

PORT OF BROOKINGS HARBOR

Special Commissioner Meeting

16350 Lower Harbor Rd Suite 202

Thursday, September 24, 2020 • 2:00pm

Teleconference / Meeting Room (Limited Space)

Teleconference Call-In Number: 1 (301) 715-8592

Meeting ID: 831 3993 9975 Participant ID: # (to mute/unmute: * 6)

When calling in, please announce your arrival and state your name when you join the meeting.

TENTATIVE AGENDA

1. CALL MEETING TO ORDER

- Roll Call
- Modifications, Additions, and Changes to the Agenda
- Declaration of Potential Conflicts of Interest

2. APPROVAL OF AGENDA

3. **PUBLIC COMMENTS** (Limited to a maximum of three minutes per person. Please email your comments to danielle@portofbrookingsharbor.com prior to the meeting. ***Please wait to be called on before speaking***)

4. ACTION ITEMS

- A. The Bell & Whistle Coffee House – Consent to Assignment and Assumption of Lease
- B. The Bell & Whistle Coffee House Request for Building Alteration
- C. Zola's on the Water Storage Area Upgrade / Expansion Plan
- D. Nature's Coastal Holiday Festival of Lights
- E. Righetti and Port Property Easements
- F. Traffic Flow and Parking at Zola's on the Water

5. INFORMATION ITEMS

- A. Fuel Dock Proposal to Lease
- B. Boat Yard Proposal to Lease

6. COMMISSIONER COMMENTS

7. **NEXT REGULAR MEETING DATE** – Tuesday, October 20, 2020 at 6:00pm

8. ADJOURNMENT

A request for an interpreter for the hearing impaired, for those who want to participate but do not have access to a telephone, or for other accommodations for persons with disabilities should be made at least 48 hours in advance of the meeting to Port of Brookings Harbor Office at 541-469-2218.

ACTION ITEM – A

DATE: September 24, 2020
RE: Bell & Whistle - Consent to Assignment and Assumption of Lease
TO: Honorable Board President and Harbor District Board Members
ISSUED BY: Gary Dehlinger, Port Manager

OVERVIEW

- Misty Crawford the current owner of The Bell & Whistle Coffee House, Inc is selling the business to Matthew and Anna Powers. The sale of the business will be completed October 1, 2020.
- A Consent to Assignment and Assumption of Lease is needed to record the change of ownership of the business and continue the lease with the Port.
- Port legal counsel will provide the draft Consent to Assignment and Assumption to Lease for Board approval.

DOCUMENTS

- Draft Consent to Assignment and Assumption to Lease will be provided prior to the meeting.

COMMISSIONERS ACTION

- **Recommended Motion:**
Motion to approve draft Consent to Assignment and Assumption to Lease for The Bell & Whistle Coffee House, Inc.

ACTION ITEM – B

DATE: September 24, 2020
RE: Bell & Whistle Request for Building Alteration
TO: Honorable Board President and Harbor District Board Members
ISSUED BY: Gary Dehlinger, Port Manager

OVERVIEW

- New owner of The Bell & Whistle Coffee House is requesting to install an electric fireplace insert in the existing wall.
- Tenant will be responsible for all the costs involved with this request.
- Port Staff would request all work involved to be done by licensed contractors.

DOCUMENTS

- Email request from Matthew Powers, 4 pages

COMMISSIONERS ACTION

- **Recommended Motion:**
Motion to approve Bell & Whistle Coffee House to install an electric fireplace insert as presented and work to be completed by a licensed contractor.

portmanager@portofbrookingsharbor.com

From: Matthew Powers
Sent: Tuesday, September 15, 2020 5:38 PM
To: portmanager@portofbrookingsharbor.com
Subject: Fwd: Fireplace
Attachments: 20200915_172231.jpg; Screenshot_20200915-172001_Amazon Shopping.jpg;
Screenshot_20200915-172014_Amazon Shopping.jpg

Hi Gary,

Here are the images of the fireplace and the proposed location where we hope to install it soon after we take possession of The Bell and Whistle.

Our contact information is:
Matthew and Anna Powers

mailing address: same as current

We will let you know concerning the deposit once Misty Crawford gets back to us.

It was a pleasure getting to meet the three of you, we will be in touch asap regarding the deposit.

Thank you, Matt and Anna

4

5:20

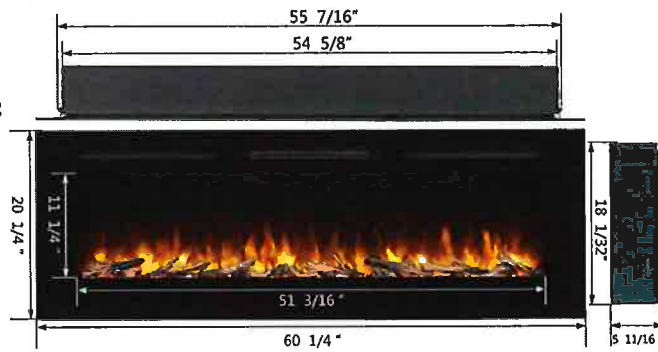


amazon prime



Dimension & Installation:

Product Dimension:

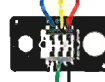


Opening Dimension:



Plug In

or



Hard Wiring



Flush Mounted



Power Cord Length: 11
Glass Film Protected

Power Cord on Right Side



5



Air inlet Air outlet Air inlet



Flame:
3 Colors





ACTION ITEM – C

DATE: September 24, 2020
RE: Zola's on the Water Storage Area Upgrade / Expansion
TO: Honorable Board President and Harbor District Board Members
ISSUED BY: Gary Dehlinger, Port Manager

OVERVIEW

- Eian is requesting permission from the Port to increase the footprint of the outside storage area, install a larger storm drain, remove the existing refrigerated container, expand the kitchen, and extend the concrete slab in the storage area for larger refrigerated container.
- Eian will attend the meeting to present his plan to the Board.
- Port Staff would request all work involved to be done by licensed contractor and provide copies to the Port of necessary building permits for this work.
- Increasing the square footage of the business may require additional sewer development charges from Harbor Sanitary.
- Oregon State Marine Board information sign would need to be relocated.

DOCUMENTS

- None at this time.

COMMISSIONERS ACTION

- **Recommended Motion:**
Motion to approve Zola's on the Water storage expansion plan as discussed.

