



**HARBOUR AUTHORITY MEETING**  
**Thursday, March 30, 2023 @ 5:00 PM**  
**Ucluelet Community Centre,**  
**500 Matterson Drive, Ucluelet**

**AGENDA**

	Page
1. CALL TO ORDER	
2. ACKNOWLEDGEMENT OF FIRST NATIONS TERRITORY The Harbour Authority would like to acknowledge the Yuułuʔiłʔatḥ, on whose traditional territories the District of Ucluelet operates.	
3. NOTICE OF VIDEO RECORDING Audience members and delegates are advised that this proceeding is being video recorded and broadcast on YouTube and Zoom, which may store data on foreign servers.	
4. LATE ITEMS	
5. APPROVAL OF AGENDA	
6. ADOPTION OF MINUTES	
6.1. December 13, 2022, Special Harbour Authority Minutes <a href="#">2022-12-13 Special Harbour Authority</a>	3 - 4
7. UNFINISHED BUSINESS	
8. REPORTS	
8.1. Harbour Improvements <i>Director Maftai</i> <a href="#">RTHA - Harbour Improvements</a>	5 - 6
8.2. Sublease Barkley Sound Adventure Centre <i>Abby Fortune, Director of Recreation</i> <a href="#">RTHA - Sublease BSAC</a> <a href="#">Appendix A - BSAC Business Information</a> <a href="#">Appendix B - Draft DFO - SCH Sublease &amp; Schedules Outlined</a>	7 - 31
9. NOTICE OF MOTION	
10. INFORMATION ITEMS	
10.1. Harbour Manager Report - March 30, 2023 Update <i>Kevin Cortes, Harbour Manager</i> <a href="#">RTHA - Harbour Manager Report</a>	33 - 34
10.2. Harbour Authority Resolution Tracking - March 30, 2023	35

[Resolution Tracker - March 30, 2023](#)

11. QUESTION PERIOD
12. ADJOURNMENT

**DISTRICT OF UCLUELET**  
**MINUTES OF THE SPECIAL HARBOUR AUTHORITY MEETING**  
**HELD IN THE UCLUELET COMMUNITY CENTRE, 500 MATTERSON DRIVE**  
**Tuesday, December 13, 2022 at 4:00 PM**

Present:       **Chair:**       Chair McEwen  
                   **Directors:**   Directors Anderson (via Zoom), Hoar, Kennington, and Maftai  
                   **Staff:**        Duane Lawrence, Chief Administrative Officer  
                                   Abby Fortune, Director of Parks and Recreation  
                                   Joseph Rotenberg, Manager of Corporate Services  
                   **Contractor:**   Kevin Cortes, Harbour Manager

Regrets:

**1       CALL TO ORDER**

The meeting was called to order at 4:00 PM.

**1.1    ACKNOWLEDGEMENT OF FIRST NATIONS TERRITORY**

**The Harbour Authority acknowledged the Yuułu?if?ath, on whose traditional territories the Harbour Authority operates**

**1.2    NOTICE OF VIDEO RECORDING**

**Audience members and delegates were advised that the meeting was being recorded and broadcast on Zoom and YouTube, which may store data on foreign servers.**

**2       LATE ITEMS**

There were no late items.

**3       APPROVAL OF AGENDA**

**3.1    December 13, 2022, Special Harbour Authority Meeting.**

2022.2035.HA        *It was moved and seconded **THAT** the December 13, 2022, Special Harbour Authority Agenda be adopted as presented.*

CARRIED.

**4       ADOPTION OF MINUTES**

**4.1    September 6, 2022 Harbour Authority Regular Minutes**

2022.2036.HA        *It was moved and seconded **THAT** the September 6, 2022 Harbour Authority Minutes be adopted as presented.*

CARRIED.

**5       UNFINISHED BUSINESS**

There was no unfinished business.

## **6 REPORTS**

### **6.1 Harbour Manager Report - December 13, 2022** *Kevin Cortes, Harbour Manager (Contractor)*

The Harbour Manager presented this report.

### **6.2 Role and Function of the Harbour Authority (Verbal Report)** *Abby Fortune, Director of Parks and Recreation*

The Harbour Manager, Kevin Cortes, presented this report which outlined Harbour facilities and operations.

### **6.3 Harbour Authority Resolution Tracker**

There were no questions regarding the resolution tracker.

## **7 ADJOURNMENT**

The meeting was adjourned at 4:36 PM.

**CERTIFIED CORRECT:** Minutes of the Harbour Authority Meeting held on Tuesday, December 13, 2022 at 4:00 pm in the Ucluelet Community Centre, 500 Matterson Road, Ucluelet, BC.

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Duane Lawrence, Corporate Officer

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Marilyn McEwen, Chair



## REPORT TO HARBOUR AUTHORITY

Harbour Authority Meeting: March 30, 2023  
500 Matterson Drive, Ucluelet, BC V0R 3A0

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<b>FROM:</b>	DIRECTOR MAFTEI	<b>FILE NO:</b> 0540-20 AGENDA
<b>SUBJECT:</b>	HARBOUR IMPROVEMENTS	<b>REPORT NO:</b> 23- 46
<b>ATTACHMENT(S):</b>	N/A	

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### RECOMMENDATION(S):

THAT the Harbour Authority direct Staff to investigate and provide a report back to the Harbour Authority on the following topics:

1. Insulation of water lines to allow for year-round supply of water;
2. Installation of power at 52 Steps;
3. Prioritization of annual moorage users;
4. Dock space allocation prioritization for seasonal users and related fee structure;
5. Moorage/enforcement policies and priorities with respect to derelict vessels; and
6. Washroom, Laundry and Shower Facility upgrades and access options.

### BACKGROUND:

The list below summarizes a few key points I have brought up over the years with the Harbour Manager. The Harbour Manager does an amazing job and has explained that a lot of these issues are not easily resolved. That doesn't mean we shouldn't address them and try to come up with constructive solutions. These are several specific recommendations I would make that I would like the Harbour Authority to discuss and consider.

1. Insulate or reinforce water lines at Small Craft Harbour.

The Small Craft Harbour is supposed to be a year-round, 24/7 facility. The water lines are often turned off for days at a time to prevent freezing and they often split, causing significant leaks. Lines should either be suspended under the docks or insulated or reinforced so that harbour users can access fresh water whenever it is needed and so that we don't waste water every time the lines burst.

2. Install power at 52 Steps.

This is prime dock space that is underutilized because there is no access to power. Can DFO pay for the improvements and if not, can the DoU undertake this work?

3. Restructure reserved moorage policies to prioritize annual moorage.

People who buy annual moorage and use their boats frequently should be able to apply for a reserved spot. This is particularly true for larger vessels > 40' which cause congestion when they are rafted. First come-first serve is great in theory but it is not efficient in an overcrowded facility catering to multiple user groups.

