



Board of Harbor Commissioners

MEETING AGENDA ITEM

APPROVE RESOLUTION NO. 2022-05 AUTHORIZING THE CEO & HARBORMASTER TO EXECUTE A GROUND LEASE WITH RENEWABLE ENERGY CAPITAL, LLC FOR THE DEVELOPMENT OF THE BAYSIDE RV PARK; AND DETERMINING THAT (1) THE SURPLUS LAND ACT DOES NOT APPLY; AND (2) THE PROJECT IS CATEGORICALLY EXEMPT FROM CEQA

EXECUTIVE SUMMARY

On September 21, 2020, the Crescent City Harbor District (“District”) released a Request for Proposal (“RFP”) to redevelop designated areas within the District’s boundaries to both support the mission of the District and to provide for future growth of the District’s facilities and grounds. Renewable Energy Capital, LLC (“REC”), a Nevada limited liability company, submitted a proposal for the RFP on November 2, 2020 (“REC Proposal”). On December 1, 2020, the REC Proposal was submitted to the Board of Harbor Commissioners (“Board”) for review and approval, which the Board did approve at the same meeting. This agenda item seeks the Board’s approval of a ground lease with REC (“Ground Lease”), for continued operation, maintenance, and development of the Bayside RV Park (“Park”).

DISCUSSION

The broader purpose of the RFP was to support implementation of the four goals established in the District’s 10-Year Strategic Plan, which was developed through workshop discussions with the Board, District staff, and community input and adopted in 2018 (the “Strategic Plan”), and are as follows:

1. Financial Management Objective: To develop a financial system that is resistant to economic shocks, fulfills basic functions, manages risks, diversifies revenue streams, and allows for growth.
2. Planned Development Objective: To plan for major development opportunities available to the Harbor District.
3. Infrastructure Objective: To improve existing infrastructure deficiencies, accommodate desired future growth, and replace worn-out facilities.
4. Increase Tourism Objective: To increase awareness of the Harbor District as an excellent tourism destination, as well as improving the Harbor District’s aesthetics and enhancing visitor experiences.

In order to develop the Park in a manner consistent with the four strategic objectives of the District provided above, the District will enter into the Ground Lease, whereby it will lease the Park, located between Citizens Dock Road and Neptune Way, a portion of Section 28, Township 16 North, Range 1 West of the Humboldt Base and Meridian, consisting of approximately 161,000 square feet to

REC. The Ground Lease will have an initial term of twenty five (25) years, and REC will have the option to extend for up to three (3) periods of five (5) years each. REC will pay the District a monthly rent of \$33,333.34 per month (\$400,000 annually), subject to an annual increase by the greater of two percent (2%) or the increase in Consumer Price Index, with the increase not less than 2% and not more than 5%.

Pursuant to the Ground Lease, REC will have the right to make any infrastructure upgrades necessary to the Park. All improvements, changes or alterations to the Park that exceed \$10,000, will be subject to approval by the District.

Developing the Park will generate additional revenue for the District and will promote public recreation in the District by providing additional opportunities for the public to access the harbor.

SURPLUS LAND ACT

In 2019, the California legislature, in an effort to address the affordable housing crisis happening across the state, passed AB 1486, which overhauled the Surplus Land Act (Government Code § 54220 *et seq.*) (the “SLA”) by, among other things, expanding the definition of “local agency” thereby making the SLA applicable to practically every public agency in the state; narrowing the definitions of other key terms (including “agency’s use,” as described further below); and granting the state’s Department of Housing and Community Development (“HCD”) enforcement powers.

“Surplus land” is a term of art, defined as “land owned in fee simple by any local agency for which the local agency’s governing body takes formal action in a regular public meeting declaring that the land is surplus and is not necessary for the agency’s use.” Gov’t C. § 54221(b)(1). In other words, if land is necessary for an “agency’s use,” it is not surplus, the SLA does not apply.

“Agency’s use” is defined by what it is and what it is not:

<u>“Agency’s Use”</u> (<i>see</i> Gov’t C. § 54221(c)(1))	<u>Not “Agency’s Use”</u> (<i>see</i> Gov’t C. § 54221(c)(2)(A))
<p>Land “being used, ... planned to be used pursuant to a written plan adopted by the local agency’s governing board for ... agency work or operations,” including (but not limited to):</p> <ul style="list-style-type: none"> • Utility sites • Watershed property • Land being used for conservation purposes • Land for demonstration, exhibition, or educational purposes related to greenhouse gas emissions • Buffer sites near sensitive governmental uses, including (but not limited to): <ul style="list-style-type: none"> ○ Waste water treatment plants 	<p>Land used for</p> <ul style="list-style-type: none"> • “Commercial or industrial uses or activities, including <ul style="list-style-type: none"> ○ nongovernmental retail, entertainment, or office development. <p>Property disposed of for</p> <ul style="list-style-type: none"> • the sole purpose of investment or • generation of revenue”

