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HERO



HANNIG ENVIRONMENTAL
RESEARCH ORGANIZATION



Electronically
FILED

by Superior Court of California, County of San Mateo

ON **7/21/2023**

By /s/ Hessen Ladcani
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
IN THE COUNTY OF SAN MATEO
UNLIMITED CIVIL JURISDICTION

HERO (Hannig Environmental Research
Organization, a California 501(c)3 non-profit
public charity), as a Redwood City Taxpayer and
Public Trust beneficiary,

Petitioner/Plaintiff,

vs.

THE CITY OF REDWOOD CITY; Jeff Gee
("Mayor"), Diane Howard ("Former Mayor"),
Lissette Espinoza-Garnica, Alicia C. Aguirre,
Kaia Eakin, Elmer Martinez Saballos, and Chris
Sturken in their capacities as Redwood City City
Council Members and in their capacities as
Public Trust Trustees; and Does 1- 100,
inclusive,

Respondents/Defendants.

Case No.: 23-CIV-03421

**PETITION FOR WRIT OF MANDAMUS;
PETITION FOR DECLARATORY AND
INJUNCTIVE RELIEF; PRELIMINARY
INJUNCTION; COMPLAINT FOR TRUSTEE
DUTY VIOLATIONS; INTENTIONAL RELEASE
OF HAZARDOUS MATERIAL INTO MARINE
ENVIRONMENT; FAILURE TO PREVENT AND
DISCLOSE DEATH OF CHILD IN PUBLIC
TRUST UNLAWFUL RESIDENCE; CODE
VIOLATIONS; NUISANCE; TRESPASS;
CONFLICT OF INTEREST BY CITY
ATTORNEYS**

1. Violations of the Public Trust by Defendant as Trustee;
2. Violations of thirteen designated fiduciary and other duties Defendant owes to the citizens of California under Public Resources Code §§ 6009 and 6009.1 and Violation of California Water Code §§13263.6
3. Improper Use of Public Trust assets including to retaliate against Citizen Taxpayer whistleblower
4. Violations of California Health and Safety Code § 25180.7; and
5. Embezzlement of Public Trust Assets to Non-Public Trust Use
6. Continuing Public Nuisance
7. Continuing Trespass
8. Continuing Conflict of Interest by City Attorney's Office representing Public Trust and City Concurrently

PRELIMINARY ALLEGATIONS

1. This petition and complaint is an action by Hannig¹ Environmental Research Organization (“**HERO**”), a 501(c)3 public charity, as a public health and marine environment interest group, current and future Redwood City taxpayer (hereinafter “**HERO**” or “**Petitioner**”) that was forced to bring this action because the Redwood City (“**THE CITY**” or “**Respondent**”) refused to act lawfully despite repeated citizen efforts including prior litigation and a settlement agreement to abide by the Office of the Attorney General of California’s opinion that Redwood City was acting unlawfully;
2. **THE CITY** has a quarter century history of knowingly acting improperly and unlawfully at **DOCKTOWN**. An exception to the rules prohibiting quoting an *unpublished* opinion is where it is *res judicata* to a party as here. The Court in Madden v. City of Redwood City, Court of Appeal of the State of California, First Appellate District, Division Two, No. A156288 (Cal. Ct. App. Nov. 25, 2020) provided a succinct history (emphasis added) of much of the relevant facts:

“DOCKTOWN is located within an area granted to the City by the State of California, to hold in trust for the people of the state and use for specified public purposes. (Stats. 1945, ch. 1359 [granting “certain lands, salt marsh, tidelands, submerged lands”]; Stats. 1954, ch. 34 [amending chapter 1359].) Such land grants “remain subject to the public trust, and remain subject to the oversight authority of the state by and through the State Lands Commission.” (Pub. Resources Code, § 6009, subd. (c).)

In 2014, the State Lands Commission (Commission) informed the City that the DOCKTOWN “residential floating home community” violated the terms of the granting statutes and was inconsistent with the common law public trust doctrine, noting that, based on advice from the Office of the Attorney General of California, Commission staff had consistently taken the position that “residential use of sovereign lands” was inconsistent

¹ HERO is named in honor of Frank Hannig, a decorated sea plane pilot war hero and a marine enthusiast also known for his involvement in the Redwood City and legal communities, who served as foreman of the San Mateo County Grand Jury, and his wife Theresa Hannig, who was a Redwood City school teacher, served for many years as a volunteer education docent at the San Mateo County Superior Court and was awarded the Liberty Bell Award; both were selected as Redwood City Outstanding Citizens. Both are now deceased. Both supported their son’s 2015 legal action against Redwood City over the unlawful City actions at Docktown, and HERO is proud to continue their legacy.

1 with the public trust doctrine.

2 In June 2015, Deputy Attorney General Andrew Vogel responded to the Commission's
3 request for "informal advice" on the legality of private residential use of houseboats at
4 DOCKTOWN with a letter stating that such private residential use violates "the terms of
5 the statutes by which the Legislature granted these tidelands in trust to the City and the
6 common law public trust doctrine." This "Vogel letter" was subsequently provided by the
7 Commission to the City.

8 In November 2015, Citizens for the Public Trust and Ted J. Hannig
9 [WHISTLEBLOWER] (Citizens/Hannig) filed suit against the City, alleging that the City's
10 operation of DOCKTOWN violated the public trust doctrine and was causing financial and
11 environmental harm. The parties entered into a settlement agreement in January 2016,
12 which provided, among other things, that "[a]bsent a superseding and publicly documented
13 change in the Commission's policies, an opinion by the AG, and/or a superseding action by
14 the Legislature, which allows residential use in DOCKTOWN, the City shall take formal
15 action, no later than December 31, 2016, to adopt a Plan that will be in conformance with
16 the Commission's policies concerning residential use of the public trust portion of
17 DOCKTOWN and consistent with the AG's 6/9/15 Letter. By December 31, 2017, the City
18 shall have undertaken its best efforts and action towards prompt implementation of the
19 Plan."

- 20 3. Ted J. Hannig, ("WHISTLEBLOWER") is not a member, officer or director of HERO.
- 21 4. This action is brought against THE CITY of Redwood City (hereinafter "THE CITY" or
22 "REDWOOD CITY") in its capacity as a municipal government and as a public trust trustee
23 and, recognizing THE CITY acts and through its Council ("THE COUNCIL") currently
24 presided over by its Mayor Jeff Gee ("THE MAYOR") and former Mayor, Diane Howard
25 ("FORMER MAYOR") who, as alleged herein, intentionally blocked efforts to stop THE
26 CITY from complying with its Trustee obligations.²

27
28 ² Pursuant to the charter adopted by the City and approved by the State of California in 1929, the "City" refers to the "municipal corporation" known as the City of Redwood City. (Redwood City Charter, § 1.) The City has "all the powers heretofore claimed or exercised by the City" and "all the powers granted to municipal corporations and to cities by the constitution and general Laws of this State together with all the implied

- 1 5. It has been adjudicated **THE CITY** has a non-delegable duty as Trustee of the Public Trust³,
2 *a fortiori*, **THE MAYOR** and the **COUNCIL** are de facto Trustees and owe a non-delegable
3 duty to act consistent with the obligations of the Public Trust.⁴
- 4 6. Council Members Jeff Gee ("Mayor"), Diane Howard ("Former Mayor"), Lissette Espinoza-
5 Garnica, Alicia C. Aguirre, Kaia Eakin, Elmer Martinez Saballos, and Chris Sturken in their
6 capacity of Redwood City Council Members each, upon taking the oath of office, have a
7 *non-delegable duty* as a Trustee of the Public Trust property that is the subject of this action,
8 including the duties of full disclosure and due care. This duty exists regardless of their
9 individual awareness of their obligations; their failure to inquire and ascertain, if any, is not
10 relevant to their duty but may serve as an illustration of breach of that non delegable duty.
11 Under **Public Resources Code Section 6009.1 (13)** the Council members are each Trustees
12 and **cannot assume delegation of duty nor** may they have or reasonably **believe others**
13 **may act as co-trustees**.
- 14 7. Defendants Does 1 to 100, inclusive, are sued under fictitious names pursuant to Code of Civil
15 Procedure section 474. **HERO** is informed and believes, and on that basis alleges, that each of
16 the defendants sued under fictitious names is in some manner responsible for the wrongs and
17 damages alleged below, in so acting was functioning as the agent, servant, partner, and
18 employee of the co-defendants, and in taking the actions mentioned below was acting within
19 the course and scope of his or her authority as such agent, servant, partner, and employee, with
20 the permission and consent of the co-defendants. The named defendants and Doe defendants
21 are sometimes hereafter referred to, collectively and/or individually, as "Defendants."
- 22 8. **THE CITY** accepted the position of trustee of all lands within the Public Trust, including
23 submerged land where **DOCKTOWN** is located (hereinafter "**PUBLIC TRUST PROPERTY**"
24 or "**PUBLIC TRUST LANDS**") and as a fiduciary for the people of the State of California with

25 powers necessary to carry into execution all the powers granted, and shall retain all rights, interests, powers and privileges heretofore gained by
26 the City or any of its departments, boards, commissions or instrumentalities," and "except as prohibited by the State constitution or restricted by
27 this Charter, the City shall and may exercise all municipal powers, functions, rights, privileges and immunities of every name and nature
whatsoever." (Redwood City Charter, § 2.) **The City's governing body is the Council**, which is composed of seven members, including the
Mayor, who are elected at municipal elections and subject to recall by the voters. (Redwood City Charter, §§ 6, 9, & 10.)

³ Public Resources Code section 6009.1, subdivision (c)(13), prohibits a trustee of public land from delegating its duties except with direct supervision.

⁴ For this reason, sometimes the City and the Council are collectively referred to as **THE CITY**.

1 respect to the PUBLIC TRUST PROPERTY. Prior litigation attempted to educate **THE CITY**
2 that the public trust lands in Redwood City are in trust for the public throughout the State, *not*
3 *just Redwood City*. **HERO** believes such attempt failed, and **THE CITY** continues to fail to
4 recognize, to ignore and egregiously violate the numerous express statutory duties and
5 common law public trust and fiduciary duties imposed on **THE CITY** (including Council
6 members). Such failure extends to the City Attorney's Office, which has failed to recognize
7 (or intentionally violated) the conflict of interest between the City of Redwood City on behalf
8 of the City taxpayers on one hand, and the Public Trust, for the benefit of all taxpayers in the
9 State of California, on the other hand. There exists an express conflict of interest as statutorily
10 the Trust must pursue claims against it, yet the City Attorney has not and cannot pursue such
11 claims on behalf of the Public Trust it represents against the City it concurrently represents.

- 12 9. As of June 2023, this is illustrative of how **THE CITY** maintains and operates **DOCKTOWN**
13 in front of **WHISTLEBLOWER's** residence (abandoned blue Styrofoam threatening a release
14 to the marine environment is visible in this picture as well); this condition has persisted for
15 **many years** and is an on-going harm:



- 25
26 10. As hereafter alleged, **THE CITY** for years has been knowingly allowing hazardous substances
27 and waste to enter the marine environment, in the case of Styrofoam from its docks, having a
28 minimum harmful life span of over 500 years, while repeatedly hypocritically passing laws

1 restricting others from using the materials it has been secretly releasing in mass quantities from
2 City owned personal property. As further alleged herein, a citizen, **WHISTLEBLOWER**,
3 with a 20-year whistleblower history with the City, resulting in grand jury investigations and
4 tens of millions of dollars of past corrective action by **THE CITY**, has been retaliated for his
5 efforts to get **THE CITY** to stop the harmful ongoing marine pollution. The **FORMER**
6 **MAYOR**, in violation of Trustee duties, canceled a meeting **WHISTLEBLOWER** scheduled
7 through **THE CITY** staff, with a City approved mediator (P. Terry Andelini) provided by
8 **WHISTLEBLOWER's** at his personal expense as a community service. Further, in gross
9 misuse and damage to Trust assets, **retaliated against WHISTLEBLOWER** by placing
10 eyesores in front of his home as means of **inverse condemnation** (reducing the value of his
11 home and making it difficult to sell), as well as **summarily rejecting** his efforts to donate
12 millions of dollars of rain forest lands as a community benefit to **THE CITY** so that it could
13 not only be "Climate Best By Government Test" but also "carbon neutral" as hereinafter set
14 forth. Trustees of the Public Trust have a duty to protect the public trust properties from the
15 harms of climate change as part of their duties, including the duty of due care. **THE CITY's**
16 acts and omissions are violative of trust obligations under the Public Trust as hereinafter set
17 forth and as established at hearing and trial.

18 11. The City of Redwood City's General Plan provides as an identified goal of the City "**Goal NR-**
19 **6: Preserve and enhance the bay lands, natural wetlands, and ecosystem** to assist with
20 improved air quality **and carbon dioxide sequestration....**" (emphasis added).

21 12. **THE CITY's** acts and omissions, in addition to being violative of the statutory and common
22 law duties for the public trust, are violative of its expressed General Plan goals. **HERO**
23 believes the declination of donated carbon sequestering land from **WHISTLEBLOWER** is
24 because of their discrimination and retaliation, all of which is specifically prohibited by statute
25 and common law.

26 13. Carbon sequestration besides a claimed General Plan objective is a developing Public Trust
27

purpose.⁵ Realizing the harm to the public and the marine environment such releases cause for hundreds of years, and **THE CITY**'s has a *duty to mitigate* the harm it has caused while serving as Public Trustee.

14. **WHISTLEBLOWER** sought to overcome **THE CITY**'s disdain for him and assist it to meet its duties as Trustee by offering to donate to **THE CITY** as a public community benefit 100 acres of extremely valuable coastal primary rain forest property he owned to assist **THE CITY** in mitigating its global harm through offsetting carbon sequestration and offsetting environmental benefit without cost to **THE CITY**. **WHISTLEBLOWER**'s proposal was to make **THE CITY** not only "Climatebest by government test" but also "Carbon Neutral" as well by utilizing rain forest carbon offset from the land he proposed to donate to **THE CITY**. A copy of the March 7, 2021, email to the then Mayor and her March 8, 2021, reply are attached as **Exhibit A** and **Exhibit B** respectively. These exhibits are incorporated herein by this reference. In Exhibit B the **FORMER MAYOR** implores **WHISTLEBLOWER** to "be patient".

15. **Exhibit B** also shows **THE CITY** was aware of the on-going Styrofoam release as the then Mayor stated that she had shared **WHISTLEBLOWER**'s email regarding the donation of carbon off-set land and his concerns about the release of blue Styrofoam with City staff.

16. Ironically, while later summarily rejecting **WHISTLEBLOWER**'s offer as a native son of the City to donate millions of dollars of carbon sequestering rain forest land at no cost to **THE CITY**, to assist the City of Redwood City in securing carbon neutrality, and provide a study and recreation area for City residents, **THE CITY** continued to maintain a sister city relationship in China that it pursued⁶, despite China's abysmal environmental and human rights records. In fact, China is the world's worst emitter of carbon.⁷ **HERO** believes this is further evidence of **THE CITY**'s discriminatory conduct towards **WHISTLEBLOWER**, a trust beneficiary, in violation of express statutory "**duty to act impartially in managing the trust**

⁵ https://www.colorado.edu/law/sites/default/files/BARRESI%20corrected_.pdf p. 70

⁶ In 1992 the City affiliated with its first sister city, Zhuhai, China. *City of Redwood City's web page*.

