

July 13, 2022

By U.S. Post and email attachment: _____

John B. Kilroy, Jr.
Chairman, CEO
Kilroy Realty Corporation
S.F. Bay Area Office
100 First Street, Suite 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 an introduction and request 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). I have been engaged to consult with, and represent and convey the interests of, OCM slip holders, especially residential "liveaboards". They are requesting a meeting directly with Kilroy, and discussion, rather than through solely Tideline, see below.

Notices of Eviction after Assurances of Non-displacement; meeting with Tideline

You may know that the OCM slip holders—both "liveaboard" and non-liveaboard—have received notices of impending eviction ("**Notices**"). These Notices were taped to slip holder crafts on June 16, 2022, noticing an eviction date of October 15, 2022. The Notices gave no reason for the eviction, but did, curiously, state that evicted slip holders are not welcome back.

Immediately on receipt of the Notices, a group of slip holders, both residential liveaboards as well as non-liveaboards, met with current "Oyster Cove Marina Management", or OCM Management, on June 22nd. OCM Management was later revealed to be Tideline Marine Solutions (aka Tideline Marine Group, from their website).

Present at the meeting from the Tideline side were Director of Operations, Charlie Gondak, CEO Nigel Cabral, founder and COO Captain Taylor Lewis, and Paul Beatty, an experienced marine captain—his role with Tideline is not immediately apparent, and not listed on the website. Present from the slip holder side were residential liveaboard Matt Klein, non-liveaboard Lucia Lachmayr, and a person who has resided at OCM for years, but was forced off both liveaboard *and* so-called "extended stay" status, Karl Rech. I was also present as an advisor and consultant.

The slip holders that attended were chosen to represent various slip holder categories. The slip holder category of "forced off" liveaboard status (and/or "off papers") were created in the past few years, by one or more harbormasters, to our understanding at the direction of Kilroy. This forced change is more fully described below, and has resulted in harm to those forced to "give up" what had been a recognizable status in the marina as a liveaboard under a BCDC permit.

Also, the Notices referenced above covered a letter that was to be signed by slip holders by June 30, 2022, a mere two weeks after posting. Many slip holders are not frequently present at OCM, and some were in actual receipt only days before the June 30 "deadline". If a slip holder did not sign the letter by June 30, 2022, the ostensible result is: (a) they would not be entitled to the low

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consideration extended by the letter—a single \$10,000 payment, and (b) they would forego four months' rent relief extended to slip holders that did sign the letter. The \$10,000 is understood as extended in exchange for an agreement to vacate without the necessity of Kilroy or Tideline having to commence eviction proceedings. An agreement now, to vacate then, for \$10,000.

Shocking and distressing to at-risk populations, impact on health and wellness

As you may be able to immediately grasp, receiving the letter in that manner, and on that time frame, as well as the content, was both shocking and distressing to many slip holders. Some of the residential slip holders have lived at OCM for decades. Many other residential slip holders have lived at OCM for several years.

A great number of residential liveboards are veterans, elderly, low income, fixed income, disabled, or a combination thereof. In other words, the majority of those facing imminent short-noticed eviction are “at-risk”. This at-risk designation means they will be underhoused or homeless in the Fall, and their health and wellness are at risk. The offer of displacement compensation is insufficient to meet the most basic needs of the residential liveboards being displaced. Nearly all such liveboards will be unable to find comparable, local liveboard slips on the short notice.

Request to revisit Kilroy-Tideline Approach to OCM, Non-opposition to upland and change

This letter is intended to convey the current posture at OCM, and the communication that has occurred between OCM slip holders and Tideline. This letter also requests that Kilroy revisit its approach and timeline at OCM, and extend the “deadline”, at a minimum, to Feb. 28, 2023. The full set of requests is below, just above the signature block.

First, we want to convey that the upland campus looks amazing and impressive. The Phase 2 drawings appear to include a marina in the brochure drawing layout. This campus will be a boon to South San Francisco (“SSF”), and we fully support the upland development. We would gladly speak to such effect in any forum or venue requested. We do, however, wish a marina open to the public, to stay.

Second, we are thoroughly impressed with Tideline. Not only is it clear from their website they are highly qualified and competent, their range of offerings is interesting and valuable. At the meeting, Mr. Cabral and Mr. Gondak were professional and extended us polite courtesy. After the meeting, we provided a written letter and email, and we enclose them here for your reference.