There is an important carve-out in the definition of “agency’s use” for non-transit-related districts: **The SLA allows for all “non-agency uses” listed in the right-hand column above to be deemed “agency’s use,”** so long as “the agency’s governing body takes action in a public meeting declaring that the use of the site will do one of the following:

- Directly further the express purpose of agency work or operations; or
- Be expressly authorized by a statute governing the local agency, provided the district complies with Section 54233.5 where applicable....”

See Gov’t C. § 54221(c)(2)(B).

Here, it is undisputed that the District is a “local agency” and a “district” for purposes of the SLA and therefore a beneficiary of the “agency’s use” carve-out in section 54221(c)(2)(B). As set forth in the Ground Lease, the purpose of the Ground Lease is for REC to operate and maintain the Bayside RV Park. See Lease, ¶¶ 9(a) (“Permitted Use”), 13(b)(1) (maintenance obligations). This is primarily for a commercial purpose and for the generation of revenue. Up to now, the District has operated and maintained the Park and, on average, has realized approximately \$120,000 of annual net income therefrom. By entering into the Ground Lease, the District will receive two (2) times more net revenue in the form of both rent from REC and cost savings.

According to the recently updated Crescent City Harbor Coastal Land Use Plan (“LUP”), the District “was formed ... to assume responsibility for improvements, maintenance, and management of Harbor District properties and related harbor facilities.” LUP at 3. More recently,

Crescent City and Del Norte County are in a state of transition from resource production to a tourism and recreation services-based economy. The 2006 Crescent City Harbor District Master Plan emphasizes the District’s intention to retain and improve existing harbor facilities in support of commercial fishing and recreational boating, while expanding coastal related visitor serving uses in the Harbor. These new uses have the potential of generating the revenue necessary to keep the District economically viable, sustaining its ability to meet its mandates under the State Tidelands Grant and the California Coastal Act.

Id. at 4 (emphasis added).

Meanwhile, the District’s Strategic Plan, referenced above, reinforces this tourism- and recreation-based purpose of the District’s work and operations, alongside its purpose of ensuring sound financial stewardship of its properties, by setting out its strategic goals, enumerated above. *See* Strategic Plan at 13-14. By financially restructuring the District’s management of the Park from direct operation and maintenance by the District to lease of the Park and outsourcing of operation and maintenance responsibilities (as well as allowance of infrastructure investment by REC in the Park [*see* Ground Lease, ¶ 14(a)]), the Ground Lease directly furthers the aforementioned express purposes of the District’s work and operations – namely, (i) diversifying the District’s revenue streams, (ii) allowing for financial growth, and (iii) improving existing and constructing new infrastructure for the Park, which will ultimately (iv) increase tourism by enhancing the visitor experience at the Park.

Because the land is necessary for the District's use (as defined in section 54221(c)(2)(B) of the SLA), it is not "surplus" for purposes of the SLA, and therefore, the SLA does not apply to the land or to the Ground Lease transaction.

FISCAL IMPACT

Approval of the attached Ground Lease will provide the District with additional revenue in the amount of \$420,000 annually in Rent, subject to an annual escalation rate of two (2) to five (5) percent, for a period of 25 to 40 years.

ENVIRONMENTAL REVIEW

Approval of the Ground Lease and REC's operation of the Park (collectively, the "Project") is categorically exempt from the California Environmental Quality Act ("CEQA"). The Project includes operation of the Park and various improvements and infrastructure upgrades to the Park, including water-efficient landscaping, drainage improvements, trenching, grading, carports, patios, fences, gates, and the construction of a public restroom. As further explained below, the Project is categorically exempt from CEQA under the Class 1, Class 3, and Class 4 exemptions set forth, respectively, in State CEQA Guidelines sections 15301, 15303, and 15304.

The Project falls within the Class 1 exemption, which applies to the operation, maintenance, permitting, leasing, and minor alteration of existing public or private structures, facilities, or topographical features involving negligible or no expansion of existing or former use. (State CEQA Guidelines, § 15301.) Here, the Park's existing use is a RV Park facility, and the Project proposes only a negligible expansion of that existing use. The leasing of the Park, the operation of the Park, and the minor alterations that comprise the Project are thus all exempt from CEQA.

