February 25, 2014

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SENT VIA ELECTRONIC MAIL & U.S. MAIL
bekern@redwoodcity.org

Bill Ekern, Director
Community Development Department
City of Redwood City
1017 Middlefield Road
Redwood City, CA 94063

Dear Mr. Ekern:

Thank you for speaking with California State Lands Commission (Commission) staff on February 3, 2014, regarding the residential houseboat community known as “Docktown” located on sovereign lands legislatively granted in trust to Redwood City (City) pursuant to Chapter 1359, Statutes of 1945, and as amended (Chapter 1359). The purpose of this letter is to explain why the residential floating home community at Docktown violates the terms of the City’s granting statutes and is inconsistent with the common law Public Trust Doctrine (Public Trust).

It is Commission staff’s understanding that Docktown consists of approximately 70 houseboats that are under short term leases with the City and located entirely on sovereign land in Redwood Creek. Staff further understands that the City is considering moving these houseboats off sovereign lands and onto nearby privately owned lands. Commission staff strongly urges the City to take this opportunity to have the houseboats removed from sovereign land in order to come into compliance with the City’s granting statutes and the Public Trust.

As background, the State of California (State) acquired tide and submerged lands and beds of navigable waterways as sovereign lands under the equal footing doctrine upon

1 For the purpose of this letter, “houseboat” is defined to include floating homes, live-aboard boats and houseboats as adopted in Title 14, California Code of Regulations Section 10127: A “houseboat” is a boat that is used for residential or other non-water oriented purpose and that is not capable of being used for active navigation.”
its admission to the Union in 1850. The State holds these lands in trust for the benefit of all of the people of California for the purposes of commerce, navigation and fisheries.\(^2\)

Traditionally, public trust uses were limited to water-related commerce, navigation, and fishing.\(^3\) In more recent years, however, the California Supreme Court has held that the Public Trust embraces the right of the public to use the navigable waters of the State for bathing, swimming, boating, and general recreational purposes. The Court has also held that the Public Trust is sufficiently flexible to encompass changing public needs, such as the preservation of lands in their natural state for scientific study, open space, and wildlife habitat.\(^4\)

Based on advice from the State Attorney General’s Office, Commission staff have consistently taken the position that residential use of sovereign lands, such as the floating home community at Docktown, is inconsistent with the Public Trust. This is because it benefits only a select few rather than the statewide public, it is not water-dependent, it does not further the unique purposes for which sovereign lands are set aside, and it in fact impairs public access to and enjoyment of sovereign lands. While residential houseboats may be less permanent than typical residential structures, long-term private residences in the form of houseboats on sovereign land does nothing to stimulate or foster purposes in which there is a general statewide public interest such as commercial harbors, recreational facilities, the protection of wildlife and fish resources, and recreational use with open access to the public.\(^5\)

The Legislature has granted the City control and management over the lands underlying Docktown pursuant to Chapter 1359, subject to the Commission’s review and oversight authority. While these sovereign lands are managed locally, the Legislature has vested the Commission with residual oversight authority to ensure that local trustees are complying with the Public Trust and the applicable granting statutes.\(^6\) Chapter 1359 limits the use of these public trust lands to "the establishment, improvement and conduct of a harbor, including an airport or aviation facilities, and for the construction, maintenance and operation thereon of wharves, docks, piers, slips, quays and other utilities, structures, facilities and appliances necessary or convenient for the promotion and accommodation of commerce and navigation by air as well as water, and for the construction, maintenance, and operation of flood control projects". Chapter 1359 does not authorize the City to lease the granted sovereign land for residential houseboats. If the City desires to continue providing its residents with a floating home community, it will be necessary to look into other areas that do not include sovereign lands.

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\(^2\) Public Resources Code section 6009(a)

\(^3\) Illinois Central Railroad v. Illinois (1982) 146 U.S. 387

\(^4\) Marks v Whitney (1971) 6 Cal.3d 251, 259-60.


\(^6\) Public Resources Code sections 6301 and 6306
In addition to Chapter 1359, Public Resources Code (PRC) §§ 6009 and 6009.1 provide guidance on the proper management of sovereign lands legislatively granted in trust to local jurisdictions. These statutes reiterate that the granted lands remain subject to the Public Trust and must be managed in a manner that is consistent with the terms of the granting statutes and in accordance with the Public Trust without subjugation of statewide interests for local affairs. As a fiduciary of State property, the City has an obligation to not use or deal with trust property for any purpose unconnected with the trust, such as the use of residential houseboats. Further, PRC § 6009.1 describes all of a trustee's fiduciary duties, such as the duty of loyalty and duty to take and keep control of trust property, which are referenced in case law, granting statutes, and the PRC. This organized list of duties is intended to help local trustees understand their obligation to the trust and prevent against any inadvertent trust violations.

Recently, there have been some comparisons to the liveaboards/residential houseboats in the City of Sausalito. However, the underlying factual and legal circumstances at Docktown vary significantly from the liveaboards/residential houseboats in the City of Sausalito. One of the important differences between the City of Sausalito and the City of Redwood City is that the fee interest in the lands in Sausalito were sold to private parties through the Board of Tide Land Commissioners; a board that was abolished in 1876.

Commission staff understands that the City is in the process of creating an Inner Harbor Specific Plan to determine future uses of the Inner Harbor area, including Docktown. Staff looks forward to continuing to work with the City, both in its capacity as a member of the Task Force and as part of its oversight duties relative to legislatively granted sovereign land, as part of this process to take advantage of the opportunity to correct the trust violations by removing the inconsistent residential uses from the sovereign lands.

I hope this information is helpful to the City's understanding of the Public Trust and its responsibilities as a trustee of State property. Should you have any questions or if Commission staff can serve as a helpful resource in any way, please do not hesitate to contact me or Reid Boggiano of our staff at (916) 574-0450.

Sincerely,

SHERI PEMBERTON  
Chief, External Affairs  
and Legislative Liaison

cc: Bob Bell, City Manager, City of Redwood City

7 Public Resources Code section 6009.1(c)(7)