

**Subject:** Fwd: Diane - Bringing the floating home issue to your attn: also re: City Council  
**Date:** Thursday, October 6, 2022 at 11:49:23 AM Pacific Daylight Time  
**From:** Alison Madden  
**To:** BCDC PublicComment  
**Attachments:** KilroyRealtyCorpOCM\_Req4Meeting\_2022Sep27FinalDS.pdf, 09-19-OysterCove\_LiveAboard\_BCDC StaffReport.pdf, Gmail - Re Thank you and Yes! on Oyster Point emergency relocation for Cove refugees.pdf, BCDCEmailREsponsePetesHarbor\_MarinaFill.pdf, Gmail - Fwd- Fw- Town Hall this Wednesday, 3-5pm.pdf

Dear Clerk,

[Please use this one, it omits the personal-professional content at the bottom...]

This is for your inclusion in general public comment for today's meeting. It shows a send to our local (incoming) Assembly Member Diane Papan, and it has been provided (the info) to Sen. Weiner's office as well. We hope working through all local SF Bay AMs and Senators, to help the process of unifying "liveaboard" definitions and Ts and Cs Baywide. This includes the definition of "houseboat" and why that would preclude a flat-top working vessel that is navigable, but also why "houseboats" can't be in BCDC/Bay marinas if they are not liveaboard. There are many inconsistent definitions and various frameworks.

If you would please pass on, and pay particular focus to, the Sept. 27 letter to Kilroy and Tideline, it goes over why the Oyster Cove Marina tenants were "not" properly noticed under the Tenant Protection Act of 2019, and will need to be re-noticed. We also want to call out that as of the Town Hall held last month, the 1 year clock appears to have "already" started ticking, not from Oct 15th, the noticed lease term date (which has to be re-noticed by the way), and locally San Mateo Co. Harbor Dist. appears to be putting a six month first time period by which people should have made their plan for new slips, which will not be possible for all people at all).

Thanks for receiving this in the spirit of cooperation and input/comments from the public.

Best Regards,  
Alison Madden  
650.270.0066

----- Forwarded message -----

From: **Alison Madden** <[maddenlaw94062@gmail.com](mailto:maddenlaw94062@gmail.com)>  
Date: Thu, Oct 6, 2022 at 11:11 AM  
Subject: Diane - Bringing the floating home issue to your attn: also re: City Council  
To: Diane Papan <[dianepapan@gmail.com](mailto:dianepapan@gmail.com)>

Hi, Diane,

I wanted to bring the Oyster Cove issue to your attention. Dave Pine has been great, as San Mateo Co. Supervisor and BCDC commissioner, as have South SF officials. They worked out an emergency transition situation thru the San Mateo Co. Harbor District. However, in the BCDC meeting Sept. 15, 2022 some Commissioners (esp. a woman who has been 35 years with the EPA) asked staff to start preparing a study to see if the "10% rule" for "liveaboards in marinas" could be re-opened and re-considered.

Also Mia Bonta and Sen. Skinner recently assisted their constituents in Alameda, with AB252. I wanted to put the Oyster Cove issue on your radar, with the legal authority in the attached letter to the effect that: "floating communities are protected, yes, by all housing and tenant laws". This is especially relevant in the scope of the TPA of 2019 (just cause lease terminations).

I have also provided this to the local aide for Sen. Weiner and will be providing it to Senators Becker and Cortese as well, given their representation of counties that touch the Bay. I've asked Sen. Weiner's aide to relay it to Sen. Skinner and AM Bonta, and I will also be sending it to Ms. Bonta. We'd "love" a co-ordinated AM/Senator endeavor to liberalize the 10% and the restrictions that don't allow "houseboats" in marinas, even if someone is not living on it at the time. (I've attached the BCDC Memo too, and my email in support).

Thanks,

Alison

650.270.0066

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Sept. 26, 2022

By U.S. Post, Hand Delivery & email attachment: [optech@kilroyrealty.com](mailto:optech@kilroyrealty.com)

John B. Kilroy, Jr.  
Chairman/CEO  
Kilroy Realty Corporation  
S.F. Office, 100 First St., Ste. 250  
San Francisco, CA 94105

*Re: Oyster Cove Marina slip holders; Request for more time through Phase 2*

Dear Mr. Kilroy,

This letter serves as a follow on to the request, made in writing over 2 months ago, to engage with you and/or your Realty company's team directly ("**Kilroy**") respecting the Oyster Cove Marina in South San Francisco ("**OCM**" & "**SSF**", respectively). As you will see below, we believe OCM is residential real property subject to the Tenant Protection Act of 2019 ("**TPA**"), which requires specific notice of no-fault just-cause termination, the basis therefor, and specific, written offers of relocation or final-month rent waiver, all of which was not complied with.

We believe Kilroy must re-notice all occupants that ever had liveaboard ("**LA**") status of any kind, shape, manner or nature. This includes all occupants that were LA tenants as of the June 15, 2022 Notice, and that ever had a signed lease agreement providing an apparent LA under the BCDC permit applicable to OCM. Therefore, this also includes all households moved off LA status onto "Extended Stay", "2-boats off papers" status, and those known to Kilroy, through Tideline, prior managers and/or harbor masters to be "known sneakaboards" (believed at no more than 2-3 boats, so this aspect shouldn't be overblown, but is important to state and preserve).

Accordingly, we believe Kilroy must give 60 days' notice as of Oct. 1, 2022 (or whichever date Kilroy elects and selects to trigger the 60 days) ("**Re-Notice**"), and that such Re-Notice must include all the advisements and information required by the TPA, which are noted below.

I have advised my clients their position is quite strong, and that any UD commenced without compliance to the TPA is a wrongful eviction for which civil claims may be made. Because the TPA voids any and all waivers, and declares any claim of waiver to be inconsistent with California public policy, any letter or paper signed by any OCM tenant, as requested by Kilroy and Tideline from June 15, 2022 forward, is null and void as to any agreement to vacate. However, each letter stands on its own as pertains to your own offer and their acceptance of rent waiver, so you may not claw back any uncollected rent you waived over the past 4 months.

**Introduction; SSF Engagement; BCDC & Harbor District Workout**

The tenants at OCM have been proactive, coordinated and very respectful, in seeking the involvement of the City of SSF, and it is our understanding City Manager Mike Futrell, his staff and other elected and/or appointed officials, have engaged in discussions with Kilroy. The OCM tenants appreciate all this activity, and the undertakings on the part of SSF and all the mentioned parties. The tenants realize this activity can be viewed as a relay, surrogate, or go-between.

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At the same time, the primary request of the OCM tenants' prior letter was to meet with Kilroy to discuss the needs of individual tenants, all of whom are similarly situated, but who are being treated unequally, and as a result, inequitably. In our prior letter, we laid out the historical status of both Kilroy/Tideline, as well as prior owners and operators of OCM, of materially exceeding the BCDC permitted allowance of LAs, then moving them off LA status through a pattern of unfair business practices. This has cost them dearly, through no fault of their own.

You must have been apprised by now of the proactivity of Supervisor Pine, a Commissioner at the BCDC (Bay Conservation & Development Commission), and SSF Council Member Addiego, also a BCDC Commissioner. Their leadership has resulted in a workout of a plan through BCDC staff and the San Mateo County Harbor District, to accommodate OCM tenants during a 1-year transition period, as both LAs and non-LAs, at Oyster Point Marina (“OPM”).

We encourage you to listen to Agenda Item #8 from the Sept. 15, 2022 BCDC meeting. BCDC staff made a presentation after having produced a Memo for the Agenda, and both of these summarize the history and current status of LAs and non-LAs at OCM and OPM, as well as broader issues. These items also lay out the plan for OCM tenants (both LA and non-LA), to work through the Harbor District Harbormaster to commence moving to OPM. As an aside, a number of Commissioners were supportive of looking at why the 10% limitation on LAs is in place, when and how it came about, and whether it and other restrictions might be loosened. This was encouraging after many years of LA and non-LA marina tenants having advocated for this.

Despite this progress and the very sympathetic response from SSF Council Members, City staff and the BCDC Commissioners, many tenants still desire the dignification of a response to their prior letter, and to the interests set forth therein, including specifically a response to, and redress of, some of the unfair distinctions that were made over the last several months and years.

These unfair distinctions have resulted in inequitable treatment across the entire set of tenants, leaving similarly situated tenants being treated unequally. Some are being denied the offer of a \$10,000 relocation benefit, and for others with detrimental reliance, they did more than \$10,000 in work to their vessels to remain at OCM, at the demand of Kilroy/Tideline, only to be told they must now leave. In public, civil rights terms, this is denial of due process and equal protection of the law. Kilroy being a private commercial firm, the causes of action are stated as breach of contract, unfair business practices, detrimental reliance and equitable estoppel, among others.

**“No-Fault Just-Cause Termination” Must be Properly Noticed; Prior Notices Insufficient**

Specifically, and as you may know, the California Legislature finally passed a Just Cause law, called the Tenant Protection Act of 2019 (“TPA”), which came into effect in 2020. Although not all scenarios of landlord-tenant activity fall under the TPA, this eviction of OCM tenants does. The TPA is Civil Code §1946.2 and is called “**Termination of tenancy after continuous and lawful occupation of residential real property for 12 months; just cause required; notice; additional tenants; opportunity to cure violation; relocation assistance or rent waiver; application of section**” (bold in original).

