

**CALENDAR ITEM
INFORMATIONAL
70**

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**INFORMATIONAL UPDATE ON THE HUMBOLDT BAY HARBOR, RECREATION
AND CONSERVATION DISTRICT LEGISLATIVE TRUST GRANT**

INTRODUCTION:

The California State Lands Commission oversees the management of sovereign Public Trust lands and assets by legislative grantees who manage these lands in trust on behalf of the State. (Public Resources Code sections 6009, 6009.1 and 6301; *State of California ex rel. State Lands Commission v. County of Orange* (1982) 134 Cal. App. 3d 20, 23). The Humboldt Bay Harbor, Recreation and Conservation District (District) is a trustee of certain sovereign tide and submerged lands located within and adjacent to Humboldt Bay, including all rivers, sloughs and estuaries, and tide and submerged lands in Humboldt Bay.

The purpose of this staff report is to summarize the District's trustee responsibilities, provide an informational update about the District's management of its legislative trust grant and the District's efforts prepare for sea-level rise and comply with Marine Oil Terminal Engineering and Maintenance Standards. This informational item is consistent with Strategy 3.1 of the Commission's Strategic Plan to foster, improve, and enhance relationships to engage the Legislature, public, local, state and federal agencies, legislative grantees, Commission lessees, potential applicants, non-governmental organizations, and the regulated community.

STATE LANDS COMMISSION JURISDICTION AND AUTHORITY:

The California Legislature is vested with the authority to enact laws involving sovereign Public Trust lands. Since statehood, the Legislature has enacted more than 300 statutes granting sovereign public trust lands to over 80 local municipalities (generally referred to as either grantees or trustees) to manage in trust for the people of California. The terms and conditions of statutory trust grants vary and are governed by the specific granting statute(s), the common law Public Trust Doctrine, the California Constitution, and case law. The specific uses permitted in each granting statute vary. For example, some trust grants authorize the construction of ports, harbors, airports, wharves, docks, piers, slips, quays

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and other structures necessary to facilitate commerce and navigation, while others allow only visitor serving recreational uses or open space. All grants reserve to the people of California the right to fish in the waters over the trust lands and the right to convenient access to those waters over the trust lands for that purpose.

Revenues generated by a trustee arising out of the use or operation of its granted lands are public trust assets of the State and must be reinvested back into the trust. These revenues must be kept separate from the general funds of a local government and may not be used for any municipal purpose, or any purpose unconnected with the trust. Expenditures of trust funds by a trustee must be consistent with the common law Public Trust Doctrine and the statutory trust grant.

While granted public trust lands and assets are managed locally, the Legislature delegated the State's residual and review authority for granted lands to the Commission. The Commission represents the statewide public interest to ensure that local trustees operate their trust grants in conformance with the California Constitution, applicable granting statutes, and the Public Trust Doctrine. Public Resources Code section 6301 provides, among other things, "all jurisdiction and authority remaining in the State as to tidelands and submerged lands as to which grants have been or may be made is vested in the commission." This oversight has ranged from working cooperatively to assist trustees on issues involving boundary determinations, proper trust land use and trust expenditures, and land exchanges, to judicial confrontations involving billions of dollars of trust assets, e.g., serving as amicus curiae in *Mallon v. City of Long Beach* (1955) 44 Cal.2d 199, 211 and as plaintiff in *State of California v. State Lands Commission v. County of Orange* (1982) 134 Cal. App. 3d 20.

RECOGNIZED PUBLIC TRUST USES:

Public Trust land uses are generally limited to water-dependent or related uses that promote fisheries, commercial navigation, environmental preservation, water-related recreation, and public access. Public Trust uses may include ports, marinas, docks and wharves, buoys, hunting, commercial and sport fishing, bathing, swimming, public access amenities and boating. Public Trust lands may also be kept in their natural state or restored and enhanced for habitat, wildlife refuges, scientific study, or open space. Ancillary or incidental uses, which directly promote trust uses, are directly supportive and necessary for trust uses, or support the public's enjoyment of trust lands, are also permitted. Examples include facilities to serve waterfront visitors, such as hotels, restaurants, shops, parking lots, and restrooms. Other examples are commercial facilities that must

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be located on or directly adjacent to the water, such as warehouses, container cargo storage, and facilities for the development, production and distribution of mineral resources. Uses that are generally not permitted on Public Trust lands are those that are not water-related or water-dependent and do not serve a statewide public purpose, such as residential, non-maritime related commercial and office uses, or municipal uses.

