

CBJ DOCKS & HARBORS BOARD
OPERATIONS/CIP/PLANNING COMMITTEE MEETING
Thursday, November 14th, 2013

I. Call to order.

Mr. Simpson called the meeting to order at 5:00 p.m. in the Assembly Chambers.

II. Roll.

The following members were in attendance: Budd Simpson, David Logan, John Bush, and Greg Busch.

Also in attendance were: Carl Uchtyl – Port Director, and Gary Gillette – Port Engineer.

III. Approval of Agenda.

MOTION: TO APPROVE THE AGENDA AS PRESENTED

The motion passed with unanimous consent.

IV. Public Participation on Non-Agenda Items.

None.

V. Approval of October 24th OPERATIONS/CIP Meeting Minutes.

MOTION: TO APPROVE THE OPERATIONS/CIP/PLANNING COMMITTEE MEETING MINUTES FOR THURSDAY, OCTOBER 24, 2013 AS PRESENTED.

The motion passed with unanimous consent.

VI. Items for Action.

1. Access by Alaska Glacier Seafoods to its leased portion of the Auke Bay Loading Facility.

Mr. Uchtyl said through an amended lease, Alaska Glacier Seafoods has been authorized access to the Auke Bay Loading Facility for the last two summers. This allows AGS to go between the ABLF and the property they lease from the Harbor Department. There is consideration for the next 25 years that AGS will pay \$0 to lease the area next to the ABLF. When AGS

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built their land they built a retaining wall that is 2 feet from the Harbor property line, this has created a gap.

Mr. Uchytel explained the contents of the packet he provided regarding AGS access to the ABLF.

Committee Questions

Mr. Simpson asked is AGS asking for a permanent right of access through the ABLF.

Mr. Uchytel said yes.

Mr. Logan asked is the access to the ABLF by AGS secure.

Mr. Uchytel said I wrote a letter to AGS informing them I was not interested in renewing the arrangement because of their continued security violations. AGS responded stating they will do better and requested we inform them when we see violations to the lease agreement. To my knowledge, over the summer, there have been no more violations.

Mr. Logan asked, as it is set up in that area now, would there be a way for AGS to access their leased area without going through the secure area. It might take modifications, but would they be able to set up a barrier to allow them secure access?

Mr. Uchytel said I would prefer it if AGS would find a way to work with the Department of Transportation to find access through the road.

Mr. Bush asked does AGS call the Statter Harbor Office to inform the staff of the times AGS will be using the ABLF.

Mr. Uchytel said to my knowledge yes.

Mr. Busch asked Mr. Uchytel, do you recommend the lease be amended permanently to allow AGS access to the ABLF through separate access or not permitting this access.

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Mr. Uchytel said I will support whatever decision the Board makes, but I would prefer AGS have their needs met through the Department of Transportation using the roadside. I do not want to enter into a long-term agreement.

Mr. Bush asked if Docks and Harbors wanted to add a building and a permanent access easement, would we have to wait 25 years to build.

Mr. Uchytel said currently there is not legal standing for the current documentation allowing AGS private access to the ABLF.

Mr. Simpson said in order to use the corridor items will need to be staged in order to get through. However, once we grant this access right-of-way, the Docks and Harbors will be limited in what we can do later.

Mr. Busch asked if allowing AGS permanent access to the ABLF would affect the building of a self-contained wash down system.

Mr. Gillette said right now we have a portable wash down system and we are setting it up at the other end. Primarily because setting it up at this end might hinder access to the ramp. Docks and Harbors will need to build a building to protect the investment of the haul-out equipment and the sealift. We do not know where the best spot for that would be at this time.

Mr. Bush said access to the ABLF through private property, and then AGS using that access for monetary gain, could be perceived poorly by the public. For this reason I do not support a long-term contract for AGS' private access to the ABLF.

Mr. Logan asked where the barrier wall is located is there a way to allow access through the leased space through their existing land. How much of an elevation change is there?