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Under the TPA, “Notwithstanding any other law, after a tenant has continuously and lawfully occupied a residential real property for 12 months, the owner of the residential real property shall not terminate the tenancy without just cause which shall be stated in the written notice to terminate tenancy.” Civil Code §1946.2(a). Thus, you were required to specifically state, in the written notice to terminate tenancy, the “just cause” you are acting under, and whether is it “at fault” or “no fault”. *See id.* (b)(1) (@ fault) and/or (b)(2) (no fault). Sec. (b)2) applies here.

Kilroy was required to have stated the just cause, as at-fault or no-fault, and the fault/no-fault basis in the notices dated June 15, 2022 (“**Notice(s)**”). (As the activity here clearly falls under “no-fault” we shall cease referring to (b)(1) and “at fault” for further discussion in this letter.) Not only did your Notices not refer to “just cause”, they did not state the “no-fault” reason for termination, as required; nor did they contain other statutorily-required information, noted below.

Kilroy may claim no-fault under a few of the Sec. (b)(2) bases, but it must state which one, or arguably more than one, if applicable or possible. This is so tenants can get accurate legal advice. Not only did your June 15, 2022 Notices not state any reason, it stated there was no reason, and purported to get tenants to “agree to vacate” if they signed.

However, the rights and entitlements of the TPA may not be waived, neither expressly or by implication. TPA, §(h): “Any waiver of the rights under this section [1946.2] shall be void as contrary to public policy.” As an aside, very few laws in California have this protection, among them being a ban on non-compete agreements and other very substantive rights. Indeed, the June 15<sup>th</sup> Notices and attached agreement seeking agreement to vacate are, themselves, yet another actionable unfair business practice, in addition to the “you never had a valid LA slip” ruse.

**Additive to Re-Notice, Kilroy must offer relocation or rent waiver, paid 15 days from Re-Notice**

In addition to the express notice requirements, identifying the no-fault, just cause basis, Kilroy must offer relocation benefits, or rent waiver, each equal to the final month’s rent. If relocation is elected, it must be paid within 15 days of Re-Notice. See Sec. (d)(1)(A) (direct relocation payment) or (B) rent waiver; (d)(2), (3) (these sections state the information that must be provided, and (3)(A) provides that the direct payment must be made within 15 days of the notice.

Finally, “An owner’s failure to strictly comply with this subdivision shall render the notice of termination void.” TPA, *id.*, at (d)(4). None of the “exclusionary exceptions” that take various forms of “real estate” or “residential dwelling unit” out of the TPA’s coverage applies to LAs. *See* TPA, at (e)(1)-(9). Moreover, Kilroy did not advise tenants timely in 2020-22 re: rent protections, as required by the TPA. *Id.*, Sec. (f).

Finally, “Residential real property” under the TPA is “any dwelling or unit...intended for human habitation ....” On this basis, all known LAs, whether LA, Extended, 2-boats or sneakaboard, are protected. Kilroy/Tideline served Notices Sept. 15, 2022 for the very few who did not sign the Agreement to Vacate under the short-time duress sought, e.g., prior to June 30, 2022. The Notices served on the few non-signatories do not comply to the TPA, and must be Re-Noticed.

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**Marinas and harbors, and rented boat slips, are “real property” for purposes of tenancy law**

Even though the TPA itself, by its very terms, definitions and omissions in the exclusionary provisions, includes LAs in harbors and marinas, the following is additional authority:

Marinas and harbors, and the infrastructure of their docks, quays, wharves and slips, are “real estate” within the meaning of the TPA, other tenancy provisions (including without limitation UD evictions under CCP §§1161 et seq.), and for purposes of land management.

For instance, the California Public Resources Code (“**PRC**”) defines public trust lands as, *inter alia*, submerged and tidelands and references title, trust oversight and other land management activities. *See, e.g.*, §§6001 *et seq.*, establishing the State Lands Commission (“**SLC**”), which oversees State of California “tidelands and submerged lands” (§6009(a) referencing “title”) and “public trust lands” (§6009(c)(1-13), referencing fiduciaries’ duties over land management, with the land the corpus of the trust, which is real estate, and alienable (can be granted, leased and permitted, subject to the fiduciary oversight obligations)).

*See also*, 1983 “Pete’s Harbor” special emergency legislation requiring the SLC to lease the outer harbor at Pete’s (now “Blu”) Harbor, off Bair Island Road in Redwood City, allowing up to 100% LA capacity in Smith Slough, which is in BCDC jurisdiction per the McAteer Petris Act (“**MPA**”). This is done through “PRC Leases”, *see, e.g.* PRC §6106.

The San Mateo County Superior Courts have also recognized boat slips as real property. *See Smith v. Muni Ct. (TMI Growth Properties/Carey, RPIs)* (1988) (AO40446 1DCA), at 1 (“In this case we hold that a rented boat slip in a marina is “real property”....”) (quotes in original; Muni. and Superior Courts merged in 1990s, all Muni authority is now considered Super. Ct.).

Moreover, Judge Weiner, Dept. 2, San Mateo Co. Super. Ct., recently held in the Docketown litigation that boat slips are real property supporting both Inverse Condemnation (“**IC**”) and applicability of the Cal. Relocation Assistance Act, or Law (“**CRAL**”), which involves the movement of persons and property “from real property....”. *See, e.g.* Gov. Code §§7260 *et seq.* (the CRAL), and in particular §§7260(c)(1)(A) & (B) (both referencing trigger to status of “displaced person” as one “who moves from real property, or who moves his or her personal property from real property....”) (and implementing Guidelines in the CCR further confirm and elucidate this). *See* 17CIV05387, San Mateo Co. Super. Ct. *Fambrough v. Redwood City* (Filed 2017, decided Feb. 18, 2022) (ruling after court/bench trial, damages to be determined by jury).

In addition, the FEHA certainly applies to LA boaters. *See, e.g.*, Gov. Code §§12955 *et seq.*, covering residential dwellings, housing accommodations, and more. There is no serious argument to be made that one may discriminate on any basis, including source of income or any other status or basis, merely because a residential tenancy unit is a boat, vessel, houseboat or floating home in a slip. Although some harbormaster routine claim this from time to time, that boat slips have no FEHA protections, no court nor statute has ever stated so. And the Unruh Act applies to commercial, pleasure and recreational slips (i.e., non-LAs), with the same argument that one could not seriously take the position that because marinas and vessels are on the water,

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civil rights legislation does not apply to protect business customers and invitees. Civil Code §51. Also, the SLC and BCDC require ADA compliance. Title III, ADA of 1990; FEHA, Unruh Act.

Accordingly, it is patently clear all legal protections in California extended to residential units, dwellings, accommodations and “real estate”, apply to liveaboards. The TPA is no exception.

Finally, there is recent legislation that confirms applicability of certain local rent protections in Alameda County to tenants in Floating Home Marinas under the Floating Home Residency Law, or FHRL, Civil Code §§800 *et seq.* Although a mixed-use LA BCDC marina such as OCM formerly did not typically fit under the express terms of the FHRL before, which was designed to apply more to large, barge-based floating structures connected to a sewer, the recently-enacted AB 252 is just another reference to legal protections being recognized for “liveaboards” within FHRL Marinas. AB 252 was sponsored by Mia Bonta and Nancy Skinner of Alameda and Oakland jurisdictions (as Assembly Member (“AM”) and Senator, respectively, Sen. Skinner also being a BCDC Commissioner). AB252 was also supported by other Bay Area AMs and Senators, including without limitation Sen. Weiner. AB252 amended the FHRL to recognize in the context of floating home marinas, that tenant protections apply. This was not curing nor admitting any prior exclusion, only helping their citizens not have to sue to prove this.

**Induced Reliance; Specific Harm to Tenants Who Upgraded or Did Not Seek Alternatives**

First, we remain committed to the posture that Kilroy made statements that induced reliance on the part of OCM tenants to remain at OCM and not seek other accommodations over the past several years, including budgeting to prepare boats and do work, have surveys, and find available slips, which are not now available. These are provable reliance damages and are actionable.

Second, and as important, are reports by OCM tenants that they were required to undertake material work on their boats, which they did, on the representation that once they did this work, they could and would remain as OCM tenants at OCM. Similar to the reliance damages above, these are directly related to express mandates stated by OCM ownership and management over the past 2 years. Had these people known they were going to immediately have to move their vessel after returning it to OCM from shipyards, they would have taken different actions.

**Conclusion; Next Steps and Remedies**

In conclusion, we ask Kilroy, directly:

1. To Re-Notice all OCM slip holders that were, and that had been, as of June 15, 2022, residential tenants, *i.e.* that Kilroy/Tideline and/or its prior owner/operators knew were “human habitants” using the verbiage of the TPA;
2. We believe 60 days is proper legal Notice;
3. This includes all persons that had LA status at any time, including those that were forced to “Extended Stay” status, or “off papers” due to having 2 boats, and/or that were “known sneakaboards”, who relied to their detriment on not changing status by such knowledge and allowance, all at any time over the last several years and that remained as of 6/15/22;
4. That the Re-Notice include all required TPA verbiage and information including identify-

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ing the amount of final month's rent and whether Kilroy will be paying a "direct payment" in a "relocation" benefit payment, or will waive final month's rent;

5. Respond with an indication when and how Kilroy will meet to discuss the detrimental reliance damages incurred by several tenants who either did not move or had material work done, so that proper compensation can be agreed without legal process.

Note: such reliance includes rent differential that will now be experienced by many who move to the interim, emergency OPM solution, when the Re-Noticed time period is up.

