

REPORT

To the Honorable Mayor and City Council
From the City Manager

December 12, 2016

SUBJECT

Consideration of Comments Received on the Draft Docktown Plan and Approval of Final Docktown Plan to Provide Relocation Assistance for Tenants and Ending Residential Use at Docktown Marina

RECOMMENDATION

Adopt a Resolution Approving the Docktown Plan and Ending Residential Use at Docktown Marina, and Finding this Action Is Not Subject to and Is Exempt from the California Environmental Quality Act

BACKGROUND

Summary of Docktown Plan Preparation Efforts

The City is required to bring the Docktown Marina (“Docktown”) (see [Attachment A \[Map\]](#)) into compliance with the Public Trust Doctrine and the statutes granting City trusteeship to the City. As determined by the State Lands Commission (SLC) and the California Attorney General (who have regulatory oversight regarding Docktown), the Public Trust Doctrine and the granting statutes do not allow continued residential use at Docktown (e.g., by persons living on “live aboard” boats or barge-based dwellings). In addition, pursuant to a Settlement Agreement approved January 25, 2016, the City must, by December 31, 2016, adopt a Docktown Plan to assist Live Aboard Docktown tenants with relocating to other places of residence to accommodate ending residential use at the Marina. This Settlement Agreement acknowledged that private residential use of State-granted lands, such as the creek on which the Docktown Marina is located, is not allowed under the statutes which granted the State land to the City, or the Public Trust Doctrine.

As is described further below, the City sought a 15-year delay in ending residential use of the Marina by seeking special legislation, but these efforts were not successful. Recognizing that this transition will be challenging for people currently living at Docktown, and consistent with the City’s goals of equity and providing affordable housing assistance, the City staff has prepared a relocation assistance program intended to address individual tenant relocation needs and to provide individuals with a reasonable time to move. (See [Attachment B \[Docktown Plan\]](#).)

While the City is not legally obligated to provide specific relocation benefits in connection with this action to bring the City's trusteeship of Docktown into compliance with the Public Trust Doctrine, as determined by the State, the City has committed to developing a customized program to address some of the relocation hardships that Docktown tenants may face. In order to understand the needs and interests of tenants living at Docktown and to develop a proposed Docktown Plan for the City Council's consideration, the City issued a Request for Proposals (RFP) to retain a qualified consultant responsible for providing all services necessary to prepare a draft Docktown Plan and implement relocation services once the City Council adopts a Docktown Plan. The scope of work is set forth in two phases:

- 1) Preparation of a Docktown Plan for City Council action by the end of 2016; and,
- 2) Implementation of the adopted Docktown Plan for the relocation of all of the tenants beginning in 2017.

An experienced relocation firm, Overland, Pacific and Cutler (OPC), was selected from four firms that submitted proposals. In early September, the City notified Docktown community members of the work OPC would be doing and asked tenants to meet with OPC representatives. The City also provided the timeline for developing the draft Docktown Plan and described opportunities for Docktown community members to provide comments on the draft Plan.

On behalf of the City, OPC commenced contacting tenants for interviews to understand household relocation needs, and to schedule appraisals of vessels the City may offer to acquire should the tenant desire to sell their property (e.g., their boat or barge-based dwelling) to the City. Several attempts were made by OPC over a six-week period to meet with all of the tenants. Because only twelve of the 65 tenants participated in interviews, OPC received limited information about tenant demographics, needs and desires. However, many tenants have communicated their desire to continue living at Docktown Marina.

The attached Docktown Plan ([Attachment B](#)) includes a yearlong transition schedule for Docktown tenants beginning in March 2017, as well as financial assistance in the form of moving expenses, incentive payments for tenants desiring to move more quickly, and vessel acquisition payments for tenants desiring to sell their property to the City. The Plan includes additional financial aid for people with special needs, including seniors, veterans, and low-income individuals. In addition, the Plan offers advisory assistance to help tenants find a new marina slip for their watercraft or a new land-based residence.