⁷ <https://www.wri.org/insights/interactive-chart-shows-changes-worlds-top-10-emitters>

1 **property”** and a further violation of duties including due care as herein alleged and set forth
2 herein.

3 17. This picture is one of the many **THE CITY** owned blue Styrofoam blocks released into the
4 marine environment due to the grossly negligent mismanagement of the Public Trust and City
5 property by **THE CITY**: (dollar bill is for size reference only)



14 18. Pieces of **THE CITY**'s discharge of harmful Styrofoam can be seen in the beaches, public
15 trust areas, and marine sanctuaries in the proximity of **DOCKTOWN**.



24 19. Although it takes over 500 years for Styrofoam to possibly degrade (some sources believing it
25 may be much longer or indefinite well beyond 500 years) the initial degradation is
26 extraordinarily harmful as the blue “grit” produced by the Styrofoam is impossible to retrieve
27 and is a grave risk to the marine environment as it is mistaken for food (dollar is solely for size

1 reference, from a decaying City owned block of blue Styrofoam released into San Francisco
2 Bay by the gross mismanagement or intentional disregard of **THE CITY**).



12 20. So massive is the release of this harmful material by **THE CITY** the ordinary citizens on the
13 annual Coastal Clean-up Day have had to take action trying to remove that which they can
14 capture from the marine environment: This one day event can only capture a tiny portion of
15 **THE CITY's** unlawful release of Styrofoam. Ironically **THE CITY** lent volunteers pickup
16 tongs to grab the City's waste.
17



21. Social media post by Redwood City communiyt members and fellow citizent taxpayer's documented the citizen clean up of some of **THE CITY's** massive harmful release:

10:45

5G



Nancy's Post



One Marina Community

Nancy Crampton · 1 hr · 📷

7 hearty souls headed out to pick up trash around One Marina this morning. The pictures show Donald Yung and Jim Crampton pulling the dock floats from Docktown out of the marina area. Brian Fay, Jen and Jack Smith, Chris Witzel and Nancy Crampton helped them pick up 5 big bags of trash. Two Grabbers have been bought by the HOA, and Redwood City lent us the other 5 for our adventure! Actually, we had a lot of fun. Stay tuned for an announcement about a future pick up day.



8

4 Comments

👍 Like

💬 Comment



22. A July 20, 2023, inspection of Docktown revealed floating detached chunks of Docktown blue Styrofoam, more than three years after **THE CITY** was notified.

23. **HERO** alleges that **THE CITY** as Trustee has violated nearly every duty imposed by the California Legislature with respect to **DOCKTOWN**. The law enacted as **Section 6009.1** of the **California Public Resources Code** provides and declares all of the following as a non-

1 **exclusive list of non-delegable express Trustee duties of all Respondents (emphasis added):**

2 “(b) The state acts both as the trustor and the representative of **the beneficiaries, who are**
3 **all of the people of this state**, with regard to public trust lands, and a grantee of public
4 trust lands, including tidelands and submerged lands, acts as a trustee, with the granted
5 tidelands and submerged lands as the corpus of the trust.

6 (c) A grantee [here the City of Redwood City] may fulfill its fiduciary duties as trustee
7 by determining the application of each of the following duties, all of which are
8 applicable under common trust principles:

9 (1) The duty of loyalty.

10 (2) The duty of care.

11 (3) The duty of full disclosure.

12 (4) The duty to keep clear and adequate records and accounts.

13 (5) The duty to administer the trust solely in the interest of the beneficiaries [the
14 citizenry of the State not just the City].

15 (6) The duty to act impartially in managing the trust property [without retaliation].

16 (7) The duty to not use or deal with trust property for the trustee's own profit or for any
17 other purpose unconnected with the trust, and to not take part in a transaction in
18 which the trustee has an interest adverse to the beneficiaries.

19 (8) The duty to take reasonable steps under the circumstances to take and keep control of
20 and to preserve the trust property.

21 (9) The duty to make the trust property productive under the circumstances and in
22 furtherance of the purposes of the trust.

23 (10) The duty to keep the trust property separate from other property not subject to
24 the trust and to see that the trust property is designated as property of the trust.

25 (11) The duty to take reasonable steps to enforce claims that are part of the trust
26 property.

27 (12) The duty to take reasonable steps to defend actions that may result in a loss to the
28 trust.

1 (13) The duty to not delegate to others the performance of acts that the trustee can
2 reasonably be required to perform and to not transfer the administration of the trust
3 to a cotrustee. If a trustee has properly delegated a matter to an agent, the trustee has a
4 duty to exercise direct supervision over the performance of the delegated matter”.
5 (emphasis added)

6 24. As noted supra, **THE CITY** does not own the PUBLIC TRUST LANDS, but **THE CITY**
7 holds these lands *as trustee for the benefit of the statewide public*. The PUBLIC TRUST
8 PROPERTY is adjacent to other public trust properties and to 3,000 acres of virgin wetlands,
9 recently created at the cost of many of millions of dollars to the taxpayers. **THE CITY** is
10 knowingly harming public trust land for hundreds of years in the future by on-going releases
11 of hazardous Styrofoam, a product of such known hazards that **THE CITY banned even**
12 **minute quantities of Styrofoam in 2013 and renewed the ban in 2022. THE CITY** enacted
13 the bans overriding any pleas of “economic hardship” as **THE CITY** realized environmental
14 harm from Styrofoam was far worse than the economic harm of the ban. Further, **THE CITY**
15 recognizing the dangerous harm of unencapsulated Styrofoam, such as the Styrofoam it
16 releases into the San Francisco Bay, when it in 2006, 17 years ago, **THE CITY required all**
17 **Styrofoam in Redwood Shores be encapsulated**⁸ but did not act to encapsulate its own
18 massive quantities of exposed degrading Styrofoam located at the decaying **DOCKTOWN**.
19 See excerpt in **Exhibit C**, incorporated by this reference. One can reasonably estimate the
20 actual release by **THE CITY** of banned Styrofoam is in the order of magnitude of **millions of**
21 **times greater** than the feared potential harm to the marine environment by Redwood City
22 businesses following normal trash disposal practices.

23 25. **THE CITY** and the City Attorney’s Office and its outside counsel appear to fail to recognize
24 the paramount obligation owed the Public Trust and the duty they have as Trustees to pursue
25 claims,⁹ as required by statute, against all responsible parties, including The City of Redwood
26

27 ⁸ July 24, 2006 Redwood Shores Lagoon Bank Policy and Construction Guidelines state: “3 Styrofoam shall be wrapped, coated or otherwise
contained to avoid abrasion and/or deterioration.”

28 ⁹ Section 6009.1 provides: (11) The duty to take reasonable steps to enforce claims that are part of the trust property.

1 City when the operations and abandonment of the docks owned by the City harm the public
2 trust.

3 26. Despite its mandatory statutory duty as Trustee to pursue claims, **THE CITY** failed to appoint
4 independent counsel to represent the Public Trust. **THE CITY** sought to avoid its liability to
5 the Public Trust despite their statutory obligation. To the best of Petitioner's knowledge, the
6 City Attorney's Offices and retained outside counsel have continued to concurrently represent
7 **THE CITY** as a Municipality with liability exposure to the Public Trust, and **THE CITY** as
8 Trustee of the Public Trust.¹⁰

9 27. **THE CITY** is well aware Styrofoam is hazardous. Ten years ago, in 2013, recognizing the
10 harmful effects of Styrofoam, **THE CITY** banned Styrofoam use by local restaurants despite
11 the concerns over economic hardship. While **THE CITY** turned a deaf ear to its citizens
12 seeking some relief from the immediate implementation of the Styrofoam ban, hypocritically
13 **THE CITY** was then and is now releasing massive amounts of Styrofoam directly into the
14 marine environment in a manner that causes *irreparable injury for centuries*. It can reasonably
15 be estimated that **THE CITY**'s release of banned Styrofoam of the past years has millions of
16 times more actual harm than the potential of food industry waste reaching the waterways by
17 the ban.

18 28. In October of 2022, over a year after **THE WHISTLEBLOWER** told **THE CITY** it was
19 releasing Styrofoam into the marine environment, **THE CITY** continued its hypocritical
20 positioning with the ban of Styrofoam noting that with respect to disposable food products the
21 ban was to "(2) **Improve the health and safety of our community** members by eliminating
22 disposable foodware that is harmful" (emphasis added).

23 29. **THE CITY** also violated its duty of disclosure, not making public **WHISTLEBLOWER**'s
24 2021, emails to the Former Mayor, and her reply that the email had been distributed to City
25

26 ¹⁰ Rule 1.7 Conflict of Interest: Current Clients (Rule Approved by the Supreme Court, Effective November 1, 2018)" (a) A lawyer shall not,
27 without informed written consent* from each client and compliance with paragraph (d), represent a client if the representation is directly adverse
to another client in the same or a separate matter... (e) For purposes of this rule, "matter" includes any judicial or other proceeding, application,
request for a ruling or other determination, contract, transaction, claim, controversy, investigation, charge, accusation, arrest, or other
deliberation, decision, or action that is focused on the interests of specific persons,* or a discrete and identifiable class of persons.* Comment [1]
28 Loyalty and independent judgment are essential elements in the lawyer's relationship to a client."

1 Staff; never disclosing that **THE CITY** was releasing Styrofoam into Redwood Creek at
2 **DOCKTOWN. THE CITY** passed Ordinance 2382 effective **January 1, 2023**, finding there
3 are harmful effect of Styrofoam in our waterways (emphasis added):

4 ORDINANCE NO. 2382 ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
5 REDWOOD CITY ADDING NEW ARTICLE XI (**POLYSTYRENE BASED**
6 **DISPOSABLE FOOD SERVICE WARE PROHIBITION**) TO CHAPTER 13
7 (ENVIRONMENTAL HEALTH) Section 1. The City Council of Redwood City finds as
8 follows: 1. The County of San Mateo has adopted an ordinance prohibiting food vendors
9 from using polystyrene based disposable food service ware; 2. **The City Council finds**
10 **that polystyrene is a petroleum-based, lightweight plastic material** commonly used
11 as food service are by retail food vendors operating in the City of Redwood City. 3.
12 **Polystyrene, often referred to by the trademark term "Styrofoam", has also become**
13 **a problematic environmental pollutant given its non-biodegradable and nearly non-**
14 **reusable nature and which may persist in the environment without breaking down;**
15 4. The City Council finds that polystyrene-based, single-use food service ware
16 consistently constitutes a substantial portion of the trash and litter found on the
17 streets, streams, creeks and in the storm drains within the City of Redwood City; 5.
18 **THE CITY** Council finds that effective ways to reduce the negative environmental
19 impacts of disposable food service ware include using compostable materials made from
20 renewable sources such as paper, cardboard, corn starch, potato starch, and/or sugarcane;
21 and 6. **THE CITY Council finds and declares that it should restrict the use by food**
22 **vendors of polystyrene-based disposable food service ware.**

23 30. Expanded Polystyrene (EPS) or Styrofoam, is a petroleum-based non-biodegradable foam,
24 which the EPA and International Agency for Research on Cancer consider styrene a “possible
25 human carcinogen” and “that such materials **can have serious deleterious impacts upon**
26 **human health, wildlife, and aquatic environment, and the economy.”**

27 31. Styrene - a known animal carcinogen -is a chemical compound found in Styrofoam and is
28 identified in the 12th edition of its Report on Carcinogens, the National Toxicology Program

(NTP) wherein it is stated that styrene is “reasonably anticipated to be a carcinogen,” and the International Agency for Research on Cancer has classified styrene as a “possible human carcinogen.” Styrene has been labeled as hazardous waste and is outlawed in many cities (including REDWOOD CITY) now for that reason. When exposed to heat or the sun, Styrofoam leaches styrene and benzene, chemicals that have known toxic properties. As noted by Rutgers: “Styrene has been found in 100 percent of human tissue samples and 100 percent of human nursing milk samples tested. Long-term exposure to small quantities of styrene can cause neurotoxic (fatigue, nervousness, difficulty sleeping), hematological (low platelet and hemoglobin values), cytogenetic (chromosomal and lymphatic abnormalities), and carcinogenic effects. Acute health effects are generally irritation of the skin, eyes, and upper respiratory tract, and gastrointestinal effects. Chronic exposure affects the central nervous system showing symptoms such as depression, headache, fatigue, and weakness, and can cause minor effects on kidney function and blood. Styrene usually exhibits its toxicity to humans as a neurotoxin by attacking the central and peripheral nervous systems. It has even affected menstrual cycles of women exposed to polystyrene”.¹¹ Release into the marine environment not only reaches humans with toxicity through the food chain but it kills marine life in the Public Trust and destroys fisheries and recreation rights in the Public Trust zone as noted: “This also affects animals in the wild, due to broken down bits of polystyrene obstructing their airways, contaminating their resources, and causing cancer and digestive problems.” While animals killed by Styrofoam decompose, Styrofoam does not decompose and can be re-ingested many times, killing time and time over decades and centuries. *The Styrofoam released by THE CITY is an environmental serial killer that can harm and kill for at least 25 generations and perhaps indefinitely.*

32. Polystyrene aka Styrofoam is a hazardous material that when improperly disposed of becomes a hazardous waste.

33. The history of DOCKTOWN reveals a long practice of unlawful conduct by THE CITY.

¹¹ rucore.libraries.rutgers.edu/rutgers-lib/38329/PDF/1/play/

1 **THE CITY** now owns the marina and docks, *which are primarily built upon massive*
2 *amounts of decaying, un-encapsulated Styrofoam which are known to be deteriorating in*
3 *massive quantities into San Francisco Bay, including a nearby protected wetlands and THE*
4 *CITY's Styrofoam has been observed reaching the nearby marine sanctuary.* Even more
5 insidious are the small granular portions from slight decomposition that get mistaken by sea
6 life for food.

7 34. The March 7, 2021, **WHISTLEBLOWER** email to **THE FORMER MAYOR** "Further, **no**
8 **action has been taking on the DOCKTOWN leaching blue Styrofoam into the marine**
9 **environment, which I believe to be a violation of its duty.**" See Exhibit A, incorporated by
10 this reference.

11 35. Despite complaints and warnings to the **FORMER MAYOR** (and currently a member of **THE**
12 **COUNCIL**) and to **THE CITY** Attorney in 2021 about release of blue Styrofoam into the
13 environment **no action was taken** and as set forth herein the **FORMER MAYOR** on October
14 11, 2021, unilaterally cancelled a meeting scheduled by the **WHISTLEBLOWER** with **THE**
15 **FORMER MAYOR's** staff to discuss this and other **DOCKTOWN** issues, even despite
16 **WHISTLEBLOWER's** arranging to pay *at his own personal expense* a professional (and City
17 previously approved) mediator to assist **THE CITY** in finding ways to comply with the law.
18 The violations by **THE CITY** continue to this day.

