

AGREEMENT BY AND BETWEEN THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION AND THE CITY OF SAUSALITO

This Agreement is made and entered into by and between the San Francisco Bay Conservation and Development Commission (BCDC or Commission) and the City of Sausalito. The parties to this Agreement are referred to herein individually as "Party" and collectively as "Parties."

Recitals

WHEREAS, the McAteer-Petris Act (Act), Government Code Sections 66600 through Section 66666, established the San Francisco Bay Conservation and Development Commission as the state agency charged with planning for the long-term use of the Bay; and

WHEREAS, pursuant to the McAteer-Petris Act, BCDC adopted the San Francisco Bay Plan, which has been amended from time to time consistent with the Act, and which establishes a policy that live-aboard boats should be allowed only in marinas and only if certain other requirements are met; and

WHEREAS, in April of 1984, BCDC, working with a steering committee composed of representatives of the local jurisdictions, including a representative of the City Council of Sausalito, finalized the Richardson Bay Special Area Plan to more precisely guide actions in Richardson's Bay; and

WHEREAS, the Richardson Bay Special Area Plan includes the following policies regarding residential vessels and floating structures:

- (1) Vessels and floating structures used for residential purposes (i.e. houseboats and live-aboards) should be allowed only in recreational or houseboat marina berths when consistent with and in compliance with local codes, Commission policies, and public trust needs;
- (2) All anchor-outs should be removed from Richardson Bay; and
- (3) A limited number of live-aboards and houseboats should be permitted in existing or new recreational boat marinas provided (a) they are necessarily incidental to the recreational boating use; and (b) they are in compliance with the applicable local government codes, including parking requirements; Bay Commission policies; and policies of the Special Area Plan;

and

WHEREAS, despite these policies, anchor-outs and houseboats have remained on Richardson Bay outside of marinas; and

WHEREAS, following adoption of the Richardson Bay Special Area Plan, the Richardson's Bay Regional Agency (RBRA) was formed in 1985 to locally and jointly manage the waters of Richardson's Bay; and

WHEREAS, the RBRA was formed as a Joint Powers Agency initially comprised of all of the local governments with jurisdiction along Richardson's Bay's shoreline, specifically: County of Marin, City of Mill Valley, Town of Tiburon, City of Belvedere, and City of Sausalito; and

WHEREAS, the City of Sausalito withdrew from RBRA on June 30, 2017, but continues to collaborate and cooperate with RBRA to address various issues related to Richardson's Bay waters; and

WHEREAS, on April 18, 2017, the Sausalito City Council adopted new provisions regarding City waters and boats on City waters, which are set forth in Title 16 of the Sausalito Municipal Code – Boat and Harbor Regulations; and

WHEREAS, on June 20, 2017, the Sausalito City Council approved a Waterfront Management Plan that prioritized the removal of marine debris vessels, the removal of unoccupied vessels being stored on Sausalito waters, the removal of unregistered vessels, and the removal of vessels occupied by persons who are a danger to themselves or others, while enunciating as the City's lowest priority the removal of legacy occupied vessels that are licensed, registered, and in possession of a waste disposal contract or utilizing a similar type of service; and

WHEREAS, on January 22, 2018, the Sausalito City Council agreed to modify its Waterfront Management Plan priorities to include a two-part strategy requiring immediate enforcement of Sausalito's 72-hour enforcement ordinance with respect to any new boats entering Sausalito waters and deferred enforcement with respect to occupied boats already on Sausalito waters to enable their numbers to be reduced through attrition and through Marin County / Sausalito relocation efforts; and

WHEREAS, between 2016 and the present, the number of vessels in Sausalito waters has been reduced from 90 to 9, and over fifty illegal mooring balls/devices have been removed from Richardson's Bay; and

WHEREAS, since 2017, the City of Sausalito, in conjunction with RBRA and the County of Marin, has participated in various efforts to preserve Richardson's Bay waters and assist anchor-outs and other vulnerable populations. These efforts include annual debris collection events upon Richardson's Bay, participation in the mobile showers offered by the Downtown Streets Team, and provision of grab and go bags of groceries from the San Francisco-Marin Food Bank during Mobile Shower visits; and

WHEREAS, on February 21, 2019, the BCDC Enforcement Committee received a briefing from Rebecca Schwarz-Lesberg, the San Francisco Bay Program Director from Audubon California, regarding the results of a white paper entitled, *Eelgrass*,

Herring, and Waterbirds in San Francisco Bay: Threats and Opportunities, which found that anchor-out vessels in Richardson's Bay have caused adverse impacts to between 50 and 84 acres of subtidal eelgrass habitat and that these impacts are ongoing; and

WHEREAS, in September 2019, the City established a partnership with four local agencies (the Ritter Center, Marin County Health and Human Services, the Sausalito Chamber of Commerce and the Sausalito Marinas) to establish the Safe Harbor program, which has been created to bring anchor-outs located on Sausalito's waters into marinas, and provide them with "wrap around" support services as they work to successfully transition the occupants from the open waters into permanent water-based or upland housing; and

