



Legislation Text

File #: 2022-0226, **Version:** 1

DATE: September 13, 2022

SUBJECT:

CHULA VISTA MARINA LP LOCATED AT 550 MARINA PARKWAY, CHULA VISTA:

A. RESOLUTION CONSENTING TO THE ASSIGNMENT AND ASSUMPTION OF THE LEASEHOLD INTEREST FROM CHULA VISTA MARINA LP TO SHM SOUTH BAY, LLC DBA SAFE HARBOR BAYFRONT; AND,

B. ORDINANCE GRANTING AN AMENDED AND RESTATED LEASE TO SHM SOUTH BAY, LLC DBA SAFE HARBOR BAYFRONT TO UPDATE LEASE TO CURRENT TERMS; AND

C. RESOLUTION CONSENTING TO A SUBLEASE AMENDMENT BETWEEN CHULA VISTA MARINA LP AND STERLING MARINA MANAGEMENT, LLC FOR A SUBLEASE TERM EXTENSION OF EIGHT YEARS AND TEN MONTHS

EXECUTIVE SUMMARY:

Chula Vista Marina LP, a California limited partnership (as successor-in-interest to Chula Vista Marina/RV Park, LTD., "Chula Vista Marina") operates a marina at 550 Marina Parkway, Chula Vista and is a tenant in good standing. Chula Vista Marina's lease with the District expires November 30, 2030 (the "Existing Lease"). Chula Vista Marina is proposing to assign its rights and obligations under the Existing Lease to SHM South Bay, LLC dba Safe Harbor Bayfront, a Delaware limited liability company ("SHM South Bay").

SHM South Bay is a subsidiary of Safe Harbor Marinas, LLC ("Safe Harbor"), which is well known within the recreational boating industry for its successful portfolio of both marinas and boatyards.

The Existing Lease requires the Board of Port Commissioners ("Board") to consent to the assignment and assumption of the Existing Lease by Chula Vista Marina to SHM South Bay (the "Assignment"). As a condition of granting consent to the Assignment, the District may adjust rent to market and update the terms and provisions of the Existing Lease. The rent increase includes a ramp-up to the higher north bay slip rate which staff was able to negotiate based on the Gaylord Pacific project going under construction. This demonstrates the positive impact to the District that our investment in the Chula Vista Bayfront has already made. SHM South Bay has agreed to an Amended and Restated Lease in the form attached hereto as Attachment B (the "Restated Lease") with the District's current standard lease terms, which includes, among other provisions, the following items not present in the Existing Lease: updated rent; District participation in refinance proceeds not reinvested in District tidelands or used to pay existing debt; District participation in proceeds resulting from a future assignment or sale of the leasehold interest; and a demolition and remediation fund to pay for any

improvements the District elects to have SHM South Bay remove at the end of the lease term as well as to fund any required environmental remediation. Safe Harbor will execute a Continuing Guaranty to guaranty all of SHM South Bay's obligations under the Restated Lease and will be required to maintain a net worth of no less than \$250,000,000 throughout the term of the Restated Lease.

In addition, Chula Vista Marina is requesting the District consent to a Sublease Modification Agreement and Amendment of Sublease dated as of January 31, 2022 ("Sublease Extension Amendment") (see Attachment C: Sterling Sublease Extension Amendment) to the existing Sublease dated November 1, 1981 (as amended, the "Sublease") between Chula Vista Marina and Sterling Marina Management, LLC ("Sterling"), which will be assigned from Chula Vista Marina to SHM South Bay as further explained in the Discussion section below. The Sublease Extension Amendment extends the term of the Sublease for an additional eight-years and ten-months and Board approval will be conditioned upon the effectiveness of a Sublease Modification Agreement and Amendment of Sublease (the "Sublease Modification") incorporating District related terms into the Sublease (see Attachment D: Sterling Sublease Modification). Sterling's management staff and ownership have over 30-years of experience in the restaurant industry, real estate and property management and the Sublease (as amended and modified) is consistent with the terms of the Restated Lease and Board of Port Commissioner's Policy No. 355 (BPC 355).

In light of the foregoing benefits, staff recommends the Board consent to the Assignment of the Existing Lease from Chula Vista Marina to SHM South Bay, authorize execution of the Restated Lease in order to update the terms as noted above, and consent to the proposed Sublease Extension Amendment.

RECOMMENDATION:

- A. Adopt a Resolution Consenting to the Assignment and Assumption of the leasehold interest from Chula Vista Marina LP to SHM South Bay, LLC dba Safe Harbor South Bay; and
- B. Adopt an Ordinance Granting an Amended and Restated Lease to SHM South Bay, LLC dba Safe Harbor South Bay; and
- C. Adopt a Resolution Consenting to a Sublease Amendment between Chula Vista Marina LP and Sterling Marina Management, LLC for a sublease term extension of Eight Years and Ten-Months.