After this slip holder-Tideline meeting, we spoke to our elected City representatives in public comments at the SSF City Council meeting held 27th. While sunshine and open meeting laws precluded discussion of a non-agendized item, it was clear the Mayor and Council Members were impacted and expressed a desire to communicate with Kilroy through the City Manager. I understand a meeting with the City Manager Mr. Futrell and representatives of Kilroy has occurred. We also have had follow up from Council Member Flores, who is interested in the impact on SSF residents. In addition, Council Member Addiego was supportive in public comments of the City Manager speaking with Kilroy.

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While our City representatives meet with Kilroy, we understand Kilroy and Tideline must communicate, and we have addressed the BCDC, the San Francisco Bay Conservation and Development Commission. The BCDC is in a position to work with existing City and County agencies and representatives to try to ameliorate the impact of an OCM reduction or closure.

Time is of the essence for slip holders, vs. future plans that have not taken shape

We must have more time to speak with our Supervisor, Dave Pine, as well as with BCDC staff, and members of the San Mateo County Harbor District, which oversees the Oyster Point marina on behalf of SSF. (Mr. Pine is the County Board representative Commissioner to the BCDC). All these agencies impact a decision to accept, in the marinas in their jurisdiction, more than 10% of slips for liveaboards, as a mitigation and accommodation to displacement. People should not have to leave the Peninsula.

As you know from your marine experience, issues are complex “where land meets water”. This includes (a) the policies of the BCDC, which encourage public access to the water and recreational opportunities, (b) the public trust, and (c) the “finding and declaration” of the California Legislature that what happens in any part of San Francisco Bay affects all other parts. *See* Gov. Code Sec. 66600 (McAteer-Petris Act, or “MPA”). This opening section of the MPA, titled “**Public Interest in Bay**”, was enacted in 1965 and creates the BCDC, while Sec. 66603 provides for the “Bay Plan”. The MPA, Sec. 66604 and Bay Plan govern marina permits.

It is not entirely certain that displacing an existing marina is consistent with the above policies and fiduciary duties. This is especially true when neither Tideline nor Kilroy has stated *any* plans for the marina space—whether commercial, recreational, or mixed-use, or whether a private ferry, water taxi, or other amenity. It is also possible a new private ferry or water taxi, which is Tideline’s core business, alone or with Tideline private slips, is not enough public access.

First, although OCM is called “private”—and this could potentially lead both City and/or other elected representatives to feel their influence is limited, as well as impact public opinion—all marinas are (a) overlaid with public trust obligations and fiduciary responsibilities therefor; (b) have public oversight of the BCDC (and/or the Cal. State Lands Commission (“SLC”) and/or the U.S. Army Corps of Engineers (“USACE”)); and (c) are “public accommodations” under Cal. and federal consumer and civil rights laws, to wit, the FEHA, Unruh Act, ADA and unlawful detainer protections. Thus, a “private marina” is just like a private hotel or restaurant, and when overseen by BCDC or SLC, it “must” be held open to the public, and many public protections abide. And all navigable water is federal, for USACE jurisdiction and some maritime principles.

The MPA and Bay Plan very much require marinas to (i) cater to the general public, (ii) ensure “maximum public access”, and (iii) offer recreational opportunities to the general public, and more. What appears to be potentially happening here, is that Tideline may offer one or more services with a commercial public trust use purpose, but the remainder of the space will be available only for a limited number of members of the general public, if at all. It is possible the new use-case shall benefit solely Tideline and its principals. Thus, low impact and low income (naturally occurring affordable living spaces) are being shifted out for the benefit of a well-

heeled and potentially well-connected entity. We hope not, but in general marinas should not be ripped out and boaters displaced, liveaboard or not, until a new use-case has been identified, developed, approved and permitted. Marinas are becoming fewer and fewer on the Bay, especially on the Peninsula, and this is a shame. The once vibrant character of a working waterfront, and mixed-use attraction to the water, has been displaced by super high density luxury rental units in much of San Mateo County. There are notable exceptions, and again, the upland campus is very desirable here for SSF. We encourage you to keep a marina in part or full.

As a result, the above begs the question: why do anything, and do so much harm to so many vulnerable people, when there is not even an inkling of a thought of an idea of a plan of what Kilroy and Tideline really want to do with the marina space? This is what has been signalled to OCM slip holders, that they are being kicked out and there is not even a proposal in the works.