The Project further falls within the Class 3 exemption, which applies to the construction and location of limited numbers of new, small facilities or structures. (State CEQA Guidelines, § 15303.) The Class 3 exemption explicitly applies to accessory (appurtenant) structures including carports, patios, and fences—the very type of infrastructure upgrades at issue in the Project here.

Finally, the Project is additionally exempt from CEQA under the Class 4 exemption, which applies to minor public or private alterations in the condition of land that does not involve removal of healthy, mature, and scenic trees; the exemption explicitly applies to grading on land with a slope of less than ten percent (with exceptions not relevant here) and to "new gardening or landscaping," which is a feature of the Project here. (State CEQA Guidelines, § 15303(a)-(b).) Here, any grading as part of the Project would not occur on land with a slope of over ten percent, and the Project would not result in the removal of any healthy, mature, and scenic trees. The Project is therefore exempt from CEQA.

None of the exceptions to the categorical exemptions set forth in State CEQA Guidelines section 15300.2 have any applicability here. The Project will not impact any environmental resource of hazardous or critical concern, will not result in significant cumulative impacts, is not subject to any unusual circumstances that could result in a significant environmental impact, would not damage any scenic resources within a scenic highway, is not located on a hazardous waste site identified on any list compiled pursuant to Government Code section 65962.5, and would not impact any historical resource.

For all of the foregoing reasons, the entirety of the Project is categorically exempt from CEQA.

OPERATIVE DOCUMENTS

By approving the Resolution attached to this staff report, the Board will authorize the CEO & Harbormaster to take any and all necessary steps to review with the advice of counsel and consultants, comment on, negotiate, approve and execute on behalf of the District the Ground Lease.

RECOMMENDATION:

Approve Resolution No. 2022-05 Authorizing The CEO & Harbormaster To Execute A Ground Lease With Renewable Energy Capital For Development Of The Bayside RV Park, and Determining that (1) the Surplus Land Act Does Not Apply; and (2) the Project Is Categorically Exempt from CEQA

ATTACHMENT(S):

1. Resolution No. 2022-05
2. Ground Lease with Renewable Energy Capital, LLC

RESOLUTION NO. 2022-05

A RESOLUTION OF THE BOARD OF HARBOR COMMISSIONERS OF THE CRESCENT CITY HARBOR DISTRICT AUTHORIZING THE CEO & HARBORMASTER TO EXECUTE A GROUND LEASE WITH RENEWABLE ENERGY CAPITAL, LLC FOR THE DEVELOPMENT OF THE BAYSIDE RV PARK, AND DETERMINING THAT (1) THE SURPLUS LAND ACT DOES NOT APPLY; AND (2) THE PROJECT IS CATEGORICALLY EXEMPT FROM CEQA

WHEREAS, the District is the owner of record of certain real property commonly known as the Bayside RV Park, located in the City of Crescent City, Del Norte County, California, commonly known as the Bayside RV Park located between Citizens Dock Road and Neptune Way, a portion of Section 28, Township 16 North, Range 1 West of the Humboldt Base and Meridian, consisting of approximately 161,000 square feet and more particularly described in Exhibit “A” to the Ground Lease, which itself is attached hereto (the “Park”); and

WHEREAS, since its establishment and to this day, the District has operated and maintained the Park; and

WHEREAS, the District has embarked upon the development of facilities and properties within the District, and to that end, on September 21, 2020, the District issued a Request for Proposals (“RFP”) for the development of the Park; and

WHEREAS, on December 1, 2020, the Board approved a proposal submitted by Renewal Energy Capital, LLC (“REC”) in response to the RFP; and

WHEREAS, in order to develop the Park and make mutually agreed upon improvements for the proposed development and operation of a Recreational Vehicle Park (“RV Park”), REC desires to enter into a long-term ground lease with the District (the “Ground Lease”) ; and

WHEREAS, the Surplus Land Act, as amended by AB 1486 (2019) (Government Code § 54220 *et seq.*) (“SLA”), defines “surplus land” as “land owned in fee simple by any local agency for which the local agency’s governing body takes formal action in a regular public meeting declaring that the land is surplus and is not necessary for the agency’s use.” Gov’t C. § 54221(b)(1); and

WHEREAS, “agency’s use” is defined in the Surplus Land Act by non-exclusive lists of examples of what is and is not an “agency’s use.” *See* Gov’t C. §§ 54221(c)(1) and (c)(2)(A); and

WHEREAS, for non-transit-related districts, what is *not* considered an “agency’s use” by, e.g., cities and counties *may* constitute an “agency’s use” so long as “the agency’s governing body takes action in a public meeting declaring that the use of the site will ... [d]irectly further the express purpose of agency work or operations.” Gov’t C. § 54221(c)(2)(B); and