Below we repeat the original asks, which would be nice to also discuss in a meeting:

1. To work openly and consistently with elected City, and City staff, representatives such as City Manager, to extend time and provide for some low-income housing units at OCM to remain, especially for long-term, elderly, disabled and other at-risk slip holders (a General Plan objective generally for low-, very low-, and extremely-low income levels);
2. To work openly and consistently with Supervisor Dave Pine, the San Mateo County BCDC commissioner (each County Supervisor Board sends 1 commissioner), for the same objective as #1, and especially to support more slips at Peninsula marinas;  
\*Both 1 & 2 would be to endeavor to keep OCM residents local to SSF, either by allowing a certain # of slips to remain for residential liveaboard at OCM, or to increase the 10% allowance at Oyster Point and Brisbane, as well as other County marinas to increase their 10% (Westpoint, Redwood City Municipal & Redwood Landing).
3. To allow residents until at least Feb. 28, 2023 to reside at the marina, with or without rent relief, depending on the overall solution and the person's plans for relocation;
4. To allow OCM slip holders, especially residential liveaboards, to stay until any new use-case is approved and permitted, and to allow a certain # to return after any necessary project work; and
5. To increase the displaced person relocation benefit payment, to an amount to be established and determined by discussions between Kilroy and OCM slip holders, treating all categories of residential slip holder the same, regardless of current papered category, given the history of forced change of status to Extended Stay, 2-boat off papers or "known sneakaboard/off papers.

Thank you in advance for your receipt of this letter in the spirit intended. We look forward to progress on meeting the needs of all concerned, with support for each others' objectives. There is no desire for animosity or interference with any upland development, or Tideline offering.

Best Regards,

DocuSigned by:

*Alison Madden*

284E658A3621410...  
Alison Madden

Law Office of Alison Madden, dba *MaddenLaw*

Cc: Matt Klein, Lucia Lachmayr,

Karl Rech (for and on behalf of OCM slip holders)



# San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

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## Agenda Item #8

September 9, 2022

**TO:** Commissioners and Alternates

**FROM:** Jessica Fain, Acting Executive Director (415/352-3642; [jessica.fain@bcdc.ca.gov](mailto:jessica.fain@bcdc.ca.gov))  
Anniken Lydon, Bay Resources Program Manager (415/352-3624;  
[anniken.lydon@bcdc.ca.gov](mailto:anniken.lydon@bcdc.ca.gov))

**SUBJECT: Oyster Cove Marina Live-aboard Discussion**  
(For Commission consideration on September 15, 2022)

### Summary

The owners of the Oyster Cove Marina in South San Francisco, San Mateo County, are exploring converting the marina to a different use and have informed those using the marina that they must leave by October 15th. Commissioners Pine and Addiego have requested that the Commission allow those liveaboards at the Oyster Cove Marina to temporarily move to the adjacent City-owned Oyster Point Marina while they find other arrangements. Staff has considered a range of actions to address the issue, as described below, and concluded that while the proposed increase in live-aboards would be out of compliance with the existing Oyster Point Marina permit (1977.001.18), the best course of action is to allow them up to one year to resolve the issue without initiating enforcement, subject to the expectations discussed below. Staff intends to send a letter of intent to the City of South San Francisco and the San Mateo County Harbor District explaining staff's proposed approach, unless the Commission objects.



*Figure 1. Oyster Point, located in the City of South San Francisco. Oyster Cove Marina is to the west of Oyster Point and Oyster Point Marina is to the east.*

## Staff Report

### **Background on Oyster Cove Marina Live-abords Issue and the adjacent Oyster Point Marina.**

Oyster Cove Marina Owner, LLP (OCMO) is the owner of the Oyster Cove Marina in the City of South San Francisco in San Mateo County. Tenants of the marina have been notified that they must vacate the marina by October 15, 2022. At the July 7, 2022 Commission meeting, the Commissioners and BCDC staff heard a number of public comments from marina tenants, including live-aboard boaters, regarding the eviction from the Oyster Cove Marina. The members of the public raised a number of issues to the Commissioners and staff, including: (1) the short period of time until the eviction from Oyster Cove Marina on October 15<sup>th</sup>, (2) that many live-abords have no place to go following the eviction, (3) that some live-abords have inquired about getting slips at other marinas, including ones outside of San Francisco Bay, and have been informed that there is a long waiting list or time period before they would be accepted as a live-aboard to those marinas, (4) many live-aboard boaters currently have no upland alternative to living on their boats, (5) that they could be displaced from the part of the Bay that they have lived in for a number of years and are connected to, (6) financial hardship impeding them from other potential options, and (7) live-aboard boaters that feared that they would perhaps need to anchor outside of a marina if they were not able to find a marina in the Bay Area that accepts them. These commenters implored for Commission assistance with this issue, and to potentially allow for an increase in the ten percent live-aboard allowance at adjacent marinas to permit them to go to these marinas. Additionally, members of the live-aboard community at Oyster Cove Marina also attended the August 18, 2022 Commission Meeting and provided similar public comments to the Commission in the open Public Comment Period.

On July 27, 2022, representatives of OCMO met with Commission staff for a short pre-application meeting to discuss a potential future use at the marina site. At that meeting, OCMO informed staff that they were in the early stages of designing a future project for the site. The existing BCDC permit (Permit No. 1982.004.08) for Oyster Cove Marina allows for the owner (OCMO) to have up to 23 live-aboards (or ten percent of the authorized berths) if they meet the permit conditions, but the permit does not require the marina to have live-aboards. Additionally, this permit requires the owner of Oyster Cove Marina to provide at least 30 days' notice of any termination of berth leases or licenses. Currently, there are an estimated 32 people living on their boats at the marina according to the City of South San Francisco, up to 23 of those are permitted by BCDC and the others are not. OCMO sent eviction notices to all tenants, live-aboards and recreational users, on or around June 15<sup>th</sup> and 16<sup>th</sup>. OCMO offered 14 live-aboard owners \$10,000 dollars to compensate for the move. According to OCMO, all but two of the live-aboards have taken the payments and a couple have since moved to other locations. To staff's knowledge, OCMO does not plan to extend the eviction deadline.

At the Commission meeting on August 18, 2022, Commissioner Pine requested that staff agendaize the matter for consideration of potential actions to address the liveaboard issue, and he and Commissioner Addiego have requested that the Commission allow those liveaboards at the Oyster Cove Marina to temporarily move to the adjacent city-owned Oyster Point Marina while they find other long-term arrangements for the evicted live-aboards.

Commission staff have been in contact with the City Manager and staff for the City of South San Francisco (City) discussing the eviction of the live-aboard boats from Oyster Cove Marina and potential options for the live-aboards. The City has conducted a number of interviews with the live-aboards within Oyster Cove Marina to try and better understand their needs and potential options to move into upland housing or to another marina. The City staff are also working on helping the live-aboard boaters find resources to help them move, but many of the live-aboard boaters are elderly and/or disabled and rely on a fixed income, making it difficult to find upland housing options or another place to go on this short timeframe. The City estimates that there are about 106 total boats remaining at Oyster Cove Marina currently, with 32 of those being live-aboard boaters that have not found another place to live. Fifteen of the remaining live-aboards were considered by the marina to be "legal live-aboards," and 7 were considered "extended stay," and these together account for 22 live-aboards of the up to 23 allowed under the permit. The remaining ten live-aboards were not considered by the marina operators as permitted live-aboards.

The City owns the Oyster Point Marina, which is located around Oyster Point from Oyster Cove Marina (Figure 1). The Oyster Point Marina is run by the San Mateo County Harbor District (Harbor District) on behalf of the City of South San Francisco, who is the underlying landowner. This recreational marina currently contains 408 berths spread across a number of docks.

The Oyster Point Marina has an existing BCDC permit (1977.001.18) that allows for up to ten percent of the berths to be used for live-aboard boats, which is about 40 berths for live-aboards. Currently the marina contains 29 live-aboards and is slated to have an additional 11 live-aboards filling the additions spots from the wait list soon. There are no vacant live-aboard spots at Oyster Cove Marina currently.

The allowance for live-aboards at Oyster Point Marina at all is based upon the marina meeting a number of conditions specified in their permit (which imposed conditions to ensure consistency with Bay Plan Recreation Policy 3.c), including the following: (1) the live-aboard boats are designed and used for active navigation and are used as a primary residence; (2) the marina maintains convenient and adequate parking, restrooms, showers, garbage disposal facilities and pump out stations for use by occupants of the live-aboard boats; (3) the number of live-aboards does not exceed ten percent of the authorized berths in the marina; (4) there is adequate tidal circulation in the marina; (5) that the discharge of any solid or liquid wastes into the Bay within the marina shall only occur in accordance with federal and state regulation; (6) that direct shoreside sewer connection be provided, if the EPA designates Oyster Point Marina as a “no discharge” area; (7) there be no houseboats; (8) that the live-aboard boats are allowed only for the purposes of security for all boat owners, users, and the public and are to be distributed throughout the marina to provide greatest security; and (9) the marina must maintain a plan showing the specific live-aboard location, name of the vessel, DMV registration, a description of the waste handling facilities of the vessel, and the names and contact details of the owners/occupants of the vessels. Additionally, the permit requires a number of public access amenities both within the marina and along the shoreline that were a condition of the original development of the marina, the installation of a ferry terminal within the marina, and other improvements along the shoreline. These areas are required to be open to the public for a variety of purposes and to be maintained.