On November 9, 2016 the City sent a letter to Docktown community members inviting them to a meeting on November 17, 2016 to discuss the elements of the draft Plan and begin to seek comments on the draft Plan. The draft Docktown Plan was publicly released on November 15, 2016. A summary of each comment received between November 15 and November 30, 2016, and responses to those comments, are provided in the Docktown Plan ([Attachment B](#)). The complete comments received during the comment period are provided in [Attachment F](#). Comments received between December 1 and December 7, 2016, when the agenda packet was put into final form for public release on December 8, 2016, are provided in [Attachment G](#). Additionally, two legal comments

and independent City responses are provided in Attachments H and I. Members of the public will be able to continue to provide comments on the draft Docktown Plan through December 12, when the City Council will consider feedback and is scheduled to adopt a final Docktown Plan.

The proposed Resolution for adopting the Docktown Plan is Attachment C.

History of Docktown Marina

Since 1945, the City of Redwood City has served as a trustee for the land on which the Docktown Marina is located. This only includes the land under the creek, not the land-based property adjacent to the creek which the City leases from a private owner. In this role, the City owns the creek area on behalf of the citizens of California and as a consequence must ensure that the land is used in accordance with the statutes that granted the land to the City as well as with the California Constitution, applicable case law, and the common law Public Trust Doctrine.

The Docktown Marina has existed since the 1960s. In 1983, the City issued a revocable permit with a marina operator, Fred Earnhardt, who also had a lease agreement with the landside property owners. When Mr. Earnhardt advised the City of his intention to terminate the permit, City wanted to avoid immediate relocation of Docktown community members and as a result, agreed to assume the operations and management of Docktown. Since 2013, the City has operated Docktown Marina. There are approximately 95 occupied berths within the Marina, of which 65 have residential tenants. Whether operated by a private operator or the City, people living at Docktown have always participated in short-term rental arrangements whereby tenancies could be terminated with 60 days' notice.

The State Lands Commission (SLC or Commission) made clear that the City can no longer permit private residential uses at Docktown when in February 2014, the Commission officially notified the City that private residential uses were not permitted at Docktown. City officials sought to achieve a compromise with the State of California regarding residential uses in Docktown. However, in late 2015, a group called "Citizens for Public Trust" brought a lawsuit against the City challenging residential uses at Docktown. On January 4, 2016, the SLC sent the City a letter, to which an Attorney General opinion was attached, which confirmed the State's determination that residential use at Docktown is incompatible with the public trust and the statutes granting the City trusteeship over the subject property. (See Attachment D.) In January 2016, the City entered into a Settlement Agreement to resolve the litigation, which, among other obligations, requires the City to develop a plan to comply with the granting statutes and Public Trust Doctrine by December 31, 2016, and to begin implementing that plan in 2017.

City officials have expended significant time and resources seeking a reasonable solution to the relocation of the Docktown community. At the City's request, State Lands Commission staff agreed to work with the City, local legislators and members of the

Docktown community to try to revise the City's granting statute in order to provide existing members of the Docktown community an extended period of time (15 years) to move from Docktown.

The proposed legislation would have allowed the Docktown residential community to remain for up to 15 years, with conditions to ensure that private residential use at Docktown would be limited to those individuals currently living there. This timeframe would have provided time for relocation, or permitting of a new marina in another location in Redwood City. However, to succeed, the proposal would have had to pass the State Legislature, and that would only have been possible with the support of the State Lands Commission and Attorney General's Office. Because the Commission directed its staff to work with the City on this legislative proposal, local legislators were willing to work with the City, the Commission and Docktown residents to carry it forward.

The legislation was drafted to include restrictions on subleasing and restrictions on transfer of vessels to new owners who would remain at Docktown. Because the draft legislation did not have full support from members of the Docktown community and members of the Redwood City community, legislators decided not to pursue the proposal. Some Docktown tenants have requested renewed legislative efforts to allow residential use of the Marina for an extended period of time. This is discussed below, along with other comments made on the draft Docktown Plan.

Additionally, in November 2016, the plaintiff in the lawsuit which led to the Settlement Agreement submitted a motion seeking a court-appointed official to oversee the Docktown Marina closure process, arguing that the City had not upheld all terms of the Settlement Agreement such as providing progress reports on preparation of the Docktown Plan and by supporting legislation that, if passed, would have allowed Docktown tenants to remain at Docktown Marina for 15 years under certain conditions. On November 21, 2016, the San Mateo County Superior Court denied the motion and determined that the parties did not contractually agree to submit disputes related to the settlement agreement to a court official. The court did not rule on whether the City's pursuit of legislation would violate the terms of the settlement agreement, and noted that another motion could be filed to seek a judicial ruling on that topic.