Mr. Fisk said there are no architectural drawings at this time. AGS needs to figure out how many loading bays they will need in order to meet current production needs and future growth. The only other way is to have another loading bay on the other side of the plant. This is very complex to

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make work and we are hoping to eliminate this bay in future designs. By eliminating that loading bay we would have proper flow through the plant.

Mr. Simpson said if the future plant is designed in a way that relies on being able to load through access on the leased property; this design might only have a 20 year lifespan, and not infinite one. Also, if AGS did design a plant that depended on access through the leased property, then Docks and Harbors would be constrained to leave it alone because of the hardship it would cause if we did change it. We can either find a design we are willing to live with for a very long time, or we can reserve some way to make changes periodically. If we reserve the right to make changes, then AGS is not going to be able to rely on having the access forever. It does not make sense to prevent them from doing what they want to do now because of some speculative change that might come in the future. We don't want to hold you up, but we might want access to the land in the future, and we don't want to wait for a long-term contract to expire to move forward with future plans.

Mr. Fisk said the area at the ABLF where AGS is not leasing has to be staging area for the Harbors. AGS does not have a firm design. If it is the Board's view to hold this matter open and have year to year leases, I would hope this would not preclude AGS coming back with designs requiring a long-term lease.

Mr. Simpson said the Board will not want a lease that requires negotiating every year. I think a longer-term lease, but a lease that can be revoked with notice.

Mr. Fisk said if the plant has been operating for many years with a specific design and then requiring the plant to reorient the plant access would be difficult.

Mr. Simpson said yes, but what you are asking us to do is to commit to a certain access point forever, and there is resistance to that.

Mr. Fisk said this is about moving more fish to Juneau. With more fish the Board gets more money.

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Mr. Busch said I have concern about granting long-term access and amending a lease to allow permanent change. We can reevaluate in the future. I prefer we work to help AGS get access to the ABLF through the road system and that would be a permanent solution. I support the temporary solution of allowing AGS access to the ABLF through their leased property.

Mr. Logan said the Harbors could use that area for storage if it were not being used as an access point by AGS. We should focus on developing the area for Docks and Harbor to use and for AGS to use.

Mr. Bush said I would support a 2 or 3 year extension and make it renewable.

Mr. Fisk said Docks and Harbors is leasing that portion of the ABLF to AGS for development reasons. When AGS leases that land and does something with it, it is meeting a Docks and Harbors purpose.

Public Discussion

Mr. Bush asked should AGS' access to the ABLF be available to the public. Does AGS leave the access open?

Greg Fisk, of Juneau, AK, said I represent AGS in this matter. No, the access would not be open permanently. If long-term access were to be granted AGS would have something more substantial built in place of the chain. AGS might put in a rolling fence or something that drops. This would prevent public access. AGS employees would receive an electronic key to swipe or something similar. The Coast Guard does not have any regulations preventing AGS' access to the ABLF, except when they are loading propane, in which case the whole area has to be blocked off. This lease parcel is not separate from the ABLF. ABLF land is what is leased. It is true that we have not done much marketing for the ABLF. However, AGS was the first client to lease the land and put it to use. The way this lease has worked out makes people think it's free for 25 years, but it's not free, the fee is \$30,000 a year and they are getting a \$28,900 credit. This is not an inconsequential lease. A long-term lease agreement is important because AGS wants to do some improvements including putting more

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freezing capability in the plant so they can put more fish through. There is a lot of fish in the area that is going to Sitka and Petersburg. If AGS makes a substantial capital investment, they will need to figure a way to get it out of their property. Loading it this way on the vans is a lot easier for them to plan around then trying to get it in from their existing access off Glacier Hwy. The Department of Transportation has not been very helpful when looking for modifications to the entrance, like making it wider or moving it further down. A long-term lease would be beneficial to everyone, in terms of generating more business, which means more fishery business tax, which comes to the Board. There has to be access in that area anyway for people to be able to access the stuff that is there. This is a good thing for everyone and it makes sense. I was thinking about how the restriction originated, and it was a result of a particular assembly member who was giving us grief regarding the lease, and so this restriction was added and was not addressed because everybody just wanted to get it done. This access right for AGS would be a big improvement. As it is written now, AGS would have to take the forklifts, drive onto the highway, and come back down and use the ABLF to deliver to the fishermen who are on the ABLF. So, we figure if the access is down there, and we're only taking ice on the forklifts, it's not going to add to any congestion or confusion.

