



STAFF REPORT

TO: Property Committee
FROM: Andrea K. Lueker, Harbor Manager
DATE: August 8, 2019
SUBJECT: Live Fish Storage Discussion

Recommendation

- Staff recommends the Committee consider preparation of a Request for Proposals for an Operating Agreement to operate the Live Fish Storage facility on Harford Pier.

Background

The Live Fish Storage building on Harford Pier has had an interesting history (Attachment 1) with efforts since 2012 to enter into a Lease agreement with Port San Luis Commercial Fisherman's Association for its use.

In late 2018, after the lease issue was taken to the Property Committee, District staff further reviewed the IRS designation of the Port San Luis Commercial Fishing Boat Owners and Commercial Fisherman Association, Inc. (typically referred to the Port San Luis Commercial Fisherman's Association [PSLCFA]).

Based on a review of IRS documents, which outlined the intent of 501(c)6 organizations as well as an online review of the rules governing 501(c)6 designation, it does not appear the PSLCFA can engage in the lease of a facility for a profit-making business activity or engage in activities that provide a convenience to its members, including providing storage.

In early April, District staff sent a memorandum to the President and Secretary of the PSLCFA with the above-mentioned documents. In the memorandum, staff further reiterated the importance of this operation and indicated there are several options for operation including, but not limited to, an individual operator(s) entering into a lease or setting up an Operating Agreement.

This issue was presented to the Property Committee in April 2019 and is being re-agendized for a recommendation from the Property Committee to be forwarded to the Board of Commissioners.

Discussion

The provision of a live fish storage facility is paramount to operations at Port San Luis and it is important to the District as well as the commercial fishermen to continue to provide a facility to address this need. As indicated in the staff report, it does not appear feasible to continue to have the Live Fish Storage facility operated through a lease or any sort of agreement with the PSLCFA due to their IRS designation as a 501(c)6. While the PSLCFA provides the liability insurance for the facility and pays the District a monthly payment for the building, it appears the facility is actually “subleased” to one or two independent businesses who purchase live fish/crab from fishermen. The purchased live fish/crab are then kept in tanks and either transported to the final buyer (wholesale) or the final buyer comes to the Live Fish Storage building and purchases the live fish/crab.

When this issue was originally raised several months ago, PSLCFA President Powers indicated the Association had retained legal counsel to review the issue and their attorney did provide a correspondence to the District’s legal counsel. The correspondence discussed the importance of the Live Fish Storage facility and commercial fishing (which the District agrees with), but there was no further explanation/discussion on the mechanics of how a 501(c)6 nonprofit organization is able to sublease a District-owned facility to a profit-making business(es).

Pursuant to the Port San Luis Harbor District Policy Handbook, Policy No. 3037 - Contract Management, District staff recommends the District advertise through the Request for Proposals process for a party to enter into an Operating Agreement to operate the Live Fish Storage facility on Harford Pier. An Operating Agreement is a limited-term, revocable written agreement to operate a business or facility under a specific set of terms. The District also has the option to enter into a Lease Agreement, however, an Operating Agreement is likely a quicker and less cumbersome process and sometime in the future the District could enter into a Lease Agreement once the operations of the Live Fish Storage are solidified.

As with either a Lease or Operating Agreement, District policy is to have a fair, open and public process for consideration of all contracts. With either a Lease or an Operating Agreement, a negotiated agreement without issuing a request for proposals is not possible as there are criteria in Policy No. 3037 that preclude that action, specifically, that there is no existing agreement (Lease or Operating) currently in place.

Should the Board determine to move in the direction of an Operating Agreement, District staff would emphasize working closely with the Port San Luis Commercial Fisherman’s Association to make sure the parameters in the Operating Agreement would support the commercial fishing industry at Port San Luis.

Conclusion

District staff recommends the Property Committee recommend to the Board of Commissioners the preparation of a Request for Proposals for an Operating Agreement for operation of the Live Fish Storage facility on Harford pier.

Attachment(s): 1. Live Fish Storage Building History