Additional background materials related to Docktown Marina can be found on the City's website:

<http://www.redwoodcity.org/docktown>

ANALYSIS

Summary of Vessels in Docktown

There are 67 vessels with Live Aboard Rental Agreements at Docktown Marina, 65 of which are believed to be used as dwellings. Because access to each vessel has not been granted, the exact status of the vessels is not known, however, there appear to be two types of vessels:

- 1) Barge-Based dwellings, of which there are approximately 25 vessels; and
- 2) Boat dwellings, of which there are approximately 40 vessels.

The difference between the two vessels is the type of hull and the type and size of the area used for dwelling. Based on the preliminary information available, it does not appear that many of the barge-based dwellings may be able to be moved, however, this assessment may change based on information provided by tenants. At this time, approximately 13 of the boat dwellings appear to be movable. As a result, 13 slips will need to be found to accommodate the relocation of the movable boat dwellings and the balance of tenants will need to relocate to land based housing.

Summary of Relocation Benefits Program

The proposed relocation benefits program in the Docketown Plan are intended to provide a reasonable time to transition, to provide practical assistance in finding new housing, and to offer financial assistance to aid tenants in relocating. The following is a summary of the proposed benefits program set forth in the Docketown Plan (Attachment B):

1. Time: Though the marina has existed for many years as primary residences for Docketown community members, individuals have always rented slips from the marina operator and participated in short-term rental arrangements. The City has provided significant notice of the need to plan for relocation, dating back to January 2016 when the Settlement Agreement was approved. The proposed Docketown Plan anticipates the relocation process beginning in March 2017 and being completed in February 2018. Although relocation is never easy, and the challenges with finding new housing are well known, the draft Plan was developed in a manner to allow significant time and assistance to current tenants.
2. Help Identifying Housing Resources: OPC surveyed both marinas and land-based housing sites in the Bay Area in order to determine potential new housing locations for tenants and the associated costs of renting at these locations. The surveys will be updated periodically to provide the most current information to tenants. As of November 1, 2016 four Marinas in the Delta region may be able to receive vessels that are movable and in good condition. No marinas are available to take the barge-based vessels.

Additionally, as a point of information, City of Redwood City and Port of Redwood City staff are actively discussing the possibility of allowing Live Aboard uses at the Municipal Marina, which is operated by the Port of Redwood City. Allowing Live Aboard uses at the Municipal Marina would require approval by the San Francisco Bay Conservation and Development Commission (BCDC) and modification of marina use policies by the Port Commission. It is anticipated that up to 19 boats could ultimately be allowed to lease space at the Municipal Marina. Capital improvements would be required at the Municipal Marina in order to support Live Aboard uses, including increased sewer pump out capacity, upgraded electrical equipment, new utility meters and pedestals, and enhancements to the dock closest to the existing

shower and laundry facilities. The cost and funding source for these improvements and the potential timeline for allowing Live Aboard uses at the Municipal Marina is not addressed in the Docktown Plan but is currently being assessed for future consideration. (Note that whether this Municipal Marina, or any other marina, might accommodate residents from Docktown does not affect the decision before the Council tonight, which is whether adopt the Docktown Plan for terminating residential use at Docktown.)

Individuals who are living on boat and barge-based vessels that cannot relocate to other marinas will need to move to land-based housing. There are adequate market rate one-bedroom apartments on the peninsula to accommodate the remaining relocation needs; one-bedroom apartments were used for comparison because the size of an average one-bedroom unit is equivalent to the size of the average Live Aboard dwelling. Housing for priority needs groups such as low-income, seniors and veterans also exist, and include 11 facilities that are currently taking applications.

3. Relocation Advisory Assistance – The draft Plan establishes eligibility criteria for receiving benefits and advisory assistance. OPC will determine eligibility to receive benefits based on information from completed tenant interviews and will provide tenants and sub-tenants with a notice of eligibility. OPC will then provide individual advice on relocation resources and obtaining compensation for relocation expenses.
4. Relocation Financial Assistance – Although not required, the City will provide financial assistance to three different types of tenants:
 - a. Those who own their vessel and live on it;
 - b. Those who own a vessel and rent it out to others to live on; and,
 - c. Those who live on a vessel and do not own it.

