

Work Shop with Fish Buyers and Other Stakeholders

September 15, 2015

AGENDA

6:30pm Welcome

Discuss Goals and Outcomes

- Reduce Wetfish Fee's to \$3.00 a ton for fish buyers
- Find an exchange to the loss of fish fee revenue so not to be considered a gift of public funds.
- Options for commercial fish sales not via the 3 fish buyers.
- Non-Lessee Fish Buyers

Overall meeting outcomes and recommendations to return to the Harbor Commission Board and New General Manager

Handouts (assorted)

*Various revenues and rate sheets

*CAM defined/explained

*Fish Buyer Leases (fees)

*Commercial Activity Permits for Non-Lessee Fish Buyers at PPH April 12, 2012 \$250. Permit fee

*\$10.00 per ton gross weight for wetfish**

*\$0.01 per pound gross weight for finfish and shellfish**

*Commercial Vessel Slip Discount 15% (see guidelines)

*** (Board Approved 2012 but not implemented)*

Additional Points of Discussion

- DBW-Department of Boating and Waterways Lease Oversight
- How to handle cost of pier repairs at Fish Buyer areas?
- CAM (Common Area Maintenance) fee
- Weighmaster Sheets
- Building Maintenance-Fish Buyer Building
- New Electrical Service to Fish Buyer Pier End
- Fender and Pile Repairs/replacements
- Wood Pier Level Deck Replacement
- Deck repairs
- Hard Tire Forklifts vs Pneumatic Tire
- Deferred Maintenance
- Safety and Public Access to unloading areas
- Truck Traffic at Peak Periods



Suggestion Form

We'd like to Hear from You!

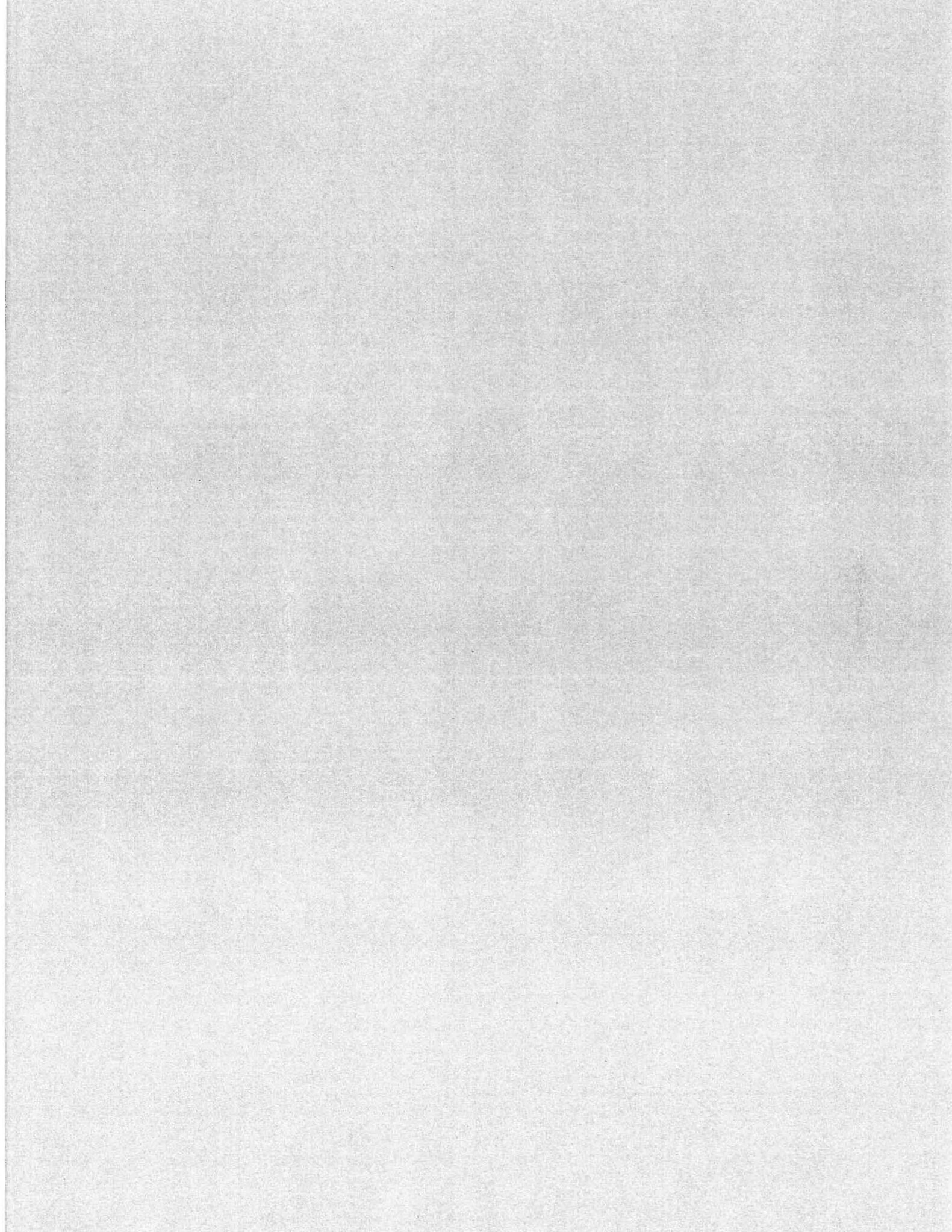
Name: _____ Date: _____

Email address: _____

Phone number: _____

Suggestions/Comments:

Please drop this form off at the Harbor Master's office or email it to Katie Mickelson at kmickelson@smharbor.com.



Revenue Received for Off Load Fees

Three Captains

2013	Finfish/ShellFish	wetfish - \$10/ lbs	Totals:
Totals	6,671.61	29,713.15	36,384.76

2014	Finfish/ShellFish	wetfish - \$10/ lbs	Totals:
Totals	5,472.87	40,902.39	46,375.26

2015	Finfish/ShellFish	wetfish - \$10/ lbs	Totals:
Totals	1,463.43	-	1,463.43

** had no wetfish off load in 2015 as of 9/10/15

Pillar Point Fisheries

2013	Finfish/ShellFish	wetfish - \$10/ lbs	Totals:
Totals	13,854.09	23,560.28	37,414.37

2014	Finfish/ShellFish	wetfish - \$10/ lbs	Totals:
Totals	14,004.00	38,787.12	52,791.12

2015	Finfish/ShellFish	wetfish - \$10/ lbs	Totals:
Totals	2,286.42	5,651.00	7,937.42

Morning Star

2013	Finfish/ShellFish	wetfish - \$10/ lbs	Totals:
Totals	5,528.51	-	5,528.51

2014	Finfish/ShellFish	wetfish - \$10/ lbs	Totals:
Totals	5,577.24	-	5,577.24

** had no wetfish off load in 2014

2015	Finfish/ShellFish	wetfish - \$10/ lbs	Totals:
Totals	1,552.23	-	1,552.23

** had no wetfish off load in 2015 as of 9/10/15

2013 Rev	79,327.64
2014 Rev	104,743.62
2015 Rev	10,953.08
Total Rev	195,024.34

Revenue Loss when changing \$ 10 wetfish fee to \$6

Three Captains

2013	Finfish/ShellFish	wetfish - \$10/ lbs	wetfish-\$6/ lbs
Totals	6,671.61	29,713.15	17,827.89

Totals (wetfish @ \$10/lbs) 29,713.15
 Totals (wetfish @ \$6/lbs) 17,827.89
Difference: 11,885.26

2014	Finfish/ShellFish	wetfish - \$10/ lbs	wetfish-\$6/ lbs
Totals	5,472.87	40,902.39	24,541.43

Totals (wetfish @ \$10/lbs) 40,902.39
 Totals (wetfish @ \$6/lbs) 24,541.43
Difference: 16,360.96

2015	Finfish/ShellFish	wetfish - \$10/ lbs	wetfish-\$6/ lbs
Totals	1,463.43	-	-

** had no wetfish off load in 2015 as of 9/10/15

2013 loss rev	21,309.37			
2014 loss rev	31,875.80			
2015 loss rev	2,260.40		(only Includes Pillar Point Fisheries)	
Total rev loss	53,185.17			

*** only includes Three Captains and Pillar Point Fisheries

Pillar Point Fisheries

2013	Finfish/ShellFish	wetfish - \$10/ lbs	wetfish-\$6/ lbs
Totals	13,854.09	23,560.28	14,136.17

478.74+375.92+7962.7+1589.69

Totals (wetfish @ \$10/lbs) 23,560.28
 Totals (wetfish @ \$6/lbs) 14,136.17
Difference: 9,424.11

2014	Finfish/ShellFish	wetfish - \$10/ lbs	wetfish-\$6/ lbs
Totals	14,004.00	38,787.12	23,272.28

Totals (wetfish @ \$10/lbs) 38,787.12
 Totals (wetfish @ \$6/lbs) 23,272.28
Difference: 15,514.84

2015	Finfish/ShellFish	wetfish - \$10/ lbs	wetfish-\$6/ lbs
Totals	2,286.42	5,651.00	3,390.60

Totals (wetfish @ \$10/lbs) 5,651.00
 Totals (wetfish @ \$6/lbs) 3,390.60
Difference: 2,260.40

Morning Star

2013	Finfish/ShellFish	wetfish - \$10/ lbs	wetfish-\$6/ lbs
Totals	5,528.51	-	-

** had no wetfish off load in 2013

2014	Finfish/ShellFish	wetfish - \$10/ lbs	wetfish-\$6/ lbs
Totals	5,577.24	-	-

** had no wetfish off load in 2014

2015	Finfish/ShellFish	wetfish - \$10/ lbs	wetfish-\$6/ lbs
Totals	1,552.23	-	-

** had no wetfish off load in 2015 as of 9/10/15

Revenue Loss when changing \$10 wetfish fee to \$3

Three Captains

2013	Finfish/ShellFish	wetfish - \$10/ lbs	wetfish-\$3/ lbs
Totals	6,671.61	29,713.15	8,913.95

Totals (wetfish @ \$10/lbs) 29,713.15
 Totals (wetfish @ \$3/lbs) 8,913.95

Difference: **20,799.20**

2014	Finfish/ShellFish	wetfish - \$10/ lbs	wetfish-\$3/ lbs
Totals	5,472.87	40,902.39	12,270.72

Totals (wetfish @ \$10/lbs) 40,902.39
 Totals (wetfish @ \$3/lbs) 12,270.72

Difference: **28,631.67**

2015	Finfish/ShellFish	wetfish - \$10/ lbs	wetfish-\$3/ lbs
Totals	1,463.43	-	-

** had no wetfish off load in 2015 as of 9/10/15

2013 loss rev 37,291.39
2014 loss rev 55,782.66
2015 loss rev 3,955.70 (only includes Pillar Point Fisheries)
Total rev loss **97,029.75**

*** only includes Three Captains and Pillar Point Fisheries

Pillar Point Fisheries

2013	Finfish/ShellFish	wetfish - \$10/ lbs	wetfish-\$3/ lbs
Totals	13,854.09	23,560.28	7,068.09

478.74+375.92+7962.7+1589.69

Totals (wetfish @ \$10/lbs) 23,560.28
 Totals (wetfish @ \$3/lbs) 7,068.09

Difference: **16,492.19**

2014	Finfish/ShellFish	wetfish - \$10/ lbs	wetfish-\$3/ lbs
Totals	14,004.00	38,787.12	11,636.13

Totals (wetfish @ \$10/lbs) 38,787.12
 Totals (wetfish @ \$3/lbs) 11,636.13

Difference: **27,150.99**

2015	Finfish/ShellFish	wetfish - \$10/ lbs	wetfish-\$3/ lbs
Totals	2,286.42	5,651.00	1,695.30

Totals (wetfish @ \$10/lbs) 5,651.00
 Totals (wetfish @ \$3/lbs) 1,695.30
Difference: **3,955.70**

Morning Star

2013	Finfish/ShellFish	wetfish - \$10/ lbs	wetfish-\$3/ lbs
Totals	5,528.51	-	-

** had no wetfish off load in 2013

2014	Finfish/ShellFish	wetfish - \$10/ lbs	wetfish-\$3/ lbs
Totals	5,577.24	-	-

** had no wetfish off load in 2014

2015	Finfish/ShellFish	wetfish - \$10/ lbs	wetfish-\$3/ lbs
Totals	1,552.23	-	-

** had no wetfish off load in 2015 as of 9/10/15

Three Captains Off Load Fees

FISH BUYERS OFF-LOADING FEES - From April 2013 thru Present

2013		Wet Fish	Finfish/ShellFish	TOTALS
04/30/13			39.96	39.96
05/31/13			809.70	809.70
06/30/13			394.07	394.07
07/31/13			262.90	262.90
08/31/13		19,630.00	195.03	19,825.03
09/30/13		10,083.15	24.84	10,107.99
10/31/13			41.62	41.62
11/30/13			3,261.99	3,261.99
12/31/13			<u>1,641.50</u>	<u>1,641.50</u>
Totals		29,713.15	6,671.61	36,384.76

