at this time. Even if that changes, the California Fish and Game Commission (FGC) has indicated they face significant challenges in processing aquaculture applications, such as the VSE project, due to resource constraints. Therefore, it would likely be a lengthy time-period for the FGC to process an application for the VSE project. The Port District would also need to commission development of an environmental impact report to comply with the California Environmental Quality Act. Further, the Port District relocated the project from state to federal waters after significant opposition was received by commercial fishing interests.

Therefore, staff and legal counsel recommend the Port District take an active role in supporting the establishment of the Southern California AOA and seek opportunities to collaborate with the

aquaculture industry to establish aquaculture farms that can land product in Ventura Harbor. This is consistent with the Port District's Long-Term Goals, 5-Year Objectives and VSE Project Goals (described in more detail below), which seek to maintain federal dredging priority, diversify commercial fisheries with sustainable forms of aquaculture, strengthen Ventura's working waterfront, develop new sources of revenue for the Port District, and provide jobs to the local and regional economies.

LONG-TERM GOALS:

- Goal 1: Safety & Navigation
 - Maintain and enhance a safe and navigable harbor
 - a: Securing funding for dredging the Harbor entrance through the Army Corps of Engineers in coordination with agencies and our elected officials
- Goal 2: Commercial & Recreational Boating & Fishing
 - Support and promote commercial and recreational boating and fishing

5-YEAR OBJECTIVES:

- Objective F: Commercial Fishing
 - Support current commercial fishing industry central to Ventura's premier working waterfront through: stakeholder engagement, diversification, and infrastructure improvements
 - 3: VSE Project Grant Utilization
- Objective D: Harbor Dredging
 - Ensure that annual dredging occurs at the federal Harbor entrance and as needed in the inner Harbor
 - 1: Support and advocate for congressional funding to the Army Corps of Engineers in support of the Harbor's annual dredging program

BACKGROUND:

The VSE project is an initiative proposed by the Port District with support from project volunteers that seeks to permit twenty 100-acre plots for growing the naturalized Mediterranean mussel (*Mytilus galloprovincialis*), in California coastal waters via submerged long lines within the Santa Barbara Channel near Ventura Harbor. Increasing the supply of safe, sustainably produced domestic seafood is a priority of the State Legislature, NOAA and the U.S. Department of Commerce.

The VSE project objectives include:

- To increase the supply of safe, sustainably produced, and locally grown shellfish while minimizing potential negative environmental impacts;
- To enhance and sustain Ventura Harbor as a major west coast fishing port and support the local economy;
- To provide economies of scale, pre-approved sub-permit area, and technical support to include small local producers who would not otherwise be able to participate in shellfish aquaculture;
- To provide an entitlement and permitting template for aquaculture projects state-wide;
- To enhance public knowledge and understanding of sustainable shellfish farming practices and promote community collaboration in achieving VSE objectives; and,
- To advance scientific knowledge and state of the art aquaculture practices through research and innovation.

The project's origins, goals and project funding are extensively discussed in a project status report to the Board on July 17, 2019. The Port District submitted applications for the VSE project to the

California Coastal Commission (Coastal Commission) and Corps in Fall 2018. Since receiving the permit application, the Corps conducted its required public comment process, and received comments from the U.S. Coast Guard (USCG) and the Ventura Local Agency Formation Commission (LAFCo). On January 15, 2020, the Corps sent a letter to the Port District requesting a Navigation Risk Assessment, as requested by the USCG, and resolution of a jurisdictional issue raised in the LAFCo letter. As stated in the Corps' letter: "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." On February 18, 2020, the Corps notified the Port District that its application had been administratively withdrawn, again stating that it would resume processing the application once the Port District provides the information requested in the January 15 letter.

The Navigation Risk Assessment, prepared by COWI on the Port District's behalf, was presented to the Commission and stakeholders at two Board meetings held on July 1 and 15, 2020. It is complete and submitted to the Corps, Coastal Commission and USCG. The project team presented the findings to the USCG in August. It is believed to be the first Navigation Risk Assessment completed for an aquaculture project in the U.S. and can be used to help inform NOAA in siting within the Santa Barbara Channel as part of the AOA process.

The Port District worked cooperatively with the Ventura LAFCo to resolve their differences and provided an update on the issue as part of the VSE Annual Status Report to the Commission and stakeholders at the July 15, 2020 Board meeting. This included joint written communication with the Corps and review of proposed legislation to allow the VSE project to move forward. Ultimately, due to Covid impacts to the legislative calendar and continuing environmental NGO opposition, sponsorship of the proposed legislation was withdrawn.