LEGISLATIVE GRANT TO THE DISTRICT:

In 1970, the Legislature created the Humboldt Bay Harbor, Recreation and Conservation District for the development of harbors and ports, for the promotion of commerce, navigation and fisheries, for recreation, and to develop and protect Humboldt Bay's natural resources. Upon creation of the District, the State was to convey in trust all state-owned ungranted tidelands and submerged lands within the boundaries of the District (Chapter 1283, Statutes of 1970). However, after Humboldt County voters ratified the Districts formation in 1973, significant confusion ensued about which land would go to the District. The District interpreted the statute as authorizing the transfer of all 360 square miles of sovereign land in Humboldt County to the District, including 121 miles of coastal tidelands. In addition, Chapter 1283 authorized the cities of Eureka and Arcata to convey to the District all the right, title and interest in their respective granted lands; however, neither city intended to transfer all their granted lands to the District. In 1974, Chapter 1283 was amended to clarify the District's granted lands were located within Humboldt Bay (Chapter 1191, Statutes of 1974), and approximately 22,400 acres of tide and submerged land in Humboldt Bay were granted in trust to the District. The amendment also allowed Eureka and Arcata to negotiate conveyance of their granted lands to the District subject to mutually agreeable terms and conditions.

The District's granting statute has an express provision requiring the District to consider environmental and ecological effects before issuing any lease, permit, franchise, right, or privilege. Section 24 of Chapter 1283 requires the Board of Harbor Commissioners to make several findings prior to the issuance of a lease, permit, franchise, right, or privilege, including that the proposed use is necessary to promote the safety, health, comfort and convenience of the public, and is required by the public convenience and necessity, and that such proposed uses will not have any substantial adverse environmental or ecological effect. The Board may determine a lease is required by public convenience and necessity only if it finds the use is (1) reasonably required to promote area growth and does not adversely affect the environment or ecology of the area to any substantial degree and (2) will not produce an unreasonable burden on the natural resources and aesthetics of the area, on the public health and safety and air and water

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quality in the vicinity (Section 24 (g) of Chapter 1283). The statute also requires that every applicant present satisfactory proof that the proposed use will not have any substantial adverse environmental or ecological effect. (Section 24 (b) of Chapter 1283).

The District is governed by a five-person elected Board of Commissioners who share the same boundary lines as the county supervisorial districts, and is served by an Executive Director. The District operates under the authority of the California Harbors & Navigation Code (Articles 1 through 5, sections 19 through 84) and its legislative granting statutes.

Humboldt Bay is California's second largest natural bay and has a variety of unique habitats, consisting of open water, shallow water, mud and sand flats, salt marshes and ponds, agricultural lands, sand beaches, islands, and woody riparian vegetation. According to the District's website, the Bay is home to approximately half of California's eelgrass population and 35 managed fish species, and supports 120 fish species, 251 species of marine birds, 550 species of marine invertebrates, 80 algae species, and numerous resident and visiting marine mammals.

The District's primary focus is consistent with its granting statute mandate, which is to facilitate commercial and recreational development and conservation. The District fulfills its granted lands management duties by managing commercial uses, such as port development projects, facilitating dredging in the Bay and appropriate disposal of dredged materials to maintain navigable depths, and improving commercial fish facilities. The District also manages recreational development, such as boat launch facilities, trails, water trails, and interpretive signage, and conserving and protecting the lands and natural resources entrusted to its care. Principal responsibilities include overseeing the Woodley Island Marina, Fields Landing Boat Yard, Redwood Marine Terminals, Shelter Cove, port development, recreation, conservation, wildlife area management, and exercising leasing authority over all public trust lands granted to the District.

The District's Master Plan for harbor and port improvement and use of the tide and submerged lands, a requirement of its granting statute, guides the District's management of the Bay and seeks to achieve balance among its diverse and potentially conflicting uses.

The District's 2014-2015 audited financial reports state that tidelands trust operating revenues for the fiscal year ending June 30, 2015 was \$1,152,723. The total tidelands trust operating expenses was \$1,362,408. The District also

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reported non-operating revenues of \$464,559 that are associated with the tidelands trust. A November 8, 2016, letter from the District, however, states that for the year ending June 30, 2015, the tidelands trust fund has a deficit of \$1,465,868, which is attributed to multi-year losses associated with declining shipping activity.