FISCAL IMPACT:

The proposed Board action would grant a new Restated Lease that includes a Minimum Annual Rent increase of \$63,608 and set percentage rental rate increases in the boat slip category as detailed below:

<u>Lease Year</u>	<u>Boat Slip Rental Rate</u>
2022-2023	15%
2023-2025	16%
2025-2026	17%
2026-2028	18%
2028-2030	22%

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A vibrant waterfront destination where residents and visitors converge.
- A financially sustainable Port that drives job creation and regional economic vitality.

DISCUSSION:

Background

The Chula Vista Marina leasehold is comprised of approximately 223,549 square feet of land and approximately 856,522 square feet of water area located at 550 Marina Parkway, in the City of Chula Vista (as shown on Attachment A: Location Map). The marina includes 583 boat slips, office space, a parking lot, a full-service restaurant, event space available for rent to the public, and other marina amenities. The Existing Lease commenced December 1, 1981 and has a term of 49 years, which expires on November 30, 2030.

Chula Vista Marina entered into an Agreement of Purchase and Sale with SHM South Bay on March 31, 2022 and has requested District consent to the Assignment. In accordance with BPC 355, upon a consented-to assignment, the District has the right to update the lease to include current standard language and to adjust rental rates to market. Staff's proposed action includes the execution of a Restated Lease pursuant to the terms detailed below.

Safe Harbor

SHM South Bay's parent company, Safe Harbor, is well known within the recreational boating industry for its successful portfolio of marinas and boatyards. Safe Harbor was recently acquired by Sun Communities Operating Limited Partnership ("SCOLP"); SCOLP, in turn, is controlled by Sun Communities, Inc. ("Sun"), a Maryland real estate investment trust which owns and operates RV parks (including the RV park on the Chula Vista Bayfront dba Sun Outdoors San Diego Bay). In addition to the RV park on the Chula Vista Bayfront, Safe Harbor owns four other entities that currently have leases on District tidelands. Such entities include SHM Sunroad, LLC dba Safe Harbor Sunroad, SHM Cabrillo Isle, LLC dba Cabrillo Isle Marina, SHM Shelter Island, LLC dba SHM Shelter Island and SHM South Bay, LLC dba Safe Harbor South Bay. Attachment D details the ownership structure of SHM South Bay and its parent companies as it would exist following the Assignment (see Attachment E: Proposed Ownership Structure). If the Board consents to the Assignment, staff anticipates that Safe Harbor's management team, together with SCOLP and Sun's well-capitalized structure, will allow for positive investment into the leasehold.

Amended and Restated Lease

District staff has negotiated the Restated Lease to include updated lease language which reflects the District's current standard lease provisions and a market rent adjustment. BPC 355 provides that as a condition of consent to an assignment, rent shall be set at the current market rate and the lease provisions may be updated to current District standard.

The following table outlines a few of the important terms that have been negotiated and agreed upon between the District and SHM South Bay.

	<u>Existing Lease</u>	<u>Restated Lease</u>
Minimum Annual Rent	\$486,392	\$550,000
Boat Slip Percentage Rental Rate	15%	Restated Lease Effective Date – November 30, 2023 : 15%; December 1, 2023 – November 30, 2025: 16%; December 1, 2025 – November 30, 2026: 17%; December 1, 2026 – November 30, 2028: 18%; December 1, 2028 – through the remaining lease term: 22%
Assignment Participation Fee	N/A	2.5%
Encumbrance Participation Fee	N/A	2.5%
Continuing Guaranty and Net Worth Requirement	N/A	Includes Continuing Guaranty from Safe Harbor and obligation to maintain a net worth of no less than \$250,000,000 throughout the lease term

It is the District's standard practice, as provided in the Existing Lease, that Minimum Annual Rent (MAR) be set at not less than 75% of the average rent paid by the tenant in the prior three accounting years. During the three-year period from December 1, 2018 through November 30, 2021, 75% of the average percentage rent paid by Chula Vista Marina was \$549,562. The current MAR of \$486,392 is below 75% of the average rent paid, and therefore, staff recommends increasing the MAR to \$550,000 with a MAR adjustment in December 2026.

The District's primary revenue stream from marinas is generated by percentage rent on the gross income from the rental of boat slips. Historically, boat slip rates in the South Bay have been significantly lower than those in the North Bay. The disparity in boat slip rates is due to South Bay marinas consistently having lower occupancy rates than North Bay marinas. South Bay marinas have more difficulty attracting boaters due to their greater distance from the mouth of the Bay and from boat fueling stations, none of which are located south of Harbor Island. Currently, marinas in the North Bay pay a boat slip percentage rental rate of 22%, while SHM South Bay and Chula Vista Marina pay 15%, and Pier 32 Marina in National City pays 14%. With future redevelopment projects anticipated to bring more visitors to the South Bay and with Gaylord Pacific construction underway, District staff has negotiated a "ramp-up" increase for boat slip percentage rental rates with SHM South Bay, as shown in the table above. The boat slips rental rates in the later years (lease years

2028 - 2030) match the North Bay boat slip rates, setting a new comparable rate for the South Bay.