After extensive stakeholder engagement, in Fall 2020, the Board also authorized the submission of the Ventura Shellfish Enterprise Operations Plan to the Corps, Coastal Commission, and other regulatory agencies as appropriate and received the Economic and Fiscal Impacts of the proposed Ventura Shellfish Enterprise. The Port District has also continued to discuss the project with the Coastal Commission, Santa Barbara Channelkeeper, and Santa Barbara Environmental Defense Center. While these meetings have been productive in better understanding their concerns, the parties remain opposed to the VSE project being located in federal waters.

Separate from the VSE project, NOAA is currently considering establishment of AOAs, including one in Southern California. NOAA is preparing an Environmental Impact Statement that will evaluate a number of potential site locations for establishment of the AOA. The purpose of the AOA is for NOAA to conduct the site selection, stakeholder outreach, and environmental review needed to establish aquaculture (including shellfish aquaculture) in federal waters, thereby significantly reducing the cost and regulatory hurdles associated with new aquaculture projects. Aquaculture applicants would still need to complete the required permitting processes, including review by the Corps.

Other Alternatives

As an alternative to staff's recommendation above, the Board could consider one of the following paths forward:

- Move the project to State waters, which would create a pathway for project approvals. This would trigger the need to obtain a State lease from the Fish & Game Commission, which as previously discussed, currently has a moratorium in place due to their lack of resources in processing aquaculture projects. While the moratorium may be lifted in April, FGC staff

was not able to provide any details regarding how long it would take to process the VSE project, indicating that it is possible it could take several years. It will also subject the project to CEQA, where the Port District would likely need to fund preparation of an Environmental Impact Report. Although significant environmental analysis has already been performed, this could cost several hundred thousand dollars.

Finally, the VSE project would also likely require Ventura LAFCo approval. While LAFCo previously communicated that they did not object to the VSE project itself (but rather its location in Federal waters), it is unknown if they would approve the relocated project. It is also unclear at this time if relocation of the VSE project would resolve environmental NGO opposition, and the project could face renewed opposition from commercial fishers.

- Maintain the project in Federal Waters but seek to assign or transfer existing permit applications for the proposed VSE project to private aquaculture firm(s) through a publicly competitive request for proposal (RFP) and selection process. The RFP would be developed by Port District staff in consultation with the VSE team, as well as state and federal regulators. The RFP would be approved in advance of its formal release by the Board with stakeholder input.

In this scenario, the Port District would no longer be the project applicant. However, the pool of global aquaculture firms ready to pick up the Port District's unentitled project is unknown amid continued threatened litigation by environmental NGO's; the current state of the global aquaculture industry impacted by reductions in demand associated with COVID-19; significant regulatory processes that remain to be completed; and potential additional costs associated with the environmental review process.

- Engage in further stakeholder meetings or workshops regarding project siting (federal versus state waters), scale (total acreage, phasing) and project details. This would demonstrate a continued strong track record of stakeholder engagement by the Port District to the Coastal Commission, USCG and Corps and would facilitate discussion of potential project changes that could potentially eliminate or reduce project opposition. It can also provide the Port District with additional information concerning whether there is any project that would be acceptable to the current project opponents if the VSE project were relocated to state waters.
- Continue to seek approvals for the VSE project in Federal waters. In this scenario, it is likely that the Port District would need to either find another legislative sponsor or seek a declaratory judgment in court that the project does not require LAFCo approval. It is also likely that environmental NGOs would continue to oppose the project.

Conclusion

The California Market Squid season comes to an end on March 31, 2021. It will mark another season of poor catch for Ventura Harbor. California Market Squid typically accounts for over 90% of commercial landings at Ventura Harbor in terms of tonnage (and over 50% by market value), which is home to the largest purse seiner fishing fleet on the west coast. This supports the Port District's working waterfront, local jobs and regional economy. It is also an important factor in annual federal dredging decisions critical to Ventura Harbor's navigational safety. One measure of the current volatility is annual offloading fees received by the Port District. Since Fiscal Year 2016-2017, these fees have decreased by 68.5% as of the end of Fiscal Year 2019-2020.

Commercial fishing vessels associated with California Market Squid have either been largely idle or have temporarily left Ventura Harbor to seek more productive fishing grounds.

The proposed VSE project, amongst its many objectives described above, seeks to diversify commercial fish offloading at Ventura Harbor through the development of sustainable forms of aquaculture in the Santa Barbara Channel. The VSE project team has completed biological studies, the first-of-its-kind navigational risk assessment at the request of the USCG, worked with marine engineers to confirm and finalize farm engineering designs to withstand 100-year storms, and completed the Operations Plan shared with both the Corps, Coastal Commission, and NOAA.