ACTION ITEM – D

DATE: September 24, 2020
RE: Nature's Coastal Holiday Festival of Lights
TO: Honorable Board President and Harbor District Board Members
ISSUED BY: Gary Dehlinger, Port Manager

OVERVIEW

- Nature's Coastal Holiday Festival of Lights requested placing light displays at the Port and other lights along the boardwalk during the holidays this year.
- Due to the installation of the displays and lights on Port property, I have requested Nature's Coastal Holiday Festival of Lights to complete a POBH Event Permit and Use Agreement. I would recommend the permit fees and electrical costs be waived, but all other terms and conditions would apply.

DOCUMENTS

- Request from Nature's Coastal Holiday Festival of Lights, 1 page
- POBH Event Permit and Use Agreement, 7 pages

COMMISSIONERS ACTION

- **Recommended Motion:**
Motion to approve Nature's Coastal Holiday Festival of Lights placing light displays at the Port and other lights along the boardwalk during the holidays this year, waiving the permit fees and electrical costs.



Nature's Coastal Holiday
Festival of Lights

PO Box 6928
Brookings, Oregon 97415

naturescoastholiday.com
EIN 93-1256343

naturescoastalholidaybrookings@gmail.com

September 18, 2020

Roy Davis, Commissioner- Chairman
Richard Heap, Commissioner- Vice Chairman
Sharon Hartung, Commissioner- Secretary Treasurer
Joseph Speir, Commissioner
Kenneth Range, Commissioner

We are excited to announce that this year Nature's Coastal Holiday-Festival of Lights will be switching gears and turning our attention to decorating the Hwy 101 corridor and other selected commercial areas in our community rather than Azalea Park. We are planning over-the-top displays and are inviting our local businesses and community members to help support our efforts. We felt that decorating Azalea Park would not best serve our community. The narrow pathways of the park did not lend themselves to our large crowds and social distancing. We could not successfully control the number of visitors and stay within State mandated guidelines.

The Port of Brookings Harbor offers us a great area to decorate and spread some holiday magic in our community. No matter where you stand on COVID-19, it has taken it's toll on our citizens. The Port of Brookings Harbor can help brighten everyone's mood by allowing us to light up the Port.

We would like to set up an ocean theme display in the rock area surrounding the Port Office. This display would include 4 large 2D whales, several 2D dolphins, a large sail boat and our Christmas Sea Monster. In addition, we would like to string net lights on the railings along the boardwalk.

In support of our efforts, we request the Port cover the electric bill for our LED lighted displays. NCH will provide the displays, all lights and timers, cords and the labor to setup and take down. We plan on starting our decorating the first week in November with the first night of lights on Thanksgiving night. The lights would run nightly through New Years Eve. We would take down the first week in January.

Thank your for your consideration.

Sincerely,

Klaus Gielisch (electronic signature)

Klaus Gielisch, President
Nature's Coastal Holiday

Leslie Wilkinson (electronic signature)

Leslie Wilkinson, Board Member
Nature's Coastal Holiday Ph 530.521.5621

The Best Christmas Light Show on the Southern Oregon Coast



**Port of Brookings Harbor
Event Permit and Use Agreement**

This Event Permit and Use Agreement (“Agreement”) is made this ___ day of _____, 20____, by and between the Port of Brookings Harbor, an Oregon special district (“POBH”) and:

Organization: _____

Address: _____

Responsible Person: _____

Phone: _____ Email: _____

hereinafter referred to as “Permittee,” for a non-assignable permit to use and occupy that portion of the Port of Brookings Harbor property described herein below:

Activity: _____ Location: _____

Usage _____ Usage _____
Date(s): _____ to _____ Times: _____ am/pm to _____ am/pm

Insurance Company: _____ Policy No.: _____

I. PERMIT TO USE

A. Event Permit. On the terms and conditions set forth below, the POBH Board of Commissioners grants to Permittee, its employees, agents, contractors, and invitees a permit to use and occupy the following facilities (“Event Permit”) at POBH described as (check box for one or more facilities):

Port of Brookings Harbor Permit Fees

√	Area	Rate Per Day	# of Days	Total
	Boardwalk Retail	\$ 315.00		\$
	Boardwalk Retail / Parking Lot	\$ 630.00		\$
	Kite Field	\$ 315.00		\$
	RV Park Picnic Area	\$ 131.25		\$
	Parking Lots Behind Port Office	\$ 315.00		\$
	Boat Wash Parking Area	\$ 315.00		\$
	Saturday Market	\$10.50/Vendor		\$
	Car Shows	\$5.25/Car		\$
	Other:			\$
	TOTAL PERMIT FEE			\$

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Use of POBH facilities or grounds for events outside of any of the above-listed facilities is not permitted. Unless otherwise specifically stated herein, Permittee's permit to use the POBH facilities is non-exclusive. The POBH facilities to be used by Permittee are hereinafter referred to as the "Premises."

- B. Payment of Use Fees.** Permittee agrees to pay the POBH for use of the Premises in amounts as follows:
1. **Deposit.** A non-refundable deposit in the amount of 50% of total permit fee, must be delivered to the POBH office by _____, along with two signed copies of this Agreement. A fully executed copy of this Agreement will be returned to Permittee.
 2. **Balance.** The remaining balance of the permit fee, required general liability insurance policy certificates (including alcohol insurance, if applicable), documentation of Fire Marshal approval, fire safety sign-off sheet, equipment list and setup information, and marketing information must be delivered to the POBH office at least 60 days prior to the event date.
- C. Cancellations.** Permittee may not cancel or otherwise terminate this Agreement without the express written consent of the Manager of the POBH. If cancellation is made at least 60 days prior to the scheduled event, the deposit stated in this Agreement will be refunded. No refunds will be given if cancellation is made in the 60 days prior to the event. POBH may cancel this Agreement upon 30 days' written notice to Permittee. In the event POBH cancels the Agreement, a full refund will be given to Permittee.
- D. Event Hours.** Event hours, including setup and tear down are limited to between 8:00 a.m. and 10:00 p.m. each day. Additional hours outside of these pre-approved hours requires the pre-approval of the Manager of the POBH. Even if additional hours are authorized, music and amplified sound is prohibited after 10:00 p.m. in any outdoor area.
- E. Expiration.** Unless, otherwise approved by the Manager of the POBH, the Event Permit expires at 10:00 p.m. on the last day of the permit.