4. Determine how dock space is allocated to prioritize users.

Seasonal sport fishing vessels take up a lot of space and use a disproportionate amount of resources. We should discuss and evaluate if they are being charged accordingly for what is a secondary (perhaps even tertiary) use of these facilities.

5. Develop/enforce stricter policies on derelict vessels or vessels in arrears on moorage.

It is frustrating that boats in arrears are taking up valuable dock space while other users are being crowded and/or rafted.

6. Upgrade washroom/shower/laundry facilities at the Small Craft Harbour.

The current laundry/washroom facilities are currently accessible 24/7 as a service to commercial fishers. This makes sense in principle but it results in abuse and misuse of the facilities to the point where they are significantly degraded. We should discuss an alternate system of access and maintenance. The Small Craft Harbour is 'the heart of Ucluelet' and serves as an entry point and destination for locals and visitors alike. We should strive to make these facilities reflect the best of what our community has to offer.

Respectfully submitted:                      Mark Maftei, Director



## REPORT TO HARBOUR AUTHORITY

Harbour Authority Meeting: March 30, 2023  
500 Matterson Drive, Ucluelet, BC V0R 3A0

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FROM: ABBY FORTUNE, DIRECTOR OF RECREATION FILE NO: 2380-20

SUBJECT: **SUBLEASE BARKLEY SOUND ADVENTURE CENTRE** REPORT NO: 23- 47

ATTACHMENT(S): APPENDIX A – BSAC BUSINESS INFORMATION  
APPENDIX B – DRAFT DFO – SCH SUBLEASE & SCHEDULES OUTLINED

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**RECOMMENDATION(S):**

**THAT** the Harbour Authority approve the Barkley Sound Adventure Centre Inc. to operate the Floathouse Patio & Grill and Adventure Centre within the Ucluelet Inner Boat Basin at 200 Hemlock Street Ucluelet, British Columbia.

**THAT** the Harbour Authority approve the sublease as presented in the March 30, 2023 report to the Harbour Authority between the District of Ucluelet and the Barkley Sound Adventure Centre Inc. for the operation of the Floathouse Restaurant and Adventure Centre in a sublease amount of \$15,445 for 2023 plus gst, excluding utilities, with an annual increase 5 % for the term of four years commencing January 4, 2023 through January 3, 2027 totaling \$66,569 plus gst.

**THAT** the Harbour Authority authorize staff to issue a letter to Department of Fisheries and Oceans - Small Craft Harbour, indicating the Harbour Authority approval of the Barkley Sound Adventure Centre Inc. business operations within the Ucluelet Inner Boat Basin and support the execution of a sublease between District of Ucluelet and the Barkley Sound Adventure Centre Inc.

**THAT** the Harbour Authority recommend to Council the execution of a sublease between the District Ucluelet and Barkley Sound Adventure Centre Inc. for the operation of the Floathouse Patio & Grill and Adventure Centre upon final sublease approval from the Department of Fisheries and Oceans Small Craft Harbour.

**BACKGROUND:**

Prior to the issuance of a sublease to the Barkley Sound Adventure Centre Inc. (BSAC) the Department of Fisheries – Small Craft Harbour (DFO-SCH) requires the Harbour Authority to review and approve in principle BSAC to operate in the harbour. The review process outlined by DFO-SCH requires the Harbour Authority to view the business proposal including their legal name, owner(s) name, Province of BC business registration information, an outline of what their business entails, what they will use the area for and what kind of provisions are required from the harbour authority (structures, water, electricity etc.). BSAC’s business information and operational details are attached to this report as **Appendix “A”**.

If approved, the Harbour Authority is required to submit a letter to DFO-SCH indicating that they have reviewed the proposal from BSAC and they support entering into a sublease with BSAC.





## Appendix A Business Information

Barkley Sound Adventure Centre Inc.  
Incorporation # is BC0679678  
operating as,  
Floathouse Patio & Grill

### Restaurant

- seating capacity is 75.
- hours of operation - 12 - 9pm wed through Sunday. usually for the months of April thru till end of September or October weather permitting.
- Full-service restaurant, alcohol is provided to Guests
- Food sales 80% - Liquor sales 20% on average,

### Permits /Licenses / Fees paid on a yearly basis

- Liquor License
- Health Permit
- Business License
- WCB - 15 to 20 employees every year
- Building and public liability insurance
- Marine Liability insurance

Note , training of serving liquor is done on an ongoing basis , all servers and owner have Serving it Right Certificates

Vehicle parking is required , it is estimated that the majority of our guests walk here during peak tourist. Season; 2 campgrounds, 6 motels, and many Air BNB are within a 10 minute walking distance .

### Moorage

Moorage is only available to friends. The boats are for their personal use .The only thing provide is a water hose to rinse boats of salt water .

### Provisions

BSAC pays for utilities. As stated above, the Floathouse operates as a Full-Service Restaurant. No other business is done on property.

### Services

Oil Bin is for used cooking oil.

Redux is the company that supplies the bin, and drains it every 2 months . 1-855-867-3389

The bin is 4 ft wide, 3ft deep , and 4 ft tall , situated behind cardboard bin . This bin is a standard receptacle, with lid for easy pouring, and keeping out rain (a cover is not needed )



## Appendix B

This Sublease made in duplicate as of this \_\_\_\_ day of \_\_\_\_\_ 2023

### B E T W E E N

**DISTRICT OF UCLUELET**, incorporated as a corporation without share capital under the *Canada Not-for-profit Corporations Act* (S.C. 2009, c. 23) having its head office at 200 Main Street, Ucluelet, in the Province of British Columbia, represented by Marilyn McEwen, duly authorized under the terms of a resolution of its board of directors dated \_\_\_\_\_, \_\_\_\_\_ a certified copy of which is attached as **SCHEDULE “F”** to this Sublease;

(the “Harbour Authority”)

### A N D

**BARKLEY SOUND ADVENTURE CENTRE INC.** incorporated in the Province of **British Columbia** carrying out at 200 Hemlock Street, Ucluelet, Province of British Columbia represented by Udo Lurch.

(the “Sublessee”)

The Harbour Authority and the Sublessee jointly referred to as the "Parties";

The Parties agree as follows:

### SECTION 1 DEFINITIONS

1. Unless otherwise defined herein the following words and expressions, wherever used in this Sublease, have the following meaning:

#### 1.1 “Contaminants”

Any substance or group of substance specified on the List of Toxic Substances in Schedule 1 of the *Canada Environmental Protection Act* in a quantity or concentration that exceed those set forth in regulations made under the *Canada Environmental Protection Act*.