WHEREAS, the City of Sausalito is committed to continuing to pursue its Waterfront Management Program, the Mobile Shower Program, and the Safe Harbor Program within feasible economic parameters; and

WHEREAS, on December 3, 2019, BCDC transmitted a letter to the City setting forth actions BCDC staff expect to be undertaken to address the vessels anchored in City waters. These include: Initiation of all appropriate actions to remove from City waters all marine debris, unoccupied vessels, unregistered vessels, and vessels occupied by persons who are not able to control the vessels during storm events or vessels that are endangering or threatening to endanger others; Preparation of a plan with timelines to transition all other vessels off the water within a reasonable period; Preparation of a plan for how the City will address and resolve the damage to natural habitat in Richardson's Bay, and Monthly reporting to BCDC on the status of implementing these actions; and

WHEREAS, surveys conducted by Merkel & Associates in June and July 2019, based on a hybrid of interferometric sidescan sonar and Unmanned Aerial Vehicle based aerial photographic, identified two primary eelgrass beds located within the City of Sausalito – one in the northern reaches of the city boundary and the second offshore of Dunphy Park and Turney Basin – and documented damage to eelgrass that has occurred in City of Sausalito waters in other areas of Richardson's Bay; and

WHEREAS, the City of Sausalito is committed to working with RBRA, Marin Audubon Society, Audubon California, and the State of California to create a plan to mitigate for eelgrass damage and to preserve and protect Richardson's Bay subtidal habitat; and

WHEREAS, while BCDC is committed to ensuring that unauthorized vessels do not remain on the Bay, BCDC also recognizes the unique risks created by the COVID-19 pandemic for those individuals with limited housing options and BCDC has noted the importance of ensuring that the BCDC's enforcement efforts do not require actions that conflict with guidance or orders from federal, state, or local officials and the Commission does not expect local jurisdictions to undertake actions that would endanger individuals during the COVID-19 emergency.

NOW, THEREFORE, the City of Sausalito and BCDC do agree as follows:

1. **Management of vessel influx.** Sausalito will continue to enforce the ordinances in its Boat and Harbor Regulations regarding waterfront management and the ten-hour limitation on mooring or beaching within City waters to prevent any new vessels from arriving in City waters and staying beyond the time periods presently allowed by law.
 - a. Any new vessels arriving in Sausalito waters on Richardson's Bay will be advised within 48 hours of being observed by law enforcement personnel of Sausalito's enforcement remedies, including the City's ability to remove vessels that have remained for more than 72 hours. If a vessel is granted permission to stay longer than the 10-hour period allowed by Municipal Code Section 16.04.060, the extended time limit will be enforced, and the vessel will not be allowed to stay beyond that period. Sausalito will continue to conduct regular patrols of Richardson's Bay and will include in the monthly reports required by BCDC information on any vessels that stay in City waters longer than 72 hours and the total length of time that the vessel remained. The City shall not permit any vessels arriving after the effective date of this Agreement to anchor or moor for a period of more than 30 days without informing BCDC of the vessel's arrival and the length of its allowable stay in a monthly report and without adhering to any requirements provided by BCDC concerning the total time period that the vessel may remain.
 - b. In the event that vessels are observed leaving City waters after the owner or occupant has received notice that their vessel may be subject to removal and then subsequently returning to City waters within seven days of the receipt of the notice for another short-term stay, the City will pursue any necessary updates to City ordinances to prevent vessels from remaining in Sausalito waters beyond the intended authorized short-term periods by repeatedly leaving and returning to City waters.
2. **Removal of unlawfully anchored vessels.** The City will remove all existing vessels (six legacy and three additional vessels including two that arrived after January 22, 2018) within five years from the execution of this Agreement:
 - a. Two of the additional vessels that arrived on City waters after January 22, 2018 will be removed by December 31, 2021.
 - b. The third additional vessel referenced above, which was the largest of the vessels surveyed in Sausalito waters during the January 22, 2018 vessel survey and which did not qualify as a legacy vessel, will be removed by no later than December 31, 2023.

