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May 19, 2021

Via email: *lmilward@smharbor.com*

Mr. James B. Pruett  
General Manager  
Board of Harbor Commissioners  
504 Avenue Alhambra, Suite 200  
P.O. Box 1449  
El Granada, CA 94018

Re: *Harbor District's reconfiguration of tenant areas*

Dear Mr. Pruett:

I represent Three Captains Sea Products, Inc. Three Captains appreciates the District's efforts to ensure safety and efficient operations at Johnson Pier and will do what is necessary to accomplish those goals. But it is concerned about some aspects of the District's plan to take its operational space behind the building.

First a historical perspective. Three Captains has been a good tenant since 1981. It has operated in accordance with the District's rules and instructions, paid its rent, and its owner Larry Fortado and manager Jason Newland assisted all the fish buyers and fishermen for decades in making operations on Johnson Pier as safe and efficient as possible. Three Captains serves many of the District's fishermen and unloads far more squid than any other fish buyer, and it has always worked hard to operate in a way that does not interfere with the other fish buyers. Three Captains shares half the fees for the squid unloading with Morning Star.

The only dispute Three Captains has ever had with the District was when the District refused to allow Three Captains to operate the second hoist promised in its 2013 lease. Twice the District approved a location and twice the District rescinded its approval on the eve of Coastal Commission approval of a Coastal Development Permit ("CDP"). The first time, Three Captains installed the electrical system, ordered the hoist, installed the hoist (at its present location), and then worked with the Coastal Commission to obtain the newly-required-by-the-District CDP. A year later, after the Coastal Commission staff recommended approval of the CDP, the District rescinded approval and forced Three Captains to remove the hoist.

The second time the District approved another location and Three Captains worked for 16 months with District staff and the Coastal Commission to obtain the CDP, only to have

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the District rescind approval three days before the Coastal Commission was scheduled to vote on the CDP. Three Captains was left with no choice but to proceed to arbitration in 2018, in which the arbitrator ruled that the District was required to live up to its contract and allow Three Captains its second hoist. Three Captains is concerned that the current recommended changes taking space from Three Captains are punishing Three Captains for that arbitration award.

Three Captains supported the steps the District took to ensure safety on the pier before, during, and after the 2020 arbitration with the tenants. Three Captains provided testimony from witnesses that assisted the District with its case, and Mr. Fortado supported the District's claims.<sup>1</sup>

Unfortunately, the District is now threatening to take operating space for Three Captains' hoist behind the building which has been in Three Captains' lease since 1981 and which Three Captains needs for its operations. Your latest proposal takes 40 lineal feet from the the 70-foot-long western end of the dock behind the building and reassigns it to the other tenants. Aside from the fact that this breaches Three Captains' lease, it is unnecessary and inappropriate. You have stated a desire to treat the tenants equitably, by which you apparently mean that the District wants to reassign storage and dock space as equally as possible. However, for the last 40 years the leased premises have been unequal because of a variety of operational and practical issues. Most importantly, it is not "equitable" to take any of the space at the back of the building away. And there are other solutions if the District insists on equalizing the storage and dock areas.

Three Captains has used the entire pier behind the building for its operations since 1981. Three Captains has a 15-foot-long fish pump with a separate generator that must be near its hoist. It has two 20-foot-long crab tanks for unloading crabs which again must be near the hoist. Recently regulators began requiring fishermen to return seawater to the sea after offloading fish with pumps. Three Captains was required to purchase a new 8,000-gallon, 10-foot water tank to capture the seawater and then return it to the sea. All this equipment needs to be used alongside forklifts which need to come through the building and then out on the dock to load and unload boats. No other fish buyer is faced with that operational difficulty. If the District takes 40 feet of the existing 70-foot Three Captains uses, it will be impossible for Three Captains to perform its loading and unloading functions in the 30 feet remaining on the cramped space behind the building.

Another issue with giving 20 feet on either end is that while Three Captains is supposed to continue to have the water rights off the west end of the pier, with 80-foot boats tying up at the pier, fishermen will be forced to tie off their bows and sterns on the other tenants' spaces, as well as access their bows and sterns and any of the other 50-foot parts of their boats beyond the middle 30 feet for maintenance, repairs, or other access from the other tenants' spaces. If the other tenants place equipment or totes that block the tie-

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<sup>1</sup> While Three Captains raised a defensive claim only in the event it lost to McHenry's claims, that the loss would be due to your predecessor signing contradictory lease amendments with the three tenants in 2017, Three Captains supported the District's right to rearrange tote storage on the pier to solve safety concerns.

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off cleats, access to the boats, and/or the view for the fishermen and Three Captains' crew to guide the boats in, tie them off, and load or unload them, it will be dangerous for the fishermen and the dock workers and be an operational nightmare. The other tenants have adequate runs of dock space beside and in front of the building to unload boats of any size; it would be inequitable to take away Three Captains' 70-foot length of dock space and render it incapable of servicing larger boats.

If the District takes the space away, Three Captains will have no place for its squid pump, generator, crab tanks, and seawater recycling tank. The District is not even providing useable storage on the finger pier for Three Captains.

In short, 30 lineal feet is not sufficient space for all the equipment and forklifts required to load and offload boats after driving through the building and allow the fishermen to safely tie up and load and unload. There has been no conflict about the west end of the dock before, and it is not appropriate to change the space that Three Captains uses for its squid and other hoist operations behind the building. The other fish buyers have adequate space near their hoists, which are in front of the building, to locate equipment needed to load and unload boats from their hoists.