19 36. **THE FORMER MAYOR** acknowledged she was aware the **WHISTLEBLOWER** desired
20 to discuss **DOCKTOWN** issues ("I can see that you would like to have an in depth discussion
21 about **DOCKTOWN**") but, despite her duties as a Trustee towards a beneficiary, "defer[red]
22 to the legal process" blocking **WHISTLEBLOWER** as a beneficiary from direct
23 communication with Trustees. The City Attorney made it clear **WHISTLEBLOWER** would
24 have large legal expense if he pursued claims against the City related to the Trust¹² and conduct

26 ¹² July 27, 2020 internal memorandum from Michelle Marchetta Kenyon and Kevin D. Siegel, outside council to Veronica Ramirez, City
27 Council, released by the City Attorney to **WHISTLEBLOWER** Hannig containing the statement the City emphasized in bold text "**Were Mr.**
28 **Hannig to Seek a Ruling from the Superior Court or Special Master, the City Would Seek an Award of Attorney's Fees**". The reference
was notably directed at Mr. Hannig, not Citizens for Public Trust. **WHISTLEBLOWER** was sensitive to such threat having personally paid for
over \$200,000 in legal expense for post-settlement legal actions brought against him as well as the **CITY** for matters that proper handling of the
Docktown Settlement could have reasonably been avoided. The **CITY** has never reimbursed **WHISTLEBLOWER** for his expense and refused
tender of defense.

1 of **THE CITY** made it clear to the **WHISTLEBLOWER** further retaliation was likely.

2 37. Legal counsel for **WHISTLEBLOWER** wrote to the City Attorney in September 3, 2021:

3 "My client has had numerous instances of large chunks of Styrofoam wash up on his
4 property. This Styrofoam could only have come from the docks that house the number
5 of unmaintained boats which currently remain in DOCKTOWN. We can support this
6 allegation with numerous videos and photographs. The environmental impact from
7 this Styrofoam is directly impacting the waters in the public trust area.

8 **Residents are still living in residential units** in the public trust area that is
9 DOCKTOWN, which is an unpermitted use of public trust land. Ms. Madden's litigation
10 is proof enough of this allegation.

11 **Decrepit boats are still in the slips of DOCKTOWN**, whose hulls are still scraping
12 the bottom of the bay, releasing chemicals into the waters in the public trust area. We
13 can support this allegation with numerous videos and photographs.

14 **The City has moved two large houseboats from a City-secured area to berths
15 directly into front of Mr. Hannig's home. Based on the City's flimsy rationale,
16 which was provided in writing, we are prepared to argue that said decision was
17 arbitrary, capricious, and serves only as retaliation for the action my Client has
18 taken against the City. Moreover, the City implied almost six months ago that a
19 resolution to the situation would be had "soon."**

20 There is no evidence that the City has adequately funded the fund that is to be used for
21 environmental cleanup." (emphasis added)

22 38. The violations by **THE CITY** constitute a continuing nuisance and the floating Styrofoam
23 constitutes a **continuing trespass** on to public trust property.

24 39. When the **WHISTLEBLOWER**, seeking to minimize taxpayer expense, proposed to **THE
25 CITY** that it was an economically advantageous time to comply with dredging obligations due
26 to **THE CITY's** mismanagement of Docktown and its obligations as Trustee, he was greeted
27 not appreciation but threat of legal expense. **THE CITY's** emphasis on future legal expense
28 directed against the **WHISTLEBLOWER individually** was a violation of the spirit if not
letter of the law protecting public participation in important public issues free of SLAPP
threats.¹³

¹³ For the benefit of readers unfamiliar with this important public policy, "SLAPP" is an acronym for "Strategic Lawsuit Against Public Participation." A SLAPP can be an effort to prevent a whistleblower or other citizen from pursuing their own right of redress. The defendant/respondent's goals are accomplished if the whistleblower succumbs to fear, intimidation, mounting legal costs or simple exhaustion and abandons the criticism. A SLAPP effort is often intended to intimidate others from participating in the debate. Subpart (e) of Code of Civil Procedure section 425.16 provides:

1 40. The following picture shows how **THE CITY** has retaliated against the **WHISTLEBLOWER**
2 and is harming the Public Trust assets and environment. After the **WHISTLEBLOWER**
3 complained of retaliation this multistory, unseaworthy houseboat was placed directly in the
4 **WHISTLEBLOWER's** view corridor. While **THE CITY** weakly claimed it was for
5 improved security, it moved it from a gated area to an ungated area, to a failing dock which
6 firefighters, or any emergency service person could not use (blue arrow) and most
7 incriminatingly next to a tall piling that has for day after day, month after month repeatedly
8 banged and severely damaged the eyesore moved in front of **WHISTLEBLOWER's**
9 residence after his complaints (red arrows), proving that the move directly in front of
10 **WHISTLEBLOWER's** residence in no way improved security but has resulted in actual
11 significant physical harm to the unoccupied barge residence. Retaliation against any citizen,
12 or disparate treatment, is a violation of the Public Trust and a misuse of public trust assets.
13 This condition existed continuously until at least July 20, 2023.

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26 (e) As used in this section, "act in furtherance of a person's right of petition or free speech under the United States or California
Constitution in connection with a public issue" includes: ...

27 (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or
judicial body, or any other official proceeding authorized by law;...

28 (4) or any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in
connection with a public issue or an issue of public interest



41. When the **FORMER MAYOR** shared the **WHISTLEBLOWER**'s email which mentions the blue Styrofoam release and boat sinkings with City Staff, City Staff were then aware of a release of Hazardous Materials and Waste in Redwood City.
42. City Staff are Designated Employees.
43. Despite **WHISTLEBLOWER**'s request that **THE CITY** refer the matter to a special master, as agreed in the resolution of the original **DOCKTOWN** litigation, should there be a dispute between the Whistleblower, a beneficiary and **THE CITY** acting as trustee. **THE CITY**, through the City Attorney's office has refused. Such refusal is a violation of the Trustee's duties.
44. The City Attorney's response shows that besides the **FORMER MAYOR**, the City Attorney was aware of the assertions that **THE CITY**'s docks at **DOCKTOWN** were releasing blue Styrofoam into the marine environment. This obviously created a conflict between **THE CITY** as a municipal entity harming the public trust and **THE CITY** as trustee of the Public Trust with superior statutory duties and obligations to pursue **THE CITY** as a municipal entity for any harm caused the Public Trust, as alleged by **WHISTLEBLOWER** and his counsel,

1 yet the correspondence reveals no informed waiver of conflict nor recusal by the City
2 Attorney's offices or outside counsel in the face of such obvious and material conflict of
3 interest, all to the detriment of the Public Trust.

4 45. Continuing thereafter, including at the time of filing this action, chunks of hazardous blue
5 Styrofoam continued being discharged by **THE CITY** through act and through omission into
6 the marine environment, so that **THE CITY's** Styrofoam is able to pollute and kill for
7 hundreds if not thousands of years. **THE CITY** has banned Styrofoam as hazardous to the
8 marine and human environment yet it continues to knowingly release mass quantities into the
9 marine environment.

10 46. Repeatedly vessels at **DOCKTOWN**, now owned by or controlled by **THE CITY** sink; when
11 a vessel sinks it is widely known that hazardous waste and contents, from batteries, holding
12 tanks (including sewage), fuel tanks and other areas, are leached into the marine environment.
13 Due to tidal action and **THE CITY's** repeated failure to take action, **HERO** is informed and
14 believes that there have been dozens of releases of hazardous materials and wastes each time
15 a vessel sinks or, once sunken, is flushed by the action of the tides. **THE CITY** was notified
16 and warned of such contamination dangers, but has allowed such pollution to continue and, to
17 the best of **HERO's** knowledge, never notified the County of San Mateo under California
18 Public Resources Code Section 25180.7 as hereinafter alleged.

19 47. Respondents, as Trustees, have violated several statutory and common law duties in allowing
20 the marina owned by The City of Redwood City to harm the State of California Public Trust,
21 and in failing to assert claims by the Trust against **THE CITY**, as they are statutorily required
22 to do under **Section 6009.1 of the California Public Resources Code**.

23 48. Under the non-delegable Duty of Care required of each Trustee, the Respondents are required
24 to be familiar with at minimum basic knowledge about the marine environment and the marina
25 they manage where for years **THE CITY** has allowed vessels to repeatedly sink, and on
26 occasion failed to take prompt action to protect against known or foreseeable harms. As stated
27 by the United States Environmental Protection Agency on its website: "Vessels, as well as
28 items in and on vessels, **can pose potential environmental, human health and navigational**

1 concerns. Vessels may contain **harmful pollutants** or serve as sources of pollution, **such as**
2 **oil, fuel, lubricants, polychlorinated biphenyls (PCBs), asbestos and floatable materials**
3 **(e.g., plastics).**”¹⁴

4 49. California Water Code Sec. 13271 provides (emphasis added):

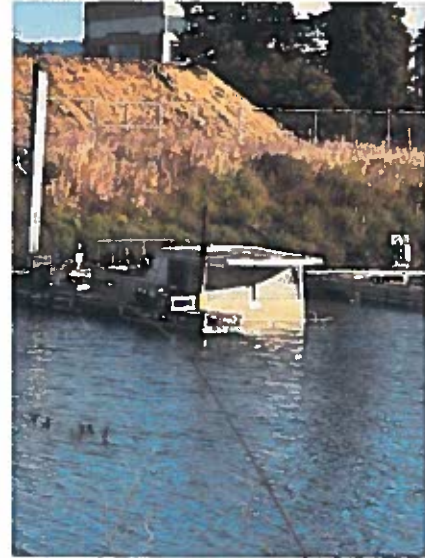
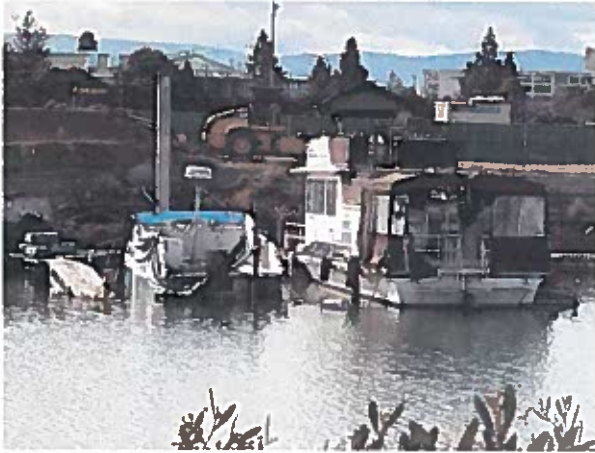
5 (a)(1) Except as provided by subdivision (b), **any person who, without regard to intent**
6 **or negligence,** causes or **permits any hazardous substance or sewage to be discharged**
7 **in or on any waters of the state,** or discharged or deposited where it is, **or probably will**
8 **be, discharged in or on any waters of the state,** **shall**, as soon as (A) that person has
9 knowledge of the discharge, (B) notification is possible, and (C) notification can be
10 provided without substantially impeding cleanup or other emergency measures,
11 **immediately notify the Office of Emergency Services of the discharge** in accordance
12 with the spill reporting provision of the state toxic disaster contingency plan adopted
13 pursuant to Article 3.7 (commencing with Section 8574.16) of Chapter 7 of Division 1 of
14 Title 2 of the Government Code.

15 50. **THE CITY Council members and City staff** were aware of the repeated sinkings and tidal
16 washing of contents of dilapidated boats containing trapped sewage and hazardous materials
17 such as fuels, cleaners, and battery contents.

18 51. The presence of dilapidated boats with the likelihood of discharges in violation of Section
19 13271 was part of **THE CITY’s** misuse of trust property to retaliate against
20 **WHISTLEBLOWER** and caused him, a Trust beneficiary, economic and emotional harm
21 while wasting Trust assets.

22 52. The following pictures illustrate a tiny fraction of events of boats sinking in **DOCKTOWN**,
23 in these cases directly across from the residence of **WHISTLEBLOWER**, bringing potential
24 contamination as well as debris to the Public Trust.

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28 ¹⁴ <https://www.epa.gov/> emphasis added.



53. By way of example, the same vessel is shown sinking at different times approximately one year apart. **WHISTLEBLOWER** notified **THE CITY** of such sinkings.

54. These photographs also illustrate various other violations of statutory duties beyond due care, including the duty to preserve public trust property as well as to make it productive. If the City has any legitimate claims against responsible parties, as Trustee it also had the specified statutory duty to pursue those claims and if **THE CITY** was implicated, to pursue action by separate counsel against **THE CITY**.

55. In at least one instance, a boat left abandoned and unattended by **THE CITY** at **DOCKTOWN** for years sank, releasing a floating propane tank. Observing the propane tank floating from the sunk vessel, as it was close to his home, **WHISTLEBLOWER** notified 911 immediately. Per the California Department of Toxic Substances Control "Discarded compressed gas cylinders containing gaseous, liquid, or physically solid (i.e., non-empty containers) the

1 **residues in the cylinders become hazardous wastes** because they are being discarded and
2 **the residues and cylinders must be handled in compliance with the RCRA regulations.”¹⁵**

3 56. An inspection of **DOCKTOWN** on July 20, 2023, revealed at least two abandoned empty
4 propane tanks at Docktown, which by appearance appeared to have been abandoned for years.

5 57. At no time has **THE CITY** or any of its employees (“designated employees”) inform the
6 County of San Mateo of the on-going release of hazardous substances and waste, including
7 leaching sunken vessels, propane tanks, and especially Styrofoam (a material **THE CITY** has,
8 with the support and knowledge of City Staff, designated as hazardous, and which **THE CITY**
9 knows also contains hazardous components), an omission **HERO** alleges is a violation of
10 California Health and Safety Code Section 25180.7.

11 58. The duty of the Public Trust Trustees is independent and distinct from their status as elected
12 City Officials, especially given the conflict of interest that can exist between their two
13 capacities, one for the City of Redwood City and the other for The People of the State of
14 California. Statutorily, and by common law, the Trustees duties include “(7) The duty to not
15 use or deal with trust property for the trustee's own profit or for any other purpose unconnected
16 with the trust, and to **not take part in a transaction in which the trustee has an interest**
17 **adverse to the beneficiaries.”**

18 59. After **THE CITY** banned Styrofoam in 2012, in 2017, in a widely public move, San Francisco
19 banned all Styrofoam including its use in the marine environment, such as the construction of
20 mooring balls, due to the hazards Styrofoam possesses in the marine environment. Respondent
21 believes **THE CITY** was aware of such ban and others.

22 60. **THE CITY** has negligently and now knowingly unnecessarily released massive quantities of
23 non-biodegradable Styrofoam (including its toxic constituents) into the marine environment
24 that besides resulting in death of marine creatures for hundreds of years, may ultimately reach
25 human tissue causing serious negative health consequences.

26 61. Illustrated in the photo is a picture of **THE CITY**’s blue Styrofoam breaking loose from a
27

28 ¹⁵ <https://dtsc.ca.gov/> emphasis added

1 dock consequently releasing hazardous waste for centuries into the marine environment,
2 thereby able to poison and kill marine life for hundreds of years, and to potentially reach human
3 tissue in the food chain, causing irreparable harm to future generations of Public Trust
4 beneficiaries:



11 62. Although Redwood City citizens have annually picked up trash bags of accumulated
12 Styrofoam debris from **THE CITY**'s decaying docks, releases to the marine environment are
13 often irretrievable. Redwood City has become the "*Flynt Michigan of the Sea*" because **THE**
14 **CITY** government has participated in an on-going harm and failed to report or correct the on-
15 going contamination it is causing. Only citizen intervention has mitigated a small portion of
16 the harm as set forth herein.