Mr. Bush asked would AGS be open to continuing an annual renewal lease.

Mr. Fisk said yes, but we maintain the mindset that it will be a few years before AGS designs a new building. This would work for two years, but when we get our new plant designs finished, and are ready to improving capacity, short-term leases become problematic because if AGS designs a plant a certain way they will want assurance they will have a way to get in and out.

Mr. Bush said there have been violations to the lease previously. AGS is doing well now, but suppose we have a long-term lease and AGS violates some of the lease agreements. This would be a problem.

Mr. Fisk said I would like to address those problems. One was regarding the jersey barriers that AGS was required to place along the lease line. They were placed there, but there was one area around the electrical

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transformers that jersey barriers were not placed. This is also the area the forklifts operated. It was easier for them to go through that area then to go out and around the road. AGS was told not to do that, and they did it anyway. That was corrected. The second problem was the chain barrier, locks were lost or forgotten to lock. This is where a gate would solve the problem. However, it is difficult to pay for a gate like that on a one year lease agreement. The third problem was that AGS staff was not calling the Statter Harbor Office when they were going onto the ABLF. We corrected this issue by informing the Statter Harbor Office that AGS would be moving vans every day during the salmon season. It is working okay now. If we had a permanent solution there would be a better gate there.

Mr. Uchytel said he might have a chain link fence AGS can use as rollers for this facility. I do not believe there is a lease payment for this property. There is another lease for the ice house for \$2,500.

Mr. Fisk said there is a calculated payment. There was no exchange of money, because it is offset by the credit.

Mr. Simpson said there is an assumed value and that was offset by the value of the space we were allowed to use.

Mr. Watson, of Juneau, AK, said I am concerned that the letter Mr. Fisk wrote to the Board does not address the issues brought forward. This started as a commercial boat launch, haul-out, and temporary storage. It is now grown to load fuel and to wash boats. There have been concerns. We are looking at 25 years, and from AGS' perspective this makes sense. However, the purpose of this facility was not designed for this and we're asking for a lease to be altered for an extended period of time. I would like to see the Board talk to legal, and I would like to see the Board contact the Department of Transportation to see what can be done. It is surprising that the Department of Transportation has not done more to assist AGS in accessing their facility. We do not know what the ABLF will look like in 25 years and I do not support building an easement from AGS' leased property to the ABLF.

Mr. Fisk said this property is part of the ABLF. Other businesses have leased ABLF property and they have access from their properties to the

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ABLF. It does not make sense to lease a major property to people then not allow them access to it. I think we, because I was on the Board when this decision was made, made a mistake by not allowing access. I think the reasons we were not allowing access was due to political concerns that were not relevant.

Committee Discussion/Action

Mr. Uchytel asked how formal will we make this agreement. For the last two years we have made a consideration for AGS.

Mr. Simpson said structurally we can characterize it as an amendment to the lease based on actual usage and experience over the first few years that this is in place. If it is a substantive change, we will take it to the Assembly.

MOTION: FORWARD TO THE BOARD THAT WE RECOMMEND TO CONTINUE WITH THE TEMPORARY AMMENDMENT TO AGS' 2010 LEASE AGREEMENT, ALLOWING ACCESS TO THE ABLF FOR UP TO 3 MORE YEARS DURATION.

The motion passed with unanimous consent.

