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February 4, 2018

VIA EMAIL smcgrath@smharbor.com

San Mateo County Harbor Board of
Commissioners
c/o Steve McGrath
General Manager
San Mateo County Harbor District
P.O. Box 1449
El Granada, CA 94019

Re: *Three Captains Sea Products Inc.'s hoist*

Dear Commissioners:

The Harbor District Board has expressed concerned about fairness given Dave Mallory's belated request for a second hoist. Fairness dictates allowing Three Captains to install a hoist based on the following facts: (1) Three Captains first requested the second hoist in 2012 lease negotiations; (2) The Harbor District granted Three Captains a second hoist in its 2013 lease; (3) the Harbor District allowed Three Captains to install its second hoist in 2014; (4) Mr. Mallory agreed to not oppose Three Captains' second hoist in exchange for the right to use the hoist during specific busy times; (5) the Harbor District approved the new location for the hoist in October 2016; (6) in the intervening year and four months Three Captains has spent tens of thousands of dollars applying for permits in reliance on the Harbor District's approval; (7) the Coastal Commission staff has reviewed all comments and recommends approval of t Three Captains' coastal development permit (CDP) application; and (8) during these years Mr. Mallory never asked for a second hoist; instead he waited until the eve of the Coastal Commission's vote on the CDP to belatedly request a second hoist.

Not only is it fair to allow Three Captains to install its hoist, the Harbor District is obligated by its lease, including the August 2017 amendment, and its October 5, 2016 approval of the new hoist location to allow Three Captains to install its hoist. It would be an egregious breach of Three Captains' rights to further delay the second hoist now, on the eve of the end of the initial five-year term of Three Captains' lease. Three Captains provides the following for the Board's consideration.

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Three Captains' existing hoist location is a handicap to serving fishermen. During its 36-year tenancy, Three Captains has been handicapped in serving fishermen. The configuration of the building allowed the outside tenants to install hoists in front of their buildings. Those tenants can load and unload boats from their hoists directly to bins or trucks. Three Captains, on the other hand, must move all product and equipment by driving forklifts through the building. This is extremely inefficient and means that Three Captains cannot serve fishermen as efficiently as the other two tenants. Years ago, Mr. McHenry installed a second hoist without Harbor District approval, which allows him to serve fishermen far more efficiently than Three Captains.

Harbor District granted Three Captains right to second hoist in 2013 lease. When Three Captains negotiated its new lease in 2012, it asked for the right to a second hoist in a location where Three Captains could unload boats more efficiently. The Harbor District approved Three Captains' request, and gave Three Captains the right to a second hoist in its April 1, 2013 lease. Mr. Mallory did not request the right to a second hoist in those negotiations, but his and Mr. McHenry's 2013 leases also included the right to a second hoist for the first time.

Three Captains installed second hoist in 2014, Mr. Mallory did not request second hoist. In 2014, the Harbor District approved a location for Three Captains' second hoist, and Three Captains installed it. Mr. Mallory did not request a second hoist.

Board approved new hoist location in October 2016, Mr. Mallory did not request one. The Board considered Three Captains' request for the new hoist location at its October 5, 2016, meeting. Mr. Mallory attended the meeting. Seven members of the public spoke in favor of the new hoist location. Mr. Mallory agreed in September 2016 to not oppose Three Captains' application and to switch storage areas in exchange for use of the hoist at specified busy times. During Mr. Fortado's presentation, he mentioned that agreement and looked back to Mr. Mallory for confirmation; Mr. Mallory nodded his agreement. The Board granted Three Captains' request and authorized it to install the second hoist in the new location after obtaining the necessary permits. Mr. Mallory did not request a second hoist.

Three Captains applied for county permit and Coastal Development Permit in 2016. Relying on the Board's approval, in 2016 Three Captains applied for a county building permit and CDP with the Coastal Commission. Notice of the CDP application went out to the other tenants at Johnson Pier, including Mr. Mallory. Mr. Mallory did not request a second hoist.

Harbor District signs amendment with Three Captains with proper map in 2017. After the Harbor District approved the new hoist location, Three Captains notified Harbor District staff that the proposed map attached to the lease amendment to reduce the fish buyers' fees was wrong, and that the storage areas needed to be switched to accommodate the new hoist location. Ultimately, on August 16, 2017, the Harbor District signed a lease amendment with the correct map. I attach that amendment with its map as **Exhibit 1**.