17 63. Scientific studies have shown that marine growth on unencapsulated Styrofoam (as evidenced
18 in these photographs) leads to an ingestion and accumulation of Styrofoam in sea life, such as
19 muscles, and then further entering the food chain. While **THE CITY** demanded and mandated
20 Styrofoam encapsulation in adopting the ordinances for Redwood Shores¹⁶ to protect the
21 environment as far back as 2006, **THE CITY**, with great hypocrisy, disregarded that
22 knowledge in owning and operating **DOCKTOWN**.



16 See Exhibit C.

1 64. Incriminatingly, in the early days of DOCKTOWN, THE CITY previously issued violation
2 letters to its then tenants, SALAMAN and EARNHARDT, for both violating the GRANTING
3 STATUTE and Public Trust Doctrine by allowing poor marina conditions and particularly
4 for allowing floating residences. These actions THE CITY complained of are the unlawful
5 practices THE CITY itself has now adopted and made worse. THE CITY is guilty of that
6 which it accused SALAMAN and EARNHARDT of doing and further it demonstrates THE
7 CITY's awareness of public trust obligations in its historic writings about DOCKTOWN and
8 its intentional disregard of those obligations.

9 65. California Health and Safety Code Sec. 25180.7 (emphasis added), at issue in the prior
10 litigation against THE CITY, and therefore of which it is well aware, provides that (emphasis
11 added):

12 (b)Any designated government employee who obtains information in the course of his or her
13 official duties revealing the illegal discharge or threatened illegal discharge of a
14 hazardous waste within the geographical area of his or her jurisdiction and who knows that
15 the discharge or threatened discharge is likely to cause substantial injury to the public
16 health or safety must, within 72 hours, disclose that information to the local Board of
17 Supervisors and to the local health officer. No disclosure of information is required under
18 this subdivision when otherwise prohibited by law, or when law enforcement personnel have
19 determined that this disclosure would adversely affect an ongoing criminal investigation, or
20 when the information is already general public knowledge within the locality affected by the
21 discharge or threatened discharge.

22 (c)Any designated government employee who knowingly and intentionally fails to disclose
23 information required to be disclosed under subdivision (b) shall, upon conviction, be
24 punished by imprisonment in a county jail for not more than one year or by imprisonment
25 pursuant to subdivision (h) of Section 1170 of the Penal Code. The court may also impose
26 upon the person a fine of not less than five thousand dollars (\$5000) or more than
27 twenty-five thousand dollars (\$25,000). The felony conviction for violation of this section
28 shall require forfeiture of government employment within thirty days of conviction.

1 66. At no time has **THE CITY** or any of its employees (“designated employees”) informed the
2 County of San Mateo of its on-going release of Styrofoam, a material **THE CITY** has, with the
3 support and knowledge of City Staff, designated as hazardous, of repeated sinking of
4 **DOCKTOWN** vessels or the release of their contents (including a propane tank), an omission
5 which can be a potential criminal violation.

6 67. Additionally, the statutory Trustee duties of full disclosure and of due care require providing
7 such notice.

8 68. **HERO** believes **THE CITY**, despite its obligations as Trustee, has refused to acknowledge and
9 act at **DOCKTOWN** so that it may obtain, if not embezzle or avoid the loss of funds in accounts
10 under **THE CITY**’s control that are intended for the benefit of the Public Trust. Any expense
11 or liability the responsibility of **THE CITY** as premises owner, but not addressed to the
12 detriment of the Public Trust, is a breach of duty by the Trustee. Further, as alleged herein,
13 absent judicial intervention, **THE CITY** will continue to redirect funds that belong in the Public
14 Trust accounts for purposes of repair and remediation.

15 69. As alleged herein, prior to filing the earlier **DOCKTOWN 1** litigation in 2015,
16 **WHISTLEBLOWER** requested and reviewed hundreds if not thousands of pages of public
17 records relating to **DOCKTOWN** from various public sources, and was on the verge of
18 discovering The City of Redwood City’s failure to provide proper notice about hazardous
19 waste release from mud then located at **DOCKTOWN**¹⁷. Depending on circumstances, such
20 failure to give notice can rise to criminal exposure, and **HERO** believes
21 **WHISTLEBLOWER**’s exercise of free speech and petition rights made them feel very
22 uncomfortable culminating in efforts to disable or otherwise neutralize the efforts of the
23 **WHISTLEBLOWER**.

24 70. While **WHISTLEBLOWER** was unloading groceries in his garage located directly across
25 from **DOCKTOWN**, a high velocity golf ball was shot from the direction of **DOCKTOWN**
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28 ¹⁷ According to the City of Redwood City, when it ultimately conducted environmental tests years later, the **Docktown** mud was no longer significantly toxic, meaning that in all likelihood the City’s inaction, while potentially then saving the City millions of dollars in cleanup costs, resulted in the toxic material migrating to San Francisco Bay.

1 at or near the back of WHISTLEBLOWER's head. The projectile entered
2 WHISTLEBLOWER's home with such high velocity it repeatedly ricocheted causing a
3 housemate to incorrectly believe WHISTLEBLOWER had fallen down the stairs.
4 DOCKTOWN is located on the other side Redwood Creek, in "direct shot" of
5 WHISTLEBLOWER's garage. Residents at DOCKTOWN later admitted it was fired by
6 one of their residents. The only known motivation, especially given the DOCKTOWN
7 location of launch from a potato gun or similar means, was to disable or intimidate
8 WHISTLEBLOWER from exercising his free speech and petition rights, conducting further
9 records review and research into DOCKTOWN. The WHISTLEBLOWER and a housemate
10 witness immediately notified Redwood City Police, who took custody of the golf ball.
11 Although not common knowledge, golf balls cause numerous fatalities every year, although
12 most are from accidental hits.¹⁸

13 71. HERO believes THE CITY had no interest in WHISTLEBLOWER researching or finding
14 further documentation on DOCKTOWN, and the City of Redwood City never conducted
15 any form of serious investigation or follow-up about the incident as to what qualifies as
16 assault if not attempted murder in the California penal code,¹⁹ never referred the matter to
17 the San Mateo County District Attorney and notably no official of the City of Redwood City
18 publicly condemned the attack on a citizen and trust beneficiary WHISTLEBLOWER,
19 merely for exercising his constitutional right.²⁰

20 72. HERO believes this, or WHISTLEBLOWER's earlier success representing an elderly couple
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23 ¹⁸ Though initially one may not realize it, golf balls can be fatal when accidentally launched, let alone targeted: "according to a study conducted
24 by the Consumer Product Safety Commission, an estimated 11,700 people were treated in hospital emergency rooms for golf ball-related injuries
25 in 2012. Of these, approximately 4,700 were children under the age of 14. While the majority of these injuries were minor, there were a
26 reported 37 fatalities associated with golf ball-related accidents in 2012. Therefore, it is safe to say that golf ball deaths do occur, although the
27 exact number per year is difficult to determine. greenvalleyccofri.com/golf-ball-deaths-per-year/#google_vignette. Per CNN: Dr. Dave Janda of
28 the Institute for Preventative Sports Medicine. "The most vulnerable injury to the head is to the side portion of the head, the temporal area,"
Janda said. "The reason is because the blood vessels become superficial around the brain, right underneath the skull." CNN - Golfers before-
warned: If a ball smacks your head, see your doctor - May 21, 1999

29 ¹⁹ Under Penal Code § 664/187 (a) attempted murder in California is when the perpetrator intends to kill the victim and takes a direct step
towards killing the person, but the victim does not die. Attempted first-degree murder is punished by life in state prison.

30 ²⁰ In sharp contrast, exactly 20 years ago when a Redwood City Council member was the victim of internet harassment, with no physical threat,
the City council member's efforts the District Attorney secured a "no contest" conviction; Petitioners are unaware of any activity by the City to
take any action to protect WHISTLEBLOWER after the physical action he received in his Redwood City home for likewise exercising his free
speech rights.

1 against the unlawful taking of their real estate property by The City of Redwood City, which
2 then triggered a Grand Jury inquiry, was the genesis of on-going ill will and retaliatory conduct
3 alleged herein in direct violation of the express statutory duty of the Trustees to “(6) **The duty**
4 **to act impartially in managing the trust property**”. **HERO** is informed and believes that
5 **in the past** members of the City Council attended party events with the residents they knew to
6 be unlawful residents at **DOCKTOWN**, even bringing food gifts, with the intention of
7 securing their votes in Redwood City elections.

8 73. **HERO** believes that had any other citizen of Redwood City had their life threatened while in
9 the sanctity of their home in Redwood City for merely exercising their constitutional rights,
10 **THE CITY** would have acted far differently and in fact did act differently in the past.

11 74. **WHISTLEBLOWER** sought to take over or purchase a houseboat in **DOCKTOWN** to
12 convert for use for public trust purposes²¹; in a discriminatory way, **THE CITY** never
13 responded to **WHISTLEBLOWER**’s inquiry yet responded to inquiries by others, even after
14 he pointed out this silence to the **FORMER MAYOR**²². Failure to respond also likely created
15 waste, as **WHISTLEBLOWER** could have made legal use of a houseboat **THE CITY** may
16 have to destroy.

17 75. Without judicial intervention, **THE CITY** has been, continues to be, and will continue to act
18 in a discriminatory manner and to be in violation of the common law Public Trust Doctrine
19 and various legal requirements set forth herein and will fail to use its police resources to protect
20 trust beneficiaries attacked in their own home for investigating and speaking up about the
21 Public Trust violations by **THE CITY**. **HERO** prays for a judicial declaration finding the
22 aforesaid acts and omissions by **THE CITY** is in violation of the Public Trust and for an order
23 **THE CITY** cease and desist from discriminatory conduct utilizing public trust property and
24 that there exists the likelihood of grave and irreparable injury absent judicial intervention.

25 76. Without judicial intervention, **THE CITY** has and will continue to permit **DOCKTOWN** to
26 contaminate the public trust lands: Redwood Creek, Bair Island, and Greco Island, San
27

28 ²¹ See Exhibit A.

²² See Exhibit D.

1 Francisco Bay, the Pacific Ocean as well as the adjoining 3,000 acre virgin wetlands now
2 showing signs of Styrofoam contamination from Redwood City. Further, the child's death in
3 2020 described *supra* in Docktown was 20 years after **THE CITY's** vice mayor wrote of the
4 unlawful and dangerous conditions, followed by the City Manager, followed by the 2015
5 California Attorney General's opinion letter of unlawfulness, followed by the 2016 lawsuit
6 settlement to promptly eliminate unlawful residential use, illustrate absent judicial intervention
7 **THE CITY** will continue to act unlawfully.

8 77. **THE CITY** was obligated under terms of the settlement in San Mateo County Action No.
9 536168 to establish a fund sufficient to comply with its Public Trust obligations; **THE CITY**
10 failed to do so by underfunding the account, and as to what funds it sequestered, in violation
11 of several duties, including avoidance of self-dealing, **THE CITY** has, despite express
12 statutory prohibition, instead removed funds and applied the funds committed to the Public
13 Trust for the citizens of California. These funds were necessary for the Public Trust. **THE**
14 **CITY** had other plans for the **DOCKTOWN** funds.

15 78. **THE CITY** has violated **Public Resources Code §§ 6009.1 (10)** by failing to designate the
16 funds held for **DOCKTOWN** as Public Trust Funds in **THE CITY's** various financial filings
17 as required by law. Removing funds in the Public Trust that are needed for the Public Trust,
18 from an unlawfully mislabeled account, into the millions of dollars, to satisfy **CITY** non-public
19 trust obligations, constitutes embezzlement.

20 79. Public Resources Code §§ 6009.1 (10) provides: "(10) The duty to keep the trust property
21 separate from other property not subject to the trust and to see that the trust property is
22 **designated as property of the trust.**" **THE CITY** was well aware of these obligations due
23 to the prior **DOCKTOWN** 1 litigation.

24 80. There is no statute of limitations for embezzlement of public trust funds. California Penal Code
25 Sec. 506 provides that "...every trustee who fraudulently appropriates it to any use or purpose
26 not in the due and lawful execution of his trust is guilty of embezzlement."

27 81. All funds committed to and all income from Public Trust Property from any source belongs to
28 the People of the State of California, not any regional or city government.

1 82. Residential use of PUBLIC TRUST LANDS is not consistent with the Public Trust Doctrine
2 or the GRANTING STATUTE for very good reason because the Public Trust Lands are
3 environmentally sensitive properties, managing **THE CITY**'s derelict dock to contaminate the
4 public trust with hazardous wastes and materials, including Styrofoam and allowing residential
5 use of said property is entirely contrary to the fundamental rationales of the Public Trust
6 Doctrine and the Granting Statute and harmful to the public which **THE CITY** is supposed to
7 be serving.²³

8 83. **HERO** asserts that by inadequately funding the settlement fund for **DOCKTOWN 1**,
9 mismanaging the resolution of the unlawful resident occupiers, and by other practices
10 including fund transfers, **THE CITY** has self-dealt as Trustee, prioritized the City of Redwood
11 City's interests and finances above that of the Public Trust of which it is Trustee, has failed to
12 properly label and segregate trust funds as legally required, has "shortchanged" the public trust
13 by millions of dollars by repaying supposed loans from the general fund, and has therefore
14 comingled public trust funds with CITY funds such that **THE CITY's funds, including THE**
15 **CITY'S reserve fund, should be held in its entirety subject to a constructive trust.**

16 84. **HERO** prays herein for injunctive relief to stop the public and private nuisance and the
17 irreparable harm being done to the public trust properties, including the adjoining 3,000 acres
18 of Don Edwards Wildlife Refuge (hereinafter "THE REFUGE"), adjoining the PUBLIC
19 TRUST LANDS, which underwent a massive restoration covering Bair Island and Greco
20 Island, and Redwood Creek by **THE CITY'S** grossly deteriorating massive docks at
21 **DOCKTOWN**. If **THE CITY** does not voluntarily act to do so, **HERO** will seek preliminary
22 and permanent injunctive relief to require **THE CITY** to initially install a surface boom or
23 similar measures to mitigate at least the larger chunks of toxic STYROFOAM into the marine
24 environment and public trust waterways and lands. **HERO** is aware, based on history at the
25 former Pete's Harbor, that the removal of the marina of **DOCKTOWN's** size could be

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27 ²³ See *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 441 ("Thus, the public trust is more than an affirmation of state power to
28 use public property for public purposes. It is an affirmation of the duty of the state to protect the people's common heritage of streams, lakes,
marshlands and tidelands, surrendering that right of protection only in rare cases when the abandonment of that right is consistent with the
purposes of the trust.")

1 accomplished in one week's time if **THE CITY** deployed adequate resources.

2 85. In light of the **FORMER MAYOR's** refusal to meet, even with an approved professional
3 mediator provided by **WHISTLEBLOWER** at his personal expense, **and being directed to**
4 **the legal process for resolution by the FORMER MAYOR, HERO** has no recourse but to
5 file suit in this Court to hold **THE CITY** to account because of **THE CITY's** failure meet its
6 fiduciary duties to act properly, its cancellation of meetings, and its pattern and practice to act
7 unlawfully without any apparent effort to be held accountable other than by taxpayer litigation,
8 and then to misuse public trust property to retaliate against a citizen beneficiary that is a
9 whistleblower.