II. USE OF THE PREMISES

- A. Permitted Use.** Permittee is granted the Event Permit for the following event:

_____,
hereinafter referred to as the "Event." The Event will include the following specific activities ("Activities"):

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____

The Premises may only be used for the Event and Activities, and for setup, cleanup, and other actions incidental thereto, and for no other purpose.

- B. Water Activities.** Water-based activities in the harbor basins require Coast Guard, Oregon State Marine Board, County Sheriff and Harbor Fire Department notifications and/or permits. Permittee must submit proof of notifications and/or copy of permits to the POBH office at least 30 days prior to the first day of the Event.
- C. Fireworks.** Fireworks on Port property require all regulatory permitting and notifications from state and federal agencies. Permittee must submit proof of notifications and/or copy of permits to the POBH office at least 30 days prior to the first day of the Event.
- D. Access to Facilities.** Access to POBH facilities will be made available through the POBH staff. Keys will be furnished only in extraordinary circumstances.
- E. Alcohol.** No alcohol is allowed in any building or on the property of the POBH, including the parking areas, without the express written consent of the Board of Commissioners. For those Events where consent has been given, Permittee must provide, at its own expense, a licensed server. A copy of the server's OLCC license must be provided to the Manager of POBH prior to Permittee's event. Permittee is solely and wholly responsible to ensure that all OLCC rules and regulations are followed. The Permittee will be required to supply the POBH with proof of liquor liability insurance, stand location(s), security plan, signage, and a copy of the OLCC permit no later than one week prior to the event. The Permittee will bear the sole responsibility for costs of security and identification checks. Patrons and guests are strictly prohibited from bringing bottles, cans and alcoholic beverages onto POBH property.
- F. Road Closures.** County road detours or road closures must be approved by Curry County. Permittee must submit proof of road closure permit to the POBH office at least 30 days prior to the first day of the Event. If Port property is used for traffic detours, Permittee is required to submit a traffic detour plan to the POBH office for approval at least 60 days prior to the first day of the Event.
- G. No Marijuana.** Marijuana items are not allowed in any building or on the property of POBH, including the parking areas. "Marijuana items" means and includes marijuana, cannabinoid products, cannabinoid concentrates and cannabinoid extracts.
- H. Defacement of Buildings or Boardwalk.** Permittee must not injure, mar or in any manner deface the Premises, or drive or permit to be driven any nails, hooks, tacks, staples or screws in any part of the Premises, or make or allow to be made any alteration of any kind therein. If the Premises are damaged by the intentional act or negligence of Permittee or any person admitted to the Premises by Permittee, Permittee will be responsible for the cost to restore the Premises to its original condition. Permittee assumes full responsibility for the acts and conduct of all persons admitted to the Premises by Permittee and agrees to have on hand at all times sufficient security personnel to maintain order and protect persons and property.
- I. Damage to Facilities.** No tape, staples, nails, etc., may be used on the POBH Boardwalk, buildings or equipment. Only painter's masking tape approved by the Manager of POBH may be used. Permittee must supply its own painters' masking tape. No weight-bearing (tire) equipment is allowed on Boardwalk.
- J. Seating Capacity.** Permittee must not admit to the Premises a larger number of persons than can safely and freely move about, and the decision of the Manager of POBH in this respect will be final. Permittee must not allow chairs or movable seats to be placed in passageways and agrees to keep passageways clear at all times.
- K. Signs and Posters.** Permittee may not place any sign, advertisement, post or other material or card ("sign") on any part of the Premises except in locations approved by the Manager of POBH. Only signs related to the Event will be approved. Signs may be placed only for such period of time as approved by the Manager of POBH. The Manager of the POBH may remove or ordered remove any sign that is not compliant with this paragraph. All approved signs must be removed by Permittee immediately after the Event. Failure to remove said signs will result in a \$50.00 per day charge until such items are removed. The use of adhesive tape or staples for the attachment of such materials to surfaces at POBH is prohibited, except on designated bulletin board areas.

- L. Hazardous Materials.** Permittee may not, without the written consent of the Manager of the POBH, operate any engine, motor or machinery on the Premises or use oils, burning fluids, camphene, kerosene, propane, naphtha or gasoline for either mechanical or other purposes or any agent other than electricity for illuminating the Premises.
- M. Animals.** It is the responsibility of the Permittee to ensure that all animals are controlled safely and responsibly. Dogs must be on a leash at all times. Owners are expected to clean up after their animals and deposit waste/manure in designated areas. Horses, llamas and cattle are prohibited from the lawn areas except when prior authorization has been given by the Manager of the POBH.
- N. Security.** The Manager of the POBH, in consultation with Permittee, will determine security and law enforcement staffing required for the Activities. All security and law enforcement costs are the sole responsibility of Permittee.
- O. Parking.** Permittees are required to control all traffic and parking regulations on POBH properties during the event. Parking availability is first come, first serve. Event parking at the boat launch parking area is prohibited. If traffic control or parking assistance is deemed necessary for public safety by the Manager of the POBH, the POBH will provide such assistance and bill the Permittee for services rendered.
- P. Box Office Facilities and Admissions Control.** Only those persons authorized by the Manager of the POBH may use box office facilities or be otherwise engaged as ticket sellers, ticket takers, ushers, door guards or other admissions control personnel. Permittee agrees to comply with the POBH's minimum requirements concerning admissions control personnel and to pay the cost thereof.
- Q. Responsibility for Property.** Permittee assumes sole responsibility for any property placed on the Premises by Permittee, independent contractors, exhibitors or invitees. Permittee accepts the Premises as-is and based upon Permittee's own inspection of the Premises as to its condition and safety.
- R. Observance of Laws.** Permittee, its employees, agents, volunteers, independent contractors, exhibitors and invitees must comply with all applicable laws, statutes, regulations, ordinances, rulings and licensing requirements of any public authority applicable to the Activities or the Premises, the use thereof or any activity thereon.
- S. Compliance with POBH Rules and Regulations.** Permittee, its employees, agents, volunteers, independent contractors, exhibitors and invitees must comply with all rules and regulations of the POBH. If Permittee is notified of any violation on the part of Permittee or any person admitted to the Premises by Permittee or any exhibitor or invitee of Permittee, the Permittee must immediately act to correct and cure the violation.
- T. Enforcement.** The POBH reserves its right to enforce its rules, regulations and use policies for the operation of the Premises and for that purpose may enter the Premises at any time. POBH reserves the right to eject from the Premises, or refuse entry to the Premises, any person whose conduct, or violation of POBH's rules and regulations, render such person subject to being ejected or barred.