2014		Wet Fish	Finfish/ShellFish	TOTALS
01/31/14			348.44	348.44
02/28/14			236.35	236.35
03/31/14			212.10	212.10
04/30/14				0.00
05/31/14			316.28	316.28
6/31/14			184.63	184.63
07/31/14			100.73	100.73
08/30/14			102.58	102.58
09/30/14		40,902.39	224.42	41,126.81
10/31/14			18.00	18.00
11/30/14			2,779.22	2,779.22
12/31/14			<u>950.12</u>	<u>950.12</u>
Totals		40,902.39	5,472.87	46,375.26

2015		Wet Fish	Finfish/ShellFish	TOTALS
01/31/15			655.97	655.97
02/28/15			166.48	166.48
03/30/15			123.22	123.22
04/30/15			77.26	77.26
05/31/15			268.87	268.87
<u>06/30/15</u>			106.51	106.51
<u>07/31/15</u>			65.12	65.12
<u>08/31/15</u>				
Totals			1,463.43	1,463.43

Morning Star Off Load Fees

FISH BUYERS OFF-LOADING FEES - From April 2013 thru Present

2013		Wet Fish	Finfish/ShellFish	TOTALS
04/30/13			57.14	57.14
05/31/13			719.93	719.93
06/30/13			432.49	432.49
07/31/13			312.28	312.28
08/31/13			188.42	188.42
09/30/13			75.47	75.47
10/31/13			43.96	43.96
11/30/13			2,489.77	2,489.77
12/31/13			<u>1,209.05</u>	<u>1,209.05</u>
Totals		-	5,528.51	5,528.51

2014		Wet Fish	Finfish/ShellFish	TOTALS
01/31/14			405.38	405.38
02/28/14			270.97	270.97
03/31/14			260.07	260.07
04/30/14			217.71	217.71
05/31/14			232.51	232.51
06/31/14			197.34	197.34
07/31/14			110.37	110.37
08/30/14			266.98	266.98
09/30/14			174.90	174.90
10/31/14			162.93	162.93
11/30/14			2,124.04	2,124.04
12/31/14			<u>1,154.04</u>	<u>1,154.04</u>
Totals		-	5,577.24	5,577.24

2015		Wet Fish	Finfish/ShellFish	TOTALS
01/31/15			541.35	541.35
02/28/15			247.23	247.23
03/30/15			164.31	164.31
04/30/15			86.82	86.82
05/31/15			202.87	202.87
06/30/15				0.00
07/31/15			309.65	309.65
08/31/15				
Totals		-	1,552.23	1,552.23

Pillar Point Fisheries Off Load Fees

FISH BUYERS OFF-LOADING FEES - From April 2013 thru Present

2013		Wet Fish	Finfish/ShellFish	TOTALS
04/30/13			187.13	187.13
05/31/13			1,529.30	1,529.30
06/30/13			968.95	968.95
07/31/13	6,796.76		294.14	7,090.90
08/31/13	8,512.29		467.52	8,979.81
09/30/13	8,251.23		478.74	8,729.97
10/31/13			375.92	375.92
11/30/13			7,962.70	7,962.70
<u>12/31/13</u>			<u>1,589.69</u>	<u>1,589.69</u>
Totals	23,560.28		13,854.09	37,414.37

2014		Wet Fish	Finfish/ShellFish	TOTALS
01/31/14			185.00	185.00
02/28/14			7.79	7.79
03/31/14			213.56	213.56
04/30/14			98.26	98.26
05/31/14			484.59	484.59
6/31/14	2,879.42		478.41	3,357.83
07/31/14	26,230.00		411.44	26,641.44
08/30/14	8,890.78		317.58	9,208.36
09/30/14	786.91		276.60	1,063.51
10/31/14			168.56	168.56
11/30/14			9,220.15	9,220.15
<u>12/31/14</u>			<u>2,142.06</u>	<u>2,142.06</u>
Totals	38,787.11		14,004.00	52,791.11

2015		Wet Fish	Finfish/ShellFish	TOTALS
01/31/15			1,083.48	1,083.48
02/28/15			78.94	78.94
03/30/15			86.29	86.29
04/30/15			243.31	243.31
05/31/15			367.65	367.65
<u>06/30/15</u>			381.19	381.19
<u>07/31/15</u>	45.56		5,651.00	5,696.56
<u>08/31/15</u>				
Totals	45.56		7,891.86	7,937.42

San Mateo County Harbor District

Fish Unloader: Pillar Point Seafood

Date of Sale: _____

Fish Buyer: _____

PERMIT #: _____

Name of Vessel: _____

Vessel Operator: _____

Poundage
TONS/LBS **Wet Fish**

TONS/LBS **Fin Fish**

Expiration Date

In this box fill in the date that the fish were off loaded and then transferred to the fish buyer. The date in this field should match the date reported on the fish and game ticket.

In this box fill in the name of fish buyer as shown on SMCHD Commercial Activity Permit (CAP). Fish buyers are required to carry their SMCHD CAP while engaging in business on SMCHD property. It is the responsibility of the SMCHD lessee to verify that the name on this form matches the name on the CAP presented by the fish buyer.

This box should reflect the SMCHD CAP Number as well as the expiration date on the CAP. If the expiration date indicates that the CAP is no longer valid, the fish buyer does not have the authority to conduct business on SMCHD grounds and the SMCHD lessee should not aid in the sale.

In this box indicate the name of the fishing vessel from which the fish were offloaded. The name reported on this form should match the name reflected on the fish and game ticket for this transaction and should match the vessel's registration or documentation paperwork.

In this box indicate the first and last name of operator of the vessel from which the fish were offloaded. This information should match the information reported on the fish and game ticket.

Identify the unit of measurement used to record the amount of fish unloaded by circling Tons or Pounds. If another unit of measurement is used to record the weight please hand write.

Record the number of units unloaded for this transaction. This information should match the fish and game ticket used to record this transaction.

7

San Mateo County Harbor District

Fish Unloader: Pillar Point Seafood

Date of Sale: _____

Fish Buyer: _____

PERMIT #: _____

Date of landing: _____

Name of Vessel: _____

Vessel Operator: _____

TONS/LBS—Should we have them circle one ? Or if it is both require they put in the /

Wet Fish (Should we put types of fish in parenthesis)?

TONS/LBS

Fin Fish (Should we put types of fish in parenthesis)?

SAN MATEO COUNTY HARBOR DISTRICT

MONTHLY FISH PURCHASE AND OFF-LOADING FEES WORKSHEET

LESSEE:

Fees for the Month of : _____

WETFISH

Number of Tons Off-Loaded:	_____	X \$10	=	_____
Number of Tons of Fish Purchased by Lessee:	_____	X \$10	=	_____
Gross Receipts for Lessee's On-Site Retail Fish Sales:	_____	X 5%	=	_____

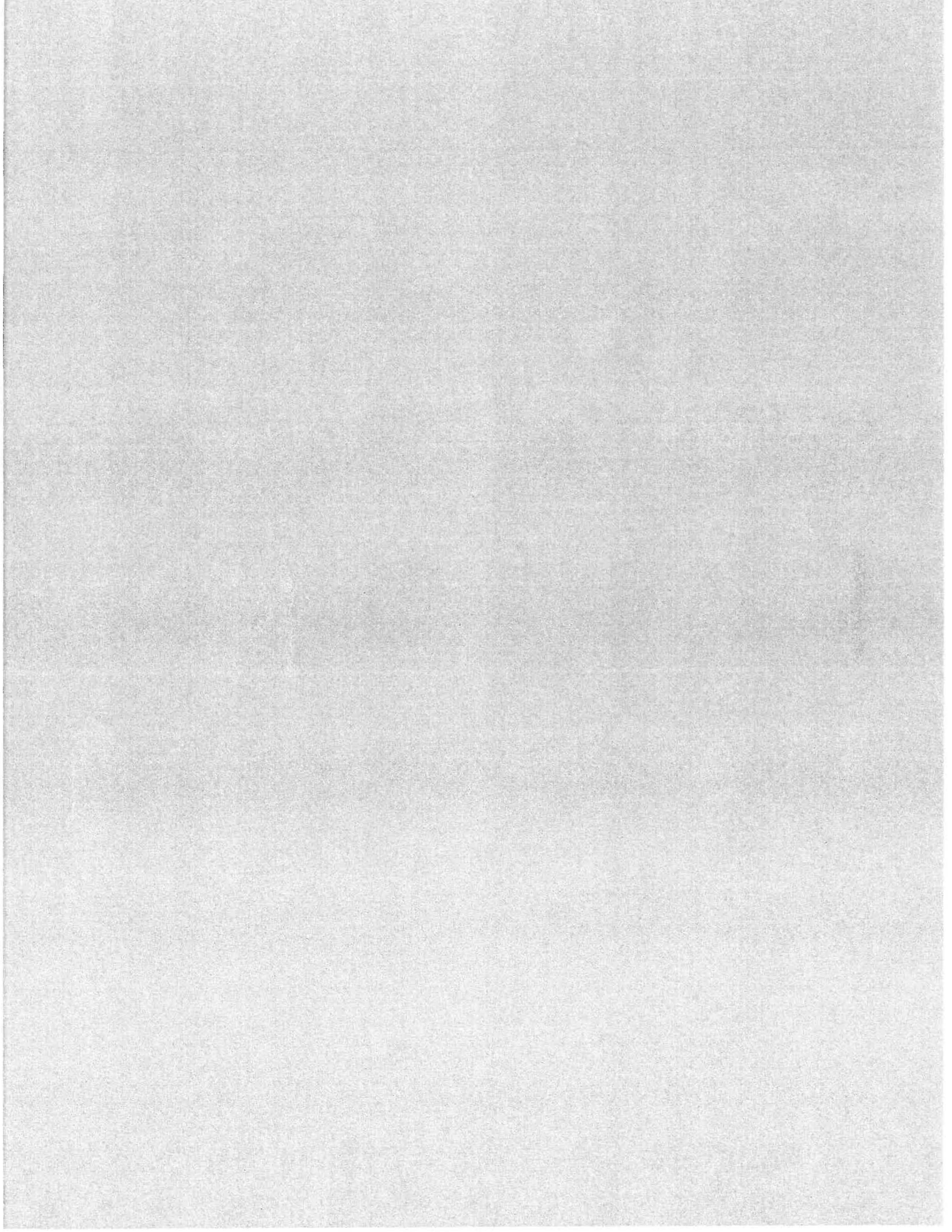
FINFISH and SHELLFISH

Number of Pounds Off-Loaded:	_____	X \$0.01	=	_____
Number of Pounds of Fish Purchased by Lessee:	_____	X \$0.01	=	_____
Gross Receipts for Lessee's On-Site Retail Fish Sales:	_____	X 5%	=	_____

TOTAL: _____

Statement of Lessee: By signing below, I affirm, under penalty of law, that all information reported on this worksheet is true and correct and contains all applicable information required by the current lease agreement and any amendments thereto.