10 **HERO HAS THE RIGHT TO BRING AN ACTION IN THIS COURT**

11 86. Judicial decisions have greatly reinforced and expanded the right of a member of the public to
12 sue as a taxpayer or private attorney general.²⁴ Consistently with these decisions, **HERO**, as a
13 California legal entity, and specifically as a recognized 501(c)3 charity for the public benefit,
14 and as a California and a Redwood City current and future taxpayer, and with its taxpayer
15 President and director, a long-time Redwood City taxpayer, has standing to lawfully assert and
16 exercise public trust rights to preserve, protect, and restrain the improper handling of the public
17 trust land granted to **REDWOOD CITY** as trustee and to seek relief and corrective action
18 against **THE CITY** as Trustee, and the City of Redwood City as a municipal entity, **THE**
19 **CITY** having caused harm to public trust properties throughout San Francisco Bay.²⁵

20 87. Additionally, **HERO** has standing under the "Citizen Action" exception to the beneficial
21 interest requirement for purposes of standing.²⁶ These liberal standing requirements have been
22 applied to citizen and citizen groups acting in the public interest to protect against effects of
23 environmental abuse.²⁷

24 88. Where the question presented is one of public right, and the Writ of Mandate would compel
25 enforcement of a public duty, **HERO** need not show any special interest in the result. "It is
26

27 ²⁴ See Van Atta v. Scott (1980) 27 Cal.3d 424, 447-50.

²⁵ Marks v. Whitney (1971) 6 Cal.3d 251, 261-63.

²⁶ Waste Management of Alameda County, Inc. v. County of Alameda (2000) 79 Cal.App.4th 1223, 1233-34.

²⁷ Laidlaw Environmental Services, Inc. v. Local Assessment Committee (1996) Cal.App.4th 346, 354.

1 sufficient that [it] is interested as a citizen in having the laws executed and the duty in question
2 enforced.”²⁸

3 89. The Superior Court of San Mateo has jurisdiction over this complaint to issue a Writ of
4 Mandate pursuant to C.C.P. § 1085. This Court has primary jurisdiction to hear this Public
5 Trust dispute.

6 90. Venue is proper in San Mateo County because the *res* held in trust by Redwood City as
7 fiduciary is located within San Mateo County.²⁹ Furthermore, the violation of Redwood City’s
8 fiduciary duties owed to the public concerning the Public Trust Land, embezzlement and acts
9 which support other relief have occurred primarily if not exclusively in San Mateo County.
10 (Cal Civ. Code 393(a).) Venue is proper in San Mateo County because **THE CITY** of
11 Redwood City is the primary defendant of this complaint. (Cal. Civ. Code 394(a).) and is
12 located within San Mateo County. (Cal Civ. Code 395(a).) In fact, by legal necessity of elected
13 office, all Redwood City Council members named herein as respondents/defendants must
14 reside in Redwood City, San Mateo County.

15 91. The Courts have held that no administrative remedy need be exhausted before seeking judicial
16 intervention in this type of case.³⁰

17 **I. PUBLIC TRUST AT AND AROUND DOCKTOWN IS A TAXPAYER CONCERN**

18 **HERO** reincorporates the preceding paragraphs as if fully set forth herein.

19 **A. Common Law Public Trust Doctrine**

20 92. The State of California acquired tide and submerged lands and the beds of navigable waterways
21 as sovereign lands under the equal footing doctrine upon its admission to the Union in 1850.
22 The State holds these lands in trust for the benefit of all of the people of California for the
23 purposes of commerce, navigation and fisheries.³¹ Docktown is located on a small portion of
24

25 ²⁸ citing *Green v. Obledo* (1981) Cal.3d. 126, 144.

26 ²⁹ Cal. Civ. Code § 392(a).

27 ³⁰ See *National Audubon Society* at 452 (“The federal court’s second question asked whether plaintiffs must exhaust an administrative remedy before
28 filing suit. Our response is “no.” The courts and the Water Board have concurrent jurisdiction in cases of this kind. If the nature or complexity of
the issues indicate that an initial determination by the board is appropriate, the courts may refer the matter to the board.”) (emphasis added).

³¹ Public Resources Code, § 6009, subd. (a). See also Ted J. Hannig, “The Public Trust Doctrine Expansion and Integration: A Proposed
Balancing Test”, Santa Clara Law Review, January 1983, Volume 23, Number 3. Mr. Hannig has lectured internationally to lawyers on the
subject of the Public Trust Doctrine and its role in climate change and rising sea level and has always availed himself to assist the City meet its
trustee obligations, but it has declined to ever inquire or ask. Ironically, a former Governor for California attend Mr. Hannig’s lecture in England.

1 the Public Trust Lands which were conveyed to the City of Redwood City, as Trustee for the
2 People of the State of California.

3 93. There are generally understood to be three types of common law restrictions in addition to
4 statutory obligations imposed on governmental authority by the public trust: The trust property
5 must not only be used for a public purpose, but held available for the general public; the trust
6 property may not be sold, even for fair market value; and third, the trust property must be
7 maintained for particular trust uses.³² The particular trust uses are generally expressed in two
8 ways: either the trust property must be held open for traditional uses, such as fishing,
9 recreation, or navigation, or the uses must relate to the natural uses peculiar to that particular
10 piece of trust property. (*Id.*)

11 94. Traditionally, public trust uses were limited to water-related commerce, navigation, and
12 fishing.³³ However, the California Supreme Court has held that the public trust doctrine
13 embraces the right of the public to use the navigable waters of the State for bathing, swimming,
14 boating, and general recreational purposes.³⁴ The Court has also held that the public trust
15 doctrine is sufficiently flexible to encompass changing public needs, such as the preservation
16 of lands in their natural state for scientific study, open space, and wildlife habitat. (*Id.*) There
17 are those who seek to distort such flexibility to include residential use. However, residential
18 use is wholly inconsistent with several basic tenants of the Public Trust Doctrine. Releasing
19 toxic and harmful Styrofoam in a continuous stream into the marine and public trust
20 environment where it can cause harm and death for generations is the *epitome of unlawful*
21 *conduct by a public trust trustee* in addition to violating the California Water Resources code
22 and public nuisance.

23
24
25
26
27 yet the City of Redwood City could not bother to travel a mile to meet with Mr. Hannig at Docktown when he sought to assist the City meet its
obligations, and as alleged above, even paid for a professional mediator the City had previously approved of, to facilitate resolution. He was met
with complete rejection and silence which were and are violations of the Trustee's duty of due care and non-discrimination.

28 ³² http://www.beachapedia.org/State_of_the_Beach/Perspectives/Public_Trust

³³ *Illinois Central Railroad v. Illinois* (1892) 146 U.S. 387.

³⁴ *Marks v. Whitney* (1971) 6 Cal.3d 251, 259-60

1 **B. Federal - Wildlife Refuge Lands Surround Redwood Creek and DOCKTOWN**
2 **(THE “REFUGE”) and Other Adjacent Areas receive the attention of the President and \$600**
3 **Million in 2023 Taxpayer Funding for Preservation**

4 95. San Francisco Bay is one of the most extensive wetland systems along the Pacific Coast which
5 taxpayers have and will invest in greatly.³⁵ The system provides habitat for millions of
6 migratory waterfowl and shorebirds along the Pacific Flyway as well as resident wildlife. (*Id.*
7 at 7.) Recently, in **June of 2023, the President** of the United States visited nearby public trust
8 wetlands emphasizing their importance to the environmental future of our Country and the
9 need for adaptation to climate threat, announcing **\$600 million of taxpayer funding** of nearby
10 public trust land preservation for climate adaptation projects. While climate possess a threat
11 to the public trust lands, THE CITY’s unlawful release possess a greater immediate and
12 preventable threat and, due to the extended life cycle of the released Styrofoam, most certainly
13 will compromise some of the \$600 million of tax payer funded investment in the surrounding
14 wetlands.

15 96. Redwood Creek is a 9.5 mile long perennial stream originating in the Woodside Glens
16 neighborhood of Woodside, California, snaking its way east across San Mateo County before
17 flowing under CITY Hall and then U.S. Highway 101.³⁶ As Redwood Creek passes under the
18 highway, it becomes a tidal channel with extensive mudflats and marsh areas.

19 97. Redwood Creek is adjacent to and flows through, THE REFUGE, which includes the Bair
20 Island State Marine Park (hereinafter “BAIR ISLAND”).³⁷ Redwood Creek flows between the
21 Port of Redwood City and the Don Edwards National Wildlife refuge and is a tributary to San
22 Francisco Bay.³⁸

23 98. These portions of the Refuge, which includes BAIR ISLAND and Greco Island, are commonly
24 referred to as the West Bay Unit under the Don Edwards San Francisco Bay National Wildlife
25 Refuge Comprehensive Conservation Plan. (*Id* at 35.) A multi-million-dollar restoration
26

27 ³⁵ Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan; U.S. Fish & Wildlife service report

28 ³⁶ <http://explore.museumca.org/creeks/1480-OMRedwood.html>

³⁷ Don Edwards San Francisco Bay National Wildlife Refuge Comprehensive Conservation Plan; U.S. Fish & Wildlife Service Report.

³⁸ <http://yosemite.epa.gov/opa/admpress.nsf/0/585E7BC1BF86C1CD852579800071A3CA>

1 incorporating new virgin soil was implemented to restore all of BAIR ISLAND to tidal salt
2 marsh to provide habitat for endangered species and other native wildlife. (*Id.* at 36.) Greco
3 Island also contains extensive mature tidal marshes and wild expanses of mudflats. (*Id.*)

4 99. THE REFUGE contains thousands of acres of BAIR ISLAND tidal wetlands to provide habitat
5 for many threatened and endangered tidal marsh species. (*Id.*) The San Francisco Estuary,
6 which BAIR ISLAND and Greco Island are part of, contain 250 species of bird, 120 species
7 of fish, 81 species of mammals, 30 species of reptiles, and 14 species of amphibians. (*Id.* at
8 60.)

9 100. Some of the more rare endangered species are the Bald Eagle, Vaux's Swift, bank swallow,
10 yellow breasted chat, pallid bat, common loon, American white pelican, and Barrow's
11 goldeneye. (*Id.* at 79.) Many of the shorebird species are "mudflat specialists," which forage
12 primarily on intertidal mudflats when those flats are available at low tide. (*Id.* at 85.) *Many of*
13 *these species will accidentally consume decaying Styrofoam either directly or through plant*
14 *and animal life that have themselves ingested the toxic Styrofoam.* Blue Styrofoam from
15 DOCKTOWN has been found in THE REFUGE and is most likely harming and killing
16 wildlife, including rare and endangered species.

17 101. Historically, native Olympia oysters *Ostrea lurida* were an abundant and ecologically
18 important part of the fauna in West Coast estuaries and an important fishery for the region.³⁹
19 Oysters are filter feeders, and they will filter in blue powder Styrofoam debris, killing the
20 oyster or incorporating it into their bodies which, like many other creatures, pass the toxins up
21 the food chain, ultimately to humans.

22 **C. The Granting Statute of PUBLIC TRUST LANDS from the CALIFORNIA**
23 **STATE LANDS COMMISSION to REDWOOD CITY in 1945 Clearly Requires THE CITY**
24 **to Maintain Navigability of the Public Trust area.**

25 102. REDWOOD CITY acquired its interest in the PUBLIC TRUST LANDS that is now
26 underneath DOCKTOWN in the GRANTING STATUTE from the State of California on or
27

28 ³⁹ 2015 San Francisco Bay Living Shorelines: Nearshore Linkages Project Summary of Key Findings Two Years Post-installation April 30, 2015

1 around April 16, 1945.⁴⁰ The GRANTING STATUTE explicitly delineated the uses that were
2 permissible pursuant to the granting statute:

3 “(a)[t]hat said lands shall be used by said city, and its successors, **only** for the
4 **establishment, improvement and conduct of a harbor**, including an airport or
5 aviation facilities, and for the construction, maintenance and operation thereon of
6 wharves, docks, piers, slips, quays and other utilities, structures, facilities and
7 appliances necessary or convenient **for the promotion and accommodation of**
8 **commerce and navigation** by air as well as **by water**, and for the construction,
9 **maintenance**, and operation of flood control projects, **and said city, or its**
10 **successors, shall not, at any time, grant, convey, give or alienate said lands, or**
11 **any part thereof, to any individual, firm or corporation for any purposes**
12 **whatever**; provided, that said city, or its successors, may grant franchises thereon
13 for limited periods (but in no event exceeding 50 years), for wharves and other
14 public uses and purposes and may lease said lands, or any part thereof, for limited
15 periods (but in no event exceeding 50 years), for purposes consistent with the trust
16 upon which said lands are held by the State of California, and with **the**
17 **requirements of commerce and navigation at said harbor**, and collect and retain
18 rents from such leases.”

19 (*Id.* (emphasis added.))

20 103. The plain language of the GRANTING STATUTE clearly indicates that the only
21 permissible public trust uses are for purposes that further either navigation or commerce.
22 **HERO** request this Court order **THE CITY** of Redwood City to dredge Redwood Creek and
23 restore it to the navigable condition that existed prior to **DOCKTOWN**.

24 **D. JUDICIAL INTERVENTION IS NECESSARY AS THE CITY HAS A**
25 **HISTORY OF KNOWINGLY OPERATING ILLEGALLY AT DOCKTOWN: City**
26 **Council Member/Vice Mayor Richard Claire Documents that THE CITY faced liability on**
27

28 ⁴⁰ 1945 Granting Statute for Public Trust Lands to Redwood City

1 multiple levels without corrective action at DOCKTOWN yet THE CITY failed to act until
2 over 10 years later with the DOCKTOWN 1 litigation. Illegal operations at DOCKTOWN
3 and violation of Public Trust duties have become a pattern and practice of THE CITY.

4 104. REDWOOD CITY Council Member and Vice Mayor Richard Claire sent a letter over
5 twenty three years ago, on April 12, 2000, (hereinafter, "VICE MAYOR LETTER") to THE
6 CITY Council, City Manager, Building and Inspection Manager, Assistant City Attorney, and
7 the Police Chief directly warning that THE CITY faced litigation and had liability exposure
8 on numerous grounds without corrective action at DOCKTOWN.⁴¹

9 105. Mr. Claire's most important point from the VICE MAYOR LETTER was as follows:

10 "DOCKTOWN Marina is currently being used as residential live aboard marina.

11 This [situation] is a violation of their revocable permit with THE CITY. *The*
12 *resulting contamination and pollution puts THE CITY at risk through fines,*
13 *abatement, assessments, lawsuits, etc. by other agencies, organizations or*
14 *private parties."*

15 (*Id.* (emphasis added.))

