

# RICHARDSON'S BAY REGIONAL AGENCY

## STAFF REPORT

For the meeting of: August 12, 2021

**To:** Richardson's Bay Regional Agency (RBRA) Board of Directors  
**From:** Curtis Havel, Harbor Master; Beth Pollard, Project Consultant  
**Subject:** Proposed RBRA/BCDC Settlement Agreement

### STAFF RECOMMENDATION

Authorize the Board Chair to execute a settlement agreement between the Richardson's Bay Regional Agency (RBRA) and the Bay Conservation & Development Commission (BCDC) to resolve pending enforcement action by BCDC against RBRA, pursuant to terms presented in the attached tentative agreement.

### INTRODUCTION

The attached draft agreement between RBRA and the San Francisco Bay Conservation and Development Commission (BCDC) would resolve BCDC's threatened enforcement action against RBRA concerning anchored vessels and associated alleged impacts to eelgrass and other environmental concerns. The proposed agreement is the result of discussions between RBRA staff and BCDC beginning in 2019.

Although the agreement includes provisions that go beyond those in [RBRA's Transition Plan](#), notably with respect to timelines for the departure/removal of occupied vessels and eelgrass measures, as a state regulatory authority BCDC has called for more definitive timelines - including the removal of all vessels within 5 years. Staff has sought to balance these interests in the context of housing challenges and homelessness regionally and statewide with as humane an approach as possible toward the most vulnerable residents on the water while also considering the importance of eelgrass in the bay. Staff recommends approval of the proposed agreement after many months of negotiation as more favorable relative to BCDC's threatened enforcement action.

### BACKGROUND

The RBRA was established in 1985 as a joint powers agency by Marin County and the cities of Sausalito, Tiburon, Belvedere and Mill Valley in order to protect the unique environmental and recreational resources of Richardson Bay through implementation of a Special Area Plan and the regulation and appropriate enhancement of the bay's use pursuant to that plan. The City of Sausalito withdrew from the RBRA in 2017.

The RBRA adopted rules and regulations in 1987 that, in part, established a 72-hour time limit for anchoring in Richardson's Bay. For decades, since before the adoption of the Special Area Plan, Richardson's Bay has been used by mariners as a location to anchor their vessels – sometimes

temporarily and sometimes for extended stays. While the number of vessels anchored in Richardson's Bay increased significantly after the Great Recession of 2008, using the anchorage beyond temporary time limits is inconsistent with the San Francisco Bay Plan, the Richardson Bay Special Area Plan, and the Marin County Code, as well as RBRA's rules and regulations for anchoring in bay waters.

In 2019, the California State Auditor issued a report regarding BCDC's responsibility to protect the San Francisco Bay – including a backlog of enforcement cases. In response, BCDC increased enforcement staff and identified Richardson's Bay as an enforcement priority.

Beginning in February 2019, the BCDC Enforcement Committee and RBRA held several discussions on improving the management of vessels in Richardson's Bay. In December 2019, BCDC transmitted a letter to RBRA setting forth the actions that BCDC staff expected RBRA to undertake, including the removal of most vessels (e.g. marine debris, unoccupied, or unregistered) and preparation of a plan with timelines to transition remaining vessels off the water and resolve associated alleged damage to the natural habitat in Richardson's Bay.

On June 11, 2020 RBRA adopted the [2020 Transition Plan](#) for Richardson's Bay after months of information gathering and analysis, stakeholder engagement, and consideration of the challenges for the bay habitat, vessel occupants, and other affected interests. The Transition Plan is intended to provide an orderly process for conforming the bay to the uses specified in the Special Area plan by preventing the arrival of additional anchor outs, taking measures to ensure protection of the bay's ecology, encouraging improved safety and environmental responsibility, and allowing the anchor-out community to decline over time through attrition.

Although BCDC viewed the Transition Plan as a good first step, BCDC claims more definitive actions are required and, in particular, has called for all vessels to be removed within 5 years with concrete achievement milestones along the way.

## **DISCUSSION**

Staff has sought to balance complex public health and safety interests with the plan's requirements regarding the anchorage and habitat protection – as well as with public health and legal constraints that all public agencies face in addressing solutions impacting persons without housing. In light of many of the anchorage's current occupants, including a significant vulnerable community, staff recommends exploring housing options with partner agencies to help facilitate a transition of residents from unsafe conditions on the water to land-based housing as humanely as possible. While the transition of current anchorage inhabitants cannot be conditioned upon the availability of permanent housing, RBRA will coordinate closely with the Marin County Department of Health and Human Services and community partners to seek state and federal funding resources to connect vessel occupants with housing options.

Staff believes the proposed agreement provides as much flexibility as is possible in negotiation with BCDC to determine how this will be accomplished, while considering what is best for vessel occupants in the context of solutions to homelessness and housing challenges statewide.

## RECENT INITIATIVES AND OUTCOMES

RBRA has made substantial progress in the past 24 months, including adoption of the [Transition Plan](#); hiring a full-time Assistant Harbor Master; obtaining significantly increased vessel abatement grant funds; developing an [Eelgrass Protection and Management Plan](#); coordinating housing outreach and social services; and visibly reducing the vessel census on the water to 86 vessels from over 200. While the number of vessels on the water has been more than halved, resolving the status of the remaining vessels will be more challenging as most remaining vessels are occupied.

Due to pandemic conditions, outreach on the water was severely curtailed during 2020, which created a significant delay in the ability to connect people living on the water with housing and shelter. Since the Spring of 2021, however, a County-supported outreach team has been conducting outreach in Richardson's Bay twice weekly and is making progress connecting residents to potential housing and services systems.