Signature:



Overview -- Rent Charges

Three Captains

	2013 Rent
Totals	\$28,874.38

	2014 Rent
Totals	\$30,675.00

	2015 Rent
Totals	\$23,561.25

PILLAR POINT FISHERIES

	2013 Rent
Totals	\$28,874.38

	2014 Rent
Totals	\$30,675.00

	2015 Rent
Totals	\$23,561.25

Morning Star

	2013 Rent
Totals	\$28,874.38

	2014 Rent
Totals	\$30,675.00

	2015 Rent
Totals	\$23,561.25

Rent Received in 201	\$86,623.14
Rent Received in 201	\$92,025.00
<u>Rent Received in 201</u>	<u>\$70,683.75</u> (Jan - Sept 2015)
Total:	\$249,331.89

Rent Charges

Three Captains

PILLAR POINT FISHERIES

Morning Star

2013	Rent
1/31/2013	2,094.08
2/28/2013	2,140.15
3/31/2013	2,140.15
04/30/13	2,500.00
05/31/13	2,500.00
06/30/13	2,500.00
07/31/13	2,500.00
08/31/13	2,500.00
09/30/13	2,500.00
10/31/13	2,500.00
11/30/13	2,500.00
12/31/13	2,500.00
Totals	\$28,874.38

2013	Rent
1/31/2013	2,094.08
2/28/2013	2,140.15
3/31/2013	2,140.15
04/30/13	2,500.00
05/31/13	2,500.00
06/30/13	2,500.00
07/31/13	2,500.00
08/31/13	2,500.00
09/30/13	2,500.00
10/31/13	2,500.00
11/30/13	2,500.00
12/31/13	2,500.00
Totals	\$28,874.38

2013	Rent
1/31/2013	2,094.08
2/28/2013	2,140.15
3/31/2013	2,140.15
04/30/13	2,500.00
05/31/13	2,500.00
06/30/13	2,500.00
07/31/13	2,500.00
08/31/13	2,500.00
09/30/13	2,500.00
10/31/13	2,500.00
11/30/13	2,500.00
12/31/13	2,500.00
Totals	\$28,874.38

2014	Rent
01/31/14	2,500.00
02/28/14	2,500.00
03/31/14	2,500.00
04/30/14	2,575.00
05/31/14	2,575.00
6/31/14	2,575.00
07/31/14	2,575.00
08/30/14	2,575.00
09/30/14	2,575.00
10/31/14	2,575.00
11/30/14	2,575.00
12/31/14	2,575.00
Totals	\$30,675.00

2014	Rent
01/31/14	2,500.00
02/28/14	2,500.00
03/31/14	2,500.00
04/30/14	2,575.00
05/31/14	2,575.00
6/31/14	2,575.00
07/31/14	2,575.00
08/30/14	2,575.00
09/30/14	2,575.00
10/31/14	2,575.00
11/30/14	2,575.00
12/31/14	2,575.00
Totals	\$30,675.00

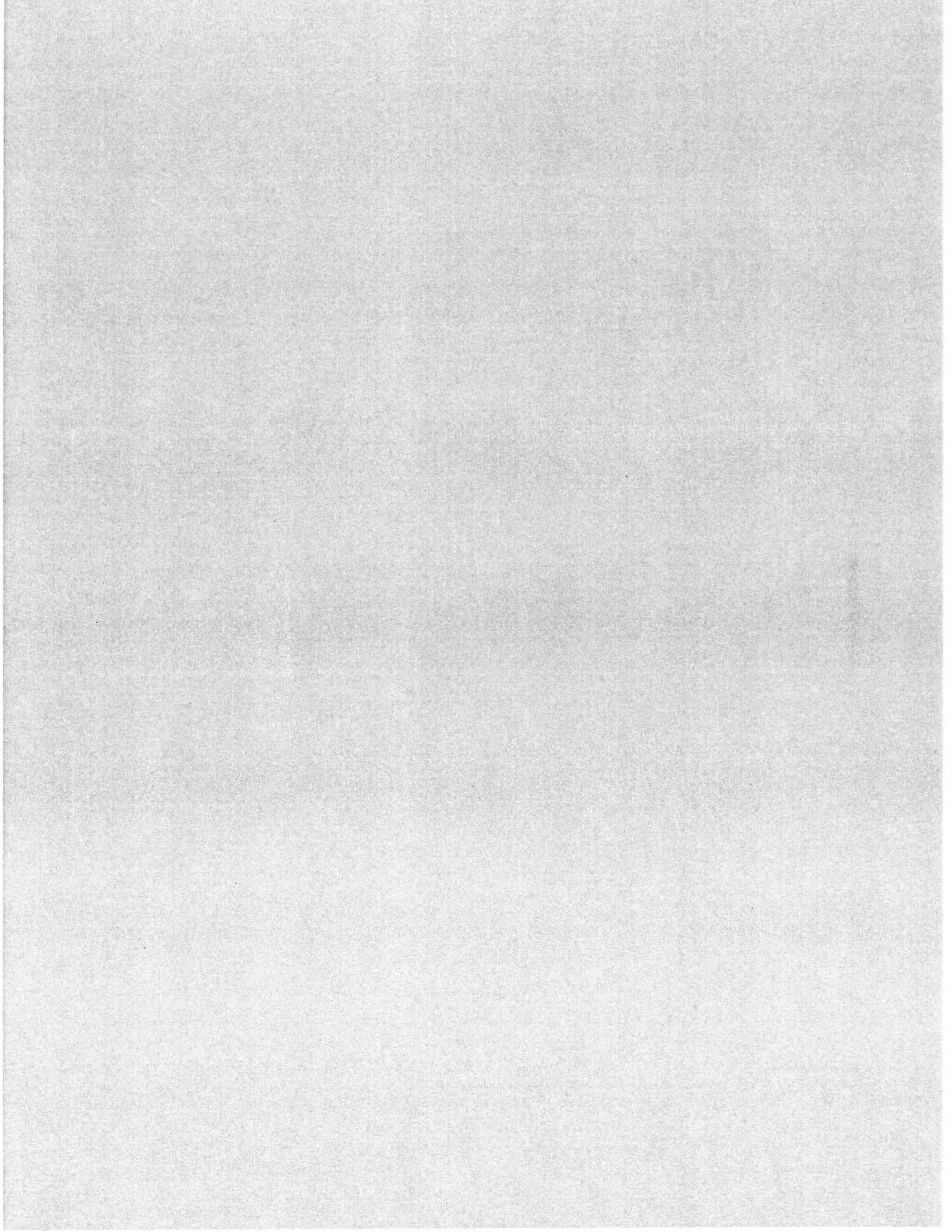
2014	Rent
01/31/14	2,500.00
02/28/14	2,500.00
03/31/14	2,500.00
04/30/14	2,575.00
05/31/14	2,575.00
6/31/14	2,575.00
07/31/14	2,575.00
08/30/14	2,575.00
09/30/14	2,575.00
10/31/14	2,575.00
11/30/14	2,575.00
12/31/14	2,575.00
Totals	\$30,675.00

2015	Rent
01/31/15	2,575.00
02/28/15	2,575.00
03/30/15	2,575.00
04/30/15	2,575.00
05/31/15	2,652.25
06/30/15	2,652.25
07/31/15	2,652.25
08/31/15	2,652.25
09/30/15	2,652.25
Totals	\$23,561.25

2015	Rent
01/31/15	2,575.00
02/28/15	2,575.00
03/30/15	2,575.00
04/30/15	2,575.00
05/31/15	2,652.25
06/30/15	2,652.25
07/31/15	2,652.25
08/31/15	2,652.25
09/30/15	2,652.25
Totals	\$23,561.25

2015	Rent
01/31/15	2,575.00
02/28/15	2,575.00
03/30/15	2,575.00
04/30/15	2,575.00
05/31/15	2,652.25
06/30/15	2,652.25
07/31/15	2,652.25
08/31/15	2,652.25
09/30/15	2,652.25
Totals	\$23,561.25

Rent Received in 2014: \$86,623.14
 Rent Received in 2014: \$92,025.00
 Rent Received in 2015: \$70,683.75 (Jan - Sept 2015)
Total: \$249,331.89



Common area maintenance charges

From Wikipedia, the free encyclopedia

Common Area Maintenance (CAM) charges are one of the net charges billed to tenants in a commercial triple net (NNN) lease, and are paid by tenants to the landlord of a commercial property. A CAM charge is an additional rent, charged on top of base rent, and is mainly composed of maintenance fees for work performed on the common area of a property.

Each tenant pays their pro rata share of a property's total CAM charges, which prorated share is the percentage of the tenant's rented square footage of the total, rentable square footage of the property.^{[1][2]}

Contents

- 1 Breakdown of charges
- 2 Cap
- 3 Recoveries
- 4 References

Breakdown of charges

Landlord and Tenant negotiate CAM charges before signing the lease, so the charges vary from lease to lease, and operating costs that can be billed as CAM charges by the landlord vary from tenant to tenant. Generally, landlords want CAM charges defined so broadly that they can pass through a majority of their operating expenses to tenants. The tenant generally wants CAM charges defined narrowly in hopes that the landlord pays a majority of the operating costs.

Examples of services often billed to tenants as CAM charges include portering, parking lot striping, parking lot lighting, and landscaping.^[3] CAM charges can be broken into two subcategories—*controllable* and *uncontrollable*. Uncontrollable CAM charges are security costs, utilities, and snow removal expenses. All other expenses charged as a CAM charge are considered controllable.

In certain leases, CAM charges also consists of administrative and management fees. Administrative fees are a negotiated percentage of all costs of operating and maintaining a property. Management fees are a percentage of gross rents collected, which percentage is defined in the management agreement between the management company and ownership of the property.^[4]

Cap

12

A cap on CAM charges limits the amount by which CAM charges can rise each year, and are presented as a percentage. Again, as with the CAM charges themselves, caps are also negotiated between the tenant and landlord, and thus vary from lease to lease. Caps can be cumulative or compounded, and calculated year-over-base or year-over-year.^[5]

Year-over-base caps allow the cap to raise each year by a certain, predetermined percentage of a predetermined, initial (base) CAM charge. Year-over-year caps mean the percentage increase applies not to a base amount, but to the actual CAM charge of the previous year. Cumulative caps allow the yearly percentage increase of the CAM Cap to accumulate. Thus, a yearly 5% cap would grow the cap each year by 5%, so that the first year it was a 5% cap, the 2nd year a 10% cap, the third year 15, and so on. Compounded caps allow the yearly percentage increase of the CAM Cap to grow at a compounded rate each year.

If actual CAM charges are lower than the cap, the cap does not apply.^[4]

Recoveries

Also known as reconciliations, true-ups, and billbacks, CAM Recoveries are the annual reconciliation of the actual Common Area Maintenance Charges for a fiscal year versus the monthly charges billed to the tenant.

The monthly CAM charges a tenant pays as a part of the rent are actually estimates of that tenant's monthly, pro-rated CAM charge for the current fiscal year. The estimate is created from a property's budget by the property manager. After the fiscal year ends, an audit is done of the paid CAM charges versus the actual CAM charges, and the difference is either paid to the landlord, or the tenant.^[3]

References

1. Kovacs, Michael. "Splitting Costs- CAM Charges » Ostrow Reisin Berk & Abrams, Ltd" (<http://www.orbablog.com/industries/real-estate/splitting-costs-cam-charges/>). Retrieved 2014-01-20.
2. "What Are Common Area Maintenance Charges (CAM) In A Commercial Lease? | Spadea, Lanard, & Lignana" (<http://www.spdealaw.com/blog/2011/07/12/what-are-common-area-maintenance-charges-commercial-lease>). Spdealaw.com. 2011-07-12. Retrieved 2014-01-20.
3. "CAM COSTS, CAPS, AUDITS AND NEW IDEAS: THE VIEW FROM BOTH SIDES OF THE TABLE" (http://stevewatten.files.wordpress.com/2011/05/sp-3389981-v1-cam_costs_caps_audits_and_new_ideas12.pdf) (PDF). Retrieved 2014-01-20.
4. Betesh, Marc E. and Nancy M. Davis (May–June 2009), *Negotiating Common Area Maintenance Costs* (http://www.goulstonstorrs.com/portalresource/Article_ABAProbateProperty_N.Davids_5/09), *Probate & Property*, pp. 40–45, retrieved 2014-01-20
5. Misonzhnik, Elaine (1999-09-01). "The Battle over CAM Charges | mag content from National Real Estate Investor" (<http://nreionline.com/mag/battle-over-cam-charges>). Nreionline.com. Retrieved 2014-01-20.

Retrieved from "https://en.wikipedia.org/w/index.php?title=Common_area_maintenance_charges&oldid=637980268"

Categories: Real estate | Real property law | Real estate terminology

CAM and Capital Expenses

Ira Meislik

This is long one. Brew that coffee before you delve in.

There is no “law” as to whether Common Area Maintenance Costs (CAM) should include capital costs. It depends on the business deal, and that, in turn depends on the relative bargaining power of the parties and the custom in the locality. Essentially, are capital costs already “in the rent,” or are they to be added, if and when incurred, as additional rent, usually as part of CAM?



Let's back up. What broad cost categories are tossed into CAM? Put another way, does CAM only cover Common Area items? Most would agree that the Common Areas are those parts of a project (e.g., a shopping center) used in common by each of the tenants and their respective customers, delivery people, etc. Clearly, that includes the parking areas, sidewalks that run from premises to premises, driveways, and even landscaping. It is also generally accepted that liability and property insurance costs, though not strictly for “Common Areas,” are “common costs,” and are reasonably included within CAM. It is less commonly accepted that costs to maintain the roof are common costs, even though the cost of shared HVAC is usually lumped in as a “common cost,” and for convenience, made a component of CAM. [Now, perhaps shopping center people should move over to the “dark side” where the office people hide and replace the term “CAM” with “Operating Expenses” given that very few CAM clauses limit themselves to Common Area expenses.]

There are other building components that, like the roof, are “shared” by building occupants because they are parts of the buildings that are shared in common among the various tenants at the project. But, unlike the roof, they rarely are treated as parts of the Common Areas.