16 106. Mr. Claire pointed out in his letter that the San Mateo County Environmental Health
17 Department had conducted water sampling and then posted public signs stating that the water
18 was contaminated. (*Id.*) An exhibit attached to the VICE MAYOR LETTER contained an
19 email in which an environmental consultant was concerned that the presence of *fecal coliform*
20 bacteria was worsening at DOCKTOWN and that the consultant wanted to take steps to
21 measure and contain any further increase of *fecal coliform* bacteria. (*Id.*) This email was then
22 forwarded to the Building and Inspections Department and the Redwood City Attorney. (*Id.*)

23 107. Furthermore, the VICE MAYOR LETTER stated that the HOUSEBOATS and floating
24 homes at DOCKTOWN were being built without permits at an accelerated rate. Moreover,
25 these structures were being built without the proper infrastructure to support residential use,
26 including water and sewage use. (*Id.*) The VICE MAYOR LETTER highlighted THE
27

28 ⁴¹ 2000 Letter from City Council Member Claire to THE CITY RE: Docktown Violations [EXHIBIT J]

1 CITY's multiple environmental violations, which would include violations of the Clean
2 Water Act, other federal, state and local ordinances. (*Id.*)

3 108. Mr. Claire stated his conclusion in the VICE MAYOR LETTER that **THE CITY has been**
4 **aware** of the dire environmental situation at DOCKTOWN for a number of years and
5 that the marina is in an obvious state of disrepair. (*Id.*) Mr. Claire gave THE CITY a direct
6 recommendation as to the condition of DOCKTOWN in the VICE MAYOR LETTER:

7 "I have met with [CITY] staff on April 6, 2000, and directed Code Enforcement to
8 enforce any issues concerning health and safety. *I recommend that the Council*
9 *direct THE CITY Attorney to issue a cease and desist order to curtail any further*
10 *development in violation of the Redwood City code, applicable state law, and the*
11 *terms and conditions of the permit..."*

12 (*Id.* (emphasis added.))

13 109. An attachment to the VICE MAYOR LETTER listed the current violations at
14 DOCKTOWN prepared by THE CITY. (*Id.*) The first violation stated that:

15 "[l]ive aboard and floating home use is not approved. Preamble: "for the purpose
16 of conducting a commercial small boat marina business, including the right to
17 maintain piers, docks, wharves, floats and other facilities necessary or convenient
18 for the berthing and servicing of boats; including the operation of a sailing school,
19 a yacht sales and brokerage business, and for no other purpose."

20 (*Id.*)

21 110. Prior to its assumption of management duties in March 2013, THE CITY considered
22 HOUSEBOAT use in DOCKTOWN to be a violation of the revocable permit for the
23 "Redwood Creek Property." (*Id.*) Now that THE CITY was operating and managing
24 DOCKTOWN directly, THE CITY openly and conveniently reversed its view regarding
25 residential use at DOCKTOWN, which directly contradicts both the GRANTING STATUTE
26 and the Public Trust Doctrine but produced a revenue stream for THE CITY, only changing
27 its public position after the WHISTLEBLOWER lawsuit and the California State Lands

Commission making public and attorney-client letter from the Office of the Attorney General of California again confirming Redwood City's practices were unlawful.

111. As alleged herein, **HERO** asserts that **THE CITY** desires to minimize payments of its financial obligations to **DOCKTOWN**, prioritizing the City of Redwood City's interest over that of the Public Trust and is so doing pilfer reserve funds necessary for **DOCKTOWN**. **HERO** believes prior City Council members have previously actively solicited the votes from the residents of **DOCKTOWN**. The Public Trust Doctrine is designed to resist any political and economic vulnerability that any government may impose on PUBLIC TRUST LAND. Put simply, the ongoing situation at **DOCKTOWN** was the exact situation that the Public Trust Doctrine is supposed to prevent and why the duty as Trustee is statutorily defined as the highest priority. Moreover, the Public Trust Doctrine empowers the Court to have the ultimate authority to protect the public's right to protect and have open access to the PUBLIC TRUST LANDS.

E. **Former REDWOOD CITY City Manager, Ed Everett Informs DOCKTOWN OPERATOR of Numerous Code Violations in 2001, Conditions which THE CITY itself has now created and worsened over 22 years later as owner and operator despite its status as Trustee, demonstrating CITY'S long history of INTENTIONAL unlawful pattern and practice, likely contributing to the death of an 11-year-old City allowed unlawful resident of DOCKTOWN in 2020.**

112. On or around July 23, 2001, REDWOOD CITY City Manager Mr. Everett sent a letter to then-DOCKTOWN operator (before Redwood City took over operations) Mr. Fred Earnhardt regarding the hazardous and unauthorized activity at **DOCKTOWN**.⁴² This violation letter was also sent to the REDWOOD CITY City Attorney, Director of Community Development, Director of Finance, and J. Franklin Salaman. (*Id.*)

113. Mr. Everett stated that the condition of **DOCKTOWN** had become a public nuisance and stated that:

⁴² 2001 Redwood City Letter to Fred Earnhardt RE: Docktown Residential Use Violations [EXHIBIT K]

1 “The problems with your marina operations are threefold: (i) public health and
2 **safety issues** related to the condition of the **various vessels, docks**, utilities, and
3 associated facilities both within the waterway and dockside, (ii) the number of
4 vessels, live-aboards, and floating homes which you have allowed to be moored,
5 constructed, or installed, well beyond the confines of the permit initially issued by
6 the City; and (iii) the kinds of structures you have permitted to be so located,
7 including floating homes and other structures not independently navigable. the
8 City’s concern, therefore, *involves not only the operation of the Marina in a*
9 *manner which endangers the public health and safety of persons residing on the*
10 *vessels and floating homes, and those who visit or otherwise use the Marina*, but
11 also the extent to which the operation of your Marina has impeded Redwood
12 Creek as a navigable waterway.” (*Id.* (emphasis added.))

13 **THE CITY** therefore knew over 22 years ago DOCKTOWN floating homes and
14 docks were *in such poor condition so as to be public nuisances, and a safety*
15 *danger to residents* yet it has failed to restore or remove those same docks it now
16 owns. Further, **THE CITY** admitted how a marina is operated and specifically
17 **DOCKTOWN** was impeding Redwood Creek as a navigable water way. **THE**
18 **CITY has a non-delegable duty in the Public Trust to not cause harm, to properly**
19 **manage and to preserve the navigable waterway.** It has failed to do so.

20 **F. 15 years ago the REDWOOD CITY Fire Department Fire Prevention Bureau**
21 **Prepares a Report and Provides Recommendations Concerning the Alarming Violations at**
22 **DOCKTOWN in January 2008; THE CITY has still failed to act and despite the warnings**
23 **and, after the City agreed with WHISTLEBLOWER it would terminate DOCKTOWN**
24 **residential use, nearly 5 years after THE CITY agreed to adopt a plan to end unlawful**
25 **residential use, a child resident at DOCKTOWN died in 2020 in a “tragic incident”.**

26 114. The REDWOOD CITY Fire Department prepared a report in January 2008 that listed the
27 alarming amount of deficiencies at **DOCKTOWN** regarding fire prevention, which makes

1 **DOCKTOWN** a serious fire hazard.⁴³

2 115. In the **DOCKTOWN** litigation **WHISTLEBLOWER** sought relief before the inevitable
3 fire hazard or other difficult to respond to emergency or “unnecessary property damage and
4 the inevitable loss of life.”

5 116. In his November 9, 2015, presentation to the City Council⁴⁴ and litigation exhibits the
6 **WHISTLEBLOWER presented photographs of very dangerous conditions for children**
7 **at DOCKTOWN**, along with pictures of their bikes on the **DOCKTOWN** docks.



15
16 117. In the January 25, 2016, Settlement Agreement, **THE CITY** agreed to develop a plan
17 **by December 2016** to remove residents from **DOCKTOWN**, and to **by December 2017,**
18 **to use its “best efforts and action towards prompt implementation of the Plan” to**
19 **terminate residential use.** (Settlement Agreement paragraph 3.1).

20 118. This Settlement Agreement is a re-statement of the statutory and common law obligations
21 of **THE CITY**. On September 4, 2020, **nearly four years after THE CITY had promised in**
22 **the DOCKTOWN settlement to end and remove residential use,** Mischa Coleman, aged 11
23 died at **DOCKTOWN** in a “tragic incident” at an unlawful **DOCKTOWN** houseboat where
24 she resided *despite* **WHISTLEBLOWER’S** warning in Public Comment at the City Council
25 in 2015 and **THE CITY’S** promise to promptly end residential use four years before. **HERO**
26 is uncertain of the specifics of the tragic death because they were kept out of the press despite
27

28 ⁴³ January 15, 2008 Redwood City Fire Department Comments and Recommendations for Docktown [EXHIBIT F]

⁴⁴ <https://www.youtube.com/watch?v=jK6IzlicWJA&t=2656s>

1 **THE CITY's** duty of full disclosure. Her death certificate attached as **Exhibit E** and
2 incorporated by this reference, confirms her death from asphyxiation and strangulation
3 presumably from ropes on her unlawful residential boat. This much is known: had **THE CITY**
4 honored its promise, there would not have been a child death at DOCKTOWN in 2020 and
5 the REDWOOD CITY fire department and other first responders would not have had to
6 respond to the tragedy in the dangerous conditions that exist at **DOCKTOWN**. Most likely
7 there would have been no death; discovery will yield more information. As alleged above,
8 **THE CITY** was **repeatedly well aware** for decades of unpermitted construction and that any
9 residential use was unlawful for a long period before the tragic death. **HERO** believes the
10 illustrated bike belonged to the same child who passed away at the tragic incident at
11 **DOCKTOWN** four years after the express warning.

12 119. At no time did **THE CITY** disclose the death to **WHISTLEBLOWER**, including the
13 **City's** October 2020 quarterly DOCKTOWN Report, attached as **Exhibit G**, a public record,
14 and numerous reports thereafter, despite **THE CITY's** aforesaid-express statutory duty of "full
15 disclosure". **HERO** has been unable to locate **THE CITY's** disclosure of the death anywhere.
16 **HERO** alleges the failure to disclose is a breach of fiduciary duty (subject to a four-year statute
17 of limitations, which has not expired).

18 120. By way of contrast, in July of 2023, a worker in an assisted living facility that inadvertently
19 placed cleaning liquid in a container that another employee mistook for juice, resulting in the
20 death of two 93 year old residents, was charged with **Involuntary Manslaughter** and faces a
21 potential 8 year jail sentence. **See Exhibit D**. **HERO** is unaware of any such investigation into
22 the death of the 11-year-old resident at DOCKTOWN, in an area known by **THE CITY** to be
23 unlawful for residential use, unsafe for first responders, difficult for first responders (losing
24 potential life-saving moments), containing (as noted for decades by City officials) unsafe
25 conditions. **HERO** alleges 11-year-old Mischa Coleman (pictured below riding a bike in the
26 DOCKTOWN parking area) was owed a duty of care by **THE CITY** as Public Trust Trustee,
27 and that **THE CITY** also owes the public a duty of full disclosure regarding her death on Public
28 Trust property; neither of which duties were met.



121. From the list of donors who gave to a memorial fund it is certain that **THE CITY** was aware of the death of Mischa Coleman.

122. Further harm there has been post-traumatic stress for the first responders having to deal with such a tragic situation and unspeakable grief for her family. .

123. Further, **HERO** is informed and believes that **THE CITY**, perhaps as part retribution, allows a single female senior citizen to reside across from **WHISTLEBLOWER's** residence. As before **THE CITY** is warned that such unlawful occupancy is dangerous for a resident in her situation and could lead to further accidental tragedy for her or for first responders.

124. On a July 20, 2023, inspection, a vehicle was observed that likely belonged to someone residing on an unlawful residential vessel; of great concern to **HERO** is that the car had a child seat.

G. REDWOOD CITY'S General Plan Claims It Strive to Preserve and Protect Creeks, Sloughs, Streams, Wetlands, Plants, Wildlife, Associated Habitats and Incorporate Public Access; but THE CITY's own Styrofoam pollution is in violation of the Policies THE CITY set forth in its own General Plan.

125. **REDWOOD CITY** created its General Plan in 2010, covering the years of 2010 to 2030, to articulate a long-term vision for the evolution of **THE CITY's** resources.

126. **THE CITY's** General Plan is broken down into separate elements. (*Id.*) The Natural Resources element states that, "...resources are meant to flourish through conservation, such as marine wildlife or the wetland grasses that thrive on Bair, Bird, and Greco Islands." (*Id.*) The introduction of this element concludes by saying that "[t]hese resources share a common

1 theme: **they are meant to be conserved and protected**, so that future generations of Redwood
2 City residents can continue [to] enjoy the high quality of life we know today.” (*Id.*)

3 127. The 54-page element provides an overview of the natural resources found in Redwood
4 City, which **THE CITY** ostensibly wants to protect and preserve, including Redwood Creek,
5 BAIR ISLAND and Greco Island. This section also lists endangered species found in the
6 REFUGE, including the California Clipper and the salt marsh harvest mouse. (*Id.*)

7 128. **THE CITY**’s relevant goals and policies are listed below:⁴⁵

8 “**Goal NR-5: Protect, Restore, and maintain creeks, sloughs, and streams to**
9 **ensure adequate water flow, prevent erosion, provide for viable riparian plant and**
10 **wildlife habitats and, where appropriate, allow for recreation activities....**

11 **Policy NR 5.1: Restore, maintain, and enhance Redwood City’s creeks, streams,**
12 **and sloughs to preserve and protect riparian and wetland plants, wildlife and**
13 **associated habitats....**

14 **Goal NR-6: Preserve and enhance the bay lands, natural wetlands, and**
15 **ecosystem to assist with improved air quality and carbon dioxide**
16 **sequestration....**

17 **Policy NR-6.2: Restore and maintain marshlands** including tidal flats, tidal
18 marshes, and salt marshes as appropriate....

19 **Policy NR-6.4: Allow for appropriate public access to Bayfront open space lands**
20 **for recreation activities while protecting and restoring the Bayfront’s natural**
21 **ecosystem and minimizing environmental damage, as appropriate....**

22 **Policy NR-6.5: Take steps to reduce urban runoff into creeks and the bay....**

23 **Goal NR-8: Identify, protect, and restore open spaces, sensitive biological**
24 **resources, native habitat, and vegetation communities that support wildlife....**

25 **Policy NR-8.1: Pursue efforts to protect sensitive biological resources, including**
26 **local, state, and federally designated sensitive, rare, threatened, and endangered**
27

28 ⁴⁵ *Id.* at 40.

1 plant, fish, and wildlife species and their habitats....”

2 *(Id. (emphasis added.))*

3 129. Redwood City citizens and **HERO**, and all residents of California that are the beneficiaries
4 of the Public Trust, are being misled by **THE CITY**’s stated goals as clearly **THE CITY** has
5 not pursued those goals in the Public Trust and **THE CITY** is actively harming those goals by
6 allowing residential use, releasing Styrofoam, providing dangerous decaying docks and
7 allowing repeated flooding boat releases.

8 130. Despite **THE CITY**’s superficial commitment to the environment **THE CITY**’s conduct
9 belies these goals, most notably, glaring environmental harm **THE CITY** has caused and is
10 causing by its management and mismanagement of **DOCKTOWN**.

11 **H. HERO learns of THE CITY’s ongoing trespass into the marine environment**
12 **and public trust areas, violation of public trust duties, nuisance and its contamination of the**
13 **environment by harmful Styrofoam.**

14 131. Citizens noticed some Styrofoam on the public trust ground that had no reason for being
15 there.