2015 GRAND JURY REPORT:

In June 2015, the Humboldt County Grand Jury submitted a report concerning the District. The report focused on deep harbor dredging and economic development efforts to generate revenue to fund the District's responsibilities. As background, storms often cause a large amount of shoaling deposits from the Eel River into the Bay, considerably decreasing the depth of the channel and creating issues for large ships entering or leaving the Bay. Regular dredging of the channel is necessary to allow safe navigation for large commercial ships. The U.S. Army Corps of Engineers is required to maintain a 48 foot depth, subject to available federal funding.

The report included the following findings: 1) the U.S. Army Corps of Engineers delayed dredging prevented large commercial vessels from accessing the Bay, resulting in over \$350,000 in lost revenue, and timely dredging to 48 feet of the deep harbor channel and turning basis is crucial for commercial vessels to safely pass: 2) lobbying Congress annually for increased U.S. Army Corp of Engineers funding is paramount to keeping the Bay commercially sound and safe: 3) the District, as a cost share sponsor, borrowed \$4 million dollars as its share of the \$17 million cost of the initial deepening of the harbor in 2001. The Corps is required to annually maintain the harbor depth of 48 feet, subject to available funding, and any improvement or modernization may require the District to be the cost share sponsor again: 4) the District has successfully generated new revenue streams and stabilizing finances; and 5) the District is pursuing new and increased revenue opportunities with expanded oyster operations, increased use of Redwood Terminal 2, and other projects.

The report included the following recommendations: 1) that the Board of Supervisors request the U.S. Army Corps of Engineers complete dredging to 48 feet as soon as possible: 2) that the District consider establishing a dedicated dredging reserve fund to reduce the need to borrow and incur interest obligations when sponsoring dredging and to augment the declining surcharge fund: 3) that the Board of Supervisors lobby legislators to ensure funding for annual dredging and communicate that this is a priority: and, 4) that the District continue to pursue new revenue and prioritize economic development.

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ECONOMIC DEVELOPMENT:

Redwood Terminal 1

In September 2004, the District acquired Redwood Terminal and Berth 1 (formerly the Louisiana Pacific dock) and an additional 20 acres of land. Improvements to the property include dock repairs, demolishing an old warehouse, installing a crane and forklift, and operating aquaponics project. Aquaponics is the combination of aquaculture (raising fish) and hydroponics (the soil-less growing of plants) that grows fish and plants together in one integrated system. Other potential development options on the terminal include a commercial fish processing center, gear handling and storage, cold storage, a floating fuel dock, boat ramp, and dock hoist.

Redwood Terminal 2

Redwood Terminal 2 opened in October 2016. The terminal is located on a portion of the former Freshwater Tissue property, which is a Humboldt Bay landmark commonly known as the Samoa pulp mill site. The pulp mill ceased operating in 2008. In August 2013, the District purchased two parcels totaling 72 acres and assumed responsibility for disposing of hazardous waste at the site. The U.S. Environmental Protection Agency subsequently assessed the area and deemed it extremely hazardous. The District-facilitated cleanup included removing three million gallons of acids and pulping liquors, 30 steel and plastic tanks, and 10,000 tons of caustic sludge. The cleanup was paid for by emergency funding from the U.S. Environmental Protection Agency and by a \$1.25 million loan from Coast Seafoods. The District anticipates earning \$1 million a year by 2018 through lease agreements and shipping activity.

Terminal 2 includes docks and buildings with 220,000 square feet of warehouse space, a sophisticated computer system, a 30 million gallon per day treatment system and 1.5 miles of ocean outfall pipe. Three aquaculture companies, Coast Seafoods, Taylor Shellfish, and Hog Island, are leasing space and expanding and installing nurseries to grow oyster seed stock at the terminal.

RECREATION:

The District owns and operates the approximately 50 acre Woodley Island Marina that has 237 berths and is the largest marina in Humboldt Bay. The Marina serves commercial and recreational vessels, supports the commercial fishing industry, and has a restaurant and offices. The marina offers boat sales, rentals, lessons, and canoe and kayak launching. In addition to the marina, Woodley Island has a protected nature reserve—the Gerald O. Hansen Wildlife Area—that the District manages. Other recreational endeavors include the Humboldt Bay water trail, the Shelter Cove open-ocean boat launching facility,

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and King Salmon beach. The District is also involved in planning and improving other boat launch facilities, trails, water trails, and interpretive signage throughout its jurisdiction.

CONSERVATION:

The District protects its natural resources in many ways. The District coordinates conservation activities through an Interagency Coordination Committee and a Mariculture Monitoring Committee. Additionally, the District developed a Humboldt Bay Management Plan that reflects input from 19 agency and Bay user group representatives. Other conservation activities include maintaining an extensive bilge water recovery system on the Bay, implementing a ballast water exchange program, managing wildlife areas, participating in or coordinating natural resource research projects, and participating in or sponsoring education awareness events about the Bay.