The type of assistance that will be provided depends on the category of tenant or sub-tenant and the navigability of the vessel. The following is a summary of all types of assistance that will be offered, but the specific benefits will vary depending on individual circumstances:

- Individuals will be reimbursed for actual moving cost of movable vessels
- Individuals will be reimbursed for actual moving costs of household goods
- Individuals who are disabled, low income, seniors, or veterans will receive either three months of land-based housing rent payments or three months of berth rent differential payments (recognizing the differences between berth rents at Docktown and at a new marina), depending on whether they move to land-based housing or a new marina
- Individuals selling their vessels will be reimbursed up to \$1,000
- Individuals able to move earlier in 2017 will receive additional incentive payments on a sliding scale, starting with \$10,000 for owners of vessels and \$5,000 for non-owners; the incentive payment amount will decrease over time
- Individuals desiring to sell their vessels to the City will be offered fair market value of the structure, though the tenant is not obligated to sell their vessel to the City.

OCCUPANT TYPE	ADVISORY SERVICES	MARINA REFERRALS	LAND HOUSING REFERRALS	VESSEL MOVE COST	HOUSE GOODS COST	ACQUISITION PAYMENT	INCENTIVE PAYMENT	3 MONTH HOUSE PAYMENT	3 MONTH BERTH PAYMENT*
Live Aboard Tenant	X	X	X	X	X	X	X		
Absent Tenant w/ Sub Tenant	X	X		X		X	X		
Sub Tenant	X		X		X		X		
<i>Enhanced benefits for priority groups, in addition to benefits above</i>									
Low Income								X	X
Seniors								X	X
Veterans								X	X
Disabled								X	X

*Rent differential only

Anticipated Relocation Timeline

The following timeline is set forth in the Plan:

- City Council adoption of the Docktown Plan – December 12, 2016
- OPC completes relocation assistance eligibility interviews – February 2017
- OPC issues Notice of Eligibility to residential tenants, describing benefits to which they are entitled – March 2017
- Relocation of residential vessels and tenants – March 2017 – February 2018

Summary of Tenant and Public Comments

The City received over 70 comments on the draft Docktown Plan between the period of November 15 and November 30, 2016, including comments received at the November 17, 2016 community meeting. City staff also met with the Silicon Valley Law Foundation, which contacted the City on behalf of the Redwood Creek Association, on November 21, 2016 to receive feedback on the draft Plan. All comments received in that period are provided in Attachment F. The proposed Docktown Plan attached to this Staff Report includes revisions to respond to some of the comments.

Some of the more frequent comments received between November 15 and November 30 fall into the following general categories:

1. The City should not make tenants move from Docktown Marina
 - a. *Response:* As described above, residential uses at Docktown are not allowed under the statutes which granted the Marina property to the City, and subject to the Public Trust Doctrine. Under the litigation Settlement Agreement, the City is obligated to adopt a Docktown Plan to support the transition away from residential uses by December 31, 2016 and to begin implementation of the Plan in 2017.
2. The City should seek special legislation to allow tenants to stay for a longer period or indefinitely
 - a. *Response:* The previous attempt at legislation, which would have allowed a 15 year time period to transition away from residential uses, was designed to allow time for relocation and to explore the permitting and building of a new live aboard community. The community was divided on the proposed legislation, with many Docktown tenants voicing strong opposition to any time limits, to restrictions on sub-leasing berths, and to restrictions on allowing property transfers so that new people could live at Docktown. Staff believes that these objections would still be present if legislation were attempted again, as many tenants have continued to request that the City advocate for ongoing unrestricted residential uses at Docktown. The City has extended considerable effort and resources to address residents'

concerns, however, there does not appear to be an approach that would both satisfy tenants and be likely to achieve the support of legislators and the State Lands Commission. Additionally, it is clear that the plaintiff in the Settlement Agreement will object to City support of any new attempts at legislation, exposing the City to ongoing legal and financial risks. As a result, staff does not recommend any further pursuit of State legislation related to Docktown.