16 132. Upon investigation, **HERO** found that the source of the Styrofoam was the docks of
17 **DOCKTOWN** itself. Pieces could be easily matched.

18 133. **HERO** was able to confirm that large chunks of Styrofoam from **DOCKTOWN** have
19 washed up onto **DOCKTOWN** and other Public Trust shoreline.

20 134. Researching the matter, **HERO** learned that Styrofoam takes anywhere from 500 years to
21 one million years to break down in the wild, depending on environmental conditions.⁴⁶

22 135. Polystyrene is not biodegradable and as such, it persists in the biosphere where it persists
23 ultimately contaminating up the food chain as nearby flora and fauna are contaminated by its
24 presence in the biosphere. **HERO** learned Styrofoam contains and can release toxic chemicals.

25 136. **HERO** found that there are approximately 9 residential **HOUSEBOATS** still present at
26 **DOCKTOWN** despite **THE CITY**’s 2016 promise to terminate residential use at
27

28 ⁴⁶ “How Long Does it Take for Styrofoam to Break Down?”; <https://sciencing.com/long-Styrofoam-break-down-5407877.html>

1 **DOCKTOWN** and come into compliance with the California Attorney General's opinion.

2 137. Moreover, **HERO** found that the unique age type of blue Styrofoam that
3 **WHISTLEBLOWER** had previously found on prior dates was still carelessly present both
4 on the shores away from **DOCKTOWN**, resting menacingly on top of the decaying docks
5 unrestrained as well as in decay underneath the docks themselves as demonstrated above.

6 138. The **DOCKTOWN** docks are clearly in disrepair as the blue Styrofoam is in various stages
7 of failure. These docks create a continuing public nuisance and their condition is a violation
8 of the Public Trust.

9 139. **HERO** believes that **DOCKTOWN** residents continue to discharge graywater directly into
10 the Public Trust.

11 140. **THE CITY** has abdicated its responsibilities as to the welfare and maintenance of the
12 **PUBLIC TRUST LANDS** and in **DOCKTOWN** and created a nuisance.

13 141. The areas of **DOCKTOWN** docks in the above condition visibly sink when a single person
14 walks on the dock. As a public trust property **THE CITY** has a duty to make the docks safe
15 for public usage.

16 142. Based on a totality of the circumstances, it is strikingly clear that **THE CITY** has utterly
17 failed in its administration as trustee of the **PUBLIC TRUST LANDS** and **DOCKTOWN** in
18 preserving and protecting the public's right to recreation, navigation, and fishery in the public
19 trust zone and at the same time **THE CITY** has created a nuisance.

20
21 **II. CAUSES OF ACTION: "COUNTS"**

22
23 **FIRST COUNT**

24 **Breach of Contract of 1945 Granting Statute between Redwood City and the State of**
25 **California.**

26 **Breach of Contract (Common Law) – Public Trust**

27 143. **HERO** incorporates by reference the paragraphs set forth above, inclusive, as though fully
28 set forth herein.

1 144. Redwood City violated the Granting Statute when it first allowed the private alienation of
2 Public Trust Lands, clearly in violation of the express language of the Granting Statute, as
3 early as 1964.

4 145. Redwood City issued letters and citations for violations of the 1945 Granting Statute, yet
5 took no corrective action in the 1990's; thereby showing **THE CITY'S** awareness and ultimate
6 disregard of its duties as Trustee and under the terms of the Granting Statute.

7 146. Redwood City has operated and maintained the **DOCKTOWN** marina in such a manner
8 as to knowingly cause and to allow, by intent and by neglect, harmful and toxic materials to
9 enter the Public Trust properties at **DOCKTOWN** and elsewhere.

10 147. As a result of Redwood City's long history of violating the Granting Statute and the Public
11 Trust, its admission that **DOCKTOWN** violates the Granting Statute, and evidence that **THE**
12 **CITY** has continued to violate the Granting Statute, **HERO** request this Court to issue a Writ
13 of Mandate to compel Redwood City to comply with the Granting Statute and its duties as
14 Public Trust Trustee.

15 148. **TAXPAYER's** also seek declaration of a Constructive Trust over the entire Redwood City
16 general fund and surplus fund as **THE CITY** has removed millions of dollars from the
17 **DOCKTOWN** Marina Fund without good cause, resulting in **DOCKTOWN** being unable to
18 financially afford correction of Trust violations, and that the Court, utilize the monies
19 previously held in the **DOCKTOWN** Marina Account to help bring the Public Trust Land use
20 into compliance with the Granting Statute and stop any on-going Styrofoam marine and public
21 trust property contamination by **THE CITY**.

22 Wherefore **HERO** prays relief as hereinafter set forth herein.

23
24 **SECOND COUNT**

25 **Violations of the Public Trust Doctrine by Failing to Maintain the DOCKTOWN public**
26 **trust waters as navigable waters and DOCKTOWN docks as suitable for navigation,**
27 **commerce, fishing and recreation**
28 **in violation of the Public Trust Doctrine (Common Law)**

1 149. **HERO** incorporates by reference the previous paragraphs set forth above as though fully
2 set forth herein.

3 150. The Public Trust Doctrine is one of the oldest and most enduring legal concepts with
4 philosophical roots preceding the Magna Carta and stretching back to ancient Roman times.
5 The Public Trust Doctrine is premised on the concept that the public's interest in certain natural
6 resources is a property right, which both restricts the state's power as trustee, and subrogates
7 private ownership rights in favor of public use rights. The free availability to these certain
8 natural resources are so important to every citizen because it marks our society as one of
9 citizens rather than serfs. (*Martin v. Waddell* (1842) 41 U.S. 367, 414.) A particularly
10 important public use right is that of use of the navigable waters of the state. (*United States v.*
11 *Chandler-Dunbar Co.* (1913) 229 U.S. 53, 69.) The history of Public Trust Doctrine in
12 California is set forth in Ted J. Hannig's law review article "The Public Trust Doctrine
13 Expansion and Integration: A Proposed Balancing Test", Santa Clara Law Review, January
14 1983, Volume 23, Number 3. The Public Trust Doctrine holds that the state, as an inherent
15 attribute of its sovereignty, has the right to regulate navigable waters, and lands underlying the
16 waters, for the benefit of the public. (*Illinois Central R.R. Co. v. Illinois* (1892) 146 U.S. 387,
17 435; *National Audubon Society v. Superior Court* (1983) 33 Cal3d 419, 433-434; *City of*
18 *Berkeley v. Superior Court* (1980) 26 Cal.3d 515, 524-534; *City of Long Beach v. Mansell*
19 (1970) 3 Cal.3d 462; *Colberg, Inc. v. State of California* (1967) 408 Cal.2d 416; *People v.*
20 *California Fish* (1913) 166 Cal. 576, 584.) The State holds the waters and the lands in trust for
21 the public, cannot alienate its trust responsibilities, and therefore, private parties cannot acquire
22 rights and interests in the waters and lands, such as private residences, that limit the state's
23 sovereign authority to regulate them. *Id.*

24 151. The United States Supreme Court has stated that the state has "the ownership of and
25 dominion over" navigable waters, "with the consequent right to use of or dispose of any portion
26 thereof, when that can be done without substantial impairment of the interest of the public in
27 the waters." (*Illinois Central*, at p. 435.) Furthermore, the California Supreme Court has held
28 that the state "owns" the waters and lands as **"trustee of a public trust for the benefit of the**

1 **public.”** (*National Audubon Society*, at p. 434.)

2 152. California Courts have often applied the Public Trust Doctrine for the specific purpose of
3 protecting **the public interest in commerce and navigation.** (*Colberg, Inc.*, at p. 421.) Under
4 the Public Trust Doctrine, the state has the right to regulate navigable waters, which are vital
5 to the state’s economic development and prosperity. (*Illinois Central*, at p. 453.) The Public
6 Trust Doctrine applies to non-navigable water tributaries of navigable waters, as well as, on
7 the ground that the tributaries affect the public’s interest in the navigable waterway. (*National*
8 *Audubon Society*, at p. 437.)

9 153. The Public Trust Doctrine has traditionally protected a trilogy of public uses in navigable
10 waters – commerce, navigation, and fisheries. (*Illinois Central*, at p. 452; *National Audubon*
11 *Society*, at p. 434; *City of Berkeley v. Superior Court*, at p. 521; *Marks v. Whitney*, (1971) 6
12 Cal.3d 251, 259; *City of Long Beach v. Monsell*, at p. 482; *Coldberg*, at p. 417.) Thus, the
13 public trust Trustee has the right to utilize navigable, and tributaries of, waters for purposes of
14 commerce, **to maintain the navigability of the waters** for this purpose, and **to protect the**
15 **fisheries** that inhabit the waters and tributaries. As the United States Supreme Court stated, the
16 state holds “title” to navigable waters “in trust for the people of the state that they may enjoy
17 **the navigation of the waters, carry on commerce over them, and have liberty of fishing**
18 **therein free from obstruction or interference ...”** (*Illinois Central*, at p. 452.)

19 (*Id.*) (emphasis added.)

20 154. The public has the same rights in and to tidelands as navigable waters. (*Marks v. Whitney*,
21 at p. 259.) The California Courts have expanded the list of legitimate public trust uses to
22 include bathing, swimming, fishing, hunting, boating, and other general recreational purposes.
23 ***Id.*. An important Public Trust use is the preservation of the tidelands. *Id.*** Public Trust
24 environmental uses have included the growing public recognition that one of the most
25 important public trust uses is the **preservation of the tidelands in their natural, unmolested**
26 **state**, so that they may serve as ecological areas for scientific study, as open space, and as
27 environments which provide food, habitat for birds and marine life, and which favorably affect
28 the scenery and climate of the surrounding area. *Id.*, at p. 259-260. An important goal in the

1 ecological study of the tidelands, is the preservation of such tidelands in their natural state. *Id.*,
2 at p. 259.

3 155. REDWOOD CITY is in violation of the Public Trust by failing to maintain DOCKTOWN
4 for the safe use by the public, by allowing continued residential use, by contaminating the area
5 with decaying harmful blocks of Styrofoam and by causing the silting in of DOCKTOWN
6 preventing navigation and by failing to properly maintain DOCKTOWN by periodic dredging
7 so as to avoid and remove silting so as to preserve the public trust rights including those of
8 navigation, commerce, fishing, recreation and environment preservation. REDWOOD CITY
9 has dredged other areas of THE CITY and the Port to protect the navigable waters, but
10 intentionally failed to do so at DOCKTOWN.

11 156. THE CITY was warned by adjoining marina owner Pete Uccelli of Pete's Harbor that the
12 unlawful residential boats at DOCKTOWN would lead to silting in of Redwood Creek based
13 on his experience with the local waterways, and indeed his warning and prediction has come
14 true.

15 *Wherefore Petitioner HERO prays relief as herein set forth.*

16 THIRD COUNT

17 **Violations of the Public Trust Doctrine by violation of Section 6009.1 of the** 18 **Public Resources Code (c) (1) - (The Duty of Loyalty).**

19 **HERO** reincorporates the preceding paragraphs as if fully set forth herein.

20 157. By law **THE CITY** releases an annual financial statement.

21 158. On page 16 of the June 30, 2020 Financial Report, **THE CITY** admits explicitly that **THE**
22 **CITY** Transferred funds away from the **DOCKTOWN** account, putting **THE CITY**'s interest
23 ahead of the Public Trust interest, in direct violation of the Public Trust Doctrine. The City has
24 violated Public Resources Code - PRC § 6009. per **THE CITY** report:

25 *"During [Fiscal Year] 2019-20, the general fund transferred \$4.4 million into the*
26 *DOCKTOWN Marina Fund in relation to a litigation settlement agreement to end residential*
27 *uses at the marina. After non-operating revenues (expenses) and transfers into the*
28 *DOCKTOWN Marina fund, net position increased by \$3.4 million, compared to an increase*

1 of \$1.5 million in the previous fiscal year. In addition, during [Fiscal Year] 2017-18, the
2 parking fund and equipment services fund loaned the DOCKTOWN Marina fund \$1.7
3 million and \$6.0 million, respectively. During [Fiscal Year] 2018-19, the DOCKTOWN
4 Marina fund was able to repay the parking fund and the equipment services fund \$850
5 thousand and \$3.0 million, plus interest, respectively. In [Fiscal Year] 2019-20, the
6 DOCKTOWN Marina fund repaid the parking fund and equipment services fund in full.”

7 (Id. (emphasis added.))

8 159. As such, it is without question that **THE CITY** has impermissibly and illegally managed
9 trust funds from **DOCKTOWN**, without identification of the funds as “trust funds”, as
10 required by law, which funds are only to be used on for expenses stemming from PUBLIC
11 TRUST LANDS. While contractually obligated to reserve funds to address liabilities at
12 **DOCKTOWN THE CITY** used funds within the **DOCKTOWN** Marina Fund for General
13 Fund obligations. There is also a question, as yet unknown, if **THE CITY** used this finance
14 movement and the appearance of (or lack of) resources in contract negotiations. **THE CITY**
15 impermissibly withdrew \$7.7 million from the **DOCKTOWN** Marina Fund, monies which
16 should have been kept reserved for public trust purposes and belonged to the People of the
17 State of California once deposited.

18 160. Furthermore, it is without question **THE CITY** unjustifiably enriched itself by paying itself
19 interest on said comingled funds because **THE CITY** has admitted to this conduct in its own
20 annual financial report.

21 161. Therefore, PETITIONER prays for the Court to order a constructive trust to be placed on
22 the entirety of **THE CITY**’s general fund to rectify this situation as **THE CITY** has managed
23 to turn a profit from its legally indefensible administration of **DOCKTOWN**.

24 Wherefore Petitioner **HERO** prays for additional relief as herein set forth.

25 //

26 ///

27 ///

1 **FOURTH COUNT**

2 **Violations of the Public Trust Doctrine by violation of Section 6009.1 of the**
3 **Public Resources Code (c) (2) - (The duty of Care).**

4 **HERO** reincorporates the preceding paragraphs as if fully set forth herein.

5 *Wherefore Petitioner HERO prays relief as herein set forth.*

6 **FIFTH COUNT**

7 **Violations of the Public Trust Doctrine by violation of Section 6009.1 of the**
8 **Public Resources Code (c)(3) - (The duty of Full Disclosure).**

9 **HERO** reincorporates the preceding paragraphs as if fully set forth herein.

10 *Wherefore Petitioner HERO prays relief as herein set forth.*

11 **SIXTH COUNT**

12 **Violations of the Public Trust Doctrine by violation of Section 6009.1 of the**
13 **Public Resources Code (c)(4) - (The duty of loyalty).**

14 **HERO** reincorporates the preceding paragraphs as if fully set forth herein.

15 *Wherefore Petitioner HERO prays relief as herein set forth.*

16 **SEVENTH COUNT**

17 **Violations of the Public Trust Doctrine by violation of Section 6009.1 of the**
18 **Public Resources Code (c)(5) - (The duty to administer the trust solely in the**
19 **interest of the beneficiaries).**

20 **HERO** reincorporates the preceding paragraphs as if fully set forth herein.