AQUACULTURE:

Aquaculture, also known as fish or shellfish breeding, is the breeding, rearing, and harvesting of fish, shellfish, plants, algae, and other organisms in all types of water environments. Aquaculture is a method used to produce food and other commercial products, restore habitat and replenish wild stocks, and rebuild populations of threatened and endangered species. There are two main types of aquaculture—marine and freshwater. Marine aquaculture refers to farming species that live in the ocean. In California, marine aquaculture for commercial purposes is limited to oysters, abalone, clams, and mussels. Shellfish have been farmed in Humboldt Bay for more than 100 years. Approximately 70 percent of the state's oysters are grown in Humboldt Bay. In 2009, the California Legislature designated Humboldt Bay as California's oyster capital.

Marine aquaculture in California is regulated by the California Department of Fish and Wildlife and the Fish and Game Commission. The Fish and Game Commission issues leases and permits and regulates marine aquaculture on state and private water bottoms, and ensures that marine resources and essential habitat are protected. (Fish and Game Code section 15400 *et al.*) In Humboldt Bay, however, the District rather than the Fish and Game Commission issues aquaculture leases for lands under its jurisdiction.

There are two significant pending aquaculture projects in Humboldt Bay that involve Public Trust lands and resources. The first project, known as the Pre-permitting project, is proposed by the District and involves permitting aquaculture in three areas of submerged lands within Humboldt Bay. In February 2016, the District certified a Final Environmental Impact Report (EIR) for the project and

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issued permit No. 13-03 for the activity, subject to the California Coastal Commission, U.S. Army Corps of Engineers, and the North Coast Regional Water Quality Board issuing additional approvals. The approved Pre-permitting project limits the project to areas of subtidal lands, eliminating impacts to eelgrass.

Once the District obtains all the necessary permits and approvals it will issue leases to private growers that would like to develop aquaculture in the Bay. The purpose of the pre-permitting approach is that the District, instead of individual growers, obtains permits and then leases the pre-permitted areas to growers, potentially reducing the cost and time involved in the regulatory process. Although the District is responsible for the permitting and for monitoring compliance, it anticipates generating hundreds of thousands of dollars in additional revenue annually and creating new jobs.

The second aquaculture project is the Coast Seafoods Company Humboldt Bay Shellfish Aquaculture Permit Renewal and Expansion Project. Coast Seafoods currently cultures nearly 300 acres of Pacific oysters, Kumamoto oysters, and Manila clams using a variety of culture methods. Coast Seafoods Company initially proposed continuing its existing operations and expanding its aquaculture in Humboldt Bay by another 622 acres. The project as proposed will impact sovereign Public Trust resources, including cultural and historical resources, dense and patchy eelgrass habitat, and shorebird mudflat habitat.

The District, as the lead agency under the California Environmental Quality Act, had previously released a Draft EIR in October 2015 for the Coast Seafoods project. Numerous comments were submitted from state and federal agencies and from citizens, academia, nongovernmental organizations (Audubon CA, Earth Justice, Oceana, and Humboldt Baykeeper), tribes and local governments. Many comments expressed opposition and an amalgam of significant concerns about the project, including concerns about the project resulting in significant impacts to Public Trust resources, including eelgrass and mudflat habitats, and species such as the Pacific herring, shorebirds, salmonids, and waterfowl such as black brant and widgeon. Commenters also stated that the proposed mitigation was insufficient and that conclusions in the Draft EIR that the project impacts are less than significant under CEQA were not well supported by the analyses provided in the document. Other commenters stated that the physical structures that would be placed in the tidal mud flats would create significant navigational hazards for recreational boats.

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The District subsequently reconsidered the project's design and the proposed mitigation measures, and circulated a revised Draft EIR in July 2016. On September 16, 2016 Commission staff commented on the recirculated Draft EIR, stating that the project continued to present unacceptably high adverse impacts to local and regional Public Trust resources, notably black brants, shorebirds, eelgrass and mudflat habitats.