The City and Harbor District have indicated that currently there is only about a 76 percent occupancy rate at Oyster Point Marina, and that there are about 123 vacant slips/berths in the marina. They have indicated they are willing to temporarily take the live-aboards into Oyster Point Marina and the City will provide assistance to the live-aboards in finding additional resources, housing, or another marina that may have an open live-aboard slip. However, the ten percent live-aboard restriction in their current permit does not allow for them to take the live-aboards into the Marina. The Harbor District has indicated that they could meet all other requirements of the live-aboard conditions of their permit, including having appropriate pump out facilities, restrooms, showers, parking spaces, and trash receptacles, and that the additional live-aboards would have negligible impacts on the facilities or maintenance requirements. Additionally, the Harbor District has indicated that the marina and facilities will be maintained in a manner that does not cause some of the services to spill over into required public access areas within the marina and along the shoreline. The Harbor District has indicated that required public access, including parking, Bay Trail, wind surfing ramp, park, fishing pier, viewing platform, and other amenities would not be impacted.

Additionally, due to the number of vacant slips, the Harbor District would be able to place the live-aboards around the marina based upon the vessels' size. The boats would be placed throughout the facility to not disrupt circulation patterns within the marina and in a manner that may assist with additional security. The City and Harbor District are considering taking all of the live-aboards from Oyster Cove Marina (up to 32 additional live-aboards) as part of a humanitarian effort on a temporary basis to assist these people with finding additional places to go in the long-term.

### **BCDC's Laws and Policies on Live-aboards**

In July 1985, Commission staff published a Planning Staff Report titled "Houseboats and Live-aboard Boats," upon which the current Bay Plan Recreation Policy 3.c on live-aboards and the definitions for live-aboards in the Commission's Regulations is based. This report makes clear that "live-aboard boats are used for navigational purposes but are also used for long-term residential use." The 1985 report recognizes that a residential use is not a "water-oriented" use and therefore is not consistent with the McAteer-Petris Act and is also not consistent with the public trust. At the time of the report, there was not a comprehensive account of the "inception, growth, or migration of waterborne residences on San Francisco Bay," but the report mentions that boats for residential use have been found in small numbers in the Bay since the mid-1800s. Prior to the report, the Commission did not have policies specifically related to live-aboards, but the report provided that analysis and basis for the development of the Bay Plan Recreation Policy 3.c. on live-aboards. At that time there was a recommendation for a five percent allowance for live-aboards within marinas due to the security benefits that they could provide to marinas. The report recommendation for up to five percent live-aboards was developed based upon surveys done of the existing marinas in 1985 that were sent out by the Commission staff, and projecting future marina/berth construction anticipated in the Bay Area. On March 20, 1986, the Commission adopted findings, policies, and definitions around live-aboard boats, including a policy to allow up to ten percent of total marina berths to be used for live-aboards, in addition to a number of other requirements.

Currently, Bay Plan Recreation Policy 3.c states that, "[l]ive-aboard boats should be allowed only in marinas and only if: (1) The number would not exceed ten percent of the total authorized boat berths unless the applicant can demonstrate clearly that a greater number of live-aboard boats is necessary to provide security or other use incidental to the marina use; (2) The boats would promote and further the recreational boating use of the marina (for example, providing a degree of security), and are located within the marina consistent with such purpose; (3) The marina would provide, on land, sufficient and conveniently located restrooms, showers, garbage disposal facilities, and parking adequate to serve live-aboard boat occupants and guests; (4) The marina would provide and maintain an adequate number of vessel sewage pumpout facilities in locations that are convenient in location and time of operation to all boats in the marina, particularly live-aboard boats, and would provide the service free of charge or at a reasonable fee; and (5) There would be adequate tidal circulation in the marina to mix, dilute, and carry away any possible wastewater discharge. Live-aboard boats moored in a marina on July 1, 1985, but unauthorized by the Commission, should be allowed to remain in the marina provided the tests of (2), (3), (4), and (5) above are met.

Where existing live-aboard boats in a marina exceed ten percent of the authorized berths, or a greater number is demonstrated to be clearly necessary to provide security or other use incidental to the marina use, no new live-aboard boats should be authorized until the number is reduced below that number and then only if the project is in conformance with tests (1), (2), (3), (4), and (5) above.”

The McAteer-Petris Act Section 66604 empowers the Commission to grant a permit for placing fill, extracting materials, or making any substantial change in use of any water, land or structure within the Commission’s jurisdiction. McAteer-Petris Act Section 66632(f) states in relevant part that the Commission shall grant a permit for a project, “if the commission finds and declares that the project is either (1) necessary to the health, safety or welfare of the public in the entire bay area, or (2) of such a nature that it will be consistent with the provisions of this title and with the provisions of the San Francisco Bay Plan then in effect.” Further, Section 66605 lays out the requirements that must be met in order for the Commission to issue a permit for a project for which fill is proposed. These requirements include the following: (a) the fill should only be authorized when the public benefits of the fill clearly exceed the public detriments from the loss of water areas and the fill is for a water-oriented use, (such as ports, water-related industry, airports, bridges, wildlife refuges, water-oriented recreation, and public assembly, water intake and discharge lines for desalinization plants and power generating plants requiring large amounts of water for cooling purposes; (b) there is no alternative upland location for the fill; (c) the water area to be filled is the minimum amount necessary to achieve the purpose of the fill; (d) the nature, location, and extent of fill are such that it minimizes harmful effects to the Bay Area and Bay resources; (e) that public health, safety, and welfare require the fills to be constructed in accordance with sound safety standards against unstable soil or geologic conditions and flooding; (f) the fill establishes a permanent shoreline; and (g) the applicant has valid title to the property.

In the McAteer-Petris Act, fill is defined in Section 66632(a) as “...earth or any other substance or material, including pilings or structures placed on pilings, and structures floating at some or all times and moored for extended periods, such as houseboats and floating docks. For the purposes of this section ‘materials’ means items exceeding twenty dollars (\$20) in value.” Both houseboats and live-aboard boats are considered fill by this definition, but the regulations further distinguish the two types of boats. The Commission’s regulations define houseboats in Section 10127 as “a boat that is used for a residential or other nonwater-oriented purpose and that is not capable of being used for active navigation,” and Section 10128 defines a live-aboard boat as a “boat that is not a transient boat, that is capable of being used for active self-propelled navigation, and that is occupied as a residence as that term is defined in California Government Code Section 244.”

Bay Plan Recreation Finding “h” states that live-aboard boats, while designed and used for navigation, are used as a primary place of residence, and distinguished from other recreational vessels in that regard. It further states that residential use is neither water-oriented nor a public trust use. This policy position that residential use is not a water-oriented use for purposes of the McAteer-Petris Act has been further supported through caselaw: “[a]ll the uses in [Section 66605] subdivision (a)'s illustrative list, with the possible exception of airports, are functionally dependent on proximity to the water. Housing has no such necessary connection to the Bay. Housing, like a myriad of other land uses, may but need not be built on or near the Bay. An interpretation of section 66605 which included these uses under the rubric of ‘water-oriented’ would make the term meaningless in practice and would frustrate the purposes of the Act.” (*Mein v. BCDC* (1990) 218 Cal.App.3d 727, 733.) The Court further found that in that case “BCDC's conclusion that housing is not a water-oriented use is thus in accord with the Act and the Bay Plan.” (*Id.* at 734.). Although residential uses are not water-oriented uses for which the Commission can approve a permit for Bay fill in accordance with the McAteer-Petris Act, Bay Plan Recreation finding “h” recognizes that live-aboard boats can be easily converted to navigable, recreational uses, and when properly located in a recreational boat marina can provide a degree of security to the marina. In consideration of this finding, Bay Plan Recreation Policy 3.c does allow, subject to other requirements, for some live-aboards to be authorized at recreational marinas, but such allowance is limited to no more than ten percent of the authorized berths in the marina, with an exception for allowance beyond the ten percent limitation if “the applicant can demonstrate clearly that a greater number of live-aboard boats is necessary to provide security or other use incidental to the marina use.”

The Bay Plan policies on Environmental Justice and Social Equity direct that the guiding principles on environmental justice and social equity should shape all of the Commission's actions and activities. Bay Plan Environmental Justice and Social Equity finding “g” says that addressing social equity in policy is essential for the economy, health of a population, and community well-being. One of the guiding principles states that the Commission shall endeavor to eliminate disproportionate adverse economic, environmental, and social project impacts caused by Commission actions and activities, particularly in disadvantaged and vulnerable communities. Additionally, Bay Plan Environmental Justice and Social Equity finding “h” says that the Commission should recognize the importance of low-income communities as invaluable stakeholders and should uplift the voices of these communities. The Oyster Cove Marina live-aboards include residents who are low-income, veterans, elderly, and have fixed incomes and disabilities. Members of the public have raised concerns that they will likely end up becoming homeless and/or anchoring outside a marina, threatening human, and environmental health. Staff has considered the social equity aspects of the current situation in settling on its proposed approach forward.

**Potential Actions that the Commission and Staff May Take:**

To reduce potential harm to Bay resources and recognize the humanitarian issues resulting from the closure of Oyster Cove Marina on October 15, 2022, staff considered taking a variety of actions in conjunction with the City of South San Francisco and San Mateo County. The options discussed below include both the benefits and disadvantages of each option considered. Please note that common to all of these options is the overarching issue that residential and housing uses of the Bay are not consistent with BCDC's laws and policies, but can be allowed for live-aboard boats in recreational marinas in numbers that do not exceed ten percent of the allowable berths given the unique nature of live-aboard boats. This allowance is based upon the premise that these boats also can serve recreational purposes and are incidental to the marina use.

