

REPORT

To the Honorable Mayor and City Council
From the City Manager

March 14, 2016

SUBJECT

Letter to State Lands Commission regarding Docktown

RECOMMENDATION

By motion, authorize the Mayor to send a letter to the State Lands Commission requesting that the State Lands Commission support legislation that would allow residential uses to remain at Docktown for a limited period of 15 years to provide an easier transition to compliance with State law

BACKGROUND

The following report provides an overview of a proposed letter (attached) from the Mayor to the State Lands Commission. This letter requests that the State Lands Commission support legislation that would allow live-aboard watercraft to remain on granted public trust lands at the Docktown Marina for a period of 15 years. The details of this request are outlined in the analysis section below. The following background section provides greater context for this request, including the history of granted public trust lands in California, the State granting statutes (the rules) that apply specifically to Docktown and a brief description of Docktown today.

Granted Public Trust Lands in California

The following excerpt is taken from the State Lands Commission website, and provides an overview of the history and intent of granted public trust lands in California:

“Upon its admission to the United States of America on September 9, 1850, the State acquired by virtue of its sovereignty and in trust for the purposes of commerce, navigation, and fisheries, all right, title, and interest in tide and submerged lands and beds of navigable waterways within its borders. These lands are sovereign, not proprietary, and have unique restrictions in their management and use. Unlike proprietary lands, the California Constitution, California statutes and the [Common Law Public Trust Doctrine](#) prohibit the sale or alienation of sovereign lands except in very limited circumstances. All sovereign lands are held in trust for the benefit of the people of California.

Since statehood, the Legislature has enacted more than 300 statutes granting sovereign public trust lands to over 80 local municipalities (generally referred to as either grantees or trustees) to manage in trust for the people of California. The terms and conditions of statutory trust grants vary and are governed by the specific granting statute(s), the common

law Public Trust Doctrine, the California Constitution, and case law. The specific uses permitted in each granting statute vary. For example, some statutory trust grants authorize the construction of ports, harbors, airports, wharves, docks, piers, slips, quays and other structures necessary to facilitate commerce and navigation, while others allow only recreational and visitor oriented uses. All grants reserve to the people of the State of California the right to fish in the waters over the trust lands and the right to convenient access to those waters over the trust lands for that purpose.

While granted public trust lands and assets are managed locally, the Legislature delegated the State's residual and review authority for granted lands to the State Lands Commission. The Commission is responsible for monitoring administration of each statutory grant by the trustee to ensure compliance with provisions of the granting statute and the Public Trust Doctrine. The Commission has the authority to investigate, audit, and review the administration of all statutory trust grants. The Commission also has the authority to investigate specific allegations of maladministration, to seek corrective measures by trustees, and make recommendations to the Legislature; the ultimate trustee of public trust lands."

Two key passages in the section above note that public trust lands "are sovereign, not proprietary, and have unique restrictions in their management and use", and "all sovereign lands are held in trust for the benefit of the people of California." In other words, an individual cannot be granted exclusive use of public trust lands, thereby restricting access for all citizens of California.

The California Constitution (all applicable articles attached) also reiterates this message:

Article 10, Section 4: "No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof."

Redwood City Granting Statutes:

In 1945 the State first granted the City authority to manage certain portions of Redwood Creek (where Docktown sits today). This statute, amended most recently in 1954 for construction of flood control measures, is attached to this report. The statute includes several conditions on the City's management of these lands, which reiterates many of the points above, for example:

"That said lands shall be used by said city, and successors, only for the establishment, improvement and conduct of the harbor, including an airport and aviation facilities, and for the construction, maintenance and operation thereon wharves, docks, piers, slips, quays and other utilities, structures, the 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, and said city, or its successors, shall not, but anytime, grant, convey, give or alien said lands, or any part thereof, to any individual, firm or corporation for any purposes whatsoever, provided, that

said city, or its successors, may grant franchises thereon for limited periods for wharves and other public purposes...”

Docktown Today

Docktown Marina, which sits on the above-mentioned granted lands, has been the home to “live-aboard” watercrafts for over 50 years. It has evolved into a Redwood City community, with longtime residents and naturally affordable housing. The City took over management of Docktown Marina in 2013 when its private operator gave notice to terminate the permit under which it operated. Since taking over operations, the City has been in constant communication with State Lands Commission staff to determine whether residential use was allowed on granted lands. Recently, the State Lands Commission waived Attorney-Client privilege, and released an informal opinion from the Attorney General’s Office. This letter informed the City that, despite the fact that live-aboard vessels have been located at Docktown for decades, private residential uses are in violation of the City’s granting statute and Public Trust Doctrine. The letter from the Attorney General’s Office is attached to this report.