A lot more could be said about what categories are in and which are not. I'm assuming the reader knows enough about this part of the topic that not much more needs to be said.

Even if a building component (think – roof, by way of example) or an element of the Common Areas (think – parking surfaces, by way of example) are agreed to be included within the concept of CAM, do you toss every expense connected with those items into the CAM bucket? We're going to leave that unexplored when it comes to the costs of maintenance and the cost of most repairs. We're going to explore what are commonly called “Capital Repairs” and its “mother category”: “Capital Improvements.” And, we're only going to talk about those items that would be in CAM. For example, if a property owner adds a leasable building to the project, no one would expect the cost to do so would show up in CAM. There are other examples of all stripes and colors, but that's not where we are going today.

What are “Capital Repairs”? A repair is considered to be a capital repair when it is undertaken to improve or extend the normal economic life of an existing structure. No deductions are available for a capital repair; it will instead be added to the cost of the property. A Capital Repair is really a subset of “Capital Improvements,” which are part of the larger category of “Capital Expenses.”

What is a “Capital Improvement”? Capital Improvements include Capital Repairs, but also the addition of a permanent structural improvement or the restoration of some aspect of a property that will either enhance

14

the property's overall value. Again, the cost of a Capital Improvement cannot be deducted from income. It must be added to the cost of the property.

Now, just to get all of us on the same page, if accounting rules or tax rules don't allow a property owner to treat the cost of a Capital Improvement as a deduction from income (think – as an expense), but make the property owner add it to such costs as the one to acquire the property in the first place, why should a tenant reimburse its landlord for landlord's the cost of acquiring an asset? Yes, "assets" and "liabilities" are not on the same page as "income" and "expense." You don't instantly mix the two.

The way an asset becomes an expense is through "depreciation" (or "amortization," but that's not a good term to use when it comes to dealing with physical things). Although accountants and tax people don't allow you to "write off (expense)" a Capital Improvement immediately upon writing the check, they do let you reduce you asset account and increase your expense account as the physical item "wears out." So, by way of example, according to the Internal Revenue Code, generally (and there may be some exceptions, but for our purposes they are only a distraction), a building is treated as having a "life" of 39 years and its owner can reduce the "cost" of a building on its books by 1/39 every year and claim an equivalent business expense on its tax return and in its accounting records. Look at Section 179 of the Internal Revenue Code. The topic is complicated, but, in general, you look for an item's "useful life."

At this point, please hold the accountants back. I know this treatment is a gross simplification and therefore is useless if you are going to "cook" the books or do a tax return, but we're only talking principles.

Let's talk about a roof. If a tenant insists the agreed-upon rent was intended to cover the roof, and prevails, the discussion is over. But, what if that isn't the case. Do you ever add any roof replacement costs (yes, those are Capital Repair costs) to CAM? If you do, and you've followed the discussion to this point, you know that the issue is that you don't throw the whole replacement cost into the first year's CAM bill. So, if you are going to put any part into CAM, you need to agree on the useful life of a roof. Do you use the "warranty" period – e.g., use 20 years for a roof with a "20 year" warranty? Don't roofs last longer than their warranties? Isn't a roof warranty merely a promise that the roofer will come back for 20 years and fix defects in the roof?

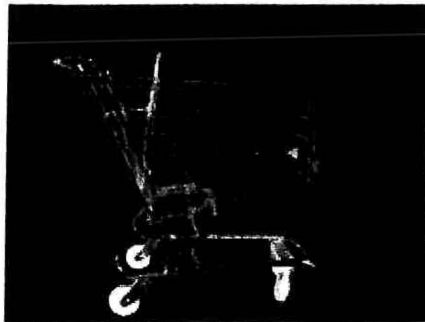
If you think that's a tough one, let me share a secret with you. Bushes and trees are closely associated with a building, so they have a determinable useful life. Therefore, you depreciate them, not expense them. So, should a tenant pay for the entire cost of a new or replacement tree in the year it is planted? If the tree has a 20 year useful life and the tenant only has 5 years to go in the lease term, should it pay for the whole "20 year" cost?

Ok, here's another conundrum. Suppose a tenant and its landlord agree which Capital Improvements will be "in CAM" and how those costs are to be spread out over the useful life of the item. Should the tenant be charged with "interest" on the not-yet expensed part of the cost?

How about this one – A 10 year parking lot is 5 years old when a tenant moves in. The tenant believes its agreed-upon rent gets it the parking lot it "sees." The landlord, however, is adding 1/10 of its original parking lot replacement cost into CAM and intends to do so for the next 5 years. Should this tenant pay its share of that component?

Last one (for now). What if the Capital Expense was to acquire a mechanical sweeper and the machine will replace 35 workers and eliminate the cost to replace 100 brooms each year? Shouldn't a tenant pay the "depreciation" for the mechanical sweeper at least to the limit of what is saved?

15



expenses incurred by the landlord in the operation and maintenance of the building or shopping center. CAM is commonly expressed as a cost per square foot, and is calculated on a pro rata basis. The provision should only pass through to the tenant legitimate expenses relating to the operation and maintenance of the common areas. This usually covers non-capital items such as parking lot repairs, exterior repairs and cleaning, shared interior repairs and cleaning, increases to landlord's insurance cost that exceed the Base Years' insurance and property management fees.

- Before signing a lease, it is recommended tenants estimate their costs associated with CAM and ask for the history of the building's CAM charges for at least the two prior years. This will enable tenants to compare the amount of operating expenses and their annual increases to other comparable buildings to determine whether they are reasonable, and to estimate what the charges might be in future years.
- Attention must be given to the definition of the base year in any CAM clause which requires the tenant to pay its prorata share of expenses incurred over a base year. Some tenants can negotiate to ensure they do not pay for expenses during the base year and that the base year variable expenses are subject to a "gross up" to reflect the full amount of operating expenses that would have been incurred by the building had it been 100% occupied.
- There should never be any provision making the landlord's determination of CAM charges final unless the tenant can reserve the right to audit the landlord's expenses and to review the landlord's calculations.
- A tenant friendly lease commonly reserved for well established tenants may include a cap on the CAM amount, or on specific items included in the CAM amount (i.e. Management expenses shall not exceed 5% of total Common Area Maintenance cost.)

An example of a CAM Lease clause follows

COMMON AREA MAINTENANCE EXPENSES (CAM):

Common Area Maintenance (CAM) shall include but not be limited to maintenance, repair, replacement and care of all lighting, plumbing, roofs, parking surfaces, landscaped areas, signs, snow removal, non-structural repair and maintenance of the exterior of the Building, costs of equipment purchased and used for such purposes, cleaning and cleaning supplies for the common areas, insurance premiums for insurance required by this Lease, management fee up to five percent (5%) of gross collected rents, and wages and fringe benefits of personnel up to the level of property manager or equivalent employed for such work. Additionally, during the Term of this Lease, any extension and/or renewal of this Lease, CAM expenses shall include the annual cost or portion allocable to the Building of any capital improvements made to the Building by Landlord which result in a reduction of expenses or required under any governmental law or regulation that was not applicable at the time it was constructed. Landlord shall amortize such costs over the useful life and at a reasonable rate of interest.

Notwithstanding the foregoing, CAM shall exclude the following:

- (i) interest, amortization or other costs, including legal fees, associated with any mortgage, loan or refinancing of all or any part of the Building or sale of all or any part of the Building;
- (ii)



- [HOME](#)
- [EXPERTISE](#)
- [SERVICES](#)
- [PROPERTIES](#)
- [CLIENTS](#)
- [NEWS](#)
- [CONTACT](#)



Asking Price
 \$600 -
 \$550 -
 \$500 -
 \$450 -
 \$400 -
 \$350 -
 \$300 -
 \$250 -
 \$200 -
 2006

[1](#)
[2](#)
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[5](#)
[PrevNext](#)

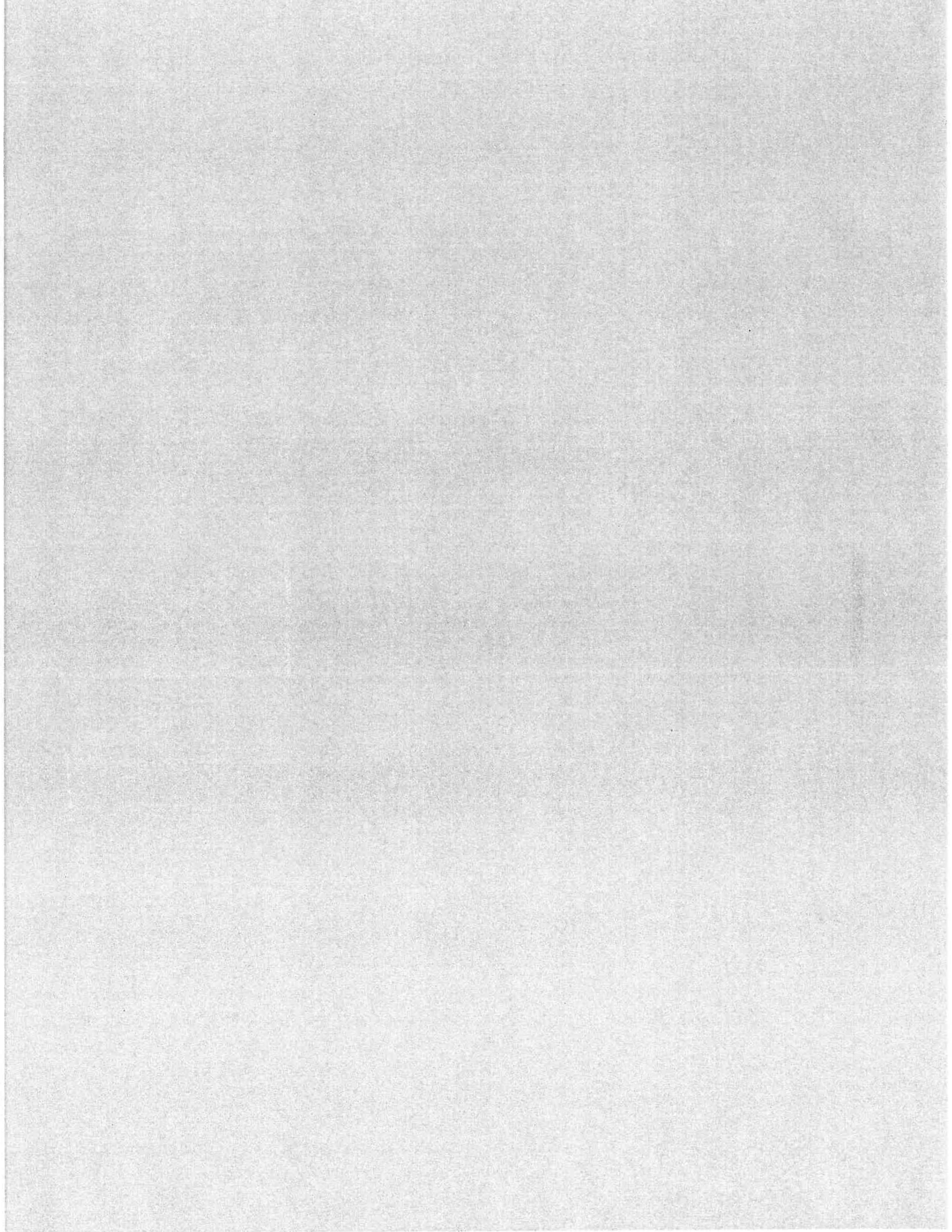
What is CAM and is it negotiable?

In Common Area Maintenance, by Bob

4428 1 0 4

Common Area Maintenance (“CAM”) Expenses (also known as “Operating Expenses”): An Operating Expense or CAM provision requires the tenant to pay its pro rata share of the operating

17





42-002(Rev 7/04)

DEPARTMENT OF FOOD AND AGRICULTURE
DIVISION OF MEASUREMENT STANDARDS

Remit fees to: PO Box 942872, Sacramento, CA 94271-2872
6790 Florin-Perkins Rd., Ste. 100, Sacramento, CA 95828-1812

Email: dms@cdfa.ca.gov Web Address: www.cdfa.ca.gov/dms/programs/wm/wm.html
Phone #: (916) 229-3040 Fax #: (916) 229-3055

WEIGHMASTER LICENSE

LICENSE NO. 012096

Weighmaster

JOHN A. DOOLEY
(DBA) J. R. DOOLEY
48 FAIRWAY PL.
HALF MOON BAY, CA 94019

Total Fees Remitted: \$225.00

Effective Date: 9/17/2013

License Year: 11/01/2013 - 11/01/2014

The Weighmaster is responsible to renew this license. (Division 5, Chapter 7, Section 12707, Business and Professions Code)

THIS LICENSE SHALL BE AVAILABLE TO WEIGHTS AND MEASURES OFFICIALS AT EACH WEIGHING LOCATION.