1. **No action.** In this case, Oyster Cove Marina is not required to continue having live-aboards as a condition of their BCDC permit for the marina.<sup>1</sup> For this option, the existing requirements of the permit for Oyster Point Marina allowing for up to ten percent live-aboards at this marina would remain in place and the Commission would be silent on the matter. However, staff recognizes that if no action is taken, the lack of legal options for the large number of current live-aboards displaced simultaneously at the current time will likely result in some of the remaining Oyster Cove live-aboard boaters moving to another marina illegally and increasing that percentage of live-aboards without a BCDC permit, or becoming boats that anchor outside of a marina, which are known to have more detrimental environmental and human impacts than those boats located in marinas onshore. Either of these options could have impacts on water quality, the environment, public access, recreation, and other public trust uses and would not be regulated under a permit, in addition to being dangerous for the live-aboard boaters and their safety.
2. **Amendment to existing Oyster Point Marina Permit (1977.001.18) or other marina permit for an increase in live-aboard percentage allowance.** The current Bay Plan policies potentially allow for an increase in the percentage of live-aboards, so long as the marina can show consistency with the Commission's laws and policies. The findings required of Recreation Policy 3.c.(1)-(5) would need to be made, which from a policy perspective the most difficult and significant are Policy 3.c.(1) requiring that a greater number of live-aboard boats is necessary to provide security or other use incidental to the marina use; and

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<sup>1</sup> As explained above, the permit for Oyster Cove Marina allows but does not require the Marina to have live-aboard boats. As also noted above, it is staff's understanding that Kilroy does likely intend to ultimately use the Marina property for some other use. While section 10125(b)(2) of the Commission's regulation define "substantial change" to include "a change in the general category of use of a structure or of water or land, i.e., agriculture, residential, commercial, office, industrial, recreational, **vacant non-use**, etc." (emphasis added), it is not necessarily the case that Marina-wide evictions to prepare for use of the property for a different land use amounts to "vacant non-use." If and when the proposed change in "the general category of use" of the Marina property occurs, this will clearly constitute a "substantial change in use" for which a permit from BCDC is required. (Gov. Code § 66632(a).) As a practical matter, requiring a permit amendment now for the evictions as a "change in use" per Government Code section 66632(a) and section 10125(b)(2) will not remedy this situation for the live-aboards since BCDC is not in a position to compel the Marina to allow the live-aboards (nor would such a posture necessarily be warranted under BCDC's laws and policies).



Policy 3.c.(2) requiring that the boats would promote and further the recreational boating use of the marina (for example, providing a degree of security), and are located within the marina consistent with such purpose. Such an amendment to the existing Oyster Point Marina permit would require submittal by the Harbor District of an amendment request and all information that the Commission requires to file the application before action could be taken on the permit amendment within 90 days of filing.

However, given the circumstances of the eviction situation at Oyster Cove Marina, the immediate need to find new berthing locations for these live-aboards is not necessarily due to security reasons or other incidental uses at Oyster Point Marina, but is more related to humanitarian reasons and to ensure that these live-aboards do not anchor outside a marina. The increase in live-aboard percentage above ten percent through a permit amendment would result in a long-term increase at this marina and perhaps is not even necessary or desirable to redress the immediate situation. Additionally, studies and background information would be needed in order to justify the security reasoning and need at the Oyster Point Marina. As Commission staff understand it now, such a need does not exist (or, at the least, has not been justified), and these would be difficult findings for staff to make without further information. This permitting process may also take longer than is currently afforded by the pending October 15, 2022 eviction date from Oyster Cove Marina.

- 3. Emergency Permit to allow for a temporary increase in live-aboards at Oyster Point Marina.** The Executive Director is authorized to issue emergency permits for situations defined by Commission Regulation Section 10120 as, “a sudden, unexpected situation that poses an immediate danger to life, health, property, or essential public services and that demands action by the Commission more quickly than the Commission’s normal permit procedures would allow. A sudden, unexpected situation that poses an immediate danger to life, health, property, or essential public services may include, for example, an accident, sabotage, vandalism, fire, flood, earthquake, or soil or geologic movements.” Staff would need to determine that the facts around this situation qualify as an such an emergency. Although not specifically called out as an emergency situation, the eviction was somewhat unexpected by the live-aboard residents. Given the waiting lists for current live-aboard slips at other marinas or time needed to find upland housing, it may be difficult for the live-aboards to find places to go, therefore displacing them out into the Bay, which may pose an immediate danger to life and property. Still, interpreting this situation as an emergency for purposes of Regulation Section 10120 may have a negative precedential effect.

This permit process would require the City of South San Francisco and/or the Harbor District to apply for an emergency permit from BCDC, which could allow for a more expedited process than what is required for other permit types and may be issued prior to the eviction date. Section 10652 of the Commission’s regulations specifies that the Executive Director may grant an emergency permit subject to reasonable terms and

conditions, including an expiration date. An emergency permit also requires that the project proposed be fully consistent with the McAteer-Petris Act and Bay Plan policies. This option poses similar, though distinct, issues as an amendment to the existing Oyster Point Marina permit to increase to the live-aboard percentage, as discussed above.

This option would only allow temporary relief in this situation. As mentioned above, this situation is not a bright line example of an emergency situation as called out in the Commission's regulations and could set a bad precedent for what is determined to be an emergency. Emergency permits are usually only used in cases where an emergency exists of a kind similar to those described in Regulation section 10120 and there is not time to issue another permit type.

4. **Bay Plan Amendment for live-aboards in marinas.** The Commission could undertake a Bay Plan Amendment process, which would require that the staff re-evaluate the live-aboards allowance within recreational marinas and related marina requirements. Depending upon the outcomes of the staff research and public process required for Bay Plan Amendments, there could be a recommendation to leave the policies as is or to make some policy changes. If a Bay Plan Amendment were approved by the Commission, marinas would then need to seek a permit amendment to their existing permit requirements.

However, Bay Plan Amendments involve a lengthy process that includes staff research, Commission adoption of a descriptive notice to initiate the amendment, a public hearing, and a staff planning report at least 30 days in advance of the public hearing, a final staff recommendation, and two-thirds Commission vote for approval. Given the amount of time required for this process, it is not feasible for this process to occur before the October 15, 2022 eviction date for Oyster Cove Marina live-aboards. This option does not solve the particular issues brought forward in this case.

5. **Issuance of Regionwide Permit similar to Regionwide Permit No. 9 for Richardson Bay.** On September 2, 2021, the Commission voted to approve Regionwide Permit No. 9 to allow for temporary live-aboard limit increases for Richardson Bay and Tiburon Peninsula marinas to provide affordable slips for boats illegally anchored in Richardson Bay on or before August 2019. This regionwide permit for Richardson Bay allows subject marinas to accept up to 20 additional live-aboards on a temporary basis for eligible boats and/or their occupants. The period of this particular regionwide permit expires on October 15, 2030, to allow for the entirety of Richardson Bay to come into compliance with the Richardson Bay Special Area Plan and BCDC enforcement orders and/or agreements. This regionwide permit also requires that the live-aboard boats be seaworthy and that the marinas have adequate facilities, tidal circulation, and other requirements to qualify for the regionwide permit. Additionally, the temporary increase in live-aboards in the number of live-aboards allowed by the regionwide for Richardson Bay is premised on the findings that the live-aboard use and increase provides incidental benefits to the marina

use because it includes removing boats in Richardson Bay that were creating recreational impediments for boats in marinas, removes navigational hazards, and reduces on going damage to eelgrass habitat for fish species that is caused by illegally anchored boats. The Commission could take a similar action in the area and marinas around Oyster Point.

However, this option would only make sense from a programmatic perspective if there were multiple marinas that would be taking on the live-aboards rather than just a single marina or a few marinas. Additionally, the facts of the situation in Richardson Bay are different than the situation at Oyster Cove Marina. This action was taken as part of the long-term issue and to resolve illegal anchor outs. The illegally anchored boats in Richardson Bay were actively causing environmental damage and recreational and navigational impacts for current boats at marinas, and thus the temporary placement of these additional live-aboard boats at marinas to help resolve the enforcement matter was determined to be an improvement on recreational uses and incidental to the marina use. These same facts do not currently exist at Oyster Cove Marina or in the areas adjacent to the marina. Making findings to justify a regionwide permit similar to the Richardson Bay situation would present its own challenges.

6. **Period of resolution prior to active enforcement.** The Commission attempts to resolve activities that are not consistent with its law and policies prior to initiating formal enforcement. In this approach, the Commission would recognize that the unique circumstances of this situation will likely take a year to resolve and so during that interim period, staff will not initiate active, formal enforcement so long as the involved parties are making good faith efforts to come into legal compliance. For this option, the Executive Director would provide a letter of intent to the City of South San Francisco and Harbor District indicating that the staff understands that they are planning to take on all live-aboards from Oyster Cove Marina into Oyster Point Marina and that this is in exceedance of the ten percent allowance in the Oyster Point Marina permit, but that there exists extenuating circumstances in this case and that doing so may prevent these boats from anchoring out or moving to another marina illegally. This letter would recognize that the City and Harbor District are doing everything that they can to try and help resolve the issue and find places for the live-aboards to go. The letter would indicate that even though this is a violation of the existing permit conditions, it would be Commission staff's intent to work with them to bring the marina back into compliance and that there would be a temporary one-year period where the Commission would consider this a low-priority enforcement issue to allow the City and Harbor District time to resolve this situation. The letter would convey our expectations of the City and Harbor District, and the live-aboards themselves, working actively to try and find alternative upland housing options or open live-aboard spaces at other marinas. This letter would specify the temporary forbearance of formal enforcement is only related to the increase in live-aboards boats that are coming from Oyster Cove Marina and is not related to any other live-aboards that would be in exceedance of the ten percent allowance at Oyster Point Marina or any other permit requirements.