Three Captains suggests the following solution to accomplish the District's goal of equalizing the storage and dock space for the tenants. Rather than take space that Three Captains needs to operate, provide the other tenants with additional space in front of the building. They have already used the space in front for the last 40 years. Indeed, the map attached to the 2017 lease amendments gave significant space in front of the building to McHenry, and McHenry used that space. Morningstar and its predecessor Dave Mallory also used the space in front of their building, and it did not and does not interfere with McHenry or Three Captains' operations. I attach a map showing where the District could provide the other tenants with additional space to accomplish its desire to be "equitable". The new space is marked in red.

McHenry is informing others that the District has approved moving its fish pump behind the building, where Three Captains has equipment including the seawater recycling tank. McHenry installed the pump without any permits (including the required CDP) or permission from the District. Before that, McHenry operated for decades with its fish pump in front of its building, in the space that the plan now provides to McHenry along the southern end of the pier by its two hoists. It can use that area again for its pump as it is near the hoists where it will be unloading squid.

If the District is trying to be equitable, why is it not providing Three Captains any useable tote storage on the finger pier (that Three Captains can use when the hoists are not being used) while Morning Star and McHenry have 380 and 204 useable square feet on the finger pier, respectively, and the only regular tote storage the District provides Three Captains is around on the main arm of the pier *beyond* McHenry's 32 lineal feet of storage. That means that Three Captains may not store any totes on the finger pier (other than when the hoists are in operation) and must drive off the finger pier and past

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McHenry's totes and forklifts to the area farthest from the hoists to store its totes and equipment. That is hardly an equitable arrangement.

Recently, McHenry and Morning Star disclosed their true intentions to eliminate Three Captains as competition by suggesting that they take over Three Captains' building space and hoists to operate themselves. This would have left only two fish buyers and significantly changed the competition and service to the fishermen. Three Captains urges the District not to assist the other tenants in eliminating their competition by making it impossible for Three Captains to load and unload from its hoist behind the building.

Thank you for your efforts to make the pier a safe and efficient location for the tenants. You and the Commissioners should feel free to contact Larry Fortado or me with any questions.

Very truly yours,



George Wailes

cc: Virginia Chang Kiraly (by email)  
Nancy Reyring (by email)  
Tom Mattusch (by email)  
William Zemke (by email)  
Edmundo Larenas (by email)

# San Mateo County Harbor District Johnson Pier Terminus Operational and Safety Plan



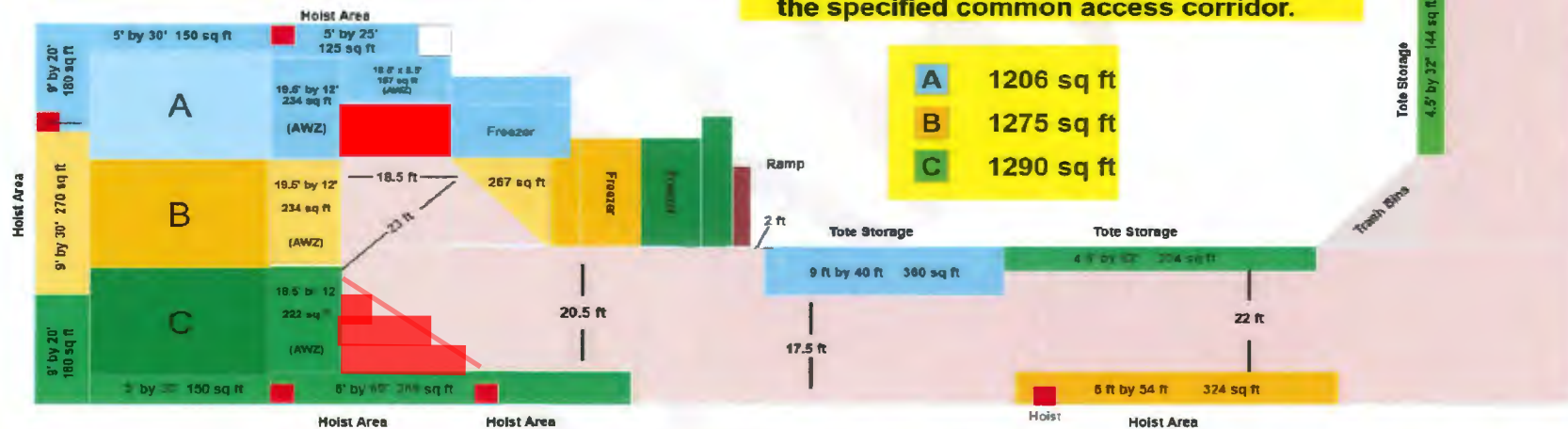
## Enclosure (1)

### RADM Sigval B. Johnson (USCG (ret.)) Pier Terminus Layout Plan

No unauthorized Personnel beyond this line.

**ACTIVE WORK ZONES (AWZ):** Active Work Zones are for active loading/offloading operations only and must remain clear unless active loading/unloading activities are in taking place. **NO TOTE/EQUIPMENT STORAGE**

Fork Trucks must not unreasonably interfere with or block access for other fork trucks and equipment operating on the pier.  
Each Tenant is obligated to cooperate with the other tenants and refrain from encroaching on the specified common access corridor.



Each Tenant is responsible to keep their assigned areas clean of debris and unauthorized materials.

Hoist Areas are "Active Work Zones" Only totes and equipment actively being loaded/worked allowed in the Active Work Zones.

Suggestions for alternative location for additional operational space shown in red