This license is not transferable. Any change in ownership requires a new license.

Principal Location

Pier 54
San Francisco, CA 94107
County: San Francisco
(650) 678-2453

Additional Location(s) - 1

165 Columbia St.
(650) 678-2483

Princeton By Sea

County Code

41

Only persons listed below may perform the functions of a Deputy Weighmaster for the licensed Weighmaster.

(Division 5, Chapter 7, Section 12703, Business and Professions Code)

For instructions on adding/deleting Deputies to your license, refer to the instruction sheet on our website.

<http://www.cdfa.ca.gov/dms/programs/wm/wm.html>

Deputy Weighmaster(s) - 6

BOLA, JIM

DIERKS, AARON

NOTHSTEIN, GARY

RYDMAN, MARK

TILLEY, JERRY

VANISI, ANDREW

Number of vacant deputy positions: 0

18

R DOOLEY/SHELL FISH

DATE: 12-23 2014

START:

CALIF

MARE ISLAND, VALLEJO, CA

FINISH:

F/G #

F/V DYNAMIK

TALLY

38742

Bucket #	TARE	29 GROSS Weight	Net crab	
1	216	30 502	286	TOTAL
2	216	31 500	284	
3	216	32 388	172	742
4	216	33 508	292	
5	216	34 526	310	772
6	216	35 386	170	
7	216	36 506	290	734
8	216	37 494	278	
9	216	38 382	166	826
10	216	39 508	292	
11	216	40 528	312	432
12	216	41 438	222	
13	216	42 384	168	432
14	216	43 480	264	
15	216	44		TOTAL 3508 LBS
16	216	45		
17	216	46		Net crab
18	216	47		
19	216	48		FG TAG #
20	216	49		
21	216	50		D603207
22	216	51		
23	216	52		19
24	216	53		
25	216	54		
26	216	55		
27	216	56		

LANDING RECEIPT - SALMON/HERRING
DFW 625-D (REV. 01/14)

PERMIT #

CT0480TI

MONTH DAY YEAR

12 23 14

D603207

SEE 2ND PAGE

FISHERMAN LAST NAME NOLTE	F.I. B	ID NUMBER L21759	PORT OF FIRST LANDING 453	LOCATION WHERE FISH WERE CAUGHT 253
VESSEL NAME DYNAMIK	VESSEL ID 38742	FISH BUSINESS NAME NORCAL	FISH BUSINESS ID 40708	

FISH NAME	POUNDS	PRICE	TOTAL AMOUNT	CONDITION	GEAR	PRIMARY GEAR USED
1) CHINOOK 302 SALMON LG.	,	.	\$.		27
2) CHINOOK 302 SALMON MED.	,	.	\$.		
3) CHINOOK 302 SALMON SM.	,	.	\$.		
4) CALIFORNIA HALIBUT 222	,	.	\$.		
5) OCEAN 812 SHRIMP	,	.	\$.		
6) BRINE 819 SHRIMP	,	.	\$.		
7) CHINOOK 306 ROE	,	.	\$.		
8) ROE HERRING 122	,	.	\$.		
9) HERRING EGGS ON KELP 995	,	.	\$.		
10) DUNGENESS CRAB 800	3508	4.00	14,032.00			
11) ROCK CRAB 801	,	.	\$.		
12) BAY SHRIMP 810	,	.	\$.		
13) BARRED 551 SURFPERCH	,	.	\$.		
14) REDTAIL 553 SURFPERCH	,	.	\$.		
15) NIGHT SMELT 187	,	.	\$.		
16) SURF SMELT 182	,	.	\$.		
17) _____	,	.	\$.		
18) _____	,	.	\$.		
19) _____	,	.	\$.		

PRIMARY GEAR USED

27

GEAR LEGEND

01 HOOK & LINE (NON-SALMON)

04 MOOCHING (SALMON)

09 TROLL (SALMON)

27 TRAP (CRAB)

40 BRAIL

55 BEAM TRAWL

58 SINGLE RIGGED TRAWL

59 DOUBLE RIGGED TRAWL

66 SET GILL NET

71 PURSE SEINE

OTHER

OF SALMON

(BIOLOGIST USE)
FISH CODE

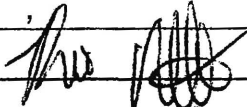
TOTALS # 3508 \$ 14032.00

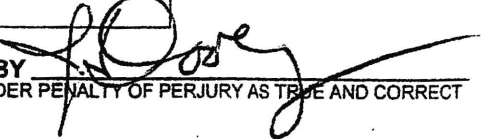
NOTE PAD MAIL CK
P.O. Box 7409
Brookings, OR
97415

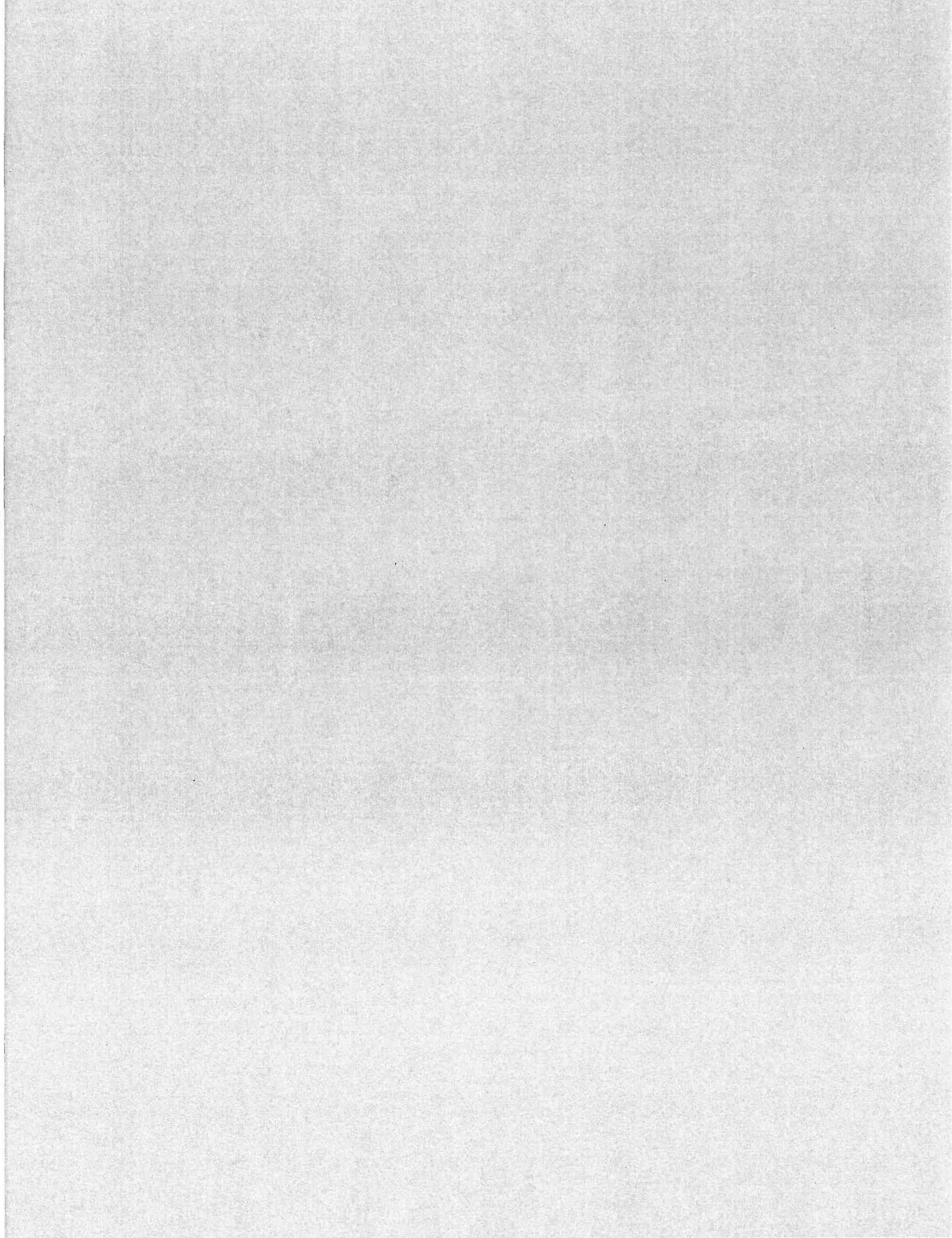
CORRECTIONS - FOR FIELD BIOLOGIST USE ONLY

LINE #	FISH CODE	POUNDS	PRICE	CONDITION	GEAR
			\$		
			\$		
			\$		

CHANGES ON BACK

FISHERMAN/PERMITTEE 

RECEIVED BY 
CERTIFIED UNDER PENALTY OF PERJURY AS TRUE AND CORRECT



Statement of Qualifications for the Commercial Fisherman's Discount

I undersigned do hereby certify and swear under penalty of perjury that the following is true:

- 1.) I have earned at least \$30,000 gross income from commercial fishing during the last calendar year;
- 2.) I was a paid berth holder at Pillar Point Harbor for the past twelve months;
- 3.) I make at least 60% of my entire income from commercial fishing (I am prepared to produce my last year's tax records upon request to verify this.)
- 4.) I understand this is not an automatic reoccurring discount and must be resubmitted annually.

You must also submit a copy of your commercial fishing license and driver's license.

Signed: _____

Date: _____

Print Name: _____

Account Number: _____

Boat Name: _____

2015 Commercial Fisherman Discount Form

of Commercial Fishermen

2014	
# of Comm Fishermen	107
# of Receiving Discount	59

2015	
# of Comm Fishermen	108
# of Receiving Discount	67

Commercial Fishermen Discount

2014	
Amt of loss rev/mo	3,596.90
# of months	12
Total amt loss revenue	\$43,162.80

2015	
Amt of loss rev/mo	4,109.94
# of months	12
Total amt loss revenue	\$49,319.28

Commercial Fishermen Discount Overview

15% Discount

Amt of loss rev/mo	4,109.94
# of months	12
Total amt loss revenue / yr	49,319.28

10% Discount

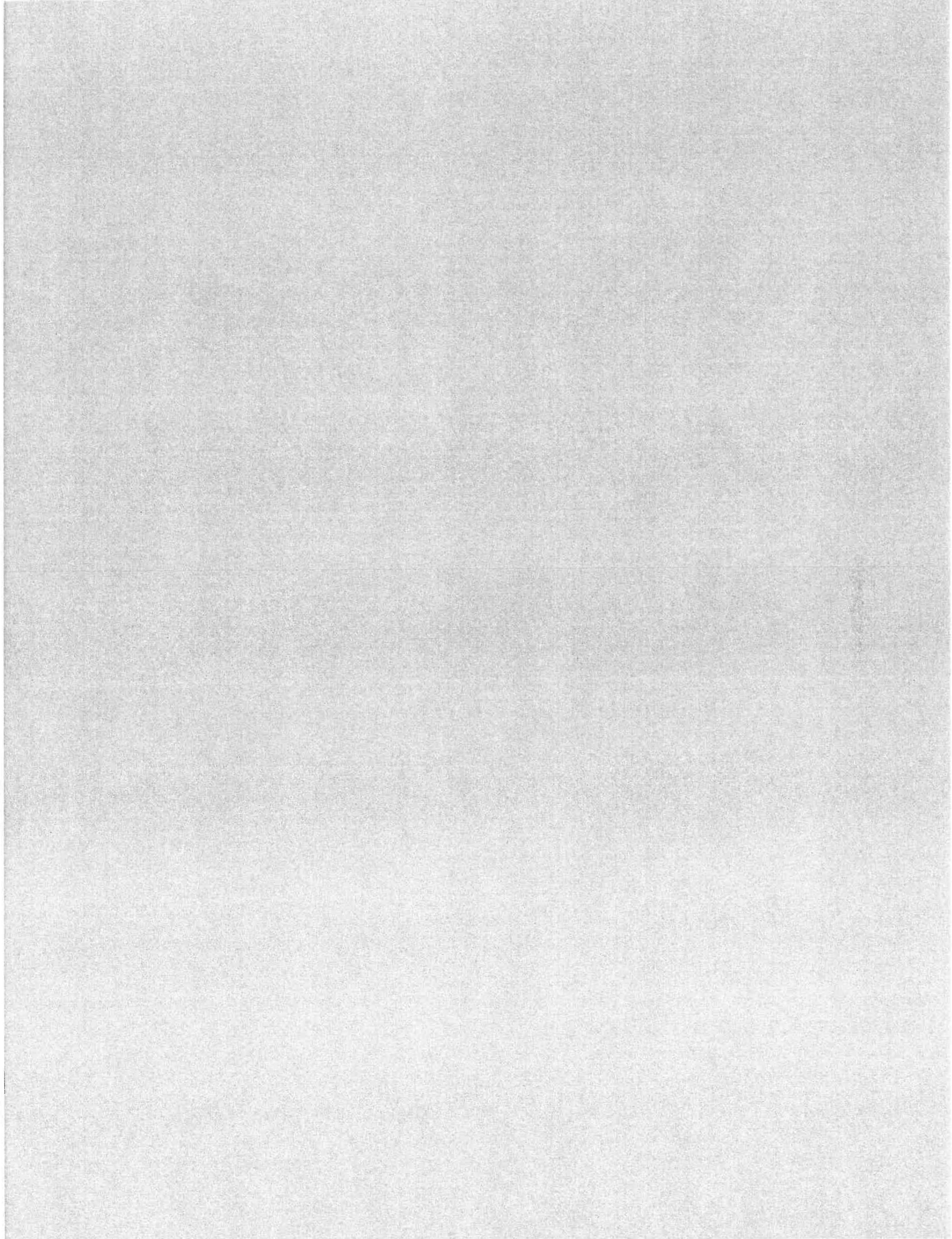
Amt of loss rev/mo	2,739.96
# of months	12
Total amt loss revenue / yr	32,879.52