This option would provide temporary relief for the current situation and allow time for the displaced live-aboards to find long-term accommodations that are fully compliant with Commission law and policy, and for the City and Harbor District to address this issue and come back into compliance with the permit requirements. The expectation is that Oyster Point Marina would provide a temporary location for the Oyster Cove Marina live-aboards while they figure out a longer-term solution, such as getting on waiting lists at other marinas, etc., and prevent any issues related to these boats anchoring outside of a marina that has appropriate facilities and needed services. It appears that Oyster Point Marina has the facilities and capacity to temporarily take these live-aboards and remain in compliance with all other conditions of their existing permit. This option is not a long-term solution but has the benefit of providing relief while not specifically authorizing any activities that are inconsistent with the Commission's laws and policies. However, this option could also set a precedent for future situations. Staff does not believe that a Commission resolution is needed to take this approach, as it is simply documents staff's proposed enforcement approach and prioritization for this matter, unless the Commission disagrees with it.

**Issues Raised by the facts of the Oyster Cove Marina eviction.** Since the pending eviction of live-aboards from Oyster Cove Marina was raised to Commission in July 2022, staff has been working to learn more about the situation and identify potential ways to address the situation as it relates to the agency's powers and responsibilities. However, there are a number of practical, legal, and policy issues raised by the options that the staff has evaluated over a short period of time. Based on preliminary information about the situation and what staff has gathered, there are several legal and policy considerations regarding the live-aboards at Oyster Cove Marina. These issues include the following:

1. Residential uses of the Bay are not consistent with the McAteer-Petris Act or the Public Trust, due to the fact that this type of fill is not a "water-oriented" use, nor is it in furtherance of Public Trust needs.
2. Increasing the live-aboard allowance beyond ten percent at another marina nearby through amendment of its existing permit is inconsistent with the Bay Plan policies on live-aboards, unless it is necessary for security reasons or incidental to the marina use.
3. In this instance, time does not allow for a Bay Plan Amendment to increase the allowance of live-aboards in marinas, nor is it clear at this time that such a policy direction can necessarily be found consistent with the McAteer-Petris Act.
4. Notwithstanding the ten percent limit of live-aboard allowance under Bay Plan Recreation Policy 3.c.(1), any allowance of live-aboards at a marina must still otherwise meet the other requirements for allowance of live-aboard boats per Bay Plan Recreation Policy 3.c, including that the marina facilities, including restrooms, parking, pump out facilities, showers, etc. are adequate to support the live-aboards, that the boats would promote further recreational boating, and that there is adequate tidal circulation throughout the marina.

## Conclusion

After weighing the benefits and disadvantages of each of the options, staff intends to send a letter of intent to both the City of South San Francisco, as the underlying landowner of the Oyster Point Marina, and the Harbor District, as the marina operator. As discussed above, the letter will make clear that the increase in live-abords is out of compliance with the existing Oyster Point Marina permit (1977.001.18), but that staff understands that this is a temporary and humanitarian effort and will allow them up to one year to resolve the issue. This letter would make clear the expectations that (1) the live-abords will work in good faith to find other legal housing elsewhere; (2) that the City of South San Francisco and Harbor District will continue to work with the live-abords; and (3) that the Oyster Point Marina will provide adequate facilities and safety to ensure that there will not be environmental or other significant problems caused by the additional live-abords. Unless the Commission objects, the staff intends to send a letter of intent regarding its approach to the issue.



Alison Madden &lt;maddenlaw94062@gmail.com&gt;

**Re: Thank you and Yes! on Oyster Point emergency relocation for Cove refugees**

1 message

**Alison Madden** <maddenlaw94062@gmail.com>

Thu, Sep 15, 2022 at 10:24 AM

To: publiccomment@bcdcc.ca.gov

My apologies,

I had wanted to make one more point.

I also appreciate the discussion on "fill". As to Mein (the court case) I mentioned that the SLC approves private docks and piers for upland residential all over the state (this is shown on their monthly agendas, many agenda items).

The Staff memo did discuss "fill". Overall (very high level) I agree with the concept and approach that "a stick put in the Bay (a big one, like a piling) is "fill", and taking it out is generally "dredge".

First, it is likely an EIR is needed to remove this marina.

Second, we should keep as many marinas as possible.

Third, the Staff memo did acknowledge that marinas, harbors, ports, airports, docks, quays, wharves etc. are DESIRED fill under the McAtreer Petris Act (MPA) and Bay Plan. Thus, everything that goes "in" these desired fill projects, which are water-borne and water-based (inherently, ports, docks, slips, quays, wharves, etc.) is ALSO desired. It is not only desired it is specifically ANTICIPATED.

Thus, boats of any kind, working or not working, are not "fill". Harbormasters move boats around all the time, including even FLOATING HOMES hooked to sewers, because they can be, and are, moved by two dinghys within the harbor and hooked back up, to another connection. This was routine at Docktown and is VERY much a part of management of the light and water flow getting to the bottom. ALL of the objectives of environmental management and impact can be, and are, mitigated by proper management.

The attached memo shows a 2012 perspective on Pete's Harbor, where it was viewed somehow that the marina was not DESIRED fill, in contradiction to the MPA and Bay Plan.

Thank you,

Alison Madden

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650.270.0066

On Thu, Sep 15, 2022 at 10:13 AM Alison Madden <maddenlaw94062@gmail.com> wrote:

Dear Commission and Staff,

First, thank you very much for working with Supervisor / Commissioner Pine and Commissioner Adiego and the City of South San Francisco and the San Mateo County Harbor District, to address the impending evictions of liveaboards from Oyster Cove Marina (OCM).

The developer Kilroy and the management company Tideline "very" "very" much could have operated with more sensitivity. The OCM residents in the past had been advised that their living situation was secure. Then only 4 months ago they were given notice of termination of leases and an eviction date of Oct 15, 2022.

It takes "months" to prepare a boat to leave a marina. Even when responsibly maintained and working and

navigable, to go to a new marina a survey must be obtained, usually at a cost of \$800 to \$1200. Work must inevitably be done, sometimes a degree of upgrade (bottom paint, certain repairs) that a person planned to do and was budgeting for, now must be done after survey and confirmed by a follow up.

Kilroy and Tideline "still" have not met face to face with the residents to discuss more time and relocation benefits to all. Kilroy over the past several months to a year or more, engaged in a pattern and practice of forcing liveaboards to sign that they they never had a proper permitted LA spot. But they did. People signed and were moved to "extended stay", a device that is not recognized nor appropriate to BCDC permit compliance. If someone had two boats, they were "wink/nod" moved "off papers". These people are not being offered ANY relocation benefits assistance.

The Staff memo was very well done and reflected the situation at hand, and the urgency and emergency status. I would like to point out:

1. The memo shows even now an excess of the permit, which was maintained for months and years, and does not even reflect all worthy "BFP"s (bona fide purchaser is the acronym but generally means "innocent third party").
2. The "Mein" case is an upland house case. It is not a marina, nor boat, nor anchor out nor liveaboard case. It is not very helpful for the marina context. The State Lands Commission (SLC) which has a seat on the BCDC "regularly" permits private docks and piers for upland residential lots, at Lake Tahoe, American River and indeed, all over California. Hence, a good lawyer would have and should have prevailed for Mein by showing this accepted and approved public trust use.
3. The memo made steps to clarify "houseboat" which is good. The BCDC for years has advised marina operators and owners, and harbormasters, that they (those entities and individuals) cannot accept working boats, navigable, with working engines, that had a "flat top". "Houseboat" is defined as a barge structure hooked to a sewer and/or a former vessel that has been modified to be, and/or is, no longer navigable. A working "flat top" vessel form factor, just because it can be called a "Delta Cruiser" or "Cruz a home" and people "colloquially" call it a "houseboat", these are NOT barred by the McAteer-Petris Act (MPA) or Bay Plan. I know doctors, veterans, and more, who have been denied at EVERY Bay Area marina b/c their working flat top vessel can be "construed" "as" a "houseboat". It is a ridiculous situation and scenario that must be clarified, and ended. And this memo in my opinion trough its clear definitions helps establish that.
4. The OCM folks must have the 1 year "safe harbor", and it will even be difficult to find a spot locally, in Brisbane, Oyster Point and/or Redwood City, which is less impactful than Alameda or Oakland. These (Alameda/Oakland) are nice, but far. People's lives will be disturbed. It bears keeping in mind that flexibility for all the neighboring marinas over the next few years will help accommodate the displaced LAs, and management and attrition can re-calibrate marinas to 10% through such flexible management.
5. I endorse up to 20% or "harbor master" good faith management in the long run. Harbormasters know the market, they boats they desire, the applications they get, the security they need. etc. Also it must be taken into account that a LA presence under BCDC policies is to 'support and enhance' the boating community, which is done through so much more than "safety and security" although that is important. Safety and security involves noticing theft, vandalism, break-ins, and also sinking, fires (after-hours when harbormaster not around), shorts in the electrical wires, and more. Harbormasters find this advisement function incredibly helpful. Also, usually clubs are upland (yacht and boating clubs) and LAs do all kinds of activities, sailing and safety and knot-tying events, sail-ins, lighted boat parades, opening day activities, and more.
6. OCM is a sailors marina, opens to the Bay, does not interact with other recreational boating as much as some locales (paddle boarding, etc.), and we are losing marinas at a clip and pace that is truly disheartening. We lost over 800 slips in Redwood City through losing Pete's Harbor, the former Pensinsula Marina, and Docktown.
7. Please continue to discuss allowing ALL the displaced boaters to remain in the Bay Area local to South S.F., by allowing Brisbane, OPM, Redwood City and Alameda/Oakland, as well as Alviso or any other potential locale, to flexibly accommodate and manage their LA # to place all displaced persons in a floating home (by this I mean their liveaboard afloat, navigable and working ;-)

8. I very much support stewardship of the public trust. Liveaboard is a privilege not a right or entitlement. When extended, the responsibility must be high to be stewards of the public trust, and LA communities restore wetlands (Galilee), clean Creeks (Redwood City), run maritime days, engage in the Yacht Club boating activities mentioned, and much more. With such a privilege comes responsibilities and I fully advocate working vessels, well maintained and supportive communities.

