

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

**7 February 2006**

**PRESENT:**

Commissioner Pellegrini  
Commissioner Curless  
Commissioner Wilson  
Commissioner Hunter  
Commissioner Ollivier

The Closed Session was called to order at 6:02 p.m. Closed Session adjourned at 6:27 p.m.

The regular meeting of the Board of Commissioners was called to order by President Pellegrini at 7:00 p.m.

President Pellegrini led those present in the Pledge of Allegiance.

District Counsel reported on the items discussed during Closed Session: real property negotiations regarding the Redwood Dock property; lease with Evergreen Pulp; potential litigation regarding the vessel Yankee Girl; and the Louisiana-Pacific tideland leasehold improvement removal; and a Personnel Matter, the Bar Pilot application process, but no action was taken.

**PUBLIC COMMENT:** None

**CONSENT CALENDAR**

President Pellegrini pulled Item 6(c) of the Consent Calendar for further discussion.

COMMISSIONER HUNTER MOVED FOR THE APPROVAL OF THE REMAINDER OF THE CONSENT CALENDAR. COMMISSIONER OLLIVIER SECONDED. MOTION CARRIED WITHOUT DISSENT.

CEO reported that NMFS delivered their Biological Opinion (BO) on the Maintenance Dredging Project. The BO states the project will result in the "take" of 30 juvenile Coho Salmon. Because of the findings of the BO, California Department of Fish & Game has made a Consistency Determination for appropriate mitigation measures for the "take" of the salmon that has resulted in the Harbor District contributing \$15,000 towards the Rocky Gulch Stream Restoration project.

COMMISSIONER CURLESS MOVED FOR THE APPROVAL OF ITEM 6(C) OF THE CONSENT CALENDAR. COMMISSIONER HUNTER SECONDED. MOTION CARRIED WITHOUT DISSENT.

**CEO REPORT**

- ∨ 1/31: CEO met with Naval Officers, local law enforcement and local terminal operators to assess security needs to bring a Naval ship into Humboldt Bay.
- ∨ 2/6: Commissioners Curless and Hunter attended a Samoa Town Master Plan meeting. CEO later met with Dan Johnson to ask questions regarding the Plan.
- ∨ CEO reported it is time to re-charter the Sea Scouts. Commissioner Fritzsche was the liaison to the Sea Scouts. President Pellegrini asked Commissioner Wilson if he would be Commissioner Fritzsche's replacement. Commissioner Wilson said he would consider the idea.
- ∨ Cruise the West information was included in the Board's packets. The marketing information contained distances and hours of sail-time between the ports.
- ∨ CEO reported an ad was placed in the Times-Standard for two Bar Pilot positions. Applications will be accepted until February 15<sup>th</sup>. If applications are received, CEO, District Counsel and the HR advisory committee will meet to negotiate with applicants and return to the Board of Commissioners for their consideration.
- ∨ 2/8: A new bar forecast model will be presented by Troy Nicolini, National Weather Service. The model is a tool for mariners to assist in crossing the bar. Mr. Nicolini has been ground-truthing the model for over a year.

## **DISTRICT COUNSEL'S REPORT**

District Counsel reported he is the Program Chair for the month of March for Eureka Rotary and has asked President Pellegrini to make her China Trip presentation to the service club.

**STAFF REPORT:** None

## **COMMISSIONER REPORTS**

Commissioner Curless reported that on February 18<sup>th</sup> at the River Lodge in Fortuna a public dinner will be held to kick-off Fortuna's 100th anniversary celebration.

Commissioner Wilson reported he and several HSU students met with Conservation Specialist regarding the students' project on water trail systems.

Commissioner Hunter reported he attended the Samoa Town Master Plan meeting.

Commissioner Hunter stated he would not be in town for the next Board of Commissioners meeting on February 23<sup>rd</sup>.

Commissioner Ollivier stated this last week there was a ship carrying containers in Humboldt Bay, dispelling the belief of some that container ships do not enter Humboldt Bay. Commissioner Ollivier stated he will be traveling to Sacramento and will visit the Port of Sacramento while he is there.

President Pellegrini asked everyone to wish Steve Mitchell good health. Mr. Mitchell is a tugboat operator out of Shelter Cove who was airlifted from his boat to Mad River Hospital due to chest pains. President Pellegrini stated she understands Mr. Mitchell is recovering well.

President Pellegrini reported that last September, the US Coast Guard told a charter boat captain out of Winchester Bay, OR that the seas were going to be treacherous and he was to head home. The boat sank and three people died. The captain was indicted on seamen manslaughter, a seldom-used 154 year-old federal law.

