

# REPORT

To the Honorable Mayor and City Council  
From the City Manager

April 27, 2015

## SUBJECT

Docktown Marina Management and Operations

## RECOMMENDATION

Accept staff report and provide direction related to the City operated Docktown Marina.

## BACKGROUND

Redwood City acquired its interest in the portion of Redwood Creek that is now the Docktown Marina from the state in 1954. In 1964, the City leased the waterway for use as a marina and it has been operated as such since that time. Up until March of 2013, Docktown Marina, Inc. had a lease agreement with the land side owners and a revocable permit to operate the marina with the City. The owner of that business, Fred Earnhardt, Jr., advised the City in December of 2012 that he was terminating his lease and his revocable permit, and shortly thereafter, the City took over the operations and management of Docktown. Prior to taking over the management of the Marina, the City did attempt to retain an operator but was unsuccessful. This was due in large part to the condition of the Marina and it not being seen as financially viable for a marina operator to operate.

Since taking over the management of Docktown, the City has reviewed how many of the berths are "liveaboards" or in other words, where people use their boat or vessels for residential purposes and how many are more traditional berth arrangements, where the boats are used for recreational purposes. The breakdown is as follows:

	March '13	Current
Liveaboards:	73	70
Recreational Boating Berths	29	17
<b>Total:</b>	<b>102</b>	<b>87</b>

Since taking over the Marina, the City has spent roughly \$1.5 million in the maintenance and operation of the marina. This includes costs associated with day-to-day duties of sewage pump outs from the boats, electric meter readings, inspection and repair of the docks and fingers for trip and fall hazards, inspecting electrical connections, monitoring and repair of ramps and pillars and cleaning of restrooms, laundry room, parking lot and marina office areas. In addition, the City hired a management firm to aid in the operations of the Marina and made several improvements like connecting three

separate docks and reconstructing five fingers. The City also removed and disposed of a large unstable concrete structure (known as the PanAm barge) and three other boats from the Marina. All told, there are 10 staff members in the Public Works and Community Development departments who spend a total of approximately 700 hours per month on the maintenance and administration of the City's operation of the Marina.

During this same period, the City has collected approximately \$1.4 million in revenues from the berthing agreements, and this revenue has been used to support the operations described above. This revenue has not been sufficient to cover all costs, resulting in net expenditures over the course of the last 25 months of nearly \$100,000. Going forward, the anticipated annual net cost of operating the marina would be approximately \$195,000.

In addition to taking over the operations of the Docketown Marina, the City has been in contact with the California State Lands Commission (SLC) to ascertain the allowed uses of the lands and waterways for which the SLC has oversight. As background, the State acquired tidal and submerged lands and beds of navigable waterways as sovereign lands upon its admission to the Union in 1850. This acquisition includes the waterways of Redwood Creek and the marina known as Docketown. Pursuant to Chapter 1359, Statutes of 1945, and as amended, the legislature granted control and management of the State's sovereign land to the City. This legislative control granted to the City is subject to the authority and oversight of the SLC. Moreover, the City's control and management of Docketown must be compliant with granting statutes and the common law Public Trust Doctrine.

As it relates to the allowable uses of the lands and waterways managed and controlled by the City, the SLC has informed the City more than once that "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" (see Attachment 1 - California State Lands Commission Letter to City dated February 25, 2014). The SLC has also opined that, on advice from the State Attorney General's Office, "...residential use of sovereign lands, such as the floating home community at Docketown, is inconsistent with the Public Trust. This is because it benefits only a select few rather than the statewide public" (see Attachment 1 - California State Lands Commission Letter to City, dated February 25, 2014). The SLC also clarified what are allowable uses of these sovereign lands which includes "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" (see Attachment 1 - California State Lands Commission Letter to City, dated February 25, 2014).

The SLC has also informed the City of various cases where they pursued remedies to correct similar situations in other jurisdictions (see Attachment 2 - California State Lands Commission Letter to City, dated August 7, 2014). The SLC does first attempt to work cooperatively with grantees that may be in violation of the Public Trust doctrine. If

they find that the grantee continues to be in violation they will seek legislative or legal remedy. The SLC views that being out of compliance with the Public Trust Doctrine is a gift of a public asset and will move to revoke the grant or file a lawsuit. The SLC has encouraged the City to move forward on a plan to remedy the residential uses at Docktown and notes that “The City’s stewardship of its legislatively granted public trust lands is a matter of statewide importance” (see Attachment 2 – California State Lands Commission Letter to City, dated August 7, 2014).