As a result of these efforts over the past 6 plus years of work, the VSE project team has generated extensive data demonstrating that sustainable long line mussel farming is ideal for the Santa Barbara Channel. This has helped inform NOAA in their decision-making process to identify Southern California as currently one of only two proposed AOAs. Further, the Santa Barbara Channel has specifically been included in this AOA process for further consideration. The Port District should continue to support the AOA process moving forward, complete the tasks required under its Sea Grant, seek opportunities to collaborate with the aquaculture industry to establish sustainable aquaculture farms that can land product in Ventura Harbor and authorize continued advocacy efforts for the establishment of sustainable aquaculture farms in the Santa Barbara Channel proximate to Ventura Harbor.

FISCAL IMPACT

The 2018 CA Sea Grant sub-award is \$266,660. The Port District's required cost match for the 2018 CA Sea Grant is \$272,210. This cost match is achieved through volunteer contributions of time by Ashworth Leininger Group (ALG), Coastal Marine Biolabs (CMB), The Cultured Abalone (TCA) and District staff plus direct costs incurred by the Port District. As of December 31, 2020, the cost share obligations were met and exceeded.

The accounting of grant funds, Port District costs and volunteer hours are documented through quarterly financial reports prepared for Board consideration and approval. The most recent report for the period ending December 31, 2020 was included in the quarterly financial report provided to the Board on March 3, 2021. It is labeled as Attachment 1.

The Port District was also the recipient of a 2015 CA Sea Grant. The 2015 CA Sea Grant sub-award was \$264,470. The District's cost match for the 2015 CA Sea Grant was \$404,229. This cost match exceeded the grant requirement and was achieved through volunteer contributions of time by the parties identified above and District staff plus direct costs incurred by the District. The completed 2015 CA Sea Grant accounting of grant funds is labeled as Attachment 2.

There will be continued costs associated with the recommended actions, albeit significantly reduced than pursuing any one of the alternatives identified above. The Port District with VSE project team support will complete grant deliverables that requires continued project management, legal and aquaculture team member support. Continued staff time, with some consultant support, will be necessary to monitor, participate and advocate for the Southern California AOA with sites proximate to Ventura Harbor. It is also recommended the Port District maintain aquaculture association membership (already budgeted) to seek opportunities for collaboration with the industry as described above. Staff will be returning to the Board with contract amendments, as necessary, for project management, environmental and legal support previously contemplated and approved in the mid-year budget presented at the February 3, 2021 Board Meeting.

ATTACHMENTS

Attachment 1 – 2018 CA Sea Grant Accounting
Attachment 2 – 2015 CA Sea Grant Accounting

ATTACHMENT 1

Ventura Port District
 Ventura Shellfish Enterprise
 2018 Sea Grant - Year 1 & 2
 Grant period 9/1/2018 - 8/31/2021

Grant Funding

	<u>Grant</u>	<u>Billed</u>	<u>Remaining</u>	<u>Comments</u>
Plauche Carr-Legal - Task 4	60,000.00	60,000.00	-	
Dudek - Task 5 - Environmental Review	119,410.00	119,410.00	-	
Coastal Marine Biolabs - Task 6	39,000.00	38,631.31	368.69	
Scott Lindell - Task 7	20,500.00	16,742.74	3,757.26	Grower/Producer Compliance Training
Blake Stok - Task 7	24,750.00	10,725.00	14,025.00	
CAPS Media - Task 7	3,000.00	-	3,000.00	
Recap through 12/31/2020				
	\$ 266,660.00	\$ 245,509.05	\$ 21,150.95	

Direct costs to District

	<u>Contract/Budget</u>	<u>Billed</u>	<u>Remaining</u>	<u>Comments</u>
Plauche & Carr	47,993.83	47,965.14	28.69	Contract terminated - Robert Smith
K & L Gates	150,000.00	105,895.14	44,104.86	New contract - Robert Smith
Dudek - Task 5, 9% & Project Management Support	260,000.00	197,642.15	62,357.85	
Maine Marine Composites - Engineering Serv	15,150.00	15,150.00	-	Evaluate the performance of mussel longline system under specific conditions
COWI No. America Inc	64,040.00	64,040.00	-	Navigation Risk Assessment
Illuminas Consulting	11,000.00	11,019.85	(19.85)	Fiscal & economic impact assessment
Misc - Engineering Services	1,750.00	1,638.00	112.00	
Braitman & Associates	2,400.00	1,360.00	1,040.00	
Kelson Marine Co.	5,850.00	5,850.00	-	
Conferences/Travel/Meetings/Supplies/Misc	12,650.00	3,446.86	9,203.14	
Recap through 12/31/2020				
	\$ 570,833.83	\$ 454,007.14	\$ 72,693.14	