5% Discount

Amt of loss rev/mo	1,369.94
# of months	12
Total amt loss revenue / yr	16,439.28

Amt of rev loss-- 15% Disc:	49,319.28
Amt of rev loss-- 10% Disc:	32,879.52
Amt of rev loss-- 5% Disc:	16,439.28

22



Fish Sales Permits Over View

Total # of permits sold in 2014	38
Cost of permit	<u>\$250.00</u>
2014 Rev from Fish Sales permits	\$9,500.00

Total # of permits sold in 2015	28
Cost of permit	\$250.00
2015 Rev from Fish Sales permits	\$7,000.00

** looking at the 2014 fish sales permits, we did have about 7-8 tenants buy fish sales permits toward could sell crab from their vessels. The total number of fish sales permits sold as of 8/6/15 is 28, so I am when crab season begins

2015

Total # of permits sold	28
Cost of permit	\$250.00
2015 Rev from Fish Sales permits	\$7,000.00

Total # of permits sold	28
Cost of permit	\$300.00
2015 Rev from Fish Sales permits	\$8,400.00

Total # of permits sold	28
Cost of permit	\$350.00
2015 Rev from Fish Sales permits	\$9,800.00

Total # of permits sold	28
Cost of permit	\$400.00
2015 Rev from Fish Sales permits	\$11,200.00

2014 inc rev w/ \$300 fee	\$1,900.00
2014 inc rev w/ \$350 fee	\$3,800.00
2014 inc rev w/ \$400 fee	\$5,700.00

2015 inc rev w/ \$300 fee	\$1,400.00
2015 inc rev w/ \$350 fee	\$2,800.00
2015 inc rev w/ \$400 fee	\$4,200.00

*** this is the amount revenue would have increased if the fee had been changed from \$

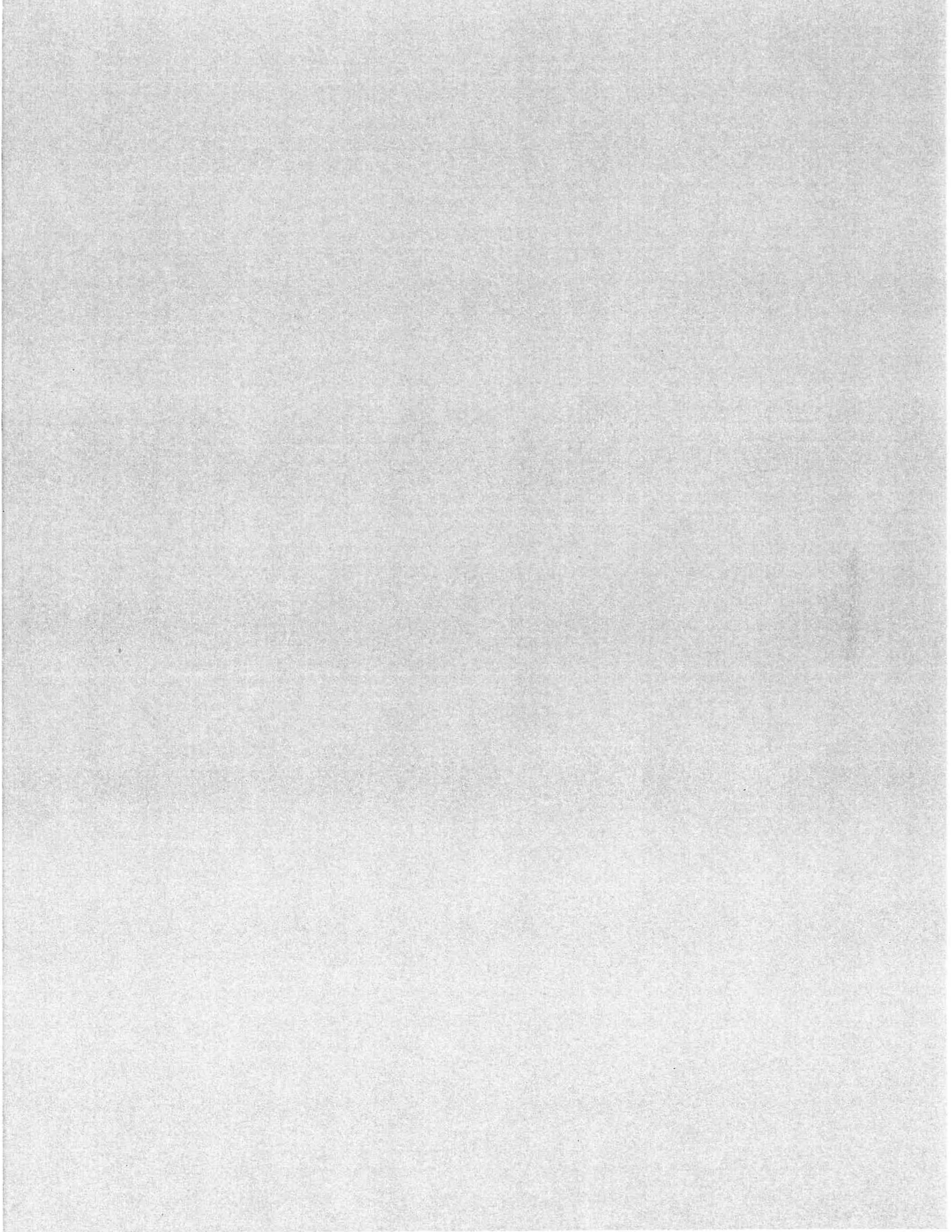
2014

Total # of permits sold	38
Cost of permit	<u>\$250.00</u>
2014 Rev from Fish Sales permits	\$9,500.00

Total # of permits sold	38
Cost of permit	<u>\$300.00</u>
2014 Rev from Fish Sales permits	\$11,400.00

Total # of permits sold	38
Cost of permit	<u>\$350.00</u>
2014 Rev from Fish Sales permits	\$13,300.00

Total # of permits sold	38
Cost of permit	<u>\$400.00</u>
2014 Rev from Fish Sales permits	\$15,200.00

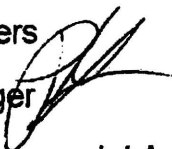


San Mateo
County Harbor
District

Memo

Date: 11/14/2013

To: Board of Harbor Commissioners

From: Peter Grenell, General Manager 

Re: INFORMATIONAL ITEM: Commercial Activity Permits for
Non-Lessee Commercial Fish Buyers

BACKGROUND

On April 18, 2012, the Board of Harbor Commissioners took action "to authorize the General Manager to inform the prospective non-lessee fish buyers of the requirements to obtain a Commercial Activity Permit and approve draft Commercial Activity Permit provisions" (see attachment). These non-lessee buyers of concern were those who occupy no premises in PPH nor pay any rents or fees to the District but who buy fish from fishermen docking and unloading at PPH.

The General Manager was authorized by the Board to devise a procedure for administering them and to issue them. In order to expedite the procedure for applying and obtaining permits and to reduce administrative effort, the Commission introduced District Ordinance Code amendments to reduce processing time and authorize the General Manager to approve and issue permits directly. These amendments were adopted in January 2013 as part of a package of Code amendments (see attachments).

While the implementation procedure was being devised, the new leases for PPH Johnson Pier wholesale fish buying and unloading had not yet been approved by Boating and Waterways, nor executed by the lessees

and the District. It was considered premature and potentially problematic (if the leases were not approved by DBW) to issue these CAPs. The leases were eventually approved by DBW and executed and became active in April 2013.

Meanwhile, the sudden and unexpected departure of the District's then Finance Director in the middle of the budget process and auditor review of financial statements, along with the need for staffing adjustments, necessitated a further postponement of action on the non-lessee CAP procedure, noticing, and issuance.

Since then, issues have arisen regarding certain provisions of the wholesale fish buying/unloading leases that have led to further Board consideration (see other Agenda item). Implications for possible lease changes would have impacts on implementation of the Board action regarding the non-lessee CAPs, resulting in a further hold on CAP issuance pending resolution of the whole issue.

The above update reiterates information provided to Commissioner Brennan at her request on or about September 2, 2013; this Agenda item was placed on this meeting Agenda by the Board at Commissioner Brennan's request at the previous Commission meeting.



MEMORANDUM

January 3, 2013

TO: Board of Harbor Commissioners

FROM: Peter Grenell, General Manager

CC: Scott Grindy, Harbor Master
Genevieve Frederick, Director of Finance
Jean Savaree, District Counsel

SUBJECT: Adopt Resolution 02-13: Amendments to Harbor District Ordinance Code Section Regarding General Provisions, Harbor Rules and Regulations, and Commercial Activities

RECOMMENDATION:

Adopt Resolution 02-13 to Amend Harbor District Ordinance Code Regarding General Provisions, Harbor Rules and Regulations, and Commercial Activities as Set Forth in the Attachment to This Staff Memorandum and Incorporated by Reference Therein

BACKGROUND:

At its December 5, 2012 regular meeting, the Board of Harbor Commissioners introduced several amendments to the District Ordinance Code Section 5.2.1.6 concerning the process for approving and issuing Commercial Activity Permits for non-lessee commercial fish buyers (see attached staff memorandum for details of the proposed amendment, reasons, and benefits). The District published a notice in compliance with the provisions of Harbors and Navigation Code Section 6070.2 to provide for public review and comment on the proposed ordinance amendment. No comments were received by the close of the twenty-day public comment period.

RECOMMENDED ORDINANCE CODE AMENDMENTS AND RESOLUTION

Staff recommends that Resolution 02-13 be adopted to (a) amend District Ordinance Code sections as set forth in the Attachment to this memorandum and incorporated by reference therein, and (b) to approve the terms and conditions of all Commercial Activity Permits for Non-Lessee Commercial Fish Buyers at Pillar Point Harbor as set forth in the attached Permit Template and incorporated by reference therein.

3.6.14.5 Sanitary facilities (marine toilet, or head, sinks, etc.) shall not be used while the vessel is in waters of the District unless the vessel is equipped with an approved holding tank, incinerator, re-circulation device or their equivalent, approved by the Harbormaster and the United States Coast Guard and in compliance with Section 3.1.17 of this code. It shall be unlawful for any person to discharge sewage or other pollutants into the waters of the District.

3.6.14.7 Failure of any person to comply with the above requirements may cause revocation of the berth agreement or cancellation of permit in addition to any other available remedies under this code.

3.11 Skiffs, Dinghies, Row Boats And Other Small Vessels

3.11.1 Authorization Required.

The owner of any boat or vessel, including a skiff, dinghy or rowboat entering the Harbor, must provide proof of ownership and registration to the Harbormaster, obtain written authorization from the Harbormaster to remain and pay all applicable fees established by the District. In the event that the owner has just arrived at the Harbor and must use a skiff or other small boat to get to shore, the owner must immediately inform the Harbormaster of his presence and use of the vessel, among other requirements listed within this code.

5.2.1 Commercial Activity Permits – General

1. Replace "5.2.1.6" with "5.2.1.6A"
2. Add a new section 5.2.1.6B as follows:

"5.2.1.6B. Commercial Activity Permits shall be heard by the Commission and acted upon within sixty (60) days, except that the Commission by Resolution authorizes the General Manager to approve and issue Commercial Activity permits whose terms and conditions are attached to this Code section and incorporated by reference herein, to non-lessee wholesale commercial fish buyers."