3. The City didn't provide proper notice of the draft Docktown Plan or enough time to comment on the draft Docktown Plan
 - a. *Response:* Staff acknowledge that not every tenant received notice of the Docktown Plan availability due to errors in the City's email distribution list, and that the comment period was brief. The City provided notice in September of the timeline for development of the draft Plan and City officials had hoped tenants would meet with OPC representatives to help inform the development of the draft Docktown Plan; unfortunately, relatively few members did so. Comments received between November 15 and 30, 2016 are being addressed in the Docktown Plan, and the City Council will receive and consider all comments received prior to and on December 12, 2016 as well.
4. The City should provide tenants with the ability to seek their own appraisal of their property
 - a. *Response:* The Docktown Plan has been modified to address this concern. In the event that a tenant wishes to sell their property to the City, the Plan now provides for a City-paid appraisal and, if the tenant does not believe the appraisal was sufficient, the tenant may pay to have their own appraisal conducted by an appraiser of their choosing. The Plan would authorize the City to pay up to 10% more than the City-paid appraisal if the tenant-procured appraisal resulted in a higher value. Should the tenant-procured appraisal result in a value more than 10% greater than the City-paid appraisal, the tenant could request that a third appraiser determine the value of the property. The decision of the third appraiser would be binding.
5. The City should provide an appeal process in the event a tenant does not agree with the application of benefits
 - a. *Response:* The Docktown Plan has been modified to address this concern. Once a tenant receives their notice of benefits eligibility, they may submit an appeal within 15 days. An independent hearing officer, paid by the City, would determine whether benefits had been appropriately provided under the terms of the Plan.
6. The City should describe what will happen to Docktown Marina in the future.
 - a. *Response:* The City has not determined how to use the Docktown Marina after transitioning away from private residential uses at the Marina.

Environmental Assessment

The Settlement Agreement required the City to undertake an environmental analysis of the sediment in Redwood Creek to determine if there are unhealthful levels of toxic chemicals present. The City hired the environmental consulting firm of Erler Kalinowski Inc. (EKI) to perform this analysis. Although not required under the Settlement Agreement, the City further contracted with EKI to test water quality in the water around Docktown in order to address statements made of poor water quality.

In considering potential human health impacts, the environmental assessment looked at recreational use, fish consumption and water quality in Redwood Creek and the adjacent slough, including areas upstream and downstream of Docktown Marina. Among the findings:

- Individuals who play or wade in water in the study area are not at significant health risk, and the less-than-significant risks in the study area are similar to those observed throughout San Francisco Bay.
- As in other areas of the Bay, the bioaccumulation of chemicals in fish caught by anglers in the study area is of potential concern. Fish consumption advisories issued by the State of California for San Francisco Bay should be followed for all fish caught in the Bay, including in the study area.
- Docktown Marina is not a likely source of bacterial or chemical contamination in Redwood Creek or the adjacent slough and public health is not at risk due to activities at Docktown.
- No additional environmental investigation or remediation of sediments/water associated with Docktown Marina is warranted.

The complete study results are available on the City's website at www.redwoodcity.org/docktown

ALTERNATIVES

Following discussion at the City Council meeting, the City Council could direct staff to further revise the Docktown Plan.

FISCAL IMPACT

The direct costs of providing relocation benefits, including the potential acquisition of boat or barge-based dwellings if requested by tenants, are estimated at between \$6 million - \$9 million at this time. This estimate cannot be refined further as relatively limited information is known about the demographics and interests of tenants, and the potential value of their property.

A conservative cost estimate of \$10.4 million is based on anticipated expenses in the following categories:

Acquisitions of barge-based dwellings	\$4,000,000
Acquisitions of boat dwellings	\$400,000
Cost of moving boats and household goods, cost of sale reimbursement	\$350,000
Financial assistance to disabled, low income, senior and veteran tenants (land-based rent payment or berth rent differential payment)	\$450,000
Early move incentive payments (up to \$10k for tenants, \$5k for sub-tenants)	\$600,000
<i>Subtotal</i>	<i>\$5,800,000</i>
50% contingency	\$2,900,000
Estimated cost of acquisition and relocation assistance	\$8,700,000
Consulting costs (Relocation Firm, Project Management, Legal Defense)	\$ 900,000
Cost share - Capital Costs for Port to Support Live Aboards at Municipal Marina	\$ 750,000
Estimated cost of consultants, special counsel, and capital investments	\$ 1,650,000
Estimated Total Cost	\$10,350,000

It is important to note that this estimate does not include the value of City staff time. Additionally, it does not include costs the City could incur to remove vessels the City may acquire or to make modifications to Marina property. These costs will be determined in the future.