#### 1.2 “Emergency”

A present or imminent event which can include but is not limited to; fire, drowning or serious injury, weather, earthquake, tsunami, serious crime, confined space incident, collision, sinking, bomb threat, demonstration and pollutant spill, which requires prompt coordinated action to protect the health, safety and welfare of people or to limit damage to property.

#### 1.3 “Expenses”

Expenditures, Expenses and costs of all kinds incurred by the Sublessee, including capital and non-capital expenditures.

#### 1.4 “Force Majeure”

An Act of God, extraordinary weather conditions (including hurricanes or ice), strikes or labour troubles, hostilities, war, restraint or seizure by any government or belligerent party,

riot or civil commotion, theft or pilferage, epidemic, quarantine, embargo, or any similar circumstances beyond the control of the signatories to this Sublease.

#### **1.5 “Harbour”**

The harbour listed in Schedule 1 to the *Fishing and Recreational Harbours Regulations*, SOR/78-767, as outlined in red in SCHEDULE “A”.

#### **1.6 “Head Lease”**

The agreement that the Harbour Authority (as Lessee) has signed with Her Majesty the Queen in Right of Canada (as Lessor), as represented by the Minister of Fisheries and Oceans Canada.

#### **1.7 “Improvements”**

Any building work, construction or modification of new or existing facilities, carried out or erected by the Sublessee on the Harbour Authority’s property or on the Subleased Area, listed or not in SCHEDULE “D”.

#### **1.8 “Maintenance and Repairs”**

Work normally carried out by the Sublessee at its own expense during the Term of this Sublease and as mentioned and described in SCHEDULE “C”.

#### **1.9 “Release”**

Includes, but is not limited to, any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal or dumping.

#### **1.10 “Sublease”**

Agreement which the Harbour Authority agrees to allow the Sublessee to occupy a defined area within the Harbour and certain facilities for a specific Term in exchange for some sort of consideration. In this document the sublease refers to the agreement and the attached Schedules, which are incorporated into and form a part of this agreement.

#### **1.11 “Subleased Area”**

The facilities and area leased by the Harbour Authority to the Sublessee under this Sublease (land and land covered by water) described in SCHEDULE “A” to this Sublease, and as outlined in SCHEDULE “A.1”.

#### **1.12 “Subleased Equipment”**

The equipment Subleased by the Harbour Authority to the Sublessee under this Sublease as described in SCHEDULE “B”.

#### **1.13 “Term”**

The Term of this Sublease is defined in Section 5 of this agreement.

## **SECTION 2** **INTERPRETATION**

**2.** Unless otherwise stated herein, the Parties agree that this Sublease shall be interpreted as follows:

#### **2.1** Number and Gender

In this Sublease, the singular shall include the plural and unless the context otherwise requires, a reference to one gender shall include reference to the other genders.

## 2.2 Heading and Captions

Headings and section numbers are inserted for convenience of reference only and are not considered when interpreting this Sublease.

## 2.3 Entire Agreement

This Sublease constitutes the entire agreement between the Parties and supersedes all negotiations, communications, verbal representations and previous agreements between the Parties.

## 2.4 Invalidity of Provisions

The invalidity or unenforceability of any provisions of this Sublease, or any covenant in this Sublease, shall not affect the validity or enforceability of any other provision or covenant in this Sublease. Any invalid provision or covenant is severable.

## 2.5 Applicable Law

This Sublease shall be interpreted and enforced according to the laws of the Province of British Columbia and the Federal laws of Canada.

## 2.6 Time of the Essence

Time is of the essence of this Sublease and of every part of it, except as is otherwise provided in the Sublease, and is an essential condition of it.

### **SECTION 3**

#### **USE OF SUBLEASED AREA AND THE SUBLEASED EQUIPMENT**

3. The Sublessee is permitted to use and occupy the Subleased Area and the Sublease Equipment for the sole purpose of maintaining and operating a 80 seat restaurant/catering facility along with a maximum of three charter vessels/private moorage operations a caretakers facility, office, and/or retail store for the following purpose(s): of providing seasonal restaurant services in a public commercial fishing harbour.

3.1 The Sublessee shall not modify the use, the description and the location of the Subleased Area, the Subleased Equipment or the Improvements without the prior written consent of the Harbour Authority and Fisheries and Oceans Canada.

### **SECTION 4**

#### **PURPOSE OF THE SUBLEASE**

4. The Harbour Authority hereby Subleases to the Sublessee the Subleased Area and the Subleased Equipment.

### **SECTION 5**

#### **TERM OF SUBLEASE**

5. This Sublease is for a Term of four (4) years, beginning on the fourth (4) of January 2022 and ending on third (3) of January 2027. (If there is less than 5 years remaining to the Term of the Head Lease, then it should only be for that period).

5.1 The signing of the Sublease is subject to the consent of Fisheries and Oceans Canada.

**5.2** If, during this five (5) year Term, or remainder of, the Head Lease is not renewed, the Sublease is automatically terminated. The Harbour Authority has the obligation to inform the Sublessee if this occurs.

**5.3.** Conditional on the Head Lease being renewed and in force for the period of this renewal, this Sublease may be renewed at the Sublessee and Harbour Authority's option for another Term of up to five (5) years plus two (2) additional five (5) year terms but shall not exceed the terms of the current Head Lease. The Sublessee must give written notice of its desire to renew at least ninety (90) days prior to the expiration of this Sublease. The Harbour Authority has the obligation to inform the Sublessee if the Head Lease will not be in force during the period of the requested renewal.

Overholding

**5.4**

If the Sublessee continues to occupy the Leased Area and use the Leased Equipment and the Improvements beyond the Head Lease maximum of four (4) five (5) year consecutive terms and the Harbour Authority accepts Rent, then the following will apply:

- (1) The tenancy created shall be a tenancy from month to month rather than a tenancy from year to year; and
- (2) The terms, covenants and conditions of this Sublease will apply to the tenancy at will so far as they are applicable.

**5.5** The Sublessee shall give the Harbour Authority or the Harbour Authority the Sublessee written notice of non-renewal at least six (6) months before the expiration of the final Term.

**5.6** The right of renewal is subject to the rent being fully paid and the Sublessee having fully discharged its obligation under this Sublease. Renewal is also dependant on the consent of Fisheries and Oceans Canada.

## **SECTION 6** **RENT**

**6.** The rent payable by the Sublessee during the Term of this Sublease, unto the District of Ucluelet Harbour Authority, in lawful money of Canada, in the amount of \$15,445 plus gst, per year (January 4, 2023 – January 3, 2027), the "Term".

**6.1** Rent will be increased by 5% or as per the fair and equitable pricing for each subsequent year without any abatement or deduction.