3. Add a new section 5.2.1.6C as follows:

"5.2.1.6C. Commercial Activity Permits for non-lessee commercial fish buyers shall be obtained by submitting completed applications at either the Pillar Point Harbor office or District Administration office for review by the General Manager. Permits will be approved or denied by the General Manager within thirty (30) days of the date a complete application is submitted. If permits are granted they may be obtained at either the Pillar Point Harbor office or the District Administration office. If a

permit is denied, the applicant may appeal to the Board of Harbor Commissioners by submitting a written appeal request to the General Manager within ten (10) days of notification of denial. In such instance, the General Manager shall cause the appeal to be placed on the agenda of the next regularly scheduled Commission meeting."

All other terms and conditions of Code Section 5.2.1.6 shall remain operative.

Notification of these Amendments shall be posted at all District offices and on the District's website. Notice sheets will also be given directly to each lessee on the Johnson Pier at Pillar Point Harbor for distribution to non-lessee fish buyers whose fish they unload.

SUMMARY OF AMENDED PROCESS FOR ISSUING COMMERCIAL ACTIVITY PERMITS FOR NON-LESSEE WHOLESALE COMMERCIAL FISH BUYERS

Adoption of Resolution 02-13 will authorize the General Manager to issue Commercial Activity Permits, good for one year, directly to wholesale commercial fish buyers who are not lessees or licensees of the District and who want to buy fish at Johnson Pier in Pillar Point Harbor. These buyers will have to submit a permit application to the District. Permit terms and conditions will be as set forth in the Permit Template approved by the Commission by Resolution 02-13 (see attachment), and the General Manager will need to issue such approved permits within thirty days of receipt of an application (although less review time is anticipated). All other terms and conditions of Code Section 5.2.1 *et seq* governing Commercial Activity Permits – General will remain in effect. Once received, permits must be retained by the buyer recipient and permit holders must be prepared to display their permits to District staff and fish unloaders on demand.

This Ordinance Code amendment, if and when approved, will become effective immediately upon adoption by the Commission, unless the Commission sets another effective date.

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MEMORANDUM

August 22, 2012

TO: Board of Harbor Commissioners

FROM: Peter Grenell, General Manager

CC: Scott Grindy, Harbor Master
Genevieve Frederick, Director of Finance
Jean Savaree, District Counsel

SUBJECT: Introduce Amendments to District Ordinance Code Section 5.2.1.6
Concerning Process for Approving and Issuing Commercial Activity
Permits for Non-Lessee Commercial Fish Buyers at Pillar Point Harbor

RECOMMENDATION:

Introduce amendments to District Ordinance Code Section 5.2.1.6 concerning the process for approving and issuing Commercial Activity Permits to non-lessee commercial fish buyers, and direct the General Manager to publish a notice in compliance with the provisions of Harbors and Navigation Code Section 6070.2 to provide for public review and comment on the proposed ordinance amendment.

BACKGROUND:

On April 16, 2012, the Board of Harbor Commissioners decided to require non-lessee commercial fish buyers to obtain a Commercial Activity Permit in order to do business at Pillar Point Harbor, so as to comply with District Ordinance Code Sections 5.2.1.1 and 5.2.1.2. At that time, the Board also approved Commercial Activity Permit language for non-lessee commercial fish buyers that provides for payment of a \$250 permit fee plus payment for wholesale fish purchases of \$10.00 per ton gross scale weight for wetfish and \$0.01 per pound gross scale weight for finfish and shellfish unloaded at Johnson Pier in Pillar Point Harbor (see attachment).

ISSUE OF CONCERN

Ordinance Code Section 5.2.1.6 requires that "Commercial Activity Permits shall be heard by the Commission and acted upon within sixty (60) days." (See attachment.) This requirement means that all non-lessee commercial fish buyers will have to

42

apply for and obtain Commission approval for a Commercial Activity Permit. The Commission regularly meets on the first and third Wednesdays of each month. This institutional and time-based requirement will create (a) a major practical impediment to buyers' ability to obtain permits in a timely manner, (b) a delay in the District's ability to augment the revenue from this source, and (c) additional administrative work and cost to the District. A more streamlined and efficient process is needed to make this new District requirement work effectively.

PROPOSED ORDINANCE CODE AMENDMENT

A model solution exists and is in use by the District: filming permits. Typically, the District receives requests from parties who desire to do film work at a District harbor, whether commercial or otherwise, on just a few days' notice. The District previously authorized the General Manager to issue film permits directly, without further Board action, based on certain terms and conditions. A variation of this method is now recommended, but it will require amending the Ordinance Code to make an exception to the present provision of Code Section 5.2.1.6.

Staff recommends that Section 5.2.1.6 be amended as set forth in the attached Amendment. In summary, the amendment would enable the Commission by Resolution to authorize the General Manager to issue Commercial Activity Permits directly to wholesale commercial fish buyers who are not lessees or licensees of the District and who want to buy fish at Johnson Pier. These buyers would have to submit a permit application to the District, the terms and conditions of these permits would have been previously approved by the Commission by Resolution (see attachment), and the General Manager would need to issue such approved permits within thirty days of receipt of an application. All other terms and conditions of Section 5.2.1 *et seq* governing Commercial Activity Permits – General would remain in effect.

BENEFITS

This amendment would create two benefits: First, the process for obtaining a Permit would be reduced to thirty days maximum, from the present sixty days. Second, the Permit would be issued directly by the General Manager, thereby eliminating the additional step of Commission action and attendant time and administrative work.

SUMMARY: PERMIT NOTIFICATION AND APPLICATION PROCESS

Notification process: Non-lessee wholesale commercial fish buyers must be notified that they must apply for and obtain a Commercial Activity Permit to buy fish at Pillar Point Harbor. This will be done following adoption by the Commission of the ordinance code amendment, following the close of the public review and comment period. Notification of this requirement will be posted at all Pillar Point and other District offices and on the District's website. Additionally, notices will be given to lessees on Johnson Pier to hand to non-lessee buyers whose fish they unload.

Application process: These non-lessee buyers will then (1) obtain a Commercial Activity Permit application form from the District at the Pillar Point Harbor office or from the Harbor District Administration office by email, post, or in person. (2a) Completed forms will be submitted to either the Pillar Point Harbor office or the District Administration office for review by the General Manager. (2b) The Pillar Point Harbor office will scan and send applications received to Administration, and forward the hard copy to Administration as well. (3) Applicants will be notified of permit approval (or denial) within thirty days of receipt of completed applications and will receive their permits either directly from Administration or from the Pillar Point Harbor office, as most convenient. Every effort will be made to expedite application processing and permit issuance.

Once received, permits must be retained by the buyer recipient; these permit holders must be prepared to display their permits to District staff and fish unloaders on demand.

PUBLIC NOTICE REGARDING INTRODUCTION OF ORDINANCE CODE AMENDMENT

Following the recommended Commission action to introduce the code amendment, a public notice would be published pursuant to Harbors and Navigation Code Section 6070.2 (see attachment). This notice would state generally the nature of the proposed ordinance amendment, where and when it may be inspected, and would specify the date, not less than twenty days from the date of the notice's publication, on which the Commission would meet to adopt the ordinance amendment; and, that the ordinance amendment would become effective immediately upon adoption by the Commission, unless the Commission sets another effective date.

AMENDMENTS TO DISTRICT ORDINANCE CODE SECTION 5.2.1.6

Harbor District Ordinance Code Section 5.2.1.6 is hereby amended as follows:

1. Replace "5.2.1.6" with "5.2.1.6A".
2. Add a new section 5.2.1.6B as follows:

"5.2.1.6B. Commercial Activity Permits shall be heard by the Commission and acted upon within sixty (60) days, except that the Commission by Resolution authorize the General Manager to approve and issue Commercial Activity permits whose terms and conditions are attached to this Code section and incorporated by reference herein, to non-lessee wholesale commercial fish buyers."

3. Add a new section 5.2.1.6C as follows:

"5.2.1.6C. Commercial Activity Permits for non-lessee commercial fish buyers shall be obtained by submitting completed applications at either the Pillar Point Harbor office or District Administration office for review by the General Manager. Permits will be approved or denied by the General Manager within thirty (30) days of the date a complete application is submitted. If permits are granted they may be obtained at either the Pillar Point harbor office of District Administration office. If a permit is denied, the applicant may appeal to the Board of Commissioners by submitting a written appeal request to the General manager within ten (10) days of notification of denial. In such instance, the General Manager shall cause the appeal to be placed on the agenda of the next regularly-scheduled Commission meeting."

All other terms and conditions of Code Section 5.2.1.6 shall remain operative.

Notification of these Amendments shall be posted at all District offices and on the District's website. Notice sheets will also be given directly to each lessee on the Johnson Pier at Pillar Point Harbor for distribution to non-lessee fish buyers whose fish they unload.


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MEMORANDUM

April 12, 2012

TO: Board of Harbor Commissioners

FROM: Peter Grenell, General Manager 

SUBJECT: Commercial Activity Permits for Non-Lessee Fish Buyers at Pillar Point Harbor

RECOMMENDATION:

Authorize the General Manager to inform non-lessee fish buyers of the requirement to obtain a Commercial Activity Permit in order to do business at Pillar Point Harbor, and approve Commercial Activity Permit terms in addition to the standard \$250 permit fee to require payment to the District for wholesale fish purchases of at least \$10.00 per ton gross weight for wetfish and at least \$0.01 per pound gross weight for finfish and shellfish unloaded at the Pier at PPH.

BACKGROUND:

Wholesale commercial fish buyers who are not lessees of the Harbor District have been purchasing fish on the Johnson Pier at Pillar Point Harbor. The fish has been off-loaded from commercial fishing vessels at the Pier hoists by one or more lessees, who control the hoists, and taken by these non-lessee buyers. The District has received no revenue from these transactions. In contrast, the District's leases presently provide that the District receive a portion of the income from fish bought by the lessees.

The District's Ordinance Code, Section 5.2.1.2, states: "No person shall conduct or operate a business or service for hire or compensation within the boundaries of the District, or on or from lands owned by the District unless a permit is first obtained from the District in the manner prescribed by the established procedures of the District." If such transactions are to continue to be allowed, these buyers should be required to obtain a District Commercial Activity Permit or, alternatively, a License, that would provide for a reasonable share of revenue to accrue to the District.

Alternatively, Ordinance Code Section 5.1.3.1 Licensing Of District Property And Facilities – General, states: "The use of lands and facilities owned or operated by

36

the District and under jurisdiction of the Board [of Harbor Commissioners] may be licensed for such purpose or purposes as the Board may deem advisable.”

Use of a Commercial Activity Permit (CAP) appears preferable because it provides greater control by the District as all such Permits are valid for one year only and must be renewed annually. This mechanism also provides more flexibility to the buyers and the District as its limited duration does not tie either party into a longer term license agreement.

FISCAL IMPACT:

In addition to the standard \$250 permit fee, these non-lessee fish buyer CAPs should require payment to the District for wholesale fish purchases of at least \$10.00 per ton gross weight for wetfish and at least \$0.01 per pound gross weight for finfish and shellfish unloaded at the Pier at PPH.

This new revenue will help defray the cost of replacing the aging utility lines under the Johnson Pier that serve the pier’s users. This important project, for which cost estimates are in preparation now, will be budgeted for FY 2012-13.

CONCLUSION:

Commercial Activity Permits should be required of all non-lessee fish buyers active at Pillar Point, and the permits should provide for a wholesale fish buying fee to the District.

37

San Mateo County Harbor District
400 Oyster Point Blvd., Suite 300
South San Francisco, CA 94080
Phone: (650) 583-4400 Fax: (650) 583-4611

Commercial Activity Permit (Independent Non-Lessee Fish-Buyer)

Permit Number:

1. Commercial Activity Permittee

- 1.1. Name of Permittee: [independent non-lessee fish-buyer]
- 1.2. Contact Person:
- 1.3. Address of Permittee:
- 1.4. Phone Number:
- 1.5. Facsimile Number:
- 1.6. Email Address:

2. Commercial Activity Permit Description

- 2.1. This Commercial Activity Permit is issued only for the purpose of buying fish and shellfish unloaded from registered commercial fishing vessels at Johnson Pier at Pillar Point Harbor.

3. Commercial Activity Fee

- 3.1. Payment of the Permit Fee of two hundred fifty dollars (\$250.00) to the District is required before Permit is issued.
- 3.2. Permittee shall pay to the District \$10.00 per ton gross actual scale weight for each species of wetfish purchased and \$0.01 per pound gross actual scale weight for each species of finfish and shellfish purchased by Permittee and unloaded at Pillar Point Harbor.
- 3.3. Permittee shall pay to the District the required amount(s) as prescribed in section 3.2 above based upon fish unloading/landing tickets recorded at time of fish unloading on or before the first day of each and every successive month following the month in which the fish was bought and unloaded. The ticket shall specify: date of landing, date of purchase, the name of the vessel making delivery, and name of vessel operator.
- 3.4. Payments not paid by the due date shall bear interest at 10.00% per annum until paid.