BCDC Permit, Ownership Succession, Potential Unfair Business Practices to obtain waivers

BCDC Permit No. 4-82(B) (issued 6/1/1982) has existed for OCM for 40 years. For nearly 25 years, we understand OCM was operated by prior owners including the Shelton Realty firm, and that the Shorenstein Properties (with SKS) purchased the upland in approx. 2007-08. In 2016, a Greenland USA JV bought the upland from Shorenstein, and in 2018, it appears Kilroy purchased the upland. In each transaction, the marina was part and parcel of each deal.

During the transactions from Shelton to Kilroy, there was a harbormaster, Dick Timothy, then Tim Christopher. Shorenstein hired Kidder Matthews (“**KM**”) to manage OCM, and Mr. Christopher remained with KM through the Greenland acquisition, and moved on when Kilroy succeeded Greenland. KM then hired Jason Koulouris to succeed Christopher, and Koulouris was harbormaster from 2018 until recently, including during the time period in which the practice of shifting liveaboards to non-liveaboard status occurred, whether this was a correct interpretation of the given lease or not. On transition to Tideline, when Koulouris left for a new position, a harbormaster, Andrew, succeeded him and taped the June 16th Notices to the crafts.

It is our information and belief that, during his time as harbormaster, as noted above, Mr. Koulouri was directed by KM, on behalf of Kilroy, to begin clearing the marina by not taking new tenancies to replace craft that vacated a slip at OCM. In addition to this attrition, which included both liveaboards and non-liveaboards, Koulouris was directed to obtain from residential liveaboards the waiver of liveaboard status, by letters that required liveaboard slip holders to acknowledge they had never been a proper, or permitted, liveaboard, under the BCDC permit.

In many, if not most or all cases, this was both untrue, and an unfair business practice.

Moreover, the practice of ensuring residents they were OK “off papers” or on “Extended Stay” or “known sneakaboard” is likely also an unfair business practice. All of these representations caused detrimental reliance, and could be violations with significant BCDC enforcement fines. Hopefully, any prior slip holders who were harmed by the forced waivers, and any current slip holders who can be remedied, would result in a status and position where no BCDC enforcement

occurs; it is not our objective to expose Kilroy to any punitive fines or penalties, only to ensure that vulnerable tenants are protected, and covered.

Liveaboard, Extended Stay, "Off Papers", "Known Sneakaboard" – all similarly situated

The letters requiring slip holders to give up residential liveaboard status threatened eviction if the person did not sign. Slip holders who signed were migrated to "Extended Stay" status, which is a "workaround" to the BCDC permit limitations. However, no such designation or allowance exists in the Bay Plan or MPA, though this has been a harbormaster sleight of hand in the past.

In addition to "forced" change of status to Extended Stay, OCM "took people off papers" if they had a second boat. Mr. Rech who attended the Tideline meeting referenced above, was first forced to change status from residential liveaboard to Extended Stay, then he was "taken off papers" completely. This means he has no offer of relocation displacement payment.

This "off papers" workaround worked like this: even though management was aware that one vessel or craft was an individual's (or couple's, or family's) single primary residence, if they had another vessel or craft at the marina, this was used to justify that the person "could" stay "3 or 4 days" on one vessel or craft, whether they were or not, and 3 or 4 days on another. Hence, having the equivalent of an "unwritten" liveaboard allowance by virtue of some justifiable right to be overnight the full 7 days. This is yet another non-allowed workaround to BCDC limitations.

In addition to the: (1) actual papered residential liveaboards allowed under the BCDC permit; and to (2) the Extended Stay; and to (3) the "off papers" due to 2 or more craft, there is the "known sneakaboard", or "so-called sneakaboard" category. This is the result of the prior marina operators not properly administering the BCDC permit, nor providing proper oversight.

There is at least one elderly gentleman that has lived with his sole and exclusive residence at OCM for nearly two decades as a "known sneakaboard". We shall henceforth use "off papers" also for this category, as this status is not the fault of the individual, was known and condoned, and allowed others to obtain and enjoy the status as permitted liveaboard, i.e. #1 above. In addition to this elderly long-term resident, the at-risk vet with PTSD, who is elderly and on a fixed income, was migrated from liveaboard to Extended Stay and not offered the displacement relocation benefit payment offered to others.