**6.2** The rent is due payable on the fourth (4) day of January 2023

## **SECTION 7** **OBLIGATION OF THE SUBLESSEE**

**7.** The Sublessee's obligations are as follows:

**7.1** Operations Costs (Optional if not negotiated in price of rent)

To pay the utility consumptions costs including but not limited to the following: water, electricity, internet, garbage, recycling and any used oils in connection with the rental of garbage containers.

Pay the operational costs attributable to the use of the Subleased Area, the Subleased Equipment and all Improvements as listed in SCHEDULES "B", "C" and "D".

## **7.2 Taxes and Fees**

Pay all costs, taxes, assessments, rates, and charges applicable and imposed by the Government of Canada, Canadian agencies and any governmental Canadian authority, the Government of British Columbia, provincial agencies and any governmental provincial authority and the Municipality of (**District of Ucluelet**) during the Term of this Sublease related to the Subleased Area, the Subleased Equipment, and all Improvements and the Sublessee's use thereof.

## **7.3 Maintenance & Repairs of the Subleased Area and the Subleased Equipment**

Carry out, at its own expense, all Maintenance & Repairs regarding the Subleased Area, the Subleased Equipment and all Improvements in which the Sublessee is responsible for as outlined in SCHEDULE "C" & "D". Inform the Harbour Authority, within thirty (30) days of becoming necessary, any and all Maintenance & Repairs in which the Harbour Authority is responsible for regarding the Subleased Area, the Subleased Equipment and all Improvements as described in SCHEDULE "C" & "D".

Not permit anyone to damage or cause harm to the Subleased Area or to the Subleased Equipment, or any portion thereof.

Ensure, at its expense, that the Subleased Area, the Subleased Equipment and all Improvements are always maintained and in good repair and shall make all Maintenance & Repairs on the damaged portions of the Subleased Area, the Subleased Equipment and all Improvements as described in SCHEDULE "C" & "D".

## **7.4 General Liability Insurance**

Obtain General Liability Insurance and maintain it in force throughout the duration of each Term of the Sublease, including any and all renewals. The Harbour Authority as well as Fisheries and Oceans Canada must be named as an additional insured party on any and all such policies.

Deliver a copy to the Harbour Authority as required of adequate insurance that is satisfactory to the Harbour Authority.

Submit (thirty (30) days) advance written notice from the Insurer prior to any termination, alteration and or renewal of such policies. A Sublease without insurance should be a cause for immediate termination of the Sublease.

## **7.5 Insurance Coverage –Improvements Works and Maintenance & Repairs**

Require general contractors, subcontractors or tradesmen retained by the Sublessee to carry out work for all Improvements or Maintenance & Repairs, in the Subleased Area, to the Subleased Equipment or any Improvements, to provide, prior to commencing any work or repair, evidence of adequate insurance coverage for the work to be undertaken.

## **7.6 Cleanliness Subleased Area**

Keep at all times the Subleased Area and the Subleased Equipment, at its expense, clean and tidy and in particular, promptly remove all litter and garbage from the Subleased Area, the Subleased Equipment and all Improvements.

## **7.7 Emergency Response**

Take necessary precautions to prevent emergencies. The Sublessee's shall have and apply emergency procedures and take appropriate actions in case of an emergency.

## **7.8 Protection of Subleased Area and Subleased Equipment**

Take all appropriate measures to ensure the protection of the Subleased Area, Subleased Equipment and all Improvements.

## **7.9 Unsafe Conditions**

Upon becoming aware, immediately inform the Harbour Authority of any unsafe condition occurring in the Subleased Area, Subleased Equipment and any Improvements and immediately erect barriers or take other safety measures as may be necessary whenever an unsafe condition shall occur on the Subleased Area.

## **7.10 Notification of Potential Lawsuits or Court Activity**

Immediately notify the Harbour Authority should any aspect of the Subleased Area, Subleased Equipment and all Improvements.

## **7.11 Sublessee Improvements**

Present all contemplated Improvements by the Sublessee to the Harbour Authority and receive written approval from the Harbour Authority and Fisheries and Oceans Canada prior to commencement of such improvements.

## **SECTION 8** **OBLIGATIONS OF THE HARBOUR AUTHORITY**

**8.** The Harbour Authority's responsibility for repairs on the Subleased Area and the Subleased Equipment pursuant to Section 7.

### **8.1 Repairs to the Subleased Area and Subleased Equipment**

Keep the Subleased Area and the Subleased Equipment in good repair, except for Improvements owned by the Sublessee outlined in SCHEDULE "D", and associated Maintenance and Repairs outlined in SCHEDULE "C". The Harbour Authority shall make the reasonably necessary repairs resulting from the normal wear and tear and/or any Act of God of the Subleased Area and the Subleased Equipment. This responsibility comes with the condition that the Harbour Authority shall only be responsible for making those repairs which it, in its absolute discretion, deems necessary and at a time when it has funds available for such repairs.

For this purpose, the Sublessor and its members, employees, officials, mandataries and/or agents shall have access to the Subleased Area and to the area where the Subleased Equipment is located in order to carry out repairs, and this shall not constitute a total or partial eviction of the Sublessee. The Harbour Authority shall not be liable for any damages to the Sublessee's goods or any Improvements.

## **SECTION 9** **IMPROVEMENTS**

**9.1** The Sublessee may, at its own expense, build or install Improvements on or in the Subleased Area only upon receipt of prior written approval from the Harbour Authority and Fisheries and Oceans Canada. The Sublessee may also make Improvements to the Subleased Equipment, upon prior written approval from the Harbour Authority and Fisheries and Oceans Canada.

**9.2** To this effect, the Sublessee shall provide, at its own expense, prior to the commencement of any work, a written description and associated documents of the project describing the contemplated Improvements; in particular, in the case of Improvements relating to the Subleased Area, at the request of the Harbour Authority, the Sublessee shall provide a survey or other acceptable documents describing and showing said Improvements to be built on or in the Subleased Area or relating to the Subleased Equipment.



**9.3** The Parties agree that the Sublessee shall be the owner of all Improvements it has made to the Subleased Area or relating to the Subleased Equipment, given that they are not permanent in nature.

**9.4** The Sublessee will be liable for all risks and expenses, including without limiting the generality of the foregoing, all construction and modification costs, required training, insurance, permits and inspections relating to all Improvements made by Sublessee on or in the Subleased Area and the Subleased Equipment.

**9.5** The Sublessee ensures at its expense, that all Improvements owned by it on or in the Subleased Area and the Subleased Equipment are maintained in good condition and in reasonably good repair, are well maintained, safe and comply with applicable construction and engineering standards, and therefore shall carry out all the necessary work, and pay all the necessary costs to that effect. The Sublessee shall also obtain any necessary permits, or other applicable approvals in respect of the Improvements or works undertaken.