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This conformed to Mr. Mallory's agreement with Three Captains in September 2016 to switch the storage locations. Mr. Mallory did not request a second hoist.

Three Captains worked with Harbor District and Coastal Commission throughout 2017. Three Captains' CDP application included public support from almost 50 Johnson Pier fishermen. However, the Coastal Commission repeatedly requested additional information. Three Captains and its counsel worked with Harbor District staff and its counsel to respond to these inquiries (as well as the lease map issue mentioned above) through written communications and in-person meetings. Mr. Mallory did not request a second hoist during this period.

Coastal Commission staff recommended approval of the CDP in August 2017. The Coastal Commission staff report for the September 14, 2017, meeting recommended approval of the CDP. Staff summarized the reasons:

Installation of the new hoist would upgrade existing commercial fishing operations, improve the Applicant's efficiency of offloading products, and promote continued commercial fishing and associated uses at Johnson Pier. . .

Then the Coastal Commission pulled the CDP application off its agenda based on a letter from Harbor District staff.

Mr. Mallory belatedly requested a second hoist. Only now, many years after Three Captains requested permission to install a second hoist, obtained approval of the location for the hoist, installed the hoist, then requested permission for another location for the hoist in 2016, and after the Board granted Three Captains' request in 2016, and Three Captains spent time and tens of thousands of dollars on permit applications, did Mr. Mallory request a second hoist. Based on Mr. Mallory's demand, the Harbor District declined to approve moving the itinerant dock and declaring the hoist exempt from CEQA at its October 18, 2017, meeting. Instead, it tabled the issue for further consideration based on a concern for "fairness."

Three Captains continued to work with Harbor District staff and the Coastal Commission. Even after the Board's action further delayed its hoist, Three Captains continued to work with Harbor District staff and its counsel and the Coastal Commission to obtain its second hoist. Harbor District staff agreed that it did not have to move the dock if Three Captains would provide a safety plan to ensure that no users of the dock would be hurt while Three Captains was operating its hoist. Three Captains provided the plan, and Harbor District staff approved it. Three Captains provided all this information to the Coastal Commission.

Coastal Commission staff again recommends approval of CDP for hoist. Now, again, the Coastal Commission staff report recommends approval of Three Captains' CDP at its February 8, 2018, meeting. The report is accompanied by public testimony from almost 50 Johnson Pier fishermen supporting the new hoist, stating that the new hoist will increase the efficiency of offloading their boats, increase their income as well as the Harbor District's income, decrease congestion at the end of the pier, and provide better

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traffic flow. The fishermen stated that the Half Moon Bay Seafood Marketing Association (HMBSMA) represents a small minority of some 20 of the commercial fishing vessels out of Half Moon Bay and is not representative of the majority of the fishermen who use Johnson Pier. **Not a single fisherman submitted opposition to Three Captains' CDP application.**

Fairness dictates allowing Three Captains to install the hoist promised it in 2013. In response to Three Captains' 2012 request, the Harbor District gave Three Captains the right to install a second hoist in its 2013 lease. Three Captains has pursued its second hoist ever since. Three Captains relied on the Harbor District's October 5, 2016, approval of the new location and applied for a county building permit and the CDP. The permit applications alone cost Three Captains almost \$10,000; in addition, Three Captains spent tens of thousands of dollars on engineering and attorneys' services to obtain the necessary permits to install the hoist. Three Captains has spent the year and four months since the Board approved the new location attempting to obtain the CDP. All of this was in reliance on the Harbor District's approval of the location. Now, on the eve of Coastal Commission approval, the Harbor District Board is considering interfering with Three Captains' right to a second hoist.

Three Captains has been handicapped for 36 years because it must move product and equipment by forklift through its leased space to load and unload boats, while its competitors, including Mr. Mallory, can load and unload directly from their hoists to bins and trucks. The Harbor District promised Three Captains that it could install a second hoist to alleviate this problem in 2013; now, five years later, Three Captains has not unloaded a single commercial load with a second hoist located where it can efficiently service fishermen.