Objective: Kilroy/Tideline Re-evaluation; Prior representations caused detrimental reliance

We take pains to explain in this detail because our primary "ask" at the Tideline meeting was (and remains) that *all slip holders* at OCM for whom OCM is, and has been, their sole residence (known in the law as primary place of abode or primary residence) be treated alike. In other words, also in the parlance of the law, that "similarly situated people" be treated the same.

We believe the conduct of prior owners may have exceeded allowances of the BCDC permit. But we also believe that both prior, as well as current (under KM and Kilroy, and now under Tideline) tactics used to reduce the liveaboards, is likely both bad faith breach of contract, and an unfair business practice, as noted above.

Moreover, some would say it is cruel to put long-term residents, especially the elderly and veterans, at risk by the Notices and impending short-noticed evictions, when there is not a plan or proposal for the marina. It is one thing to have plans in hand, with hired tradesmen and a time frame, and need to clear a space for liability purposes; it is another to evict people in a pandemic and housing crisis, when there is not even a proposal before BCDC or any City, County or federal agency. This includes EIRs, water quality permits from USACE, BDCD approval for removal of slips (which requires a permit after public hearing, when in connection with a development, an EIR and/or a turbidity curtain, as in the former Pete's Harbor in Redwood City (now "Blu"). All this takes time, why not allow slip holders during this process?

Representations to OCM slip holders by Greenland and Kilroy in 2018; Due Diligence Applies

In addition to the above, it is the recollection and documentation of OCM slip holders that assurances were made to slip holders that their occupancy at OCM would not change under Kilroy. This was apparently communicated in several meetings, including in 2018 at which City officials were present. It is the recollection that both Greenland did so, communicating on the handover to Kilroy, with Kilroy reps present, and that Kilroy did so, in preparatory stages of Oyster Point work and Phase 1 at OCM. The most basic due diligence would have revealed the representations made to OCM slip holders by Greenland at the time of the Kilroy acquisition.

While the preceding remains a matter of proof, if it is the case, then the OCM slip holders acted, for years, in reliance on these clear representations, and to their detriment. This would justify action, working with the City, County, and/or BCDC, to ensure no one is displaced without a then-current, local, comparable and readily available slip to move to. It bears noting here, a friend of mine showed me one of the forced waiver letters many months ago during the pandemic. While I was not his representative, and his son is an attorney, he eventually moved rather than sign, and even he may have damages for this breach and unfair business practice.

More time required; please stop accepting letters without opt-in; Mr. Beatty throwing away non-abandoned items

After the June 22nd meeting with slip holders, Tideline only allowed an extension to July 31, 2022 to the 3 attendees at the meeting, and on follow up and request, to those who had not yet signed as of June 30, 2022. However, many who had signed, did so under duress, on the two-week timeframe. Tideline even accepted and solicited strongly, signatures after the June 22nd meeting from OCM slip holders who hadn't even had time to learn about the meeting and extension. Finally, it appears Mr. Beatty is walking the docks throwing away items he deems to be abandoned, and falsely so—Ms. Lachmayr's kayak was almost thrown away, as well as deck items, such as a cleaning brush for her craft (a non-liveaboard that is very much still there).

We ask that you ask Tideline to dial back any pressure tactics and ask Mr. Beatty to cease throwing away items unless it is absolutely clear they have been abandoned, and that Tideline knows so through clear communication from the former slip holder. Almost all slip holders who signed before the June 22 meeting desire the extension, as well as those who had not yet signed,

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or who signed “after” June 22. In short, once the July 31 date was agreed to, there is no reason it should not have reached out and back to all slip holders. The 2 week time frame was unreasonable, and slip holders had “FOMO”, with an emphasis on the fear.

In conclusion, we ask Kilroy, directly:

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, at-risk elderly slip holders (a General Plan objective);
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 very much in advance for your receipt of this letter in the spirit intended. We seek solely more time, more accommodation to move, the potential for some to stay or return, depending on the person, time frame, eventual project, and especially those with fixed or low income, and other at-risk factors, including disability, medical condition or age.

We look forward to discussions and progress on meeting the needs of all concerned, with support for each others’ objectives and interests. There is no desire for animosity or interference with any upland development, amenity, nor Tideline offering.

Best Regards,

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Cc: Matt Klein, Lucia Lachmayr, Karl Rech (for and on behalf of OCM slip holders)