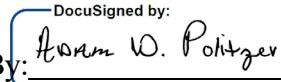
- c. The City will ensure that the remaining six legacy vessels that arrived on City waters before January 22, 2018 will not remain in City waters beyond December 31, 2025.
 - d. The time period for removal of vessels set forth in this section may be extended for good cause, at BCDC's discretion, if causes beyond the control of the City prevent the City from removing the vessels. The City must submit a request for extension as soon as reasonably possible and in any event no later than 30 days after becoming aware of the need for extension. Causes for extension include local, state, or federal orders related to pandemics or emergencies that restrict the City's ability to move individuals on illegally anchored or moored vessels and the issuance of a court order precluding the City from complying with the requirements in this section regarding vessel removal. BCDC recognizes the unique risks presented to those lacking on-land housing alternatives during a pandemic, and BCDC will grant an extension to any actions required by this Section 2 and Section 1 above in the event that an extension is necessary to ensure that the City is not required to undertake actions that conflict with federal, state, or local orders and guidance related to the current COVID-19 emergency or other pandemic emergencies.
3. **Regional cooperation.** Sausalito will continue to cooperate in actions to address the broader issues in Richardson's Bay and will avoid actions that may interfere with the regional effort to ensure that vessels that are unlawfully anchored or moored in Richardson's Bay are removed.
- a. Sausalito will continue to participate in the effort presently led by Senator Mike McGuire and other local representatives in the region, including the RBRA, to develop resources and necessary actions to create housing opportunities for residents of unlawfully anchored or moored vessels. Working with the regional participants, the City will ensure that planning for housing considers the need to house the existing anchor-outs in Richardson's Bay. The City will present BCDC with a plan to implement measures to provide housing by June 30, 2023, and interim updates on the development of a plan will be provided by June 30, 2021 and June 30, 2022.
 - b. In discussions regarding the planning for and allocation of City resources, Sausalito will ensure that it is able to devote resources necessary to fulfill its commitment to participate in the regional effort to resolve the issues on Richardson's Bay.
4. **Eelgrass habitat mitigation and damage avoidance.** Sausalito will restore, create or enhance eelgrass habitat to mitigate for damage caused by vessels anchored or moored unlawfully in City waters.

- a. Utilizing work that has been undertaken to date, working with consultants with expertise on eelgrass within Richardson's Bay, the City shall by August 31, 2021 submit to BCDC for review and approval a report quantifying the amount of eelgrass damage in City waters. After completing the analysis of damage to eelgrass habitat, the City will work with BCDC, RBRA, National Marine Fisheries Service, California Department of Fish and Wildlife and other state and local agencies to develop a plan for mitigation of eelgrass habitat damage in City waters that will be submitted to BCDC no later than June 30, 2022. Goals in the plan will include compensatory mitigation at a ratio of no less than 1.2 to 1 (mitigation area to impact area).
 - b. No later than August 31, 2021, the City shall prepare and submit to BCDC a list of measures that will be undertaken to avoid and/or minimize further damage to eelgrass habitat from vessels anchored or moored in City waters. These measures will be developed in accordance with state and federal policies and will be implemented in accordance with a plan that will be submitted to BCDC for approval no later than August 31, 2021.
 - c. The City agrees to review the findings of Pilot Programs to restore eelgrass habitat being undertaken in Richardson's Bay and to incorporate any proven measures that are feasible in City waters into the plan that it develops for mitigation.
 - d. The City will monitor and adaptively manage eelgrass restoration activities for at least 10 years from the date the efforts are implemented.
5. **Waterfront management.** The City will continue to work with the County of Marin on the existing holistic waterfront management efforts to ensure those most in need have access to available programs and facilities and that federal, state, and local requirements regarding water quality and environmental protection are met. Elements of the City's efforts will include, as appropriate:
 - a. Continuing the mobile shower program / outreach;
 - b. Continuing annual debris box collections on Richardson's Bay;
 - c. Continuing the pursuit of Safe Harbor program and assisting in scaling that program to other marinas within RBRA's jurisdiction; and
 - d. Working to ensure that upland affordable housing opportunities are made available to anchor-outs in the City's waters.
 6. **Reporting.** The City will report monthly to BCDC staff, and City officials will be available to provide reports to BCDC's Enforcement Committee three times per

year. The City will also prepare annual reports for submission to BCDC's Commission regarding the progress on meeting all of the commitments set forth in this Agreement.

7. **Reservation of Rights.** The Executive Director and the Commission reserve the right to take appropriate enforcement action in the event of any failure by the City of Sausalito to comply with the terms of this Agreement. No less than 30 days prior to issuing a Violation Report, BCDC will give written notice to the City of such failure under the Agreement and the Parties will meet informally in an effort to resolve the issue without the necessity of commencing a formal enforcement action.
8. **Authority.** Each Party has the full and complete authority to execute this Agreement as set forth below. The Parties further warrant and represent that the individuals executing and delivering this Agreement have the full and complete authority and capacity to execute this Agreement.
9. **Governing Law.** This Agreement shall be governed by, interpreted, and construed in accordance with the laws of the State of California.
10. **Effective Date.** This Agreement is effective on the date it is signed by the representatives authorized to sign for the Parties.

CITY OF SAUSALITO,
a municipal corporation

By: 
Adam W. Politzer, City Manager
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Dated: 12/22/2020 | 1:21:48:12 AM PST

**SAN FRANCISCO BAY
CONSERVATION AND
DEVELOPMENT COMMISSION**

By: 
Larry Goldzband,
Executive Director
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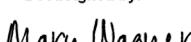
Dated: 1/25/2021 | 2:39:05 PM PST

ATTEST:

DocuSigned by:

Helen Swader
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City Clerk

APPROVED AS TO FORM

DocuSigned by:

Mary Wagner
400025516FF5E4B
City Attorney

APPROVED AS TO FORM

DocuSigned by:

Karen Donovan
Staff Counsel