The total cost of approximately \$10.4 million to provide relocation assistance is expected to be incurred over two fiscal years, Fiscal Year 2016-17 and Fiscal Year 2017-18. The City has approximately \$3 million immediately available to address these expenses, and staff will present a funding plan with the mid-year budget update in February 2017, when we expect to have a better sense of anticipated costs and the timeframe under which those costs will be incurred.

ENVIRONMENTAL REVIEW

The approval of the Docktown Plan for terminating residential use at Docktown is not subject to and is statutorily exempt from CEQA pursuant to Section 15268 of the CEQA Guidelines, entitled Ministerial Projects. (The CEQA Guidelines are found at sections 15000 et seq. of Title 14 of the California Code of Regulations.) The decision to terminate residential use and to relocate Docktown residents is a ministerial act under CEQA. Terminating residential use of Docktown through the Docktown Plan will bring the

City's trusteeship over Docktown into compliance with the statutes granting the City trusteeship over Docktown and the State's directive regarding the public trust doctrine. The Commission has unequivocally informed the City that it must cause the cessation of residential use at Docktown, and the City has no discretion about whether to allow further residential use at Docktown.

Even if the City's action were determined not to be ministerial under CEQA, the decision to approve the Docktown Plan for terminating residential use at Docktown is categorically exempt from the requirements of the CEQA because it falls within each of four classes of projects that the Secretary for Resources has found do not have a significant effect on the environment pursuant to Sections 15301, 15304, 15307, and 15308 of the CEQA Guidelines, entitled titled Existing Facilities, Minor Alterations to Land, Actions by Regulatory Agencies for Protection of Natural Resources, and Actions by Regulatory Agencies for Protection of the Environment, respectively. There is no applicable exception to the foregoing categorical exemptions. The action at issue will involve only minor physical changes to Docktown Marina (e.g., removal of residential watercraft) and will benefit the environment and natural resources by reducing potential releases of contaminants from residents and their property and by bringing Docktown into compliance with the Public Trust Doctrine, as interpreted by the Commission, for the benefit of all the people of the State of California.

In addition, the approval of the Docktown Plan for terminating residential use at Docktown is exempt from the requirements of CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that there is no possibility that this action may have a significant effect on the environment.

For further analysis of reasons for which the proposed action is not subject to environmental review, see the letter from the City's outside counsel, dated December 8, 2016 ([Attachment H](#)). The Docktown Plan is categorically exempt from CEQA because 1) it can be seen with certainty that there is no possibility that the adoption of the Plan may have a significant effect on the environment (14 CCR § 15061(b)(3)), and 2) the Plan assures the maintenance, restoration, enhancement, or protection of a natural resource and the environment (14 CCR §§ 15307, 15308).



MELISSA STEVENSON DIAZ
CITY MANAGER

ATTACHMENTS

1. Attachment A – Docktown Marina Location Map
2. Attachment B – Docktown Plan (including Comments Received During November 15-November 30, 2016 Public Comment Period and Responses)
3. Attachment C – Resolution Adopting the Docktown Plan
4. Attachment D – January 4, 2016 Letter from the State Lands Commission (including the attached June 19, 2015 Attorney General Opinion)
5. Attachment E – EKI Environmental Analysis, see file here: <http://www.redwoodcity.org/home/showdocument?id=9898>
6. Attachment F – Comments Received During Public Comment Period
7. Attachment G – Comments Received Between December 1 and December 7, 2016
8. Attachment H – Letter from William Parkin, Wittwer Parkin, dated November 30, 2016, and response from the City’s outside counsel, dated December 8, 2016
9. Attachment I – Letter from Gary Redenbacher, dated November 16, 2016, and response from the City’s outside counsel, dated December 1, 2016