78

4. Commercial Activity Terms and Conditions

4.1. Hours and Standard of Operation

- 4.1.1. Permittee shall operate during daylight hours only, but not later than 8:00 p.m. on weekends and holidays, without the advance written approval from the General Manager or designate.
- 4.1.2. Permittee shall clean up any debris, litter or other items generated from their business.
- 4.1.3. Permittee shall not sell food or beverages or other products at any time.

4.2 Permittee shall be required to obtain and/or comply with the following:

- 4.2.1 Permittee shall provide the District with a copy of the Fictitious Business License from the County of San Mateo Treasurer's Office (required in all unincorporated areas of the County of San Mateo) or a City of South San Francisco Business License (if business is located in South San Francisco) and Permit issued from the California State Board of Equalization, which entitles Permittee to buy or sell products. License shall be maintained in accordance with law and Permittee must be able to produce license when requested to do so by a representative of the District. Permit requirement only applies if applicable.
- 4.2.2 A Certificate of Insurance for the business activity described in Section 2.1 attesting to liability coverage consisting of a Comprehensive General Liability policy with a Broad Form Endorsement that provides coverage for bodily injury and property damage in the amount of \$1,000,000.00 per occurrence and \$2,000,000.00 per aggregate. Said policy shall be in favor of, and name applicant and District, its directors, officers, agents and employees as additionally insured and shall be maintained in full force and effect during the term of this permit. Said policy shall state by its terms and by an endorsement that said policy shall not be canceled until District shall have had at least thirty (30) days written notice of such cancellation.
- 4.2.3 Permittee shall comply with all applicable District's Ordinances and regulations as adopted.
- 4.2.4 Permittee must use reasonable care and may not unreasonably increase the burden on the District's facilities. Permittee may not interfere with other bona fide users of the facilities or the conduct of their business. Permittee shall comply with the Harbor Master's directions regarding access and parking on the Johnson Pier and loading of fish and shellfish.
- 4.2.5 The parties acknowledge that the District is obligated to control the volume and use of its facilities, particularly with respect to vehicular traffic, parking, vessel traffic and the use of berthing and other facilities. In that regard, the District reserves the right to make a finding that the availability of berthing and/or parking, and/or the public safety, is threatened due to Permittee or third-party use of the District's facilities

pursuant to this permit. In that event, the District may limit the use of the facilities by Permittee or third parties by providing a written thirty (30) day notice to the Permittee and to any known third-party users of said limitations.

- 4.2.6 Permittee, as a material part of the consideration to be rendered to the District under this Permit, waives all claims against the District for damages to all personal property in, on or about the District's facilities, and for injuries to persons in or about the District's facilities from any cause arising at any time. Permittee hereby agrees to defend, indemnify, and save harmless SMCHD, its governing board, commissions, officers, employees and agents, from and against any and all claims, suits, actions liability, loss, damage, expense, cost (including, without limitation, costs and fees of litigation) of every nature, kind or description, which may be brought against, or suffered or sustained by, SMCHD, its governing board, commissions, officers, employees or agents caused by, or alleged to have been caused by, the negligence, intentional tortuous act or omission, or willful misconduct of Permittee, its employees or agents in the performance of any services or work pursuant to this permit. The duty of the Permittee to indemnify and save harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code; provided, however, that nothing herein contained shall be construed to required Permittee to indemnify SMCHD, its governing board, commissions, officers, employees and agents against any responsibility or liability in contravention of Section 2782 of the California Civil Code.
- 4.2.7 Should either party to this agreement bring any legal action, dispute, or proceeding arising out of or relating to this permit, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually acceptable mediator. Neither party shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached neither party shall be deemed the prevailing party for purposes of settlement, and each party shall bear its own legal fees and costs.
- 4.2.8 The laws of the State of California shall govern this agreement and any suit or action initiated by either party shall be brought in the County of San Mateo, California. In the event of litigation between the parties hereto to enforce any provision of the agreement, the unsuccessful party will pay the reasonable attorney's fees, court costs, discovery costs and expenses of litigation of the successful party.
- 4.2.9 Permittee shall pay a fee pursuant to Section 1719 of the Civil Code for the State of California for each check that is returned to the District for lack of sufficient funds. A fee of twenty five dollars (\$25) shall be paid by Permittee for the first check passed to District on insufficient funds and thirty five dollars (\$35) for each subsequent check passed to District on insufficient funds.

5.0 Term of Permit

This Commercial Activity Permit is effective from January 1, 2012, and shall terminate on December 31, 2012, unless renewed. This Commercial Activity Permit becomes immediately null and void should any of the conditions specified in Section 4 above not be met, or should any required certificates expire or be revoked or suspended.

This Commercial Activity Permit may be revoked or suspended by the San Mateo County Harbor District at any time and without notice by the District for violation of any Terms or Conditions of the Commercial Activity Permit, or for violation of the Ordinances of the District.

PERMITTEE:

Signature

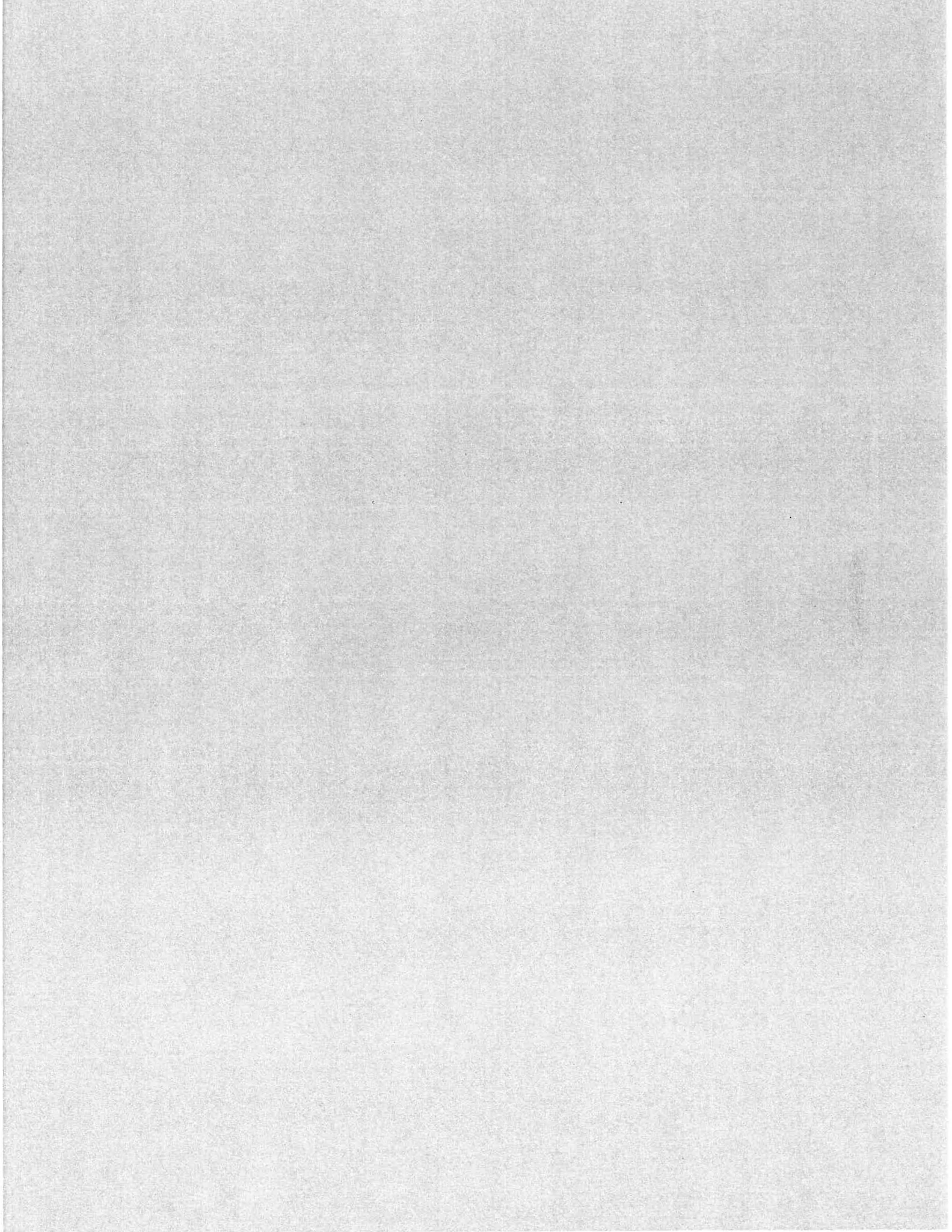
Date

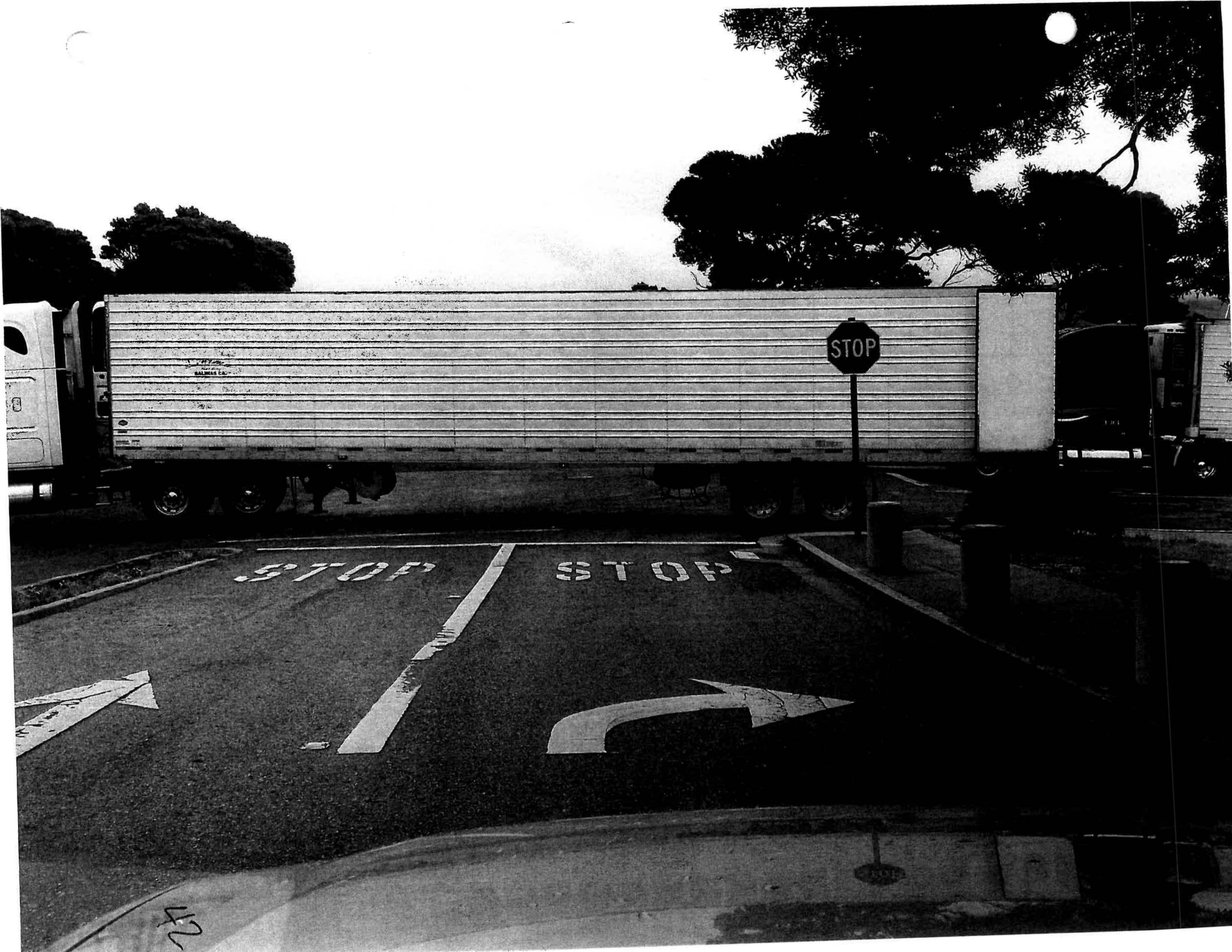
SAN MATEO COUNTY HARBOR DISTRICT

Peter Grenell
General Manager

Date

41





STOP

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