President Pellegrini stated she has made several more China Trip presentations since the last Board of Commissioners meeting and has plans to make several more in the upcoming month.

## **ADVISORY COMMITTEE REPORTS**

Commissioner Hunter reported the HR advisory committee met to work on CEO's evaluation and to discuss upcoming union negotiations.

### **a) Port of Oakland Advisory Committee Update**

CEO reported that details are still being finalized for Port Director Wilson Lacy and Port of Oakland's Board President to visit in February.

### **b) Long-Term Sediment Management Study Update: None**

**OTHER:** None.

**NON-AGENDA:** None

**UNFINISHED BUSINESS:** None

## NEW BUSINESS

### A. CONSIDERATION OF APPROVAL OF RESOLUTION 2006-02, A RESOLUTION TO STATE THE DISTRICT'S CONTINUED COMMITMENT TO PURSUE THE MOST ENVIRONMENTALLY AND FINANCIALLY RESPONSIBLE FUTURE MAINTENANCE DREDGING PROGRAM.

President Pellegrini reported she, Commissioner Hunter and CEO met with Pete Nichols of Humboldt Baykeeper and Baykeeper's attorney Fred Evenson last week. As a result of that meeting, Mr. Nichol's delivered to the Board of Commissioners a contract for the Harbor District to sign. One of the conditions of the Harbor District states "The Harbor District agrees that after the 2006/2007 dredge cycle, and for a period of fifty (50) years, it will not apply for disposal, or dispose of, any dredged material on any beach or into nearshore waters." If the Harbor District Board of Commissioners approved the contract, the Baykeeper would agree not to oppose the California Coastal Commission's issuance of a CDP, with special conditions, and would refrain from filing a citizen suit action against the Harbor District during the 2006/2007 dredge cycle.

President Pellegrini read an agenda report outlining the recent delays to the Woodley Island Marina maintenance dredging project, specifically the lawsuit threatened by Humboldt Baykeeper. The agenda report stated Baykeeper has opposed the project twice during consideration by the California Coastal Commission. Due to a claim by Baykeeper that there were toxins in the dredge material, additional testing and analysis was done and the findings concluded the dredge materias were appropriate for beach disposal. Baykeeper contends the Harbor District does not have the proper permit for the current dredge cycle from the Corps of Engineers with concurrence from the EPA and wants specific concessions from the Harbor District on future dredging plans, all under threat of a lawsuit. President Pellegrini concluded her agenda report with the recommendation of the maintenance dredge advisory committee to the Board of Commissioners to adopt Resolution 2006-02.

Commissioner Hunter read Resolution 2006-02.

COMMISSIONER HUNTER MOVED FOR THE APPROVAL OF RESOLUTION 2006-02, A RESOLUTION TO STATE THE DISTRICT'S CONTINUED COMMITMENT TO PURSUE THE MOST ENVIRONMENTALLY AND FINANCIALLY RESPONSIBLE FUTURE MAINTENANCE DREDGING PROGRAM. COMMISSION OLLIVIER SECONDED.

Commissioner Wilson stated he liked some of the Baykeeper's contract points, but thought the threat of a lawsuit created an awkward way to get to a signed contract. He suggested that a committee be formed that would consider combining shoaling, dredge maintenance and sediment management; the Humboldt Bay Management Plan advisory committee is too broad. Commissioner Wilson said he did not think that it was bad to agree there would be no beach disposal in the future except for in emergency situations because in his opinion EPA and Fish & Game will be very direct about their opposition to future beach disposal of dredge spoils; the Board would not be giving up much. Commissioner Wilson stated this Board binds itself to many kinds of policies and this would just be another policy; but he did not feel it should be through a contract with Humboldt Baykeeper. He did say that he wished he had more time to consider this item.

Commissioner Hunter stated this Board of Commissioners could not encumber a future Board of Commissioners with absolutes. He said that it is this Board's responsibility to look at the most environmentally sound and financially responsible methods of maintenance dredging, whatever that happens to be. Commissioner Hunter also said that Pete Nichols had asked the Commissioners Hunter and Pellegrini to hold a special meeting or move the Board Meeting of February 9<sup>th</sup> earlier in order to discuss this item which is why this meeting was scheduled two days early.

Commissioner Wilson said he thought it was a reasonable request by Baykeeper to put out signs on the beach during the dredge disposal notifying the public of this activity. He stated that he liked the basic tenets of the contract, but he did not like the method of getting to this point.