WHEREAS, pursuant to the California Environmental Quality Act (Public Resources Code, § 21000 *et seq.*), the State CEQA Guidelines (California Code of Regulations, Title 14, § 15000 *et seq.*), and

the District’s local CEQA Guidelines (collectively, “CEQA”), the District is the lead agency for the Park project (the “Project”); and

WHEREAS, in accordance with State CEQA Guidelines section 15061, the District evaluated the Project and considered existing conditions at the subject site and surrounding vicinity, to evaluate whether an exemption from CEQA applied; and

WHEREAS, in accordance with Del Norte County Code (“County Code”), Title 21, Chapter 50, Section 30(A)(2), the District determined that the Project does not require a coastal development permit because the proposed improvements do not (1) involve a risk of adverse environmental effect, (2) adversely affect public access, or (3) involve a change in use contrary to the County’s policy; and

WHEREAS, the Project and entry into the Ground Lease would support the four strategic goals, established in the District’s 10-Year Strategic Plan (2018-2028), including developing a new revenue stream, increasing income to the District, developing and improving District infrastructure, and increasing awareness of the District as a tourism destination and enhancing the visitor experience; and

WHEREAS, the Board hereby finds that the Project is in the best interests of the District because it promotes public recreation by providing additional opportunities for the public to access and enjoy the harbor.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF HARBOR COMMISSIONERS OF THE CRESCENT CITY HARBOR DISTRICT THAT:

Section 1. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. The Board finds that the land that is the subject of the Ground Lease is not “surplus land,” as that term is defined in the Surplus Land Act (Government Code § 54220 *et seq.*) (“SLA”), because it is necessary for the District’s use, pursuant to section 54221(c)(2)(B). Specifically, the District’s entry into the Ground Lease will directly further several express purposes of the District’s work and operations, as stated in the District’s 10-Year Strategic Plan (2018-2028), including (1) increasing net revenue to the District, (2) diversifying the District’s revenue streams, (3) developing new and improving existing infrastructure at the Park, which will serve to (4) increase awareness of the Park as a tourism destination and enhance the experience of visitors to the Park.

Section 2. The Board finds that the Park Project, including the approval of the Ground Lease and improvements to the Park (e.g., landscaping, trenching, grading, carports, patios, fences, and construction of a public restroom), is categorically exempt from CEQA under the Class 1, Class 3, and Class 4 exemptions. An RV park currently operates at the Park, and the leasing of the Park and operation of the Project would involve only a negligible expansion of that existing use. (State CEQA Guidelines, § 15301 [Class 1 exemption applies to the operation, repair, maintenance, permitting, leasing, or minor alteration of existing structures, facilities, or topographical features where the project involves negligible or no expansion of existing or former use].) Additionally, the construction of accessory structures, including the construction of fences, patios, and a restroom facility—all of which are part of the Project here—are exempt from CEQA. (State CEQA Guidelines, § 15303.) Moreover, minor alterations in the condition of land is exempt from CEQA where, as here, such alterations would not involve removal of healthy, mature, and scenic trees. (State CEQA Guidelines, § 15304.) For all of the foregoing reasons, the Board finds that the Bayside RV Park Project is categorically exempt from CEQA.

Section 3. The Board hereby approves the Ground Lease with Renewable Energy Capital, LLC, in substantially the form attached to this Resolution as Exhibit “A.”

Section 4. The CEO & Harbormaster (“Authorized Officer”) is hereby authorized and directed to execute the Ground Lease to which the District is a party, with such changes, insertions and omissions as may be approved by the Authorized Officer and District Counsel.

Section 5. The Authorized Officer is hereby authorized and directed to do any and all things necessary to execute the Ground Lease, and to execute and deliver any and all documents which the Authorized Officer or District Counsel deem necessary or advisable, in order to consummate the transactions contemplated by the Ground Lease and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution and the documents referred to herein.

Section 6. If any provision of this Resolution or the application of any such provision to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application and, to this end, the provisions of this Resolution are severable. The Board declares that the Board would have adopted this Resolution irrespective of the invalidity of any particular portion of this Resolution.

Section 7. This Resolution shall take effect immediately upon its adoption.

APPROVED, ADOPTED AND SIGNED this 8th day of April, 2022, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Rick Shepherd, President
Board of Harbor Commissioners
Crescent City Harbor District

ATTEST:

Clerk of the Board of Harbor Commissioners
Crescent City Harbor District

EXHIBIT "A"

GROUND LEASE

[Attached behind this cover page]