III. UTILITIES & SERVICES.

- A. Electricity.** All electrical outlets are 20-amp service only. If extra lights, other than regular house lights, or electrical power is required by Permittee, they must be installed at Permittee's expense and the electric power must be paid by Permittee at current rates in effect for the Premises. All electrical connections must be made by POBH. All electrical connections and exhibitors' electrical equipment must conform with Oregon Electrical Specialty Code and the Oregon Fire Code, the cost thereof to be paid by Permittee. The use of multiple plugs such as twin sockets, cube taps or similar devices are not permitted.
- B. Water.** POBH will furnish, through facilities presently installed on the Premises, water for human consumption and for ordinary toilet or janitorial purposes, but for no other purpose, unless otherwise specifically provided for in this Agreement. No water facility, appliance or apparatus furnished by POBH may be used for any purpose other than that for which it is constructed, and no

sweepings, rubbish, rags, paper or other substance are to be placed in any sink, toilet, or drain. If any such misuse results in damage to any such facility or equipment as a result of Permittee's use or occupancy of the Premises, the cost of repair will be the responsibility of Permittee.

- C. **Trash.** Permittee must properly dispose of all trash and debris brought onto or generated on the Premises. Permittee is not authorized to use POBH dumpsters for such purpose. No trash or debris generated at any other location may be disposed of at the POBH.
- D. **Extra Help.** If it is necessary for the POBH staff to assist Permittee with setup, cleanup or aspects of Permittee's event, or if it is necessary for the Manager of POBH to employ extra help, such as stage hands, public address system operators or janitors, Permittee agrees to pay for the cost of such extra help at a rate of \$100.00 per hour, including any partial hours.
- E. **Equipment.** POBH does not supply extension cords, stage, ladders, fans, hand tools, office supplies/equipment, telephone, or copy services for Permittee's Activities. Any additional equipment, extra help, secured WIFI lines and/or materials requested by Permittee during the Activities must be coordinated through POBH and will be invoiced to Permittee.
- F. **Payment.** Payment for extra help, utilities or other services rendered by the POBH to Permittee will be due to the POBH within 10 days of the date of invoice. Failure to timely pay the invoice will result in the imposition of a \$25.00 late fee and monthly interest of 1.5%.

IV. TERMINATION AND VACATION

- A. **Vacation.** Permittee agrees to vacate the Premises no later than the expiration of the Event Permit issued hereunder. Permittee is required to remove all trash, debris and personal property from the Premises and to put away all tables, stack chairs, etc.
- B. **Failure to Vacate.** If Permittee fails to remove all its personal property from the Premises prior to the expiration of the Event Permit, Permittee agrees to pay additional rent in the amount of \$100.00 per hour (including any partial hours) until Permittee has completely vacated and removed all its personal property from the Premises. The POBH will have the right to remove and dispose of the property at the expense of Permittee. Alternatively, the POBH may allow the personal property to remain on the Premises. In either event, the POBH and its elected officials, officers, employees, agents and volunteers will not be liable for any damage or loss to any such personal property, either by reason of its removal or disposition, or by reason of any occurrence on or condition of the Premises. If the POBH elects to remove and store the personal property, the POBH will have a lien on said property for the reasonable cost of removal and storage.
- C. **Default by Permittee.** If Permittee fails to keep or perform any of its obligations under the terms of this Agreement and fails to correct said default immediately upon notice, the POBH may terminate this Agreement and the Event Permit, re-enter the Premises and remove all persons and property and resort to any legal proceeding necessary to obtain possession. Such termination and re-entry will not relieve Permittee from the obligation of paying any amounts theretofore accrued or from liability for loss caused by Permittee's violations of this Agreement.
- D. **Re-Entry by the POBH.** If Permittee vacates the Premises prior to the expiration of the Event Permit, the POBH may then re-enter and take full possession of the Premises. Upon re-entry, the Event Permit will be deemed to have expired. Vacating the Premises early does not entitle Permittee to any refund or discount.

V. GENERAL TERMS AND CONDITIONS

- A. **Insurance.** Permittee, at its sole cost and expense, is required to procure and maintain in full force through the term of this Agreement (including setup and teardown) comprehensive general liability insurance with coverage limits of at least \$1,000,000 per occurrence; \$2,000,000 aggregate for products and completed operations, property damage, bodily injury and personal and advertising injury. The Port of Brookings Harbor and its elected officials, officers, employees, agents and volunteers must be listed as additional insureds. Permittee's name on such policies must be the

same as on this Agreement. The policy must be endorsed to provide at least 10 days prior written notice to the POBH before cancellation or change in coverage. Evidence of coverage and additional insured endorsement(s) must be provided to the Manager of POBH at least 14 days prior to Permittee's use of the Premises. Failure to meet any of these insurance mandates constitutes a material breach of this Agreement by Permittee. The Event may not take place if proof of insurance in compliance with this paragraph has not been supplied to the POBH.