2. Statter Harbor Fish Credit.

Mr. Uchytel said commercial fishermen who have an assigned stall in the downtown harbors get up to 20 days in free moorage at Auke Bay annually. Previously, fishermen who sell fish to a tender that takes the fish to be processed outside Juneau have not qualified for the fish credit. There are 75 fishermen who qualify for the fish credit. Last year 49 fishermen took advantage of the fish credit, with a cumulative total of just under 600 days, and \$12,500 of free moorage. I have been directed to send a letter to the fishermen. I would like to specify in the letter that the fish tickets need to be turned in within the same month and fishermen are not exempt from paying other accrued fees like power and crane fees.

Committee Questions

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Mr. Logan asked where in the policy does it state the fish need to go to a Juneau based plant.

Mr. Uchytel said in the past we have allowed tenders to take advantage of the fish ticket credit. I can state that fishermen are required to sell to AGS or Taku in order to be eligible for the fish ticket credit. The fish need to be destined for a fish processing plant in the City and Borough of Juneau.

Mr. Simpson said two things need to be taken care of, one, that the clarification is accurately stated in the policy, two, discuss if we want to make a substantive change to the policy.

Mr. Bush said the clarification is to encourage landings here.

Mr. Busch said I would like to limit this discount to local fishermen who are paying for moorage downtown as well as selling their fish in Juneau.

Public Discussion

Mr. Fisk said I was on the board when we considered this and I do believe the interpretation given tonight is correct. It was to encourage landings in Juneau. Fishermen are required to inform the office when they will be out of their downtown slips so that space can be utilized.

Mr. Uchytel said there is another regulation that states if the boat is out of the slip for 96 hours the patron is required to notify the Harbor Office. So, there are two regulations that require the Harbor Office to be notified when the boat is gone.

Committee Discussion/Action

MOTION: TO MOVE THAT THE PORT DIRECTOR ISSUE A LETTER TO COMMERCIAL FISHERMEN INCORPORATING THE CHANGES RECOMMENDED BY THIS COMMITTEE.

Motion passed unanimously.

VII. Items for Information/Discussion.

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Mr. Hart is the director of the Community Development Department and he requested a liaison to participate on the Community Development Committee. Mr. Hart said we are embarking on a land use planning effort. We are developing an area plan with the intent of encouraging more businesses and transportation. We want to make sure the investments by the Port and by the University work together in the future. We have set up a committee of 14 to 18 spots. 2 more spots are set aside for the Auk Nu tribe or a corporate interest. We are inviting the Docks and Harbors Board as a liaison. We are focusing on coordination of investments. Many land holders have been holding their land since the 70's and have not developed it. This is to see what the land holders would like to do with the land for the next 30 years. The city is also increasing transit service to the University and possibly out to the Ferry Dock. One goal is to make development easier and another goal is to have the different Boards collaborating on issues. The Assembly wants the final product by September 2014. Our schedule will be an aggressive one, between 10 and 20 meetings.

VIII. Member & Staff Reports.

Mr. Gillette said with regards to the Taku dock expansion, the decking has been removed, concrete has been poured, and piles are being driven. With the cruise ship staging area Miller Construction is in the area in front of the tram the foundation is complete and the utilities are almost completed. Everything is currently on schedule.

Mr. Uchytel said Bob Bartholomew recommended \$36 million be approved for the Cruise ship improvements, Sea-Walk, and the Uplands projects. This will be introduced at the next Assembly Meeting; then, in December it can get approved. We are focused on the preliminary decision by the Department of Natural Resources to convey the tideland property to the Docks and Harbors. The preliminary document says for the tidelands to be transferred to the Docks and Harbors.

Mr. Gillette said that once this was issued a 30 day public comment was started. It went onto their website on Friday.

