



CITY AND BOROUGH OF SITKA

A COAST GUARD CITY

MEMORANDUM

To: Mayor Eisenbeisz and Assembly Members

Thru: John Leach, Municipal Administrator

From: Amy Ainslie, Planning Director

Date: March 16, 2022

Subject: Class IIB Tidelands Permit Request

Background

The applicants for this request are the upland property owners at 1401 Halibut Point Road (John Hardwick and Ral West) and 1403 Halibut Point Road (Kris Pearson). The request originally arose in 2019, which is when Planning Commission and Ports and Harbors reviews took place. The applicants put the request on hold until early March of this year and would like to continue forward with Assembly consideration.

The dock will consist of a 12' x 200' pier, a 8' x 70' gangway, and two floats sized 12' x 40' and 12' x 100'. The tidelands in this area are shallow, requiring a significant distance to be spanned between shore and adequate mooring depths. Excluding ramps and gangways, the perimeter of the floats is 328 linear feet.

Sitka General Code (SGC) Chapter 18.16, Tideland Lease Procedure governs the procedures for leasing and permits for use of CBS owned tidelands. There are three classes for permits/leases under this Chapter – Class I is for tidelands permits that can be cancelled by CBS on 30 days' notice, Class II is for personal use docks and facilities immediately seaward of deeded lands, and Class III is for commercial docks and/or personal use docks that include the lease of space and facilities. The enclosure titled "Permit Classes and Approval" provides information on the different approval classes for tidelands and approval authority/process for each.

Requirements for Class IIB permits:

1. Submission of full horizontal and vertical dimension drawings of the dock facilities drawn to scale.
2. Submission of an approved corps of engineers permit.
3. Planning consideration of the request during at least one meeting, and meeting minutes provided to the Assembly.

4. An estimate from the Assessor of the value of the tidelands.

All of these requirements have been met and are included as enclosures for Assembly review. Additionally, a Resolution was passed by the Assembly in 1994 (Resolution 94-580) stating that within the breakwater, north of 913 Halibut Point Road, only upland owners may apply to use Municipal tidelands seaward of their property for placement of mooring buoys or construction of private docks.” Given this property’s location inside the breakwater, it was determined that Ports and Harbors review was appropriate. The Commission unanimously recommended approval of the request.

Analysis

1. **Classification as a Class IIB Facility**

Class IIB approvals are for large personal use docks (where the perimeter exceeds 300 linear feet). Per the zoning code, the proposed dock is a “personal use dock – perimeter of dock and float exceed 300 linear feet”. While it is shared between two parties, it does not cleanly rise to the level of being considered a “community personal use dock” wherein property owners in the area, not just upland property owners, would be allowed to use the dock. In this case, the dock is for the exclusive use of the upland property owners. This is also why the orientation of the dock in the tidelands sits between the two properties so that both upland properties can access it.

The standard terms for a Class IIB facility are an initial 10 year approval with two automatic five-year renewals that may be exercised at the applicant’s discretion.

Class III approvals are generally used for commercial use docks, docks owned/used by those other than the upland property owners (which would include community docks), and/or personal use docks that also include the lease of the space.

Importantly, the difference between a lease and permit is that a lease generally gives broader allowance for use within the lease area, whereas the permit only allows the construction and use of the dock as approved in the permit. In other words, a permit does not provide leasehold interest that is akin to ownership interest; it gives you permission to use CBS tidelands for a limited and specified use.

Planning staff felt this request fit within the definition of a Class IIB permit. The Assembly has the choice to require this request to follow the Class III procedures.

2. **Annual Permit Fee**

SGC 18.16.090(D) states that the annual permit fee for Class IIB facilities shall be two hundred dollars a year, adjusted every 5 years based on aggregate

inflation in the previous 5 year period. However, the annual permit fee can be higher than this amount only in the event the Assembly finds that higher permit fees are justified by the area of the tidelands that are involved.

The Assessor completed an evaluation of the tidelands, and at the 4.5% base lease rate, the annual lease price would be approximately \$2,068. However, this valuation included a large area in terms of square footage (drawings provided had a rough approximation and were not tight to just the square footage of tidelands occupied by the proposed dock).

Recognizing the uniqueness of this proposal given the size of development, use of the area limited by the shallowness of the tidelands, and permit approval only (not leasehold interest), the applicants would like to propose an annual permit fee of \$1500.00.

3. Additional Conditions

The applicants need to obtain a conditional use permit from the Planning Commission for a “personal use dock – perimeter of dock and float exceed 300 linear feet.” Staff would recommend adding a condition of approval to this permit (which the Assembly is empowered to do per SGC 18.16.090(E)) that the municipality shall not issue the Class IIB tidelands permit until the conditional use permit has been approved.

Fiscal Note

CBS would gain the annual permit fee plus applicable taxes, as well as any increase in property tax revenue resulting from the increased value to the subject properties resulting from dock development.

If the Assembly would like to charge a higher price for the annual permit fee above the \$200/year in code, a finding needs to be made. Suggested wording to make such a finding is provided.

Recommendation

Motion language is provided here for possible outcomes based on Assembly deliberation and decision.

Option 1. Approve the permit with staff recommended additional condition in 1a. The Assembly may also wish to address 1b.

1a. “I MOVE TO approve an exclusive transferable permit for a period of ten years for a Class IIB tidelands permit for development of a personal use dock seaward of 1401 Halibut Point Road and 1403 Halibut Point Road. A condition is placed on this approval that the applicants must receive approval for a conditional use permit for a personal use dock – perimeter of dock and float exceed 300 linear feet before the municipality will issue the Class IIB tidelands permit.”

1b. "I MOVE TO find that higher fees are justified by area of the tidelands that are involved. The annual permit fee shall be \$_____ adjusted every five years based on the aggregate rate of inflation for the previous five-year period."

Option 2. Require this request to follow the Class III procedures
"I MOVE that the request for use of tidelands for a personal use dock seaward of 1401 and 1403 Halibut Point Road follow the Class III approval procedures."

Option 3. Deny/postpone the request
"I MOVE TO deny/postpone the request for use of tidelands for a personal use dock seaward of 1401 and 1403 Halibut Point Road."

Encl: Permit Classes and Approval
Excerpt of Planning Commission Minutes 9.18.19
Assessor Evaluation (3.4.22)
Applicant Narrative and Dock Facilities Drawings
Approved USACE permit