ANALYSIS

As noted above, in January of this year, the State Lands Commission advised the City through an informal opinion by the Attorney General’s Office that residential uses at Docktown Marina are inconsistent with the State Lands Grant issued to the City. The informal opinion opined that private residential use is inconsistent with the Public Trust Doctrine. Also in January of this year, the City settled litigation with a citizens group wherein the City agreed that, absent a superseding public change in Commission policies related to Docktown or superseding action by the Legislature to allow residential use in Docktown, the City would take formal action by December 31, 2016 to adopt a Docktown Plan which is consistent with the informal opinion of the Attorney General’s Office.

Based on Council direction given at Docktown-related Council meetings in 2015 and 2016, and the timeline noted above, staff has been researching situations similar to Docktown to determine if there is any precedent for allowing live-aboard watercrafts to remain at least for a limited period of time despite conflicts with granting statutes (and the laws that support those granting statutes). Unfortunately, the Docktown situation is rather unique, and there are no previous situations that line up precisely with the circumstances at Docktown.

A situation in San Diego, however, is similar in many respects. In this case, the “DeAnza Point Mobile Home Park” was located on filled State-granted lands. The mobile home park had entered into a 50-year lease with the City of San Diego. The attached statute, adopted by the Legislature and supported by the State Lands Commission in 1981, allowed the “DeAnza Point” Mobile Home Park to stay on granted lands for an extended period of 32 years (1981-2003), which was consistent with remaining time on the mobile home park lease. The statute was adopted in an attempt to balance the hardship of relocating tenants with the public needs for

expanded recreational use. There have been no cases with circumstances similar to Docktown, however, where a statute was amended to allow residential uses to remain in perpetuity.

Proposal

The attached letter from the Mayor to the State Lands Commission, requests that the State Lands Commission support legislation which would allow Docktown to remain on granted lands for a period of 15 years so long as the following conditions were met:

- The City would prohibit new tenants, new live-board watercrafts and transfer of existing watercraft at Docktown.
- The City would mandate that all live-aboard watercrafts be owner-occupied or City owned. No subleases would be allowed.
- The City would report to the State Lands Commission on a regular basis on the status of Docktown and public access improvements in the area.

This proposed legislation would balance the hardship of requiring near-term relocation of all tenants with the public need for greater recreational access to the area. Creating such legislation would be an involved process that would require support from both the California State Senate and California State Assembly. Furthermore, it is unlikely that the Senate or Assembly would support this bill without support from the State Lands Commission.

Based on initial conversations with State lawmakers and State Lands Commission staff, City staff is cautiously optimistic that the State Lands Commission and Legislature will support the proposed 15-year transition period. Based on these same conversations, however, staff is confident that there would be no support for legislation that would allow Docktown to remain in perpetuity. In fact, any legislation that does not require the eventual transition of private residential uses out of granted lands would be a violation of the Public Trust Doctrine and may also be in conflict with the California Constitution.

It is also important to note that there are environmental and legal restrictions which could hamper the City's ability to provide public or residential uses at Docktown. The City is currently conducting environmental analysis in the Redwood Creek area and may adjust its direction and/or policies dependent upon what the results of this analysis. Furthermore, the City does not own the land adjacent to Docktown. Marina access to facilities and in general is accomplished via a month-to-month license with private land owners. As a result, any multi-year plan for the marina use must account for the possibility that the City could not guarantee private residential access to Docktown Marina.

Next Steps

If the Council chooses to send this letter to the State Lands Commission, staff will work with State Legislators and State Lands Commission staff on the timing of the legislation, as well as specific wording. City representatives would also be involved and attend any State Lands Commission meeting in which the topic of Docktown is discussed. The City will concurrently

work on the environmental and landside access issues noted above. Additionally, the City will work with Docketown residents on creating a plan for Docketown.

ALTERNATIVES

The Council may opt not to send the letter or provide other direction.

FISCAL IMPACT

Staff time was utilized to draft this letter and research related issues. A significant amount of staff time will also be necessary during the legislation process. Finally, the City currently operates Docketown at a loss. It is expected those losses would continue, and potentially increase, over the proposed 15-year transition period. Staff will further address financial impacts as the Docketown Plan is developed.

ENVIRONMENTAL REVIEW

The action proposed in this report is not a project under CEQA as defined in CEQA Guidelines, Section 15378, as it has no potential for resulting in either a direct or foreseeable physical change in the environment.



AARON AKNIN
ASSISTANT CITY MANAGER



MELISSA STEVENSON DIAZ
CITY MANAGER

ATTACHMENTS

- Proposed Letter
- Applicable Articles
- Redwood City Statutes
- Informal Opinion from Attorney General