Mr. Uchytel said the Department of Natural Resources initiated the transfer when they said that the ships would be moored over State land. There are 17 acres of tidelands and we only need a fraction of that land. We have a two

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phased bid award which started on the 12th of November. They provided two sealed envelopes; the first envelope was for proof of the contractors' qualifications and the second was their quote for the bid. We have at least four qualified bidders. Regarding title ship to the tidelands and whether we are at risk financially, the compliance under the State Statute AS 38.05.825. "Conveyance of Tide and Submerged Land to Municipalities", states:

(a) Unless the commissioner finds that the public interest in retaining state ownership of the land clearly outweighs the municipality's interest in obtaining the land, the commissioner shall convey to a municipality tide or submerged land requested by the municipality that is occupied or suitable for occupation and development if the

(1) land is within or contiguous to the boundaries of the municipality;

(2) use of the land would not unreasonably interfere with navigation or public access;

(3) municipality has applied to the commissioner for conveyance of the land under this section;

(4) land is not subject to a shore fisheries lease under AS 38.05.082, or, if the land is subject to a shore fisheries lease, the commissioner determines it is in the best interests of the state to convey the land;

(5) land is classified for waterfront development or for another use that is consistent or compatible with the use proposed by the municipality, or the proposed use of the land is consistent or compatible with a land use plan adopted by the municipality or the department; and

(6) land

(A) is required for the accomplishment of a public or private development approved by the municipality;

(B) is the subject of a lease from the state to the municipality; or

(C) has been approved for lease to the municipality.

(b) The commissioner may not convey land under this section that has been designated by statute unless the commissioner determines that the proposed use is consistent or compatible with the purpose of the statutory designation. Land designated as a state game refuge, game sanctuary, or critical habitat

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area may not be conveyed unless the commissioner of fish and game also determines that the proposed use is consistent or compatible with the purpose of the designation. If land designated by statute is conveyed, uses of the land after conveyance are restricted to those uses determined by the commissioner of natural resources to be consistent or compatible with the purpose of the designation.

(c) Upon receipt of an application, the commissioner shall determine whether the requested conveyance meets the requirements of this section and issue a written decision regarding that determination. Upon a determination that the requirements have been met, the commissioner shall approve the conveyance of the land to the municipality. After conveyance to the municipality is approved, the municipality has management authority of the land and may lease the land, but may not sell it. The cost of the survey and all subdivision or other platting required for conveyance shall be borne by the municipality.

(d) A conveyance under this section may contain only those restrictions required by law, including AS 38.05.127 and (b) of this section, or required to support a finding that the conveyance is in the best interest of the state. Land conveyed is subject to the public trust doctrine that may be enforced by the state in a court of competent jurisdiction. The municipality shall be required to ensure that reasonable access to public waters and tidelands is provided. The municipality may not lease land conveyed under this section for shore fisheries, but after conveyance, the land may be leased by the state for shore fisheries under AS 38.05.082 if the commissioner determines that the lease is compatible with the municipality's use of the land. Title to land conveyed under this section that is retained by the municipality reverts to the state upon the dissolution of the municipality.

(e) This section does not enlarge or diminish the general grant land entitlement of a municipality under AS 29.65, nor is a conveyance under this section counted against the municipality's general grant land entitlement.

Mr. Simpson said someone opposing that would have to present a clear and compelling argument to the contrary.

Mr. Uchytel said the 30 day comment period ends December 9th, 2013. The Department of Natural Resources will reply to any substantive comments, after which, a final agency determination will be made. We will delay the bid

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opening until mid –January. This will allow bidders time to adjust their bids. The way the contracts are written, it's largely a commodity related contract, with steel and zinc. Zinc is a volatile mineral. We are only able to hold the contracts for 45 days, if we open the bids after 45 days they would have the right to negotiate the bid based on commodity prices. The optimal solution is to delay the bid opening until after we have the final agency determination.

Mr. Simpson asked when the 30 day comment period ends, does the agencies have to decide on the 31st day.

Mr. Gillette said no, there is no set time for them to decide. They understand our predicament, but if they receive a lot of comments that require more research then it could take a long time.

IX. Committee Administrative Matters.

Next Meeting: December 5, 2013.

X. Adjournment.

The meeting was adjourned at 6:35 p.m.