**9.6** In the absence of an agreement in writing to the contrary between the Parties, upon the expiration or termination of this Sublease, the Sublessee shall, at its own expense, remove all Improvements made by the Sublessee to the Subleased Area, or to the Subleased Equipment during the Term of this Sublease and restore them to their initial condition. In the event that the Sublessee fails to remove said Improvements within thirty (30) days of a written notice from the Harbour Authority to the Sublessee to that effect, the Harbour Authority shall be entitled to exercise the following options:

- a) Remove and dispose of all Improvements located in, or on, the Subleased Area or those made to the Subleased Equipment and restore them to their initial condition at the expense of the Sublessee;
- b) Take possession of all Improvements, and thus obtain all relevant property rights without being liable to paying any indemnity whatsoever to the Sublessee.

**9.7** The Parties acknowledge that all Improvements made by the Sublessee on the Subleased Area and Subleased Equipment prior to the expiration or termination of this Sublease and approved by the Harbour Authority are described in SCHEDULE "D" or any amendments to SCHEDULE "D", which has been signed by the Parties.

## **SECTION 10** **ACCOUNTING RECORDS AND AUDIT**

**10.** The Sublessee is an independent body from the Harbour Authority and therefore the Harbour Authority holds no accounting or audit responsibilities.

## **SECTION 11** **ENVIRONMENTAL PROTECTION**

**11.1** The Sublessee agrees to abide by, and comply with, all federal environmental legislation, including the relevant provisions of the *Canadian Environmental Protection Act*, applicable to the Subleased Area, as well as with the regulations and guidelines made and established hereunder, and all applicable provincial, regional district and municipal environmental legislations, regulations, rules or guidelines applicable to the Subleased Area and the Subleased Equipment.

**11.2** The Harbour Authority shall share with Sublessee their environmental best management practices for the Subleased Area and Subleased Equipment.

**11.3** The Sublessee shall follow the environmental best management practices and respect the Environmental Management Plan (EMP) for the Subleased Area and Subleased Equipment to the satisfaction of the Harbour Authority.

**11.4** The Sublessee agrees to inform the Lessor immediately upon becoming aware of the Release of Contaminants on or in of the Subleased Area, Subleased Equipment or Improvements and follow the EMP. Once the Sublessee has become aware of a Release of Contaminants the Sublessee shall collaborate with the Harbour Authority and any government entities to help in efforts to determine the source or cause of the Release of Contaminants.

**11.5** The Sublessee agrees to remediate, at its expense, and in accordance with applicable federal, provincial and regional district standards and municipal bylaws, any part of all the Subleased Area and the Subleased Equipment contaminated by the Release of Contaminants arising from the acts of the Sublessee during the Term of this Sublease, immediately upon becoming aware of such Release of Contaminants.

**11.6** The Sublessee shall construct all Improvements in such a manner that surface drainage waters shall discharge in a manner acceptable to the Harbour Authority.

**11.7** The Harbour Authority hereby acknowledges that the Sublessee is not responsible for any environmental contamination of the Subleased Area and Subleased Equipment that existed prior to the commencement of this Sublease.

**11.8** The Harbour Authority shall ensure that the use of the Subleased Area and of the Subleased Equipment is compatible with their environmental condition.

## **SECTION 12** **HARBOUR AUTHORITY ACCESS**

**12.** The Harbour Authority, its members, employees, officials, mandataries and/or agents shall have a right of access to the Subleased Area or any part of it, to verify the condition of the Subleased Area, Subleased Equipment and all Improvements. Such right of access shall be exercised reasonably.

## **SECTION 13** **ASSIGNMENT – SUBLETTING**

**13.** The Sublessee shall not assign any of its rights and obligations under this Sublease or sublet the whole or any portion of the Subleased Area, Subleased Equipment or grant any licence, privilege, easement or other right in any manner affecting the Subleased area and Subleased equipment without prior written consent of the Harbour Authority and Fisheries and Oceans Canada upon such terms and conditions as may be stipulated by the Harbour Authority and Fisheries and Oceans Canada.

## **SECTION 14** **MORTGAGING**

**14.** The Sublessee hereby agrees that it shall not mortgage any part of the Subleased Area or Subleased Equipment.

## **SECTION 15** **COMPLIANCE WITH LAWS AND REGULATIONS**

**15.** The Sublessee agrees to comply with all applicable federal, provincial and regional district ~~territorial~~ laws, regulations and rules and all municipal bylaws applicable to this Sublease, including all rules, procedures and policies or regulations set out by the Harbour Authority.

## **SECTION 16** **DISTURBANCES OR NUISANCE**

16. The Sublessee shall use best efforts to not cause or permit any act that constitutes or may constitute a disturbance, or nuisance whatsoever, detrimental or likely detrimental to the enjoyment of the Subleased Area, Subleased Equipment or Improvements or any other affected person.

## **SECTION 17** **INDEMNIFICATION**

17. During the Term of this Sublease, the Sublessee shall indemnify and hold harmless Fisheries and Oceans Canada, the Harbour Authority, its members, employees, officials, mandataries and/or agents from and against any and all claims, penalties, actions of any nature whatsoever arising from the actions of the Sublessee, its members, employees, officials, mandataries and/or agents or any other person authorized by the Sublessee to use the Subleased Area and to use the Subleased Equipment having harmed any person, including the Harbour Authority, its members, employees, officials, mandataries and/or agents, or harmed any property, due to a fault, negligence or omission on the part of the Sublessee, its members, employees, officials, mandataries and/or agents or any other person authorized by the Sublessee to use the Subleased Area, the Subleased Equipment or the Improvements.

17.1 The Sublessee shall defend the Harbour Authority, its members, employees, officials, mandataries and/or agents, in any proceedings against them arising from this Sublease, from the exercise of rights arising thereunder, or from the occupation, improvements, construction, modification or demolition of, or repairs made to, the Subleased Area or from the use of the Subleased Equipment. This obligation shall survive the expiration or termination of this Sublease or the expiration of the last renewal term thereof, for any cause or event related to any action on the part of the Sublessee, its members, employees, officials, mandataries and/or agents or of any person authorized by the Sublessee to use the Subleased Area and the Subleased Equipment, having taken place prior to such expiration or the renewal.

17.2 The Sublessee shall not submit any claim against the Harbour Authority in relation to losses, damages or prejudice of any nature whatsoever, caused in any manner whatsoever, in connection with this Sublease, sustained by any person who shall be present on the premises or by any property that shall have been added thereto or placed thereon, unless said losses or damages shall arise from the negligence of an employee, a government official, or an agent of the Harbour Authority in the course of his duties or in the course of his employment.