Pete Nichols, Humboldt Baykeeper, said the Board of Commissioners is missing an opportunity by not signing the contract that would complete this round of the maintenance dredging and would change what he sees as a bad policy that has been going on at the Harbor District for many years. He said Baykeeper is looking for a commitment from the Harbor District that the District would stop putting "waste products" on the Samoa beach. Removing this one option would not remove all the District's options and would allow the project to move forward. Mr. Nichols said that after the meeting with Commissioners Hunter and Pellegrini that they thought there was consensus for the contract and they brought in attorney Nancy Diamond to craft the binding agreement presented to the Board for tonight's meeting. He said the Baykeeper do not gain a lot with this contract, they lose a lot because their "constituents" want the beach disposal stopped.

Mr. Nichols went on to say that by "extending the olive branch" to allow the dredge project to move forward by ceasing the operations of beach disposal and to allow the commercial fishermen to work this year was a good deal for the Harbor District; and in addition, the Baykeeper will stand aside and not pursue their position at the Coastal Commission meeting on February 9<sup>th</sup>.

Mr. Nichols said he was on Samoa beach today and there were over 50 kids playing on the beach; and if the dredging project was going on right now, those kids would be digging in sludge. He said EPA has stated very strongly that they would not allow the beach disposal in the future, so he feels the Board of Commissioners should consider the contract. Mr. Nichols then said Baykeeper representatives would be at the Coastal Commission meeting; and depending upon what the Board decides tonight, they would plan their speech accordingly.

Commissioner Hunter asked Mr. Nichols if "extending the olive branch" means Baykeeper won't sue if the Board of Commissioners signs the contract. Commissioner Hunter stated that to him it means blackmail.

Mr. Nichols responded that currently the Harbor District is breaking federal law by allowing beach disposal.

Commissioner Hunter responded that he didn't understand how that was true.

Mr. Nichols stated the project is "wrong" and has been "wrong" for over 20 years.

Commissioner Hunter asked if that was his opinion. Mr. Nichols said that it was his opinion and that of a good majority of the community.

Ken Bay, commercial fisherman, told the Board about his day. Pulling on one of his crab pots that was buried by recent local storms caused his boat's mast to be pulled down. Adding insult to injury, when Mr. Bay brought his boat with the broken mast into the marina, he was unable to steer his boat into his slip due to the shoaling built up in the marina. Mr. Bay said he would rather have his boat stuck in 6' of mud than to have the Board of Commissioners sign the contract. He said Baykeeper is obstructionist and their request amounts to extortion. He said this project has gone on for years, the commercial fishermen in the bay have always been environmentally conscious and he asked why do the Baykeeper think they know best. Mr. Bay said he would not take a back seat to anyone about the commercial fishermen's respect and honor for the bay. He urged the Board of Commissioners to not accept extortion from Baykeeper.

Pete Oringer stated the sediment load in the bay is a problem we are burdened with due to the problems upstream. He said that posting the beaches during the dredging is an excellent idea. To him, a multi-use beach means that there maybe times when the beach cannot be used for recreation, but that at this point it is difficult to use the harbor also. Mr. Oringer said he would be aghast if the Board of Commissioners precluded the consideration of all beach disposal options in the future. The Board of Commissioners has a fiduciary responsibility to consider all options and make a determination based on the facts at the time.

Mr. Oringer asked why there are two separate committees: long-term shoal management committee and maintenance dredging advisory committee. CEO stated the committee created through the

Humboldt Bay Management Plan would be a standing committee comprised of agency representatives and stakeholders. The present advisory committee consists of two Commissioners, is for the duration of the project and then will disband.

Rex Bohn stated he has been involved with every dredge project in Humboldt Bay for the last 23 years. He said the reason he was here for public comment was that he heard a threat of litigation. Mr. Bohn was on Samoa Beach on January 3<sup>rd</sup> and the beach was as black then, after the big storm, as it was 9 years ago during the last dredge project when signs were also posted on the beach. Mr. Bohn said it bothered him to hear Mr. Bay speak of having to time his arrival at the marina during high tides, when the fishermen should only have to worry about their timing entering and leaving the bay. He said Baykeeper recently arrived in Humboldt Bay, is aligned with the Ecological Rights Foundation, and has numerous attorneys for litigation purposes. Why don't we let the elected officials do their job? They are doing a good job. He doubted that the Baykeeper was correct in their assertion that the Harbor District has been breaking federal law for 20 years as the federal government is not going to let a project go on for 20 years without putting a stop to it if it is in violation. Mr. Bohn went on to say what has happened to Humboldt Bay is a travesty. At one time, the bay supported 4,800 jobs, now 600. If we don't get something started on this bay, more than the railroad will suffer. Mr. Bohn stated he thought Baykeeper had some good ideas, but the message isn't playing to the community. For the safety of the fishermen and the vitality of the port, Mr. Bohn urged the Board of Commissioners to adopt the resolution. He also thanked the Board for the work they are doing.