At no time during those years did Mr. Mallory request a second hoist. Instead, in 2016, Mr. Mallory agreed to not oppose Three Captains' application for the new hoist location and to switch storage locations in exchange for the right to use the hoist at specified busy times. Only now, almost five years into the lease which gave him the right to a second hoist, does Mr. Mallory demand a second hoist. The Harbor District's records reflect that Mr. Mallory processes less than 20% of the tonnage that Three Captains and Mr. McHenry's hoist users process. That is likely the reason he has not applied for a second hoist in the past; he doesn't need it. He can efficiently load and unload product and equipment directly to bins and trucks with his existing hoist, except at extremely busy times. By contrast, Three Captains has constructed a \$2 million processing facility in Princeton to ensure continued service to the fishing community because of the large volume of product it unloads despite its inefficient process.

Mr. Mallory is entitled to a second hoist; however, it would be unfair to Three Captains' rights after so many years of effort and more than a year and four months after the Harbor District approved the new location, all because of Mr. Mallory's belated request. Three Captains supports the Harbor District's desire to study development and expansion of Johnson Pier to make it more efficient; however, Three Captains does not believe that is a fair reason for the Harbor District to rescind its right to install the hoist at the new

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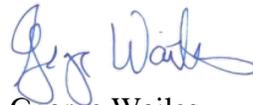
Three Captains Sea Products, Inc's. hoist

location once it obtains its permits.

There is a further reason not to interfere with Three Captains' hoist: the Harbor District is bound by its lease, including the August 2017 amendment, and its 2016 approval of the hoist location, to allow Three Captains to install its second hoist. When the Harbor District Board delayed the hoist in October 2017, Three Captains demanded mediation as the first step of arbitrating its breach of contract claims for failure to allow the second hoist. The initial five-year term of that lease expires next month, and Three Captains still does not have its second hoist. If the Harbor District further delays the hoist, Three Captains will proceed to arbitration. Three Captains will claim in that arbitration the tens of thousands of dollars it spent in reliance on the Harbor District's 2016 approval. It is likely that the arbitrator will agree that the Harbor District breached its lease by denying Three Captains its second hoist and award damages to Three Captains, including lost profits, attorneys' fees, and expenses.

Three Captains urges the Board to confirm its right to a second hoist now and then consider where Mr. Mallory can install his second hoist as well as work to develop and expand the pier to make it more efficient to better serve the fishing community. To assist the Board, Three Captains attaches as **Exhibit 2** proposed findings that support option 1, since the staff report did not contain a single finding supporting Three Captains' hoist. Thank you for your consideration of this submission.

Very truly yours,



George Wailes

Enclosures

cc: Commissioners (by email)



Board of Harbor Commissioners

Tom Mattusch, President
Virginia Chang Kiraly, Vice-President
Robert Bernardo, Secretary
Edmundo Larenas, Treasurer
Sabrina Brennan, Commissioner

Steve McGrath, General Manager
Steven D. Miller, District Counsel

August 16, 2017

Larry Fortado
Three Captains Seafood
P.O. Box 1971
El Granada, CA 94018

Dear Mr. Fortado, *Larry:*

As you know, in September 2016, the San Mateo County Harbor District (District) approved an amendment (the First Amendment) to the March 13, 2013 Lease of space on Johnson Pier to be used for fish buying and/or off-loading.

Pursuant to the First Amendment, Section 9.1 (b) of the Lease was amended to read, in part:

- (ix) Tenant may use exterior pier deck and storage space, as shown and allocated on Exhibit A; provided that Tenant's use of such space may be limited or restricted by the Landlord, for instance as necessary to accommodate Landlord's repair and maintenance of the pier. Landlord agrees to work cooperatively with Tenant to minimize disruption during any such repair and maintenance activities.

Subsequently, in October 2016 the Harbor Commission approved a second hoist location for Three Captains, and the plan attached as Exhibit A to the proposed First Amendment to your lease has been changed. Please include the attached amended Exhibit A, dated August 2017, as part of the First Amendment.

In accordance with our discussions, this amended Exhibit A:

- 1 Reallocates a portion of the 'B2' space in the First Amendment, as shown on the Revised Exhibit A, and now known as 'B3'
- 2 Identifies the location for Three Captains' second hoist;
- 3 Notes the removal of the 'impound dock'; and
- 4 Conditions #s 2 and 3 on Three Captains' receipt of a Coastal Development Permit for the second hoist location.