## **SECTION 18** **DISPUTE RESOLUTION**

18. In the event of any dispute, conflict, claim or controversy (hereinafter referred to as "Dispute") relating to this Sublease, the Parties shall use their best efforts to settle any such Dispute by negotiations or mediation. If the Parties fail to resolve the Dispute within a period of thirty (30) days or such greater period as may be mutually agreed, then either Party may refer the Dispute to arbitration in accordance with the *Commercial Arbitration Act*. The Parties agree to have arbitration hearings conducted at Ucluelet, British Columbia.

## **SECTION 19** **TERMINATION**

19.1 This Sublease may be terminated at any time by the Harbour Authority, upon prior written notice of ninety (90) days, signed by the Harbour Authority and delivered to the Sublessee or to one of its representatives, or sent by registered mail to the address given in Section 21. The Harbour Authority shall not be liable to the Sublessee, its members, employees, officials, mandataries and/or agents and users for any damages or losses incurred by the termination of the Sublease.

**19.2** This Sublease may be terminated at any time by the Sublessee, upon prior written notice of ninety (90) days, signed by it and delivered to the Harbour Authority or to one of its representatives, or sent by registered mail.

## SECTION 20 DEFAULTS

**20.** In the event that, during the Term of this Sublease,

- 1) The Sublessee fails to pay any sum due under the section entitled **RENT**, or any other sum due under this Sublease within sixty (60) days of the due date for payment;
- 2) The Sublessee fails to remedy any failure to fulfill obligations, provided herein within thirty (30) days or within a reasonable period of time as may be appropriate according to the nature of the failure indicated in the written notice of the Harbour Authority sent to the Sublessee;
- 3) The Sublessee uses or permits anyone to use the Subleased Area or the Subleased Equipment or the Improvements for purposes other than activities that can be reasonably associated with those of a harbour, including economic development activities, without the written consent of the Harbour Authority;
- 4) The Sublessee becomes insolvent or avails itself of any law relating to insolvency, or is subject to proceedings under such law;
- 5) Measures are taken seeking the liquidation or dissolution of the Sublessee;
- 6) A receiver, trustee, guardian, or any other similar official is appointed with respect to the assets located on the Subleased Area, at the business place of the Sublessee or at the place of the Sublessee itself; or
- 7) The Sublessee has made false declarations to the Harbour Authority in connection with this Sublease;

the Sublessee shall then be immediately deemed to be in default, and without notice to the Sublessee, the Harbour Authority shall be entitled, in its sole discretion, to exercise the following options, which shall be cumulative in nature, in the following order:

- a) The Harbour Authority shall be able to take measures to rectify or to attempt to rectify, at the expense of the Sublessee, any default on the part of the Sublessee under this Sublease and without liability to the Harbour Authority for any damage caused to the Sublessee. The Harbour Authority shall have access to the Subleased Area and to the Subleased Equipment for this purpose;
- b) The Harbour Authority shall be entitled to rescind this Sublease, upon written notice to the Sublessee to that effect; without liability to the Sublessee for any damage caused thereby to the Sublessee, its employees, members or users; in such case, the Sublessee shall no longer have the right to remedy the default(s) in question;

irrespective of the option exercised by the Harbour Authority, it shall be entitled to recover, at any time, from the Sublessee, all damages the Harbour Authority shall have suffered as well as all Expenses incurred as a result of any default.

## SECTION 21 NOTICES

**21.** Any notice given pursuant to this Sublease shall be in writing and delivered personally, by courier, registered mail, e-mail or by telecopy and, unless notice to the contrary is given, shall be addressed as follows:

**21.1** To the Harbour Authority:

District of Ucluelet  
 PO Box 999, 200 Main Street  
 Ucluelet, BC V0R 3A0  
 250-726-7744  
[info@ucluelet.ca](mailto:info@ucluelet.ca)  
 Atten: Abby Fortune Dir of Recreation

**21.2** To the Sublessee:

Barkley Sound Adventure Centre Inc.  
 PO Box 1339, 200 Hemlock Street  
 Ucluelet, BC V0R 3A0  
 250-726-2411  
 Udolerch2003@yahoo.ca  
 Atten: Udo Lerch

**21.3** A notice shall be deemed to have been received when the postal receipt is acknowledged by the Party to whom it shall have been sent, if sent by registered mail, and on the following business day if sent by telecopy, e-mail or courier or delivered in person during business hours or the next day (if sent after working hours).

**21.4** Either the Harbour Authority or the Sublessee may change its address by giving a notice of change to the other Party.

## **SECTION 22** **GENERAL PROVISIONS**

**22.1.** Members of Parliament

No member of the House of Commons shall hold any interest in this Sublease or receive any benefit there from.

**22.2.** Public Office

No former Public Office Holder not in compliance with the post-employment provisions of the Federal *Conflict of Interest and Post-Employment Code for Public Office Holders* shall derive any direct benefit from this Sublease.

**22.3** Survival of Harbour Authority's Rights and Sublessee's Obligations

The Harbour Authority and Sublessee's rights and obligations under Section 12 and 20 shall survive the expiration or termination of this Sublease.

**22.4** Amendments to the Sublease

No amendment to this Sublease will bind the Harbour Authority or the Sublessee unless in writing and signed by both Parties.

**22.5** Registration

In the event that this Sublease shall be registered in the appropriate land registry office, the Sublessee shall pay all the applicable costs, as well as the costs of copies for the Harbour Authority. The Sublessee will also be responsible to cover the cost to unregister this Sublease upon termination.

**22.6** Arrears

Where an amount is owing to the Harbour Authority by the Sublessee, interest calculated and compounded monthly at the prime rate plus three percent (3%) shall be payable on that amount and shall accrue during the period beginning on the due date and ending on the day before the day on which payment is received by the Harbour Authority or calculated by any other method currently in force under the *Interest and Administrative Charges Regulations* (SOR/96-188).

#### **22.7 Waiver of Right**

No waiver, release, or amendment relating to any terms or obligation of this Sublease by the Harbour Authority shall be effective unless it is made in writing and signed by both Parties. The failure of a party to require the performance of an undertaking, obligation or Term of this Sublease, or to exercise any rights granted hereunder, shall not be construed as a waiver thereof.

#### **22.8 Force Majeure**

Neither the Harbour Authority nor the Sublessee shall be deemed to be in default of any obligation provided for in this Sublease if such failure shall result from Force Majeure. Any applicable deadline for performing the obligation shall be extended accordingly.

#### **22.9 Successors and Assigns**

This Sublease shall insure to the benefit of the Parties and of their heirs and successors.

#### **22.10 Title Defect**

The Sublessee releases the Harbour Authority from all liability respecting any defect in title. It agrees that it shall have no recourse against the Harbour Authority if the Harbour Authority's title to the Subleased Area is defective or if this Sublease proves ineffective because of any defect in the Harbour Authority's title.