The Existing Lease does not contain the District's most updated lease provisions, and staff has negotiated the Restated Lease to update the language to include terms such as District's participation in refinance proceeds at 2.5%, assignment participation fee at 2.5%, a demolition and remediation reserve fund, as well as updated indemnity and prevailing wage language.

In addition, Safe Harbor, as parent company of SHM South Bay, will execute a new Continuing Guaranty as part of the Restated Lease (see Exhibit F to the Restated Lease), pursuant to which Safe Harbor will guaranty all of SHM South Bay's obligations under the Restated Lease. Further, the Restated Lease contains a covenant requiring Safe Harbor to maintain a net worth of at least \$250,000,000 throughout the term of the Restated Lease.

Sublease Amendment to Sterling Marina Management, LLC

Sterling has purchased all assets of the former sublessee, Bill Muncey Industries, Inc., which has operated a restaurant at the Chula Vista Marina under the name "The Galley" and "The Galley at the Marina" for over 25 years. The proposed sublessee's management staff and ownership has over 30-years of experience in the restaurant industry, real estate and property management. Chula Vista Marina is requesting approval of the Sublease Extension Amendment with Sterling extending the Sublease term for eight years and ten months, terminating on November 30, 2030, which is co-terminus with Chula Vista Marina's Existing Lease. The proposed Sublease, when combined with the Sublease Extension Amendment and Sublease Modification, is consistent with the terms of the Existing Lease (as well as the Restated Lease) and BPC 355, therefore, staff recommends the Board grant consent conditioned upon the effectiveness of the Sublease Modification. If the Board approves staff's recommendation, the Sublease would be assigned to SHM South Bay upon consummation of the transaction.

Conclusion and Recommendation

The proposed assignment from Chula Vista Marina to SHM South Bay will provide for the renewed success and performance of the marina operation and has the ability to increase the marina's revenue over time. Additionally, staff anticipates Safe Harbor's management team, together with SCOLP and Sun's well-capitalized structure, will allow for continuing strong performance and potential future improvements. Further, Safe Harbor has an excellent reputation in the marine recreation industry, with a proven track record of quality services and experiences for its guests, and the District expects this to continue following the transfer. The proposed transfer is consistent with BPC Policy No. 355 and will enable the District to enter into the District's most current lease form in the Restated Lease, which includes more District-protective provisions. Additionally, the proposed sublessee has extensive experience in the restaurant industry and the Sublease (as amended and modified) is consistent with the terms of the Existing Lease, the Restated Lease, and BPC 355. Therefore, staff recommends the Board consent to the assignment and assumption of leasehold interests from Chula Vista Marina LP to SHM South Bay, LLC dba Safe Harbor Bayfront, grant an Amended and Restated Lease with SHM South Bay in the form of Attachment B to this Agenda Sheet, and consent to the assignment of the Sublease between Bill Muncey Industries, Inc. and Sterling Marina Management, LLC.

General Counsel's Comments:

The Office of the General Counsel has reviewed this agenda sheet and the attachments as presented to it and approves the same as to form and legality.

Environmental Review:

The proposed Board actions, including without limitation, resolution consenting to the assignment and assumption of the leasehold interests from Chula Vista Marina LP to SHM South Bay, LLC; and, ordinance granting the Restated Lease to SHM South Bay, LLC to update lease to current terms; and, resolution consenting to the Sublease Amendment between SHM South Bay, LLC and Sterling Marina Management, LLC extending the Sublease term for eight years and ten months, do not constitute a project under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because there is not a potential to result in a direct or indirect physical change in the environment. Therefore, the proposed Board actions are not subject to CEQA and no further action under CEQA is required.

The proposed Board actions comply with Sections 21, 35, and 78 of the Port Act, which allow the Board to pass resolutions; to do all acts necessary and convenient for the exercise of its powers; and for the establishment, improvement, and conduct of small boat harbors, marinas, aquatic playgrounds, and similar recreational facilities. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board actions are consistent with the Public Trust Doctrine.

The proposed Board actions do not allow for development, as defined in Section 30106 of the California Coastal Act, or new development, pursuant to Section 1.a. of the District's Coastal Development Permit Regulations. Therefore, issuance of a Coastal Development Permit or an exclusion finding is not required.

Diversity, Equity, and Inclusion Program:

This agenda sheet has no direct impact on District workforce or contract reporting at this time.

PREPARED BY:

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Attachment(s):

Attachment A:	Location Map
Attachment B:	Amended and Restated Lease
Attachment C:	Sterling Sublease Extension Amendment
Attachment D:	Sterling Sublease Modification
Attachment E:	Proposed Ownership Structure