

San Francisco Bay Conservation and Development Commission

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Agenda Item #8

September 9, 2022

TO: Commissioners and Alternates

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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-aboards 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 15th, (2) that many live-aboards have no place to go following the eviction, (3) that some live-aboards 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 15th and 16th. 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.¹ 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

¹ 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-aboards 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-aboards 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-aboards; 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-aboards. Unless the Commission objects, the staff intends to send a letter of intent regarding its approach to the issue.