#### **22.11 Counterparts; Electronic Execution**

The Parties agree to use technological processes to sign this agreement. The Parties further acknowledge that by signing and sending this agreement electronically, they are bound by the terms of the agreement, and acknowledge that it is enforceable against them, with the same legal and contractual obligations as if the Parties had signed this agreement by hand on a paper version.

#### **22.12 Independent Legal Advice**

The Sublessee hereby certifies that it has had the benefit of independent legal advice or has had the opportunity to seek independent legal advice.

IN WITNESS WHEREOF Parties have signed this Sublease, in duplicate as follows:

District of Ucluelet Harbour Authority, by its representative, at Ucluelet, province of British Columbia, this \_\_\_ day of \_\_\_\_\_ two thousand and twenty-three (2023)

SIGNED SEALED AND  
DELIVERED

Ucluelet Harbour Authority

\_\_\_\_\_  
Witness

per: \_\_\_\_\_

\_\_\_\_\_ per: \_\_\_\_\_  
Witness

Barkley Sound Adventure Centre Inc., by its representative, at Ucluelet, Province of British Columbia, this \_\_\_\_ day of \_\_\_\_\_ two thousand twenty-three (2023).

SIGNED, SEALED AND DELIVERED (Insert name of Sublessee)

\_\_\_\_\_ per: \_\_\_\_\_  
Witness

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SCHEDULE "A"

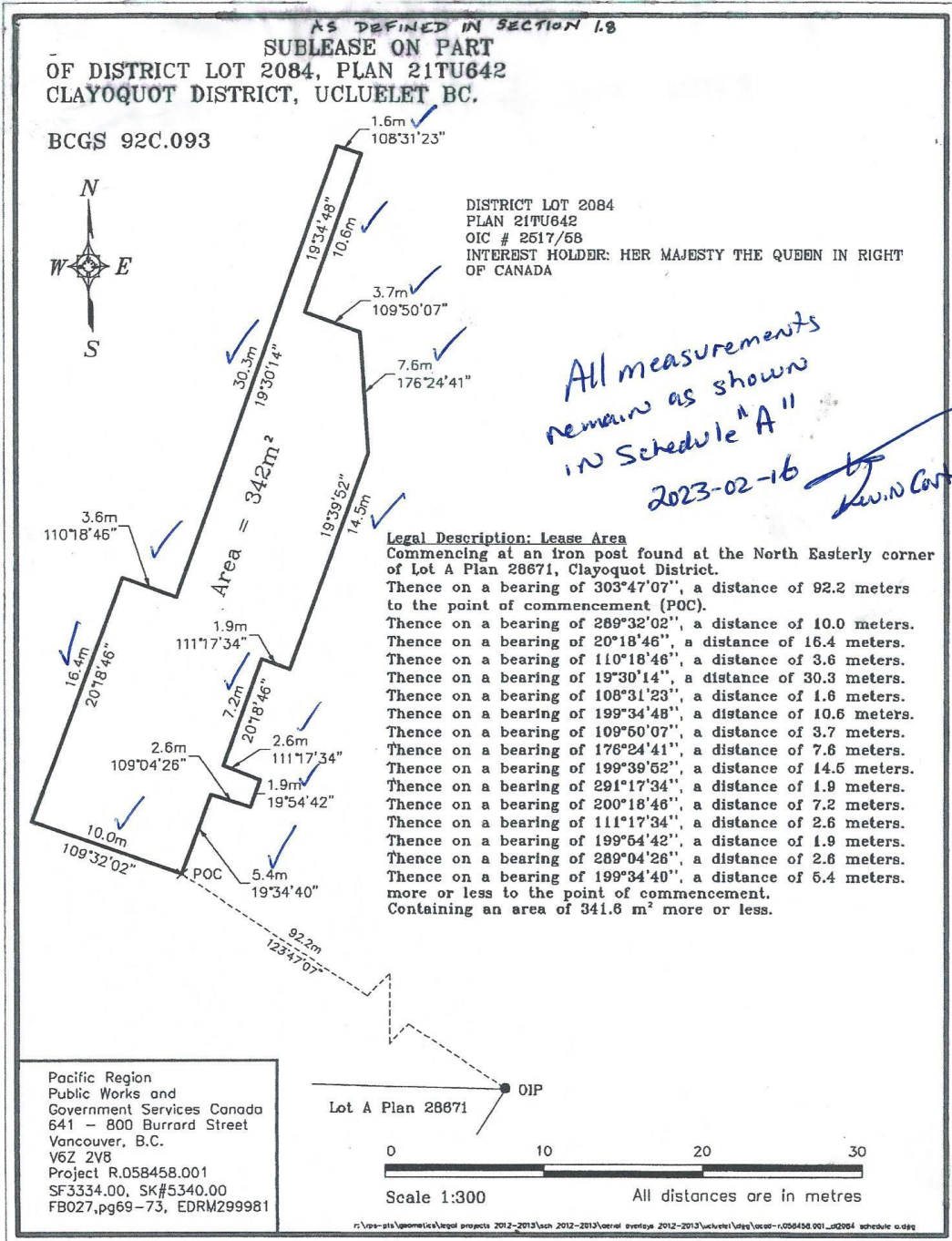


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SCHEDULE "A.1"

SCHEDULE "A"



**SCHEDULE "B"**

**DESCRIPTION OF SUBLEASED EQUIPMENT**

N/A

**SCHEDULE “C”**

**DESCRIPTION OF MAINTENANCE AND REPAIRS**

<b>No.</b>	<b>Facility</b>	<b>Responsibility</b>	
1	Channels	Keep area free of debris	UHA
2	Basins	Day-to-day management to keep moorage basin clear and open	UHA
3	Breakwater	Maintain free of logs and debris	UHA
4a	Wharfs	Minor maintenance including refastening/repairing any rotting or otherwise damaged planking and handrails	BSAC
4b	Wharfs	Any areas of confusion regarding what constitutes minor maintenance should be addressed to the SCHB	UHA
5	Launching Facilities	N/A	
6	Shore Protection	N/A	
7	Buoy	N/A	
8	Float	Minor maintenance of the floats including refastening/repairing and rotting, missing or otherwise damaged planking, bull rails, handrails and pile rub boards. In locations where excessive pile wear occurs, rubber tires are to be maintained in pile wells. Water lines are to be bided During freezing conditions.	BSAC
9	Service Area	N/A	
10	Building	Replace any glass, trim and hardware, perform any painting and repair any leaks or damaged material of structure as required within budget guidelines.	BSAC
11	Armour Units	N/A	
12	Anchor	N/A	
13	Gangway	Minor maintenance of the gangways. Minor maintenance includes inspection and lubrication of pins, and ensuring that the pins remain seated in sleeves. Any larger problems with the gangways should be reported to the SCHB.	BSAS owned and maintained w/o SCH responsibility
14	Deck	Minor maintenance to the deck includes the refastening/repair of any damaged deck materials and gangway tracks. Major problems with rotting or wearing of the structural components of the deck should be reported to SCHB.	BSAS
15	Fender	N/A	
16	Mooring Device	N/A	
17	Ladder	N/A	
18	Wheel Guard	Inspection and minor maintenance of the wheel guard. This includes removing rust or any other impediments from the track and lubrication of the wheels. Regular inspection of the guard is required to ensure that the gangway continues to operate smoothly. Any problem which requires replacement should be brought to the attention of the SCHB.	BSAS owned and maintained w/o SCH responsibility