Please sign two copies of the attached First Amendment to the Three Captains lease and return to the District for execution.

On final execution of the First Amendment with the amended Exhibit A, please work with District administrative staff on the necessary steps to implement the new fees and calculate retroactive reduced fees.

Thank you for patience.

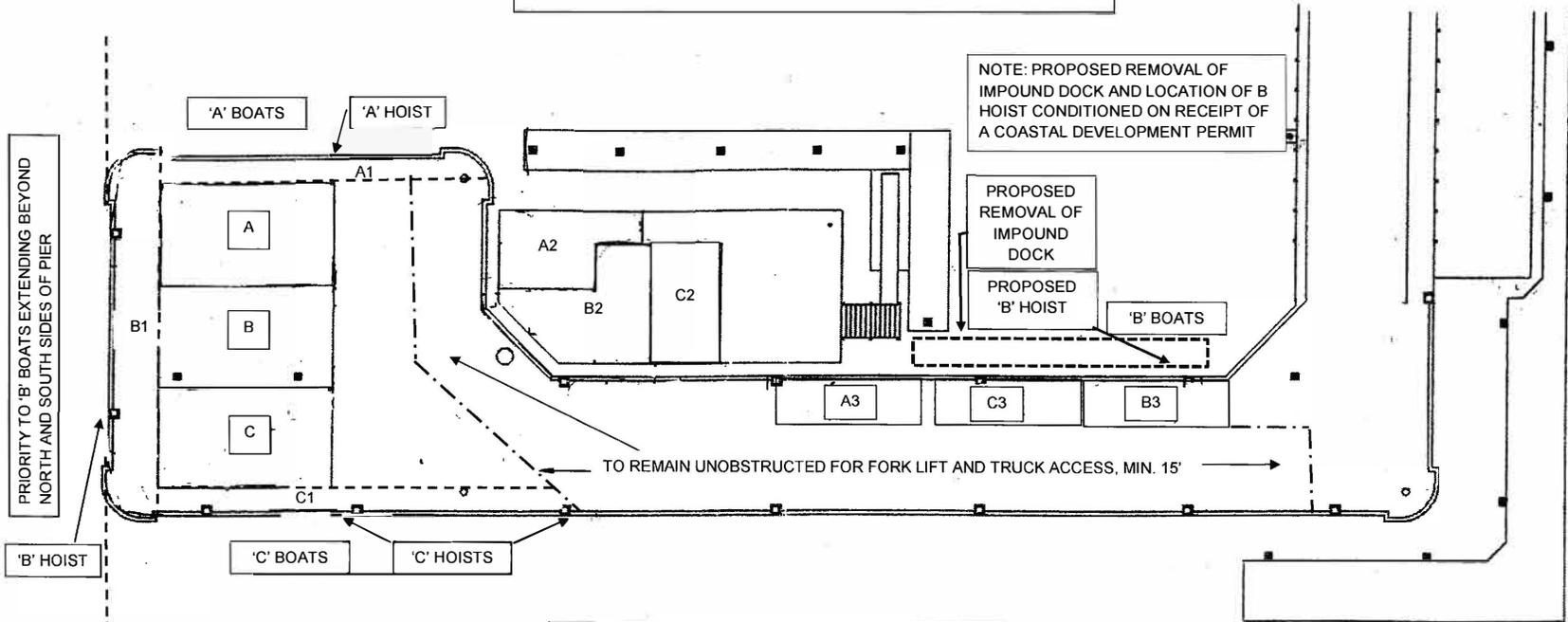
Sincerely,

Steve McGrath, General Manager

504 Avenue Alhambra, 2nd Floor, P.O. Box 1449, El Granada, CA 94018
(650) 583-4400 T (650) 583-4611 F

JOHNSON PIER

EXHIBIT A – PLAN, REVISED AUGUST 2017



A, B, C BUILDING SPACE	ca. 19'x33'
A1, A3 EXT. STORAGE	ca. 325 s.f.
A2 STORAGE/REFRIG.	ca. 610 s.f.
B1, B3 EXT STORAGE	ca. 630 s.f.
B2 STORAGE/REFRIG.	ca. 1,260 s.f.
C1, C3 EXT. STORAGE	ca. 500 s.f.
C2 STORAGE/REFRIG.	ca 1,100 s.f.