## KEY ITEMS IN AGREEMENT

The proposed agreement sets out enforcement milestones that RBRA must meet and environmental recovery and protection actions it must undertake. In return, BCDC will not take enforcement action against the RBRA or its constituent members. In addition to monthly, quarterly, and annual reporting, key action items are summarized below:

### A. VESSEL DEPARTURE/REMOVAL - ALL VESSELS DEPART/REMOVED BY OCTOBER 2026

The following milestones will require enforcement such as regular patrols, law enforcement support, and possible civil legal actions. Vessel occupants will be notified about the timelines and encouraged to remove their vessels on their own accord, and to connect with outreach assistance as needed. Staff will develop a proposed bifurcated enforcement strategy, ensuring additional/new arrivals are compliant with time limits per RBRA rules and regulations as a temporary anchorage, while allowing focus on a phased approach regarding vessels already on the anchorage consistent with the agreement milestones below with outreach, housing and supportive services options.

1. October 15, 2021 – removal of all unoccupied marine debris and their ground tackle/ moorings (most have already been removed)
2. December 2021 - no new vessels in Eelgrass Protection Zone (see (B) below)
3. October 15, 2023
  - a. All vessels that arrived after August 2019 must be removed (est. 19 vessels)
  - b. All floating homes removed (4 total)
4. October 15, 2024 - occupied vessels that did not enroll in Safe & Seaworthy Program removed (est. 49 vessels)
5. October 15, 2024 - all vessels removed from Eelgrass Protection Zone
6. October 15, 2026 - occupied vessels that did enroll in Safe & Seaworthy Program removed (est. 14 vessels)
7. After October 15, 2026 - Richardson's Bay is a short-term anchorage for safe and seaworthy vessels

## **B. EELGRASS PROTECTION AND MANAGEMENT PLAN (EPMP) AND ADAPTIVE MANAGEMENT PLAN**

1. December 15, 2021 - RBRA to adopt EPMP establishing anchoring zone and Eelgrass Protection/no-anchoring zone
2. 60 days after adoption of EPMP - RBRA to petition for no-anchoring zone from federal agencies
3. 2022 - RBRA to initiate active eelgrass recovery studies
4. 2021/2023 - If subtidal habitat damage is caused by vessels relocated from the Eelgrass Protection Zone to the anchoring zone before the ten-year adaptive management plan for eelgrass recovery is implemented, RBRA will take necessary measures to halt the damage and restore habitat conditions within a reasonable timeframe as determined by qualified scientists selected by RBRA
5. December 15, 2022 - RBRA to install approximately 15-20 temporary moorings in anchoring zone for temporary vessel relocation from Eelgrass Protection Zone
6. December 15, 2023
  - a. Finalize no-anchoring zone and update ordinances to reflect zone
  - b. Develop ten-year adaptive management plan and begin implementing

### **FINANCIAL IMPACT**

RBRA has increased its budget substantially in recent years, including funding for vessel abatement and comprehensive eelgrass studies. Member Agencies have demonstrated their commitment and resolve by steadily increasing annual contributions from a FY 2016-17 budget of \$289,100 to a FY 2021-22 budget of \$586,169 (a 103% increase over five years), in addition to substantial grant awards relating to vessel abatement and eelgrass study.

Going forward, presuming the Board approves the settlement agreement, staff foresees additional expenses in the years ahead that may be, though without certainty, substantially mitigated with non-local grant and other funding opportunities. Staff would return to the Board in an implementation phase with a new Transition Plan 2.0 Plan including next steps regarding:

- **Enforcement efforts** to ensure additional/new arrivals are compliant with time limits per RBRA rules and regulations as a temporary anchorage;
- **Eelgrass recovery/protection efforts**, for which we are informed that grant resources are available given the importance of eelgrass ecologically; and
- **Housing and related supportive services efforts**. While adequate non-local funds cannot be guaranteed, efforts with Health and Human Services and other community partners have more likelihood of success in the years ahead given the significant state and federal funding resources committed to address homelessness as a statewide priority.

While there remains some risk that the RBRA and its constituent agencies will be subject to additional expense if such resources are not forthcoming, staff believes there is potentially much greater risk associated with BCDC's threatened enforcement action absent an agreement.

## **CONCLUSION**

The path forward will not be easy. However, the proposed agreement avoids an uncertain and potentially much more costly BCDC enforcement action that would afford RBRA less flexibility in implementation. It also advances significant environmental protection while acknowledging the range and limits of RBRA's authority and responsibilities and the needs of the anchor-out community. Further, while it contains specific provisions beyond the policy direction descriptions in RBRA's Transition Plan, it is not inconsistent with the Plan's vision, principles, and policies.

## **NEXT STEPS**

Following settlement agreement execution by RBRA and BCDC, staff would return to the Board with a proposed Transition Plan 2.0 to guide the efforts ahead with a clear, disciplined, but humane program to meet the requirements set forth in the agreement. The Board may wish to consider creating an Ad Hoc Vessel Enforcement Subcommittee and an Ad Hoc Housing/Supportive Services Subcommittee to ensure alignment of board policy with staff implementation efforts going forward.

The FY 2021-22 budget includes a \$50,000 contingency to augment RBRA revenues and spending capacity in coming year to help initiate implementation efforts. Staff would need to return to the Board for authority to transfer the contingency for any approved spending purpose.

Absent an agreement, BCDC has indicated that it intends to commence enforcement actions against RBRA and its member agencies later this month or in September.