- B. Exhibitors.** If Permittee makes any part of the Premises under this Agreement available to other persons or entities as exhibitors as part of this use, the exhibitors are subject to all of the provisions of this Agreement and to the authority of the Manager of POBH under those conditions. Permittee, however, will be fully responsible for all acts or omissions of the exhibitors as if they were Permittee's agents or employees.
- C. Unforeseen Impossibility.** If fire or any other casualty or unforeseen occurrence renders the Premises to be occupied hereunder unusable, and renders fulfillment of this Agreement impossible, then this Agreement, and the Event Permit, will automatically terminate. If the Permittee has not had any use of the Premises, the sums therefore paid therefor will be refunded to Permittee. If the Permittee has used and occupied the Premises prior to such termination, then Permittee agrees to pay for the use of the Premises up to the time of such termination. In the event of termination under this paragraph, Permittee waives any claim for any damages or compensation due to the early termination of the Event Permit.
- D. Indemnity.** Permittee shall indemnify, hold harmless, and defend the Port of Brookings Harbor and its elected officials, officers, employees, agents and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation), reasonable attorneys' fees, of every nature arising out of or in connection with Permittee's use of the Premises (including acts or omissions of invitees), Permittee's performance under this Agreement, or Permittee's failure to comply with any of its obligations contained in this Agreement, except for such loss or damage which was caused by the sole negligence or willful misconduct of the Port of Brookings Harbor or its elected officials, officers, employees, agents or volunteers. Neither Permittee nor any claims representative or attorney engaged by Permittee shall defend the claim in the name of the Board of Commissioners, Port of Brookings Harbor and its elected officials, officers, employees, agents and volunteers without first receiving from Port of Brookings Harbor Counsel, in a form and manner determined appropriate by the Port of Brookings Harbor Counsel, authority to act as legal counsel for the Board of Commissioners, Port of Brookings Harbor and its elected officials, officers, employees, agents and volunteers, nor shall Permittee settle any claim on behalf of the Board of Commissioners, Port of Brookings Harbor and its elected officials, officers, employees, agents and volunteers without the approval of the Port of Brookings Harbor. The Board of Commissioners, Port of Brookings Harbor and its elected officials, officers, employees, agents and volunteers have no liability to Permittee or its members, employees, agents, independent contractors, participants, exhibitors or invitees for any injury, loss, or damage caused by third parties or by any condition of the Premises, except to the extent caused by the gross negligence or willful misconduct of the POBH, its elected official, employees, agents or volunteers.
- E. Waiver.** The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion is not to be considered a waiver of such party's rights or deprive such party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.
- F. Attorney's Fees.** If any law suit or other legal proceeding action is commenced by either party hereto against the other party and arising out of or relating to this Agreement, the prevailing party in such litigation, including any appeal, will be entitled, in addition to costs and disbursements provided by statute, to an award of reasonable attorney fees as determined by the court on trial or appeal.
- G. Amendments.** The terms of this Agreement may not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written instrument signed by the parties.
- H. Assignment.** Permittee may not assign or transfer any of its interest in this Agreement without the written consent of the Manager of POBH. In the event that consent is granted for an assignment,

the provisions of this Agreement will be binding upon and inure to the benefit of the parties hereto and their respective assigns.

- I. Governing Law; Jurisdiction; Venue.** This Agreement will be governed and construed in accordance with the laws of the State of Oregon. Any claim, action, suit or proceeding (collectively, "the claim") between POBH and the Permittee that arises from or relates to this Agreement must be brought and conducted solely and exclusively within the Circuit Court of Curry County for the State of Oregon. Provided, however, if the claim must be brought in a federal forum, then it must be brought and conducted solely and exclusively within the United States District Court for the District of Oregon, Medford Division. Permittee, by the signature herein of its authorized representative, hereby consents to the in personam jurisdiction of said courts.
- J. Headings.** The headings and captions are inserted in this Agreement only as a matter of convenience and for reference in no way define, limit or describe the terms of this Agreement or the intent of any provision hereof.
- K. Severability.** The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal, unenforceable, or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties are to be construed and enforced as if the Agreement did not contain the particular term or provision to be held invalid.

The parties hereto have executed this Agreement in Curry County, Oregon on the date last written below.

PORT OF BROOKINGS HARBOR

PERMITTEE

Date: _____

Date: _____

Gary Dehlinger, Port Manager

By:
Its:

ACTION ITEM – E

DATE: September 24, 2020
RE: Righetti and Port Property Easements
TO: Honorable Board President and Harbor District Board Members
ISSUED BY: Gary Dehlinger, Port Manager

OVERVIEW

- Martha Rice, Port Legal Counsel, will provide an update on the Righetti and Port property easements.
- We are anticipating a response from Righetti's lawyer before the meeting.

DOCUMENTS

- None

COMMISSIONERS ACTION

Discussion and motion depending on response from Righetti's lawyer.

ACTION ITEM – F

DATE: September 24, 2020
RE: Traffic Flow and Parking at Zola's on the Water
TO: Honorable Board President and Harbor District Board Members
ISSUED BY: Gary Dehlinger, Port Manager

OVERVIEW

- During the August 18, 2020 Regular Commissioner Meeting, the Board discussed creating a one-way traffic flow between Righetti's property and Zola's on the Water. Parking along the east side (closest to Righetti's) would be eliminated.
- September 16, 2020 without knowledge of Port Staff, Righetti's painted traffic arrows on Port property. See attached photo.
- If one-way traffic were to be installed, the parking along the east side (closest to Righetti's) would be eliminated. Traffic would travel one-way north (Boat Launch Parking Lot) to south (Retail / Boardwalk).
- Zola's on the Water trash and recycle bins would be relocated along the east side near the Boat Launch Parking Lot.

DOCUMENTS

- Photo of Traffic Markings, 1 page
- Proposed Traffic Flow from Righetti's Lawyer, 1 page
- Proposed Traffic Control Map, 1 page

COMMISSIONERS ACTION

Recommended Motion:

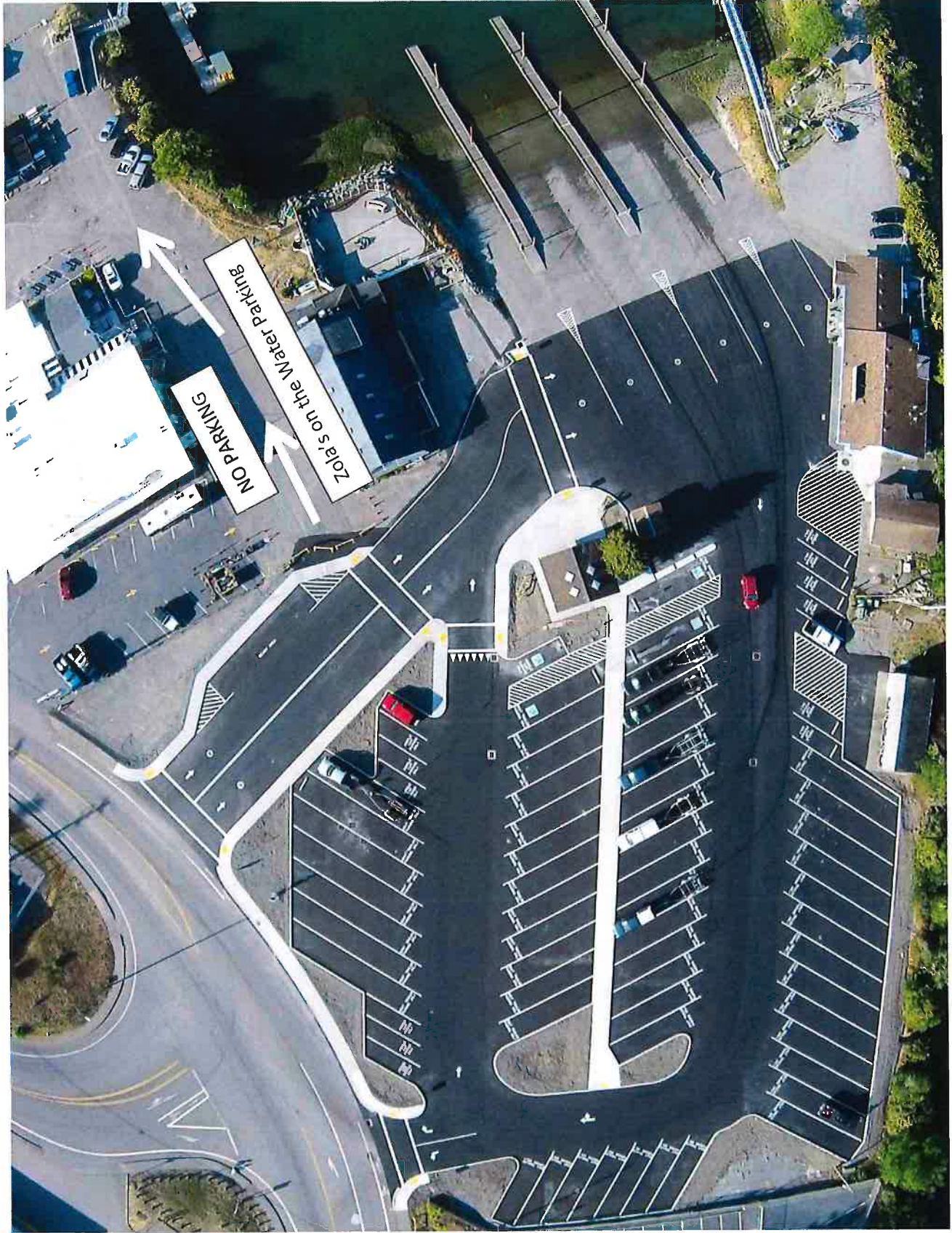
Motion to approve installing one-way traffic flow at Zola's on the Water to flow north to south, remove all parking on the east side and relocate trash and recycle bins into a secure enclosure on the east side.





— FROM RIGHTOFF'S LAWYER

Traffic Flow and Parking Plan Proposal



INFORMATION ITEM – A

DATE: September 24, 2020
RE: Fuel Dock Proposal to Lease
TO: Honorable Board President and Harbor District Board Members
ISSUED BY: Gary Dehlinger, Port Manager

OVERVIEW

- Please see attached.
- Kenny from Kenny's Boat Shop and More will be present to answer any questions.

DOCUMENTS

- Fuel Dock Proposal to Lease, 4 pages

Port of Brookings Harbor

Fuel Dock Proposal to Lease

History Overview

Eureka Fisheries has, in the past, sold fuel to commercial fishing vessels and recreational boats at the Port. Eureka Fisheries notified the Port their intent to discontinue this service in July 2001. This forced the Port to become a fuel provider. The Port operated with a temporary facility from 2001 until the new facility was open in April 2003.

The Port began building a new marine fuel station shortly after Eureka Fisheries intent to shut down by extending an existing transient dock near Basin II. Installing two double walled aboveground fuel storage tanks with a capacity of 10,000 gallons of diesel and 10,000 gallons of gasoline on vacant land. Dispensing diesel and gasoline on a floating dock to commercial fishing vessels and sport boats. A gangway and floating docks were built along the shoreline. The gangway supports fuel lines and utilities leading to the floating dock. A fuel attendant hut was placed on the floating dock. Emergency shutoff valves are located both on the dock and near the aboveground fuel tanks. The cost of the project was \$650,000*, funded mostly with loans.

**Amount from a press release April 29, 2003.*

Port Prior Years Accounting

Prior Port accounting of the Fuel Dock are questionable. The years the Port made large amount of income were the years the Port accumulated large amount of debt with the fuel supplier. At one point, over \$400,000 of debt was owed. Below are the QuickBooks numbers for fiscal year 2008 thru 2015.

Costs included in QuickBooks			
Fiscal Year	Revenue	Expenses	Net Income
2008-09	280,115	280,029	86
2009-10	297,113	271,106	26,007
2010-11	256,433	244,279	12,154
2011-12	339,904	304,828	35,076
2012-13	584,501	541,029	43,472
2013-14	1,267,714	1,158,269	109,445
2014-15	940,941	792,733	148,208
2015-16	578,102	557,264	20,838
Average	568,103	518,692	49,411

The average expense for Port employees to operate the fuel dock from FY 2008 to 2014 was \$19,849. This timeframe includes the 2011 tsunami event. In FY 2014 and 2015 some employee costs and bank fees were missing.

Port of Brookings Harbor

Fuel Dock Proposal to Lease

Port Current Accounting

Port started accounting actual costs for each revenue source between 2016-2019 which included field employee payroll, all utilities (water, sewer, electric, phonenumber, internet, etc.), maintenance and repairs, insurance, permits and bank services. All overhead employee costs remained in Administration accounting.

Profit & Loss in QuickBooks			
Fiscal Year	Revenue	Expenses	Net Income
2016-17	456,801	468,424	(11,623)
2017-18	480,047	447,052	32,995
2018-19	622,978	606,099	16,879
2019-20	780,640	712,367	68,273
Average	585,116	558,485	26,631

In Fiscal Year 2019-20 accounting, no field employee costs are included. Main reason the Port stopped tracking employee cost pumping fuel is the nonstop fuel calls they receive. There were 1,024 calls for fuel and 307,820 gallons of fuel pumped. Staff time to respond to a fuel call, complete paperwork, and then return to the work activity prior to the call is about one hour, besides the amount of fuel pumped. The pumps on average, pump 25 gallons a minute. Pumping 307,820 gallons equates to 205 hours of physical time pumping fuel. The average cost for the Port employees answering fuel calls, pumping fuel, completing paperwork is about \$30,725, including benefits. Overhead staff time dealing with ordering fuel, accounting, and maintenance issues averages about 1 hour per working day or 260 hours per year. The average cost for overhead payroll is about \$10,000, including benefits.