**SCHEDULE "D"****SUBLESSEE'S IMPROVEMENTS**

<b>No.</b>	<b>IMPROVEMENTS</b>	<b>DESCRIPTION</b>
1	Dock repair	Float
2		
4		

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**SCHEDULE "E"**  
**N/A**

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**SCHEDULE "F"**

**HARBOUR AUTHORITY RESOLUTION**

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**SCHEDULE "G"**

**SUBLESSEE RESOLUTION**

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## REPORT TO HARBOUR AUTHORITY

Harbour Authority Meeting: MARCH 30, 2023

500 Matterson Drive, Ucluelet, BC V0R 3A0

**FROM:** KEVIN CORTES, HARBOUR MANAGER

**FILE NO:** 0540-20 AGENDA

**SUBJECT:** HARBOUR MANAGER REPORT - MARCH 30, 2023 UPDATE

**REPORT NO:** 23-45

**APPENDIX:** NONE

### RECOMMENDATION(S):

There is no recommendation. This report is provided for information only.

### PURPOSE:

To update the Harbour Authority on the workings of the harbour since the December 2022 meeting.

### DISCUSSION:

Location	Update	Issues / up coming projects
Small Craft Harbour – Boat Basin	<ul style="list-style-type: none"> <li>- Installation of 2 EV charging station</li> <li>- We had 5 deliveries of commercial ghost gear. The deliveries consisted of 8 crab traps and 36 prawn traps.</li> <li>- We have had 6 Area G trollers fishing in Barkley Sound.</li> </ul>	<ul style="list-style-type: none"> <li>- Small deck repairs</li> </ul>
Small Craft Harbour – Outer Boat Basin	<ul style="list-style-type: none"> <li>- Jan 5, 2023 Recreation vessel boat fire on the Outer Boat Basin dock.</li> <li>- Thank you to Chief Rick Geddes and the volunteer fire department for their ability to contain the fire so no other vessel was damaged.</li> </ul>	<ul style="list-style-type: none"> <li>- Need to replace broken piling.</li> <li>- Dolphin to be replaced late spring.</li> </ul>
Whiskey Dock	<ul style="list-style-type: none"> <li>- Continuing maintenance replacing planks upper wharf head.</li> <li>- We had 7 geoduck deliveries in February.</li> <li>- Installed new reflectors around the wharf head</li> </ul>	<ul style="list-style-type: none"> <li>- Piling Replacement needed late spring</li> </ul>
52 Steps	<ul style="list-style-type: none"> <li>- Raised sunken 14-foot boat on eastside of dock.</li> <li>- Installed new neoprene skid and metal guide rails for the ramp.</li> </ul>	<ul style="list-style-type: none"> <li>- Arborist to asses trees on side hill.</li> </ul>

Other	<ul style="list-style-type: none"> <li>- Still waiting on DFO- SCH for new head lease.</li> <li>- Sub-lease with Barkley Sound Adventure Centre.</li> </ul>	

**OPTIONS REVIEW:**

There is no recommendation. This report is provided for information only.

**Respectfully submitted:** Kevin Cortes, Harbour Manager  
 Abigail K. Fortune, Director of Recreation & Tourism

Meeting	Meeting Item Description	Resolution Text	Description	Follow-Up Status
16-Feb-21	Ucluelet Harbour Authority Potential Project	THAT HA directs staff to provide a report regarding improvements to the public boat launch intended to solve issues with use during low tides.	Present Report to HA	In Progress: Have proposal study from Herrold Engineering outlining the proposed work to improve the Pat Leslie Boat Launch. Future project to be presented for budget 2024
04-May-21	Harbour Manager Report - May 4, 2021 Update Kevin Cortes, Harbour Manager	THAT HA direct Staff provide a report to HA donations at the Pat Leslie Boat Launch.	Present report regarding donation box at the Pat Leslie Boat Launch.	Complete: signage installed completed for parking 2021. In Progress: report to come to HA to May HA meeting to assess if this is a priority of the HA to install a donation box or parking fee potentially tying in with DOLL
07-Sep-21	Ucluelet Small Craft Harbour Service Level Survey	THAT the Harbour Authority direct Staff to distribute a survey regarding service levels to the Charter Operators.	Draft and distribute service level survey.	In progress: Draft survey is being created to go out May Long weekend with the Charter Boats
07-Sep-21	Ucluelet Small Craft Harbour Onboarding Rates Review	THAT the Harbour Authority direct Staff to provide a comparison for onboarding fees at a future Harbour Authority meeting.	Provide comparison of onboarding charges.	In progress email was sent to HA of BC for input and feedback. Minimal input was received. Report on May meeting.
06-Sep-22	West Coast Wild Adventures Request for a Fuel Boat Abby Fortune, Director of Parks and Recreation	IT was moved and seconded THAT the Harbour Authority direct staff, for the Harbour Authorities consideration, to draft an agreement between the District of Ucluelet and West Coast Wild Adventures to permit the storage of aircraft fuel and mooring of a portable fueling station within the Ucluelet small craft harbour inclusive of the conditions set out in the Harbour Authority staff report number 22-131.	Draft agreement which includes the conditions set out in report number 22-131.	In progress , working with West Coast Wild Adventures. To be in place for summer 2023 if conditions are meet.
06-Sep-22	HAABC Small Craft Harbour Program Abby Fortune, Director of Parks and Recreation	It was moved and seconded THAT the Harbour Authority approve Option A, to explore working with Harbour Authority Association of BC to undertake a review of how the Harbour Authority and District of Ucluelet manage and oversee the harbour.	Explore working with the Harbour Authority Association of BC.	Assigned
13-Dec-22	September 6, 2022, Harbour Authority Regular Minutes	It was moved and seconded THAT the September 6, 2022 Harbour Authority Minutes be adopted as presented.	Sign, file, and post harbour authority minutes.	Complete