Combined In-Kind Contributions and Cost Share Contributions

In-Kind Contributions/Value of Volunteered Time

	<u>Grant Requirement</u>	<u>Reported</u>	<u>Remaining</u>	<u>Comments</u>
Ashworth, Ev & Brooke	97,800.00	102,689.86	(4,889.86)	Volunteered time
Bush, Doug	54,720.00	12,350.00	42,370.00	Volunteered time
Imondi, Ralph	25,600.00	29,150.00	(3,550.00)	Volunteered time
Parsons, Richard	20,000.00	7,800.00	12,200.00	Paid only as stipulated in Dredging/Project Manager Professional Service Agreement
Pendleton, Brian	48,490.00	83,083.72	(34,593.72)	Paid regular salary only
Santschi, Linda	25,600.00	27,350.00	(1,750.00)	Volunteered time
In-Kind Contribution/Volunteered Time thru 12/31/2020	\$ 272,210.00	\$ 262,423.58	\$ 9,786.42	

Cost Share Contributions - Grant Year 1

	<u>Grant Requirement</u>	<u>Paid</u>	<u>Remaining</u>	<u>Comments</u>
Dudek - 9% & Project Management Support	-	16,055.39	(16,055.39)	Paid by District - Qualifies as cost share
Maine Marine Composites	-	15,150.00	(15,150.00)	Paid by District - Qualifies as cost share
Braitman & Associates	-	1,360.00	(1,360.00)	Paid by District - Qualifies as cost share
Noble Engineering	-	1,638.00	(1,638.00)	Paid by District - Qualifies as cost share
Cost Share Contributions thru 6/30/2019	\$ -	\$ 34,203.39	\$ (34,203.39)	

Total In-Kind and Cost Share Contributions **\$ 272,210.00 \$ 296,626.97 \$ (24,416.97)**

ATTACHMENT 2

Ventura Port District
Ventura Shellfish Enterprise
2015 Sea Grant

Ventura Shellfish - Recap

<u>Grant Funding</u>	<u>Grant</u>	<u>Billed</u>	<u>Remaining</u>	<u>Comments</u>
Scott Lindell-Salary/Bene	19,920.00	19,920.00	-	
Scott Lindell-Travel	5,000.00	4,933.85	-	
Pendleton travel		66.15		
				completed 11/17
Plauche Carr-Legal	25,000.00	25,000.00	-	
Dudek	202,550.00	202,333.21	-	
Dudek-meeting expenses		216.79		put 216.79 back in Dudek
Expendables				
Dudek-meeting expenses		413.10		
		(216.79)		
Coastal Marine-Website		2,640.00		
Cyborg Copies		32.33		
Pendleton travel-VSE meeting		10.19		
Pacific Coast Shellfish conf		1,365.22		
Plauche - Permitting Task 1		2,310.00		
Plauche - Shellfish Project Formation		4,207.50		
Four Points VSE meeting		1,238.45		
	12,000.00	12,000.00	-	
	<u>\$ 264,470.00</u>	<u>\$ 264,470.00</u>	<u>\$ -</u>	

Reimbursement requested	<u>\$ 264,470.00</u>
Amount reimbursed to date	<u>\$ 264,470.00</u>
	<u>\$ -</u>

<u>Direct costs to District</u>	<u>Contract</u>	<u>Billed</u>	<u>Remaining</u>	
Plauche-special	23,500.00	29,388.67	(5,888.67)	Contract \$23,500 (\$8.5k + \$15k)
Plauche-special	28,000.00	16,417.50	<u>11,582.50</u>	Contract \$28,000
			<u>5,693.83</u>	
Dudek 9% of grant	18,229.50	18,208.75	20.75	
Dudek - Amend 2&3	15,065.00	15,053.75	11.25	
Blake Stok	20,880.00	20,879.50	0.50	Contract \$20,880 (\$7.5k+\$3.28k+\$2.4k+\$7.7k)
Seasketch-UCSB	1,000.00	1,000.00	-	
Seasketch-UCSB	10,966.20	10,966.20	-	
Seasketch-UCSB	4,974.00	4,974.00	-	
Four Points - Meetings	na	1,760.10		
Cyborg Copies	na	310.86		
	<u>\$ 122,614.70</u>	<u>\$ 118,959.33</u>	<u>\$ 5,726.33</u>	

Revised 9/14/2018

<u>In-Kind Contributions</u>	<u>Grant</u>	<u>Submitted</u>
Ashworth, Ev & Brooke	118,500.00	169,221.00
Bush, Doug	86,400.00	73,150.00
Parsons, Richard	69,120.00	26,000.00
Santschi, Linda	25,600.00	38,775.00
Imondi, Ralph	25,600.00	38,775.00
Mackay, Jonathan	-	5,705.00
Pendleton, Brian	-	52,603.00
Open Water Sampling	30,000.00	-
	<u>\$ 355,220.00</u>	<u>\$ 404,229.00</u>
		<u>\$ (79,009.00)</u>