Marlene Harten, community member, stated she supported the resolution and cautioned the Board about locking in the Board of Commissioners to something that would take place years from now. Her aunt and uncle started E-Z Landing in King Salmon in the 50's and she and her friends would play on the dredge Jupiter. Ms. Harten said Humboldt County needs jobs and the delay in dredging is not helping the fishermen maintain theirs. She urged the Board to pass the resolution and get the dredging started to help the commercial and recreational boats, small and large.

Dave Schneider, Pacific Affiliates, stated that he has been a consultant for the last three maintenance dredging projects. He said that out of three alternative sites for dredge disposal, the beach disposal was the best site. Mr. Schneider said that there had not been any complaints during the last three dredging projects and urged the Board not to allow a "hijacker" to take the best alternative off the table. He said the Board has a responsibility to make their decision based on the best site, as they have in the past. Mr. Schneider also said that he had been out at Samoa beach 27 times since the last Coastal Commission meeting and did not see one surfer and only a few beach walkers.

Mike Knight, City of Eureka Director of Public Works, stated that since Baykeeper's contract was presented earlier today, the Eureka City Council did not have time to consider the document. Therefore, from City Staff's perspective, Mr. Knight urged the Board to approve the resolution and stated it is critical that all alternatives be considered in a project such as this. He said he agreed with the idea of a standing committee, but that the committee must have the tools to do their work and be able to consider all options. Mr. Knight also said that if the Coastal Commission approves the permit, there will be at least 7 special conditions and will require 5 years of extensive, costly monitoring. The purpose of the monitoring is to determine what environmental impacts there are to the area. He said that the monitoring is required, but if the information will not be shared with the agencies, such as EPA, for decision-making purposes, then we might as well just cut a check and not waste the time. He suggested EPA may look at the project differently if they had 5 years of extensive, costly valuable data to look at; therefore the beach disposal site should not be excluded as an alternative.

Ken Bates, commercial fisherman and a Board Member of Humboldt Fisherman's Marketing Association (HFMA), stated that HFMA has both supported and opposed District projects in the past and has never once asked that an agreement be signed by the District that states something would never be done in the future. He also stated that the City of Santa Barbara and the Santa Barbara harbor has been using beach disposal for 35 years. Due to the design of the harbor, a continuous dredge is used and pumps the sand and fine material onto the beach. This is called beach replenishment and this beach is the most popular recreational beach in the area.

Pete Nichols asked if he could make a clarifying comment, or would it be "double dipping."

Commissioner Curless called for the question.

Commissioner Wilson asked what that means. Commissioner Curless responded that it means he is asking for the vote. Commissioner Wilson asked for some more time for discussion.

President Pellegrini stated that since Commissioner Curless had called for the question, it is an automatic stop of the discussion.

ROLL CALL VOTE WAS TAKEN:

COMMISSIONER PELLEGRINI – AYE  
COMMISSIONER CURLESS – AYE  
COMMISSIONER WILSON – NAY  
COMMISSIONER HUNTER – AYE  
COMMISSIONER OLLIVIER – AYE

MOTION CARRIED WITH COMMISSIONER WILSON DISSENTING.

**B. CONSIDERATION OF APPROVAL OF TRAVEL EXPENSES FOR THE CHIEF EXECUTIVE OFFICER TO ATTEND THE REDWOOD EMPIRE DIVISION OF THE LEAGUE OF CALIFORNIA CITIES, FEBRUARY 24/25, 2006.**

COMMISSIONER OLLIVIER MOVED FOR THE APPROVAL OF TRAVEL EXPENSES FOR THE CHIEF EXECUTIVE OFFICER TO ATTEND THE REDWOOD EMPIRE DIVISION OF THE LEAGUE OF CALIFORNIA CITIES, FEBRUARY 24/25, 2006. COMMISSIONER CURLESS SECONDED.

Commissioner Hunter asked why the League does not cover the expenses of a scheduled speaker. CEO responded that while the League of California Cities most likely has the funds, the regional divisions of the League do not

MOTION CARRIED WITHOUT DISSENT.

**ADMINISTRATIVE AND EMERGENCY PERMITS:** None

The Regular Meeting of the Board of Commissioners adjourned at 8:03 p.m.

APPROVED BY:

\_\_\_\_Signature on File\_\_\_\_  
Roy Curless, Secretary

RECORDED BY:

\_\_\_\_Signature on File\_\_\_\_  
Patricia L. Tyson, Admin. Assistant