The next set of data are fiscal years without the questionable accounting years and estimated costs not shown within QuickBooks.

Costs in QuickBooks				Estimated Costs Missing or Not Included in QuickBooks				
Fiscal Year	Revenue	Expenses	Net Income	Overhead Admin. Wages	Staff Wages w/Benefits	Depreciation	Subtotal	Adjusted Estimated Net
2008-09	280,115	280,029	86			9,996	9,996	(9,910)
2009-10	297,113	271,106	26,007			9,996	9,996	16,011
2010-11	256,433	244,279	12,154			9,996	9,996	2,158
2011-12	339,904	304,828	35,076			9,996	9,996	25,080
2012-13	584,501	541,029	43,472	2,888	8,000	9,996	20,884	22,588
2013-14	1,267,714	1,158,269	109,445	Removed from Totals				
2014-15	940,941	792,733	148,208	Removed from Totals				
2015-16	578,102	557,264	20,838	3,000	17,000	9,996	29,996	(9,158)

Port of Brookings Harbor

Fuel Dock Proposal to Lease

2016-17	456,801	468,424	(11,623)	3,000	10,000	9,996	22,996	(34,619)
2017-18	480,047	447,052	32,995	3,000	10,000	9,996	22,996	9,999
2018-19	622,978	606,099	16,879	3,000	9,000	9,996	21,996	(5,117)
2019-20	780,640	712,367	68,273	10,000	30,725	9,996	50,721	17,552
Average	467,663	443,248	24,416					3,458

The two fiscal years with unusual net income were removed from the totals to provide a more accurate average. Other costs were added for missing expenses from previous years accounting and depreciation. After adjusting QuickBooks data, the 10-year average net income is reduced from \$24,416 to \$3,458.

Leasing the Fuel Dock Business

The Port is **not** selling any property or equipment, it would be leasing the aboveground tanks, the fueling system and the docks that are part of the fuel dock business. The ground under the aboveground tanks would be leased at the Surface Concrete per square foot rate at \$0.54. The floating docks would be leased at the Commercial Docks per square foot rate at \$0.68. The total monthly rate would be \$1,524.52 per month with annual CPI increases. The total lease amount for one year would be \$18,294.24. The tenant would be required to follow the Port Spill Prevention Control and Countermeasure Plan. The tenant would be responsible to maintaining the fueling system. Fueling “over the steel wall” would continue under the Port supervision and rates.

Benefits for Port, Private Business and Customers

The Port would benefit in multiple ways: (1) fixed annual income, (2) increase staff time maintaining Port grounds and docks, (3) staff focused on managing Port operations. Private business would have more flexibility purchasing, operating, and selling fuel for profit. Customers would get better service and pricing.

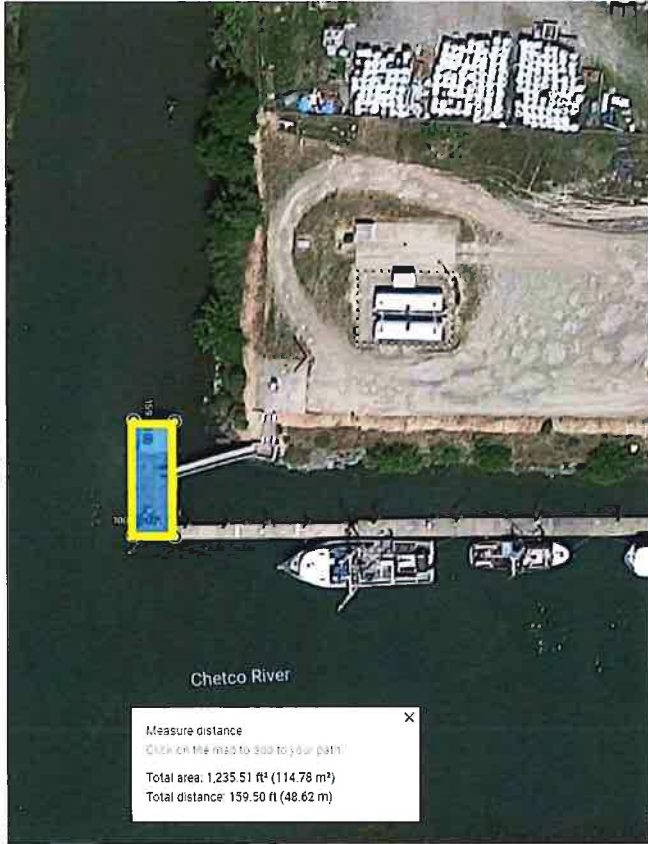
Recommendation from Port Staff

Leasing the fuel dock business will provide steady income and more time taking care of Port maintenance duties. Port Staff highly recommends this idea.

Port of Brookings Harbor Exhibit A

Fuel Dock = 1,235 square feet

Concrete surface at aboveground Fuel Tanks = 1,268 square feet



INFORMATION ITEM – B

DATE: September 24, 2020
RE: Boat Yard Proposal to Lease
TO: Honorable Board President and Harbor District Board Members
ISSUED BY: Gary Dehlinger, Port Manager

OVERVIEW

- Please see attached.
- Kenny from Kenny's Boat Shop and More will be present to answer any questions.

DOCUMENTS

- Boat Yard Proposal to Lease, 6 pages

Port of Brookings Harbor

Boat Yard Proposal to Lease

History Overview

Boat yard was established in the late 1970's servicing the commercial, recreational and Coast Guard boats as a do-it-yourself repair yard. The Port owned and operated the equipment for haul-outs and to assist in boat repairs at billable hours. Repair yard-time is also billed to the customer. Customers are required to follow Port's Best Management Practices by cleaning and disposing of all wastes generated in the repairs of their boats.

Port Prior Years Accounting

Prior Port accounting of the Boat Yard were not administered as they are today. Below are the QuickBooks numbers for fiscal year 2005 thru 2015.

Costs included in QuickBooks			
Fiscal Year	Revenue	Expenses	Net Income
2005-06	19,897	-	19,897
2006-07	52,164	-	52,164
2007-08	1,027	-	1,027
2008-09	-	-	-
2009-10	-	-	-
2010-11	-	-	-
2011-12	-	-	-
2012-13	68	-	68
2013-14	-	-	-
2014-15	31	-	31
2015-16	127	412	-285

Port Current Accounting

Port started accounting actual costs for each revenue source between 2016-2019 which included field employee payroll, all utilities (water, sewer, electric, phonenumber, internet, etc.), maintenance and repairs and insurance.