Thank you very much,  
Alison Madden  
650.270.0066  
[voteealison@madenforrwccouncil.com](mailto:voteealison@madenforrwccouncil.com)  
PO Box 620650 Woodside CA 94062



**BCDCEmailREsponePetesHarbor\_MarinaFill.pdf**

344K



Hello Ms. Fambrough,

Thank you for your comment. I have included it in our file. Unfortunately, BCDC does not have a process for an appeal or reconsideration after a permit has been issued by the Commission. **BCDC was created to regulate fill in the Bay and as a result BCDC has a** strong bias toward removing fill from the Bay. Although we learned that other entities were interested in operating a marina at Pete's Harbor, BCDC does not have jurisdiction to judge an application against a hypothetical project -- that type of planning decision must be made by the property owner and the local government. This project will remove deteriorated private piers and docks from the Bay and would enhance the water quality and wildlife value of the Bay. As owner of the private marina piers and docks, Pete's Enterprises, Inc. is entitled to a permit to remove these structures under the terms of the authorization in its permit.

Thank you,

Erik Buehmann  
Coastal Program Analyst  
San Francisco Bay Conservation & Development Commission  
415.352.3645  
erikb@bcdc.ca.gov

**From:** Francesca <[francescafambrough@yahoo.com](mailto:francescafambrough@yahoo.com)>  
**Reply-To:** Francesca <[francescafambrough@yahoo.com](mailto:francescafambrough@yahoo.com)>  
**Date:** Thursday, August 22, 2013 11:47 AM  
**To:** Erik Buehmann <[erikb@bcdc.ca.gov](mailto:erikb@bcdc.ca.gov)>

Dear Mr. Buehmann,

I am writing to you to urge you to reconsider your issuance of a permit that would allow the demolition of a historic public marina for private, exclusive gain. This is wrong. Please do the right thing and protect our local marina from destruction for the sake of the public and for future posterity for all.

Thank You,

Francesca Fambrough



Alison Madden &lt;maddenlaw94062@gmail.com&gt;

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**Fwd: Fw: Town Hall this Wednesday, 3-5pm**

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**Alison Madden** <maddenlaw94062@gmail.com>

Tue, Sep 20, 2022 at 4:24 PM

To: "votealison@maddenforrwccouncil.com" &lt;votealison@maddenforrwccouncil.com&gt;

Sending for fwd

----- Forwarded message -----

From: **Alison Madden** <maddenlaw94062@gmail.com>

Date: Tue, Sep 20, 2022 at 4:21 PM

Subject: Fwd: Fw: Town Hall this Wednesday, 3-5pm

To: Sparks, Jeff &lt;Jeff.Sparks@sen.ca.gov&gt;, Lucia &lt;lucia\_33@yahoo.com&gt;, matt klein &lt;ttam328@yahoo.com&gt;

Hi, Jeff,

We would like to give you a brief summary of where the scenario stands right now. So this is the attempt to be as brief as possible while including enough information for you to get the full picture. There is a website and we will follow up with that URL so you can see the timeline there, a posting of our letter to Kilroy Realty etc.

First, we understand that your local office focuses on constituent needs, vs. more policy-oriented approaches to legislation, which is out of Sacramento. I believe you mentioned Tate as the Sac'to lead for the Senator's office. Thanks for suggesting the possibility of potentially looping him in to our next conversation, it is great gesture for accelerating understanding of the higher level issues pertaining to California "liveboards" in general and S.F. Bay Area in particular.

Second, we understand Sen. Weiner represents the City and County of San Francisco, and that Oyster Cove Marina (OCM) is in South S.F. To the extent Sen. Weiner interfaces with Council members and Supervisors, as well as Assembly Members and our Senator, it is great to brief your office first and then start to link people up.

As Lucia referenced, the SSF Council Members (Adiego, also a BCDC Commissioner, Flores and Coleman) have been great (as well as the Mayor but the others have led), in terms of responsiveness and compassion and directing Staff (City Manager Futrell and his staff) to work with the San Mateo County Harbor District and BCDC to address the impending displacement.

Which brings us to the displacement.

The upland at OCM is going to be developed into a biotech hub, it is the Oyster "Point" project for the Kilroy Realty Group. Various companies owned the upland over the years, and the marina comes with the land purchase. Approx. 4 years ago Kilroy obtained the upland and marina, and the OCM liveaboard (LA) residents were advised their living situation would not change. Over the 4 years, however, the company engaged in a practice of coercing residents off "liveaboard" status, likely because the prior owner had exceeded its allowable permitted # of LAs under the BCDC permit. This was, of course, not the fault of the residents, nor Kilroy. However, Kilroy's means of coming into compliance by forcing people to sign a letter that they did not have a proper, permitted LA space, was not above board nor with warning that it might impact their rights in the future. It wasn't true, and it now means those who signed and went on "extended stay" or off papers altogether because they owned two boats, are not getting offered the \$10K relo benefits payment. This is quite a few households.

Now, in 2022, Kilroy, through its management company, Tideline, has given notice as fo June 15, 2022, that on Oct 15, 2022, all residents are expected to be gone, or they will receive an eviction action. Four months is not a long period of time to find another, local LA slip - e.g., in Brisbane (Sierra Point), at Oyster Point Marina (owned by SSF, but

run by the San Mateo Co. Harbor District), or even Redwood City, or across the Bay in Alameda or Oakland. Currently, to my knowledge, other than Mission Creek, S.F. does not have any LA marinas (though it could have 10% in any and all BCDC-jurisdiction marinas if it wanted, and well over 10% for any marinas on public trust land that was "taken out of the public trust" (which has occurred through Cal. legislature actions (legislation) pertaining to many parcels on S.F.'s waterfront).

BCDC Staff, working with Dave Pine (San Mateo Co. Supervisor and long-term BCDC Commissioner) and SSF Council Member Adieggo, just last Thursday announced allowing Oyster "Point" Maria, through a letter of intent or MOU, to exceed it's 10% allowable LAs, to take in the OCM displaced persons. There are 3 wooden boats that may need an exemption and exception to OPM rules and that is being discussed. This is a 1 year "non enforcement" "stand down" effectively.

When the BCDC commissioners received the BCDC staff presentation slides and presentation delivery in last Thursday's meeting (Agenda Item #8), they began asking questions about why the LA % allowed was so low (or at that # of 10% vs. some other #), how long ago did it come into effect (1985, and basically it was random, through a survey) and why a LA presence is not considered allowable as consistent with the public trust. The two BCDC staff attorneys began to discuss legal background, but there is a lot of flexibility here, and the commissioners appeared to adopt the perspective that they, the Commissioners, would like staff to look at revisiting the 10% fixed # and potentially other aspects and restrictions of LA governance. It was a great meeting and I suggest anyone interested listen to Agenda Item #8.

We are all long-term liveaboards, and are minimalists, and believe in the low impact, flexible and naturally-occurring affordable housing that LA marinas provide. We can provide some background "Latitude 38" articles (a sailing magazine), as well as other information that discusses the aspects, conditions and restrictions pertaining to LAs. In addition to the Town Hall announcement attached I attach the comments I submitted to the public comment email alias in advance of the meeting, with attachment. it goes over some of the gaps, misunderstandings, misconstructions, and random limitations and conditions that LAs and LA marinas encounter.

The City of South S.F. is having the "Town Hall" tomorrow from 3 to 5 as Lucia advised, and it is expected Council and Staff will explain to those who did not attend the BCDC meeting last week, what occurred, and that the LOI/MOU will allow a one year transition period. We expect residents to raise the issue that 1 year is likely not long enough (as some BCDC commissioners and public speakers also raised at the meeting last week). However, it is a good start. We likely will need a longer term LOI/MOU that allows all area marinas some flexibility to exceed their 10% to take the displaced OCM residents over time (about 3 dozen).

Longer term, we are a group of people that has been advocating for more floating communities in this time of crushing housing costs and crisis, as well as sea level rise. Times have changed from a fear of "fill" in the Bay to the Bay exceeding its boundaries and inundating the uplands. (Marinas and boat are desired fill in any event, under the Bay Plan statutory scheme (the McAteer-Petris Act). Floating communities are flexible, adaptable, and mitigate the impact of sea level rise to accommodate naturally-occurring affordable housing. "And" it allows a modicum of home ownership, albeit blended like a mobile home.