Coast Seafoods convened a meeting with permitting agencies on December 1, 2016 to discuss the overall project strategy and eelgrass impact analysis. Commission staff participated in this meeting. Additionally, Coast Seafoods recently circulated to these agencies additional information regarding a potential project alternative they have been developing. This alternative reduces the size of the Phase I proposal from over 200 acres to 160 acres, reduces the size of the Phase II proposal from over 400 acres to approximately 176 acres, and no longer proposes expanding into areas out of the east bay management area. According to Coast Seafoods, its objective with the potential alternative proposal includes addressing concerns that the overall proposal is too big, addressing concerns about expanding in the east bay management area, addressing suggestions to concentrate on areas of existing culture, rather than spreading culture into areas lacking concentrated culture, and to maintain the same mitigation, even if the project footprint decreases. It is staff's understanding that Coast Seafoods will be convening meetings with non-regulatory agency stakeholders in the near future to discuss this potential alternative proposal.

SEA-LEVEL RISE:

Humboldt Bay is experiencing the largest annual relative sea-level rise of any location on the California coast due to the combination of rising seas and land subsidence. The major impacts from sea-level rise to the Bay are tidal inundation and flooding that could breach natural and armored shorelines, increasing erosion, degrading infrastructure, and contaminating low-lying farm lands and groundwater reserves. In 2010, the District leveraged funding from the State Coastal Conservancy to launch a multi-phase project to address sea-level rise impacts. The first phase involved gathering baseline data to understand existing conditions and risk areas, culminating in the Humboldt Bay Shoreline Inventory, Mapping, and Sea Level Rise Vulnerability Assessment Report (Laird and Powell, 2013). The report found that a third of the Bay, mostly areas of earthen dikes constructed to protect railroads at the beginning of the 20th century, is highly vulnerable to sea-level rise. Today, subsidence has caused these shorelines to sink by 1.5 feet. If current sea-level rise trends continue and adaptation strategies are not adopted, the tidal footprint of Humboldt Bay is projected to expand by 52 percent, or 8,918 acres.

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Many stakeholders recognize the importance of a proactive planning approach to confront sea-level rise in the area and participated in phase one. In 2014, a regional collaborative was formed to identify and implement adaptation strategies for the most threatened critical resources. The District, Humboldt County, the Coastal Conservancy, the Ocean Protection Council, the Commission, and the Nature Conservancy led the collaborative. The collaborative conducted extensive stakeholder outreach and community engagement to understand and analyze the region's adaptation and resiliency needs. The District created conceptual models mapping groundwater sources and potential areas of inundation and refined digital shoreline elevation models. Humboldt County and the cities of Eureka and Arcata have received grants to amend and update their Local Coastal Programs to guide coastal development in high risk areas. While the regional collaborative has not produced a full adaptation plan as originally intended due to constrained time and resources, the District and its partners are proceeding with planning activities to safeguard and adapt to sea-level rise.

The District is subject to the requirements of Assembly Bill 691 (Muratsuchi), Chapter 592, Statutes of 2013. This law requires trustees of granted public trust lands with annual gross public trust revenues exceeding \$250,000 to prepare and submit to the Commission an assessment of their sea-level rise risks and adaptation strategies, including impacts to existing structures. Assessments must be submitted to the Commission by July 1, 2019. In 2015, Commission staff sent the District a letter with information about the sea level rise assessment requirement and offered to assist the District by providing examples of successful assessments and sea-level rise adaptation resources.

MARINE OIL TERMINAL ENGINEERING AND MAINTENANCE STANDARDS (MOTEMS) COMPLIANCE:

The Commission's Marine Oil Terminal Engineering and Maintenance Standards establish minimum engineering, inspection and maintenance criteria for all marine oil terminals in California in order to prevent oil spills and protect public health, safety and the environment.

These comprehensive standards contain requirements for assessment of the structural, mechanical and electrical systems at marine oil terminals, including audits, above water and underwater inspections, structural evaluation, seismic analyses, berthing and mooring, geotechnical, fire prevention, detection and suppression, piping/pipelines, mechanical and electrical equipment, and electrical systems.

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The Chevron Eureka terminal in Humboldt is subject to MOTEMS compliance and has completed two cycles of MOTEMS audits. The audits identified multiple operational and seismic deficiencies, which were rated for their severity. The terminal is in the process of upgrading to address deficiencies identified in their 2011 MOTEMS initial audit, as well as those discovered during subsequent audits. Several of the deficiencies identified have been corrected, and the terminal operator is working with the Commission, District, and other state and local agencies to implement terminal upgrades to address the remaining issues. When the upgrades are complete, the potential of an oil spill will be reduced, and the terminal will be more likely to promptly return to operation following a major event such as an earthquake.

CONCLUSION:

Commission staff will continue to work collaboratively with the District and stakeholders to ensure the responsible management of Public Trust lands and resources within and adjacent to Humboldt Bay.