Profit & Loss in QuickBooks			
Fiscal Year	Revenue	Expenses	Net Income
2016-17	53,892	36,961	16,931
2017-18	90,546	111,511	(20,966)
2018-19	96,160	55,284	40,876
2019-20	108,679	66,595	42,084
Average	87,319	67,588	19,731

Port of Brookings Harbor

Boat Yard Proposal to Lease

Boat Yard revenues were hampered during FY 2016-17 due to the condition of the old travel lift. The old travel lift was de-rated to a lower capacity and later shut down. New 50-MT travel lift was purchased and arrived March 2017. FY 2017-18 Boat Yard cleanup and disposal of abandon boats occurred to account for the negative net income.

Leasing the Boat Yard Business

The Port is **not** selling any property or equipment, it would be leasing the Port's warehouse building space, bare ground where the boats are serviced and for temporary storage. The Warehouse Shop per square foot rate is \$0.54. Due to the condition of the warehouse, Port Staff is recommending the per square foot rate be lowered to \$0.25. The bare ground per square foot rate is \$0.08. The total monthly rate would be \$3,376.89 per month with annual CPI increases. The total lease amount for one year would be \$40,522.68. The tenant would be required to follow the Port's Best Management Practices and Stormwater Pollution Control Plan. The Port will continue operating and removing boats with the 50 metric-ton travel lift, billable to the Port per established rates, but train Kenny's workforce on the use of the travel lift and eventually his workforce would take over the operation and maintenance of the travel lift.

Port warehouse and equipment operations would move to Kenny's Boat Shop. Office space within the Kenny's Boat Shop could be upgraded to relocate current Port Office staff. Remodeling costs for the office relocation could be reimbursed through Coronavirus Relief Fund.

Benefits for Port, Private Business and Customers

The Port would benefit in multiple ways: (1) fixed annual income, (2) increase staff time maintaining Port grounds and docks, (3) staff focused on managing Port operations. Having a private business controlling the actual repairs would help reduce environmental concerns. Customers would get better service and support for boat maintenance and repairs.

Recommendation from Port Staff

Leasing the Boat Yard business will provide steady income and more time taking care of Port maintenance duties. Better control of environmental, security and safety concerns within the Boat Yard boat service area. Port Staff highly recommends this idea.

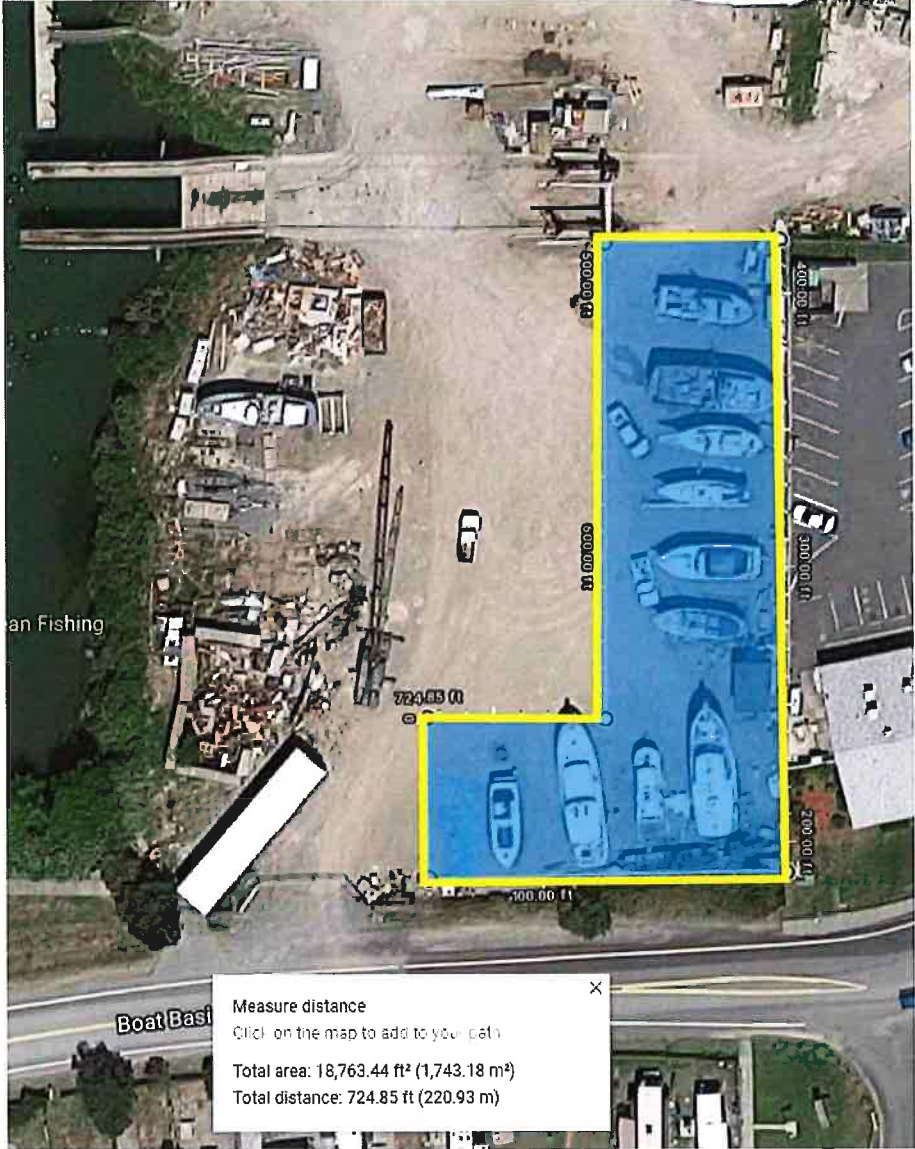
Port of Brookings Harbor Exhibit A

Warehouse-Shop Area at 16060 Lower Harbor Road = 5,265 square feet.



Port of Brookings Harbor Exhibit B

Boat Service Area at 16060 Lower Harbor Road = 18,763 square feet.



Port of Brookings Harbor Exhibit C

Boat Service / Storage Area at 16060 Lower Harbor Road = 6,995 square feet.



New location of Port equipment and operations.