Lease Amendment #1

Amendment to Lease dated March 13, 2013 between Three Captains Seafood (Lessee) and San Mateo County Harbor District (District).

The Lessee and the District entered into a lease on March 13, 2013 for space to be used at the Johnson Pier for fish buying and/or off-loading

This lease amendment changes the following sections as follows:

1 Section 6.1 is amended to reflect Board direction of September 7, 2015 to set fish buyer fees as below:

- (a) Wholesale Fish Purchase: \$5.00 per ton actual scale gross weight for squid, \$3.00 per ton actual scale gross weight for other wetfish and \$.005 per pound gross weight for other finfish and shellfish purchased by Tenant at the Premises on or before the first day of each and every successive fiscal quarter during the Term of this Lease.
- (b) Fish Off-Loading: \$5.00 per ton actual scale gross weight for squid, \$3.00 per ton actual scale gross weight for other wetfish and \$.005 per pound gross weight for other finfish and shellfish off-loaded by Tenant at the Premises on or before the first day of each and every successive fiscal quarter during the Term of this Lease.
- (c) Retail Fish Sales: Tenant will pay Landlord two and one-half percent (2.5%) of its gross receipts for all fish sold to the general public on or before the first day of each and every successive fiscal quarter during the Term of this Lease.

The following is added to clarify the payment of fees:

- (f) Fees paid under Sections 6.1 (a) and (b) above are in the alternative. For avoidance of doubt, a Tenant that both purchases and off-loads fish is not required to pay both the wholesale purchase and the off-loading fees but must pay only the [wholesale purchase/off-loading] fee.

2. Section 6.2 is amended as follows:

Payment of Purchase, Off-Loading Fees, and Retail Sales. Purchase, Off-Loading, and Retail Sales Fees at the rates set forth in Section 6.1 shall be paid quarterly and shall be due and payable by the last day of the month following the end of each fiscal quarter .

3 Section 9.1.(b) is amended to clarify the location of the clear space, and other uses on the pier:

- (vi) Tenant agrees to keep free and clear a fifteen (15) foot wide area on Johnson Pier for common area access by all fish buyer tenants at all times, unless mutually agreed by all parties. Said space shall extend in an east west direction along the southern edge of the pier, as shown in 'Exhibit A, Plan'
- (ix) Tenant may use exterior pier deck and storage space, as shown and allocated on Exhibit A; provided that Tenant's use of such space may be limited or restricted by the Landlord, for instance as necessary to accommodate Landlord's repair and maintenance of the pier. Landlord agrees to work cooperatively with Tenant to minimize disruption during any such repair and maintenance activities.

LESSEE:

Larry Fortado, Three Captains Seafood

Date

SAN MATEO COUNTY HARBOR DISTRICT:

Steve McGrath, General Manager

Date

Exhibit 2 to Three Captains Submission

San Mateo County Harbor District Board of Commissioner
February 5, 2018 Special Meeting
Additional Proposed Findings

6. Based on Three Captains' 2012 request, the 2013 fish buyers' leases allow each fish buyer to install two hoists;
7. Mr. McHenry installed a second hoist years before the fish buyers' leases authorized it;
8. The Harbor District authorized Three Captains to install its second hoist in 2014;
9. Three Captains installed its second hoist in 2014; a year later the Harbor District ordered Three Captains to uninstall it;
10. Three Captains requested approval of a new hoist location in September 2016;
11. Dave Mallory attended the October 5, 2016, meeting at which the Harbor District Board considered Three Captains' application for the new hoist location;
12. The Harbor District Board approved the new hoist location at its October 5, 2016, meeting, authorizing Three Captains to install the hoist after obtaining necessary permits;
13. Three Captains applied for all necessary permits in 2016;
14. Three Captains worked with Harbor District staff throughout 2017 to obtain its Coastal Development Permit;
15. At no time after obtaining the right to a second hoist in 2013 did Mr. Mallory request a second hoist until the eve of the Coastal Commission's vote on Three Captains' CDP application, scheduled for September 14, 2017;
16. At no time during the year following its October 5, 2016 approval of the new location did the Harbor District indicate to Three Captains it had any inclination to rescind its approval; and
17. Based on Three Captains' reliance on the Harbor District's approval of the new location, it would be unfair to rescind that approval one year and four months later.