Thanks for your time and attention so far, and your responsiveness, it's been great. Thanks also for digesting this and passing it on to Tate and the Senator.

Best Regards,  
Alison Madden (Pete's/Docktown Redwood City), Lucia Lachmeyer (OCM) and Matt Klein (OCM)

----- Forwarded message -----

From: Lucia <[lucia\\_33@yahoo.com](mailto:lucia_33@yahoo.com)>

Date: Mon, Sep 19, 2022 at 8:07 PM

Subject: Fw: Town Hall this Wednesday, 3-5pm

To: [jeff.sparks@sen.ca.gov](mailto:jeff.sparks@sen.ca.gov) <[jeff.sparks@sen.ca.gov](mailto:jeff.sparks@sen.ca.gov)>

Cc: Alison Madden <[maddenlaw94062@gmail.com](mailto:maddenlaw94062@gmail.com)>, Matt Klein <[ttam328@yahoo.com](mailto:ttam328@yahoo.com)>

Hi Jeff,

Sorry about the mix-up with this morning's phone call.

So we wanted to let you know that SSF will be having a Town Hall for us in the Oyster Cove Marina community this Wednesday afternoon from 3-5 at Dominic's (see message below).

We hope you might be able to make it and would love to chat with you before or afterwards.

Take care,

~Lucia

Dog: A kind of additional or subsidiary Deity designed to catch the overflow and surplus of the world's worship.  
-Ambrose Bierce

----- Forwarded Message -----

**From:** Lucia <[lucia\\_33@yahoo.com](mailto:lucia_33@yahoo.com)>

**To:** Matt Klein <[ttam328@yahoo.com](mailto:ttam328@yahoo.com)>

**Cc:** Shea Yzobel de Hinde <[sy.dehinde@yahoo.com](mailto:sy.dehinde@yahoo.com)>; Karl Rech <[karlhrech@yahoo.com](mailto:karlhrech@yahoo.com)>; Marlyse Hansemann <[domainsdomino@yahoo.com](mailto:domainsdomino@yahoo.com)>; Oilime Lio <[oilime@gmail.com](mailto:oilime@gmail.com)>; SpencerB <[dutchsloop69@gmail.com](mailto:dutchsloop69@gmail.com)>; [dphoenix66@gmail.com](mailto:dphoenix66@gmail.com) <[dphoenix66@gmail.com](mailto:dphoenix66@gmail.com)>; Mary Buckman <[marybuckman@yahoo.com](mailto:marybuckman@yahoo.com)>; Dave McCarthy <[sailmates@yahoo.com](mailto:sailmates@yahoo.com)>; Raina Beach <[rainabeach@gmail.com](mailto:rainabeach@gmail.com)>; Miles Darwood <[kamasukan3@gmail.com](mailto:kamasukan3@gmail.com)>; Carlodorse510 <[carlodorse510@gmail.com](mailto:carlodorse510@gmail.com)>; Gerald Barr <[jbzephyr38@icloud.com](mailto:jbzephyr38@icloud.com)>; Steve Wurm <[stevewurm1@gmail.com](mailto:stevewurm1@gmail.com)>; Morgan OCM <[mashton27@yahoo.com](mailto:mashton27@yahoo.com)>; Guy Howlett <[guyvh@aol.com](mailto:guyvh@aol.com)>; Dnc easygoin.us <[dnc@easygoin.us](mailto:dnc@easygoin.us)>; Bob Schulke <[robert.schulke53@gmail.com](mailto:robert.schulke53@gmail.com)>; Gale Schulke <[gale.schulke51@gmail.com](mailto:gale.schulke51@gmail.com)>; Viviana Siddhi <[vivi.siddhi@yahoo.com](mailto:vivi.siddhi@yahoo.com)>; Tup OCM <[tupfisher.tf@gmail.com](mailto:tupfisher.tf@gmail.com)>; Kerilyn And Michael Stewart <[surf2sail@gmail.com](mailto:surf2sail@gmail.com)>; Missy Mikulecky <[tiempo87@yahoo.com](mailto:tiempo87@yahoo.com)>; [chrisislander@msn.com](mailto:chrisislander@msn.com) <[chrisislander@msn.com](mailto:chrisislander@msn.com)>; Sharron Harper <[sharronharper@gmail.com](mailto:sharronharper@gmail.com)>; [brad.shimeall@gmail.com](mailto:brad.shimeall@gmail.com) <[brad.shimeall@gmail.com](mailto:brad.shimeall@gmail.com)>; Kimmie Haworth <[kimmie.haworth@gmail.com](mailto:kimmie.haworth@gmail.com)>; Brian Bills <[billsbrian@aol.com](mailto:billsbrian@aol.com)>; [borakgp@aol.com](mailto:borakgp@aol.com) <[borakgp@aol.com](mailto:borakgp@aol.com)>; Craig Merrilees <[craigmerr@gmail.com](mailto:craigmerr@gmail.com)>; [taomenshui@hotmail.com](mailto:taomenshui@hotmail.com) <[taomenshui@hotmail.com](mailto:taomenshui@hotmail.com)>; Ernst Werner <[ernstkwerner@gmail.com](mailto:ernstkwerner@gmail.com)>; [dyeakle@yahoo.com](mailto:dyeakle@yahoo.com) <[dyeakle@yahoo.com](mailto:dyeakle@yahoo.com)>; Thomas Herbst <[thomas@kaba-herbst.com](mailto:thomas@kaba-herbst.com)>; [beatwurz56@gmail.com](mailto:beatwurz56@gmail.com) <[beatwurz56@gmail.com](mailto:beatwurz56@gmail.com)>; Mason Goldman <[machiavellian667@yahoo.com](mailto:machiavellian667@yahoo.com)>; [michael\\_wasilewskicst@yahoo.com](mailto:michael_wasilewskicst@yahoo.com) <[michael\\_wasilewskicst@yahoo.com](mailto:michael_wasilewskicst@yahoo.com)>; [francoiscruz522@yahoo.com](mailto:francoiscruz522@yahoo.com) <[francoiscruz522@yahoo.com](mailto:francoiscruz522@yahoo.com)>; William Diep <[pigiggle@gmail.com](mailto:pigiggle@gmail.com)>; Duane Gietz <[duane.gietz@united.com](mailto:duane.gietz@united.com)>; [4ascariz@gmail.com](mailto:4ascariz@gmail.com) <[4ascariz@gmail.com](mailto:4ascariz@gmail.com)>; Matt Klein <[matt@sflowerwaterproofer.com](mailto:matt@sflowerwaterproofer.com)>; John Boatman <[boatman53.jb@gmail.com](mailto:boatman53.jb@gmail.com)>; Jeff Fletcher <[jf.fletcher@gmail.com](mailto:jf.fletcher@gmail.com)>; [earleis@gene.com](mailto:earleis@gene.com) <[earleis@gene.com](mailto:earleis@gene.com)>; [brian@bjrservices.net](mailto:brian@bjrservices.net) <[brian@bjrservices.net](mailto:brian@bjrservices.net)>; [thinkar@gmail.com](mailto:thinkar@gmail.com) <[thinkar@gmail.com](mailto:thinkar@gmail.com)>

**Sent:** Sunday, September 18, 2022 at 09:31:06 PM PDT

**Subject:** Fw: Town Hall this Wednesday, 3-5pm

Dear neighbors,

I presumed you had all received this note from Corina Lazo who is working with the city of SSF but evidently not all had. Please see the invite (below) to attend a town hall this Wednesday, from 3-5pm, to update us about the possibility of allowing us a to berth at Oyster Point marina for a year while we figure out our future options.

WHERE: DOMINIC'S AT OYSTER POINT

911 MARINA BLVD., SOUTH SAN FRANCISCO, CA 94080

I hope you can make it but if not, please let a neighbor who is going know your concerns. Or let me Matt or me know and we can bring your questions forward.

See you then,

~Lucia

Dog: A kind of additional or subsidiary Deity designed to catch the overflow and surplus of the world's worship.  
-Ambrose Bierce

----- Forwarded Message -----

**From:** Lazo, Corina <[corina.lazo@ssf.net](mailto:corina.lazo@ssf.net)>  
**Sent:** Friday, September 16, 2022 at 05:04:56 PM PDT  
**Subject:** Town Hall

Dear Oyster Cove Marina boaters,

Please join the City of South San Francisco for a Town Hall Meeting for an update from the city and the Harbor District on the availability of slips at Oyster Point Marina.

WHEN: WEDNESDAY, SEPTEMBER 21, 2022

3:00 P.M. - 5:00 P.M.

WHERE: DOMINIC'S AT OYSTER POINT

911 MARINA BLVD., SOUTH SAN FRANCISCO, CA 94080

OUTREACH TABLES BY:

YMCA

SAN MATEO VETERANS SERVICES OFFICE (CVSO)

BEHAVIORAL HEALTH AND RECOVERY SERVICES

Thank you,



Corina Lazo (she/her/ella)

Management Analyst I

City of South San Francisco – Economic Development & Housing

P.O. Box 711, South San Francisco, CA 94083-0711

Main: (650) 829-6620 Direct: (650) 829-6631

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**3 attachments**

 **OCM Town Hall.pdf**  
281K

 **Gmail - Re: Thank you and Yes! on Oyster Point emergency relocation for Cove refugees.pdf**  
76K

 **BCDCEmailREsponsePetesHarbor\_MarinaFill.pdf**  
344K