Another important issue related to the ongoing management of Docktown is the land access. The Docktown Marina berths are accessed through private property. When the City assumed management of the Marina, a license agreement was negotiated with the “land side” owner to grant access for Docktown tenants. The owner has communicated the intention to sell the property for development; subsequently the City has not been able to negotiate a long-term lease and is currently in a month-to-month arrangement. This has created considerable uncertainty for the City’s ability to provide long-term access to the Marina.

In addition to these issues, the City must maintain insurance against the liability associated with operating a marina. Even with the many efforts described above to improve and maintain the Marina’s condition, marina operations are considered to expose insurance carriers to potentially significant risk. Therefore, such insurance can be difficult to secure. Since the City began insuring the Marina operations, there has been one “trip and fall” claim loss and a vessel fire that, while it did not result in a claim, raised concern about the City’s coverage. The City’s current insurance policy for the Docktown Marina will expire on June 30, 2015 and staff has been informed of a potential challenge to secure continued coverage and the likelihood of a significant increase in the City’s deductible.

#### **ANALYSIS**

Staff has met with the City Council in closed session to discuss the SLC position on the liveaboard uses at the Marina and assess the risk of litigation. As time goes on and with no plan in place to remedy the situation, the City’s exposure increases. As such, staff would like to propose a process to determine the best way to remedy the incompatible uses in the granted lands known as Docktown.

As of now, staff has determined that the Council must first decide if it is in a position to direct staff to develop a timeline and process to close the Docktown Marina. If that is the direction from Council, the first order of business would be to allocate funding to hire a project manager who could then develop a closure plan, oversee the process and work with both staff and the residents throughout the process. The closure plan would include relocation of those at Docktown, removing vessels, as well as providing security and clean-up of the area once vacated and any needed environmental review.

Additionally, if the Council decides at this time to move towards closing the Docktown Marina, the Council could direct staff to research relocation benefits and a relocation process for those who are using Docktown for residential purposes. A project manager

would need to retain a relocation consultant and the team would work together to analyze the types of relocation plans available and potential funding sources for such plans. Moreover, the project manager and relocation expert could be tasked with getting information as to the costs of towing and relocating liveaboard units for the current liveaboard tenants at Docktown so they have some baseline data if they so choose to relocate before a Marina closure.

Legal support will also be required to provide counsel on the process relating to the potential closure and relocation and address any legal challenges. The City Attorney recommends an allocation of \$150,000-\$200,000 to retain the appropriate legal resources. This is an estimate primarily for the cost of hiring a legal advisor who can work in tandem with the City Attorney, the project manager and relocation consultant to coordinate and advise upon a myriad of legal activities. However, legal costs will need to be re-evaluated periodically and are anticipated to be well in excess of \$150,000.

#### **ALTERNATIVES**

Council could direct staff to not develop a process or closure plan at this point and come back for further discussion in the future.

Council could direct staff to continue to work with the SLC to determine if liveaboards uses would be allowed in the granted lands of Docktown in the foreseeable future.

#### **FISCAL IMPACT**

If Council directs staff to hire a project manager, the cost associated with that would be roughly \$150,000 per year. If a relocation consultant is hired and plan developed, these costs would be determined and need to be allocated from the general fund and/or reserves. If they are allocated out of the General Fund, then staff would need to revise the budget and reduce expenditures from operating budgets.

#### **ENVIRONMENTAL REVIEW**

The subject of this report and the staff recommendation, for Council to consider a process and timeline for the preparation of a Docktown Marina closure plan, is not a "Project" under California Environmental Quality Act (CEQA) as defined in CEQA Guidelines, Section 15378. This subject of this report and staff recommendation has no potential for either a direct or foreseeable physical change in the environment.



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ROBERT B. BELL  
CITY MANAGER

#### **ATTACHMENTS**

- 1) California State Lands Commission Letter to City, dated February 25, 2014
- 2) California State Lands Commission Letter to City, dated August 4, 2014