21 *Wherefore Petitioner HERO prays relief as herein set forth.*

22 **EIGHTH COUNT**

23 **Violations of the Public Trust Doctrine by violation of Section 6009.1 of the**
24 **Public Resources Code (c)(6) - (The duty to act impartially in managing the trust**
25 **property without discrimination or retaliation).**

26 **HERO** reincorporates the preceding paragraphs as if fully set forth herein.

27 *Wherefore Petitioner HERO prays relief as herein set forth.*

1 **NINETH COUNT**

2 **Violations of the Public Trust Doctrine by violation of Section 6009.1 of the**
3 **Public Resources Code (c)(7) - (The duty to not use or deal with trust property**
4 **for the trustee's own profit or for any other purpose unconnected with the trust,**
5 **and to not take part in a transaction in which the trustee has an interest adverse**
6 **to the beneficiaries).**

7 **HERO** reincorporates the preceding paragraphs as if fully set forth herein.

8 *Wherefore Petitioner HERO prays relief as herein set forth.*

9 **TENTH COUNT**

10 **Violations of the Public Trust Doctrine by violation of Section 6009.1 of the**
11 **Public Resources Code (c)(8) - (The duty to take reasonable steps under the**
12 **circumstances to take and keep control of and to preserve the trust property).**

13 **HERO** reincorporates the preceding paragraphs as if fully set forth herein.

14 *Wherefore Petitioner HERO prays relief as herein set forth.*

15 **ELEVENTH COUNT**

16 **Violations of the Public Trust Doctrine by violation of Section 6009.1 of the**
17 **Public Resources Code (c)(9) - (The duty to make the trust property productive**
18 **under the circumstances and in furtherance of the purposes of the trust).**

19 **HERO** reincorporates the preceding paragraphs as if fully set forth herein.

20 *Wherefore Petitioner HERO prays relief as herein set forth.*

21 **TWELFTH COUNT**

22 **Violations of the Public Trust Doctrine by violation of Section 6009.1 of the**
23 **Public Resources Code (c)(10) - (The duty to keep the trust property separate**
24 **from other property not subject to the trust and to see that the trust property is**
25 **designated as property of the trust).**

26 **HERO** reincorporates the preceding paragraphs as if fully set forth herein.

27 *Wherefore Petitioner HERO prays relief as herein set forth.*

1 **THIRTEENTH COUNT**

2 **Violations of the Public Trust Doctrine by violation of Section 6009.1 of the**
3 **Public Resources Code (c)(11) - (The duty to take reasonable steps to enforce**
4 **claims that are part of the trust property).**

5 **HERO** reincorporates the preceding paragraphs as if fully set forth herein.

6 *Wherefore Petitioner HERO prays relief as herein set forth.*

7 **FOURTEENTH COUNT**

8 **Violations of California Public Resources Code Section 25180.7.**

9 **HERO** reincorporates the preceding paragraphs as if fully set forth herein.

10 *Wherefore Petitioner HERO prays relief as herein set forth.*

11 **FIFTEENTH COUNT**

12 **Violations of the Public Trust Doctrine by violation of Section 6009.1 of the**
13 **Public Resources Code (c)(13) - (The duty to not delegate to others the**
14 **performance of acts that the trustee can reasonably be required to perform and**
15 **to not transfer the administration of the trust to a cotrustee. If a trustee has**
16 **properly delegated a matter to an agent, violation of the duty to exercise direct**
17 **supervision over the performance of the delegated matter.).**

18 **HERO** reincorporates the preceding paragraphs as if fully set forth herein.

19 *Wherefore Petitioner HERO prays relief as herein set forth.*

20 **SIXTEENTH COUNT**

21 **Violations of the Public Trust Doctrine by violation of Section 6009.1 of the**
22 **Public Resources Code (c)(14) - (The duty to not delegate to others the**
23 **performance of acts that the trustee can reasonably be required to perform and**
24 **to not transfer the administration of the trust to a cotrustee. If a trustee has**
25 **properly delegated a matter to an agent, violation of the duty to exercise direct**
26 **supervision over the performance of the delegated matter.).**

27 **HERO** reincorporates the preceding paragraphs as if fully set forth herein.

28 *Wherefore Petitioner HERO prays relief as herein set forth.*

1 **SEVENTEENTH COUNT**

2 **Continuing Public Nuisance**

3 **HERO** reincorporates the preceding paragraphs as if fully set forth herein.

4 **HERO** asserts that taxpayers and beneficiaries of the public trust have suffered harm because

5 **THE CITY** created a Public Nuisance, and further assert all of the following:

6
7 That **THE CITY**, by acting and by failing to act, created a condition and also permitted a
8 condition to exist that:

- 9 • was harmful to health;
- 10 • was an obstruction to the free use of property, so as to interfere with the
11 comfortable enjoyment of life or property;
- 12 • unlawfully obstructed, o the free passage or use, in the customary manner, of a
13 navigable waterway Redwood Creek an obstructed free navigation in the waters of
14 San Francisco Bay;
- 15 • maintained dangerous conditions at **DOCKTOWN**;

16 That the conditions asserted above affect a substantial number of people at the same time;

17 That an ordinary person would be reasonably annoyed or disturbed by the condition;

18 That the seriousness of the harm outweighs any claimed social utility of **THE CITY**'s
19 conduct, should there be any such claim;

20 That the citizens of California, who are beneficiaries of the public trust, did not consent to
21 **THE CITY**'s conduct;

22 That **HERO** suffered harm as well as the general public due to the acts and omissions of
23 **THE CITY**; and

24 That **THE CITY**'s conduct was a substantial factor in causing harm.

25 That the conduct of **THE CITY** was unlawful and that any person who has allowed the
26 public nuisance to continue unabated is guilty of a misdemeanor:

27 *California Penal Code Section 372 states that "every person who maintains or commits any
28 public nuisance, the punishment for which is not otherwise prescribed, or who willfully omits*

to perform any legal duty relating to the removal of a public nuisance, is guilty of a misdemeanor."

Wherefore Petitioner HERO prays relief as herein set forth.

EIGHTEENTH COUNT

Continuing Trespass

HERO reincorporates the preceding paragraphs as if fully set forth herein.

Wherefore Petitioner HERO prays relief as herein set forth.

PRAYER FOR RELIEF

HERO prays for relief as previously requested, which requests are incorporated by this reference, and additionally:

1. **HERO** request this Court to appoint a Special Master, who shall report to and serve at the will of the Court, to carry out instructions and Orders this Court may issue from time-to-time and to have such Special Master compensated at the expense of **THE CITY**;

2. **HERO** prays this Court to issue a Writ of Mandate to compel Redwood City to comply with the Public Trust Doctrine, including all applicable provisions of the Public Resources Code, to account for and restore funds withdrawn from the **DOCKTOWN** Marina Account since following the effective date of the 2016 Settlement, to properly label the account as a “Trust Fund”, to hold such funds separate and distinct from City funds and to comply with Orders of the Court and requests and instructions of the Special Master;

3. **HERO** also seeks a Constructive Trust over Redwood City's entire general fund and surplus fund having been comingled with Public Trust monies and to take the necessary action to bring the Public Trust Land and accounting for said Land into compliance with the Public Trust Doctrine;

4. **HERO** prays this Court to issue an Order to compel Redwood City to immediately cease and desist from releasing Styrofoam into the marine environment and public trust areas from **THE CITY**'s docks at **DOCKTOWN** and immediately take actions to prevent further release so as to reduce the irreparable injury **THE CITY** is causing the marine environment and public trust lands;

5. **HERO** prays this Court to issue an Order to compel Redwood City to immediately

1 commence efforts to clean and restore the marine environment and public trust areas from damages
2 due to **THE CITY**'s acts and omissions at **DOCKTOWN** during the relevant period;

3 6. **HERO** prays this Court to issue an Order compelling **THE CITY** of Redwood City to
4 cease any and all retaliation against **WHISTLEBLOWER** and any other taxpayer citizens;

5 7. For an Order requiring **THE CITY** to disclose to the public all known facts surrounding
6 the death of Mischa Coleman and any other material information related to **DOCKTOWN**;

7 8. For an Order directing **THE CITY** as Trustee of the Public Trust for the benefit of the
8 citizens of the State of California to retain and use new separate legal counsel from that of the City
9 of Redwood City and existing outside counsel, there being an inherent non-waivable conflict of
10 interest, and precluding any prior outside counsel and the City Attorney, having concurrently
11 represented the City as Trustee and as a municipality with direct conflicting interest, from
12 participating in any future legal representation or discussion and to recuse themselves from all
13 future involvement or discussions having represented concurrently the City in both its conflicting
14 capacities;

15 9. For costs and attorney's fees, and if approved by the court, under loadstar calculation, as
16 Private Attorney General for the enforcement of an important rights affecting the public interest
17 in the faces of inaction, threats, retaliation and great environmental and public trust harm inflicted
18 by **THE CITY**; and

19 10. Such further and other relief as the Court deems just and proper.

20 Dated: July 21, 2023

21 Respectfully Submitted,
22 HANNIG LAW LLP

23 

24 STEPHANIE A. MARGOSSIAN
25 ATTORNEY FOR **HERO**
26
27
28

EXHIBIT LIST

- 1) **Exhibit A-** March 7, 2021, email to the then Mayor
- 2) **Exhibit B-** March 8, 2021, email reply from then Mayor
- 3) **Exhibit C-** Degrading Styrofoam located at the decaying DOCKTOWN
- 4) **Exhibit D-** July 20, 2023, The Daily Journal News Clipping
- 5) **Exhibit E-** September 4, 2020, Death Certificate of Mischa Coleman
- 6) **Exhibit F-** January 15, 2008, Redwood City Fire Department Comments and
Recommendations for DOCKTOWN
- 7) **Exhibit G-** THE CITY'S October 2020, Quarterly DOCKTOWN Report
- 8) **Exhibit -H -I -RESERVED**
- 9) **Exhibit J-** April 12, 2000, Letter from City Council Member Claire to THE CITY
RE: DOCKTOWN
- 10) **Exhibit K-** July 23, 2001, Redwood City Letter to Fred Earnhardt RE:
DOCKTOWN Residential Use Violations

EXHIBIT A

From: Ted Hannig
Sent: Sunday, March 7, 2021 1:05 AM
To: Diane Howard <dhoward@redwoodcity.org>
Subject: Redwood City Carbon Neutral

Hi Diane-

I always feel awkward with the City in my interactions with the City. I try to compartmentalize some of that.

It is with that spirit in mind that I wanted to inquire if the City has any interest in **obtaining (potentially) carbon neutrality as a community benefit.**

Basically it would allow the City to permanently preserve rain forest lands (even allowing for citizen visits if desired) as a community benefit given by a developer.

You may or may not know I was the attorney who put together the financing to make the first carbon neutral regional airlines.

I do not know the City's carbon footprint with precision, or how to define what part of City government or all.

Presently (potentially for a brief period) I have the likely capability to deliver this, assuming the calculations meet my expectation of impact and offset. Certainly one can make it be so if its tight by defining what part of the City government is included to calculate carbon, and what type of output you will have (electric car vs. fossil fuel for example).

If this is of interest to the City I am willing to work with whoever you designate.

On an unrelated matter (other than environmental), those two boats I sent you pictures of that are maintained in direct view of my kitchen and home office above it (I am looking at right now)... **one of them did sink --- I sent those pictures.** When that happens, the fuel in a boat is lighter than water, and often it leaks out as can trash and sewage. Electrical batteries short and arc. I did see oil sheen on the water and tried to photograph it. No one has been observed using those boats in years. Soon I will lodge a public records request for the history on those boat slips. The City's defense on one is it is not a liveaboard but a day use marina boat. Let's see if the City has been collecting rent or chose to leave it their as harassment. If I were a betting man, you know my bet. Further, **no action has been taking on the Docktown leaching blue Styrofoam into the marine environment, which I believe to be a violation of its duty.**

Silence is certainly an approach --- it is the only reason I filed a lawsuit after trying a year to get the City to address Docktown.

I also tried to create space for the users of the public trust (numerous youth charities do) or purchase one of the big old houseboats for use as a community center for One Marina (the City approved our project without a community meeting room at One Marina --- so I was trying to correct what I believe was a big mistake). **Once again, silence.**

Exhibit A

If your memory is good, on the Celloti case when I appeared before the City Council I stated the City's approach was unlawful and I offered to fix the legal part FOR FREE with the request the City just treat the Cellotis fairly. The City's response was silence --- and that cost the City many millions. Docktown now over \$30 million, of which I believe the majority was unnecessary.

So it is an approach, but I would respectfully submit it is not a wise one.

Regardless, I saw an opportunity for the City to take a constructive step at no out of pocket [cost] to be carbon neutral, or significantly there depending on actual calculations. Payment would be satisfaction of the community benefit obligation for a future development in Downtown by Black Mountain.

Thank you-

Ted

Ted J. Hannig...

[EMPHASIS ADDED]

EXHIBIT B

On Mar 8, 2021, at 3:43 PM, Council-Diane Howard <DHoward@redwoodcity.org> wrote:

Dear Ted,

Thank you for your email requesting that Redwood City become carbon neutral. In your email, there were many questions that I just don't have answers for at this time. **I am sharing your email with our City Staff** and will be asking them for information to help me address your concerns. **Please be patient** as I do some research into some of your questions.

In the meantime, I hope you and your family are healthy and safe during this crazy pandemic.

In Community Spirit,

Diane Howard

Mayor of Redwood City

(650) 208-4774

[EMPHASIS ADDED]

EXHIBIT B

EXHIBIT C

Community Development Services
1017 Middlefield Road
P.O. Box 391
Redwood City, CA 94064



TDD: (650) 780-0129
Email: planning@redwoodcity.org
Website: www.redwoodcity.org

REDWOOD SHORES LAGOON BANK POLICY & CONSTRUCTION GUIDELINES

(July 24, 2006)

This policy document is organized under the following sections;

Sections:	Page
I. Purpose and Findings:	2
II. Zoning and Land Use Information	2
• Zoning Map	3
III. Definitions	3
IV. "New" Improvements	4
A. Boat Dock Design Criteria	4
B. Deck Design Criteria	5
C. Retaining / Garden Wall Criteria	6
D. Location Criteria	6
Typical Lagoon Bank Sections:	8
• Figure 1 (with a 3:1 slope)	
• Figure 2 (with a vertical retaining wall)	
E. Engineering Criteria	10
V. Existing Improvements	
A. Repairs/Replacements	11
B. Removals	11
VI. Application Procedure	
A. Submittal Requirements	11
B. Subsequent Submittal Requirements	12
C. Design Review	12
D. Project Consideration	13
VII. Exceptions	14
VIII. Appeals	14
IX. Contact Information and Department Roles	14

- b. On parcels with a width less than 50 feet wide, the maximum width (parallel to the shore) of the boat dock shall not exceed sixty (60) percent of the lot width; and the maximum length (perpendicular to the shore) shall be between eight (8) feet and ten (10) feet depending on location and site conditions.
2. The width of the boat dock shall be defined as those sides of the structure which run parallel, or approximately parallel, to the shoreline / retaining wall. The length shall be defined as those sides of the structure projecting into the water and running perpendicular, or approximately perpendicular to the shoreline / retaining wall. All docks shall be placed with their width parallel to the shoreline.
3. Where boat docks are proposed to be installed by or next to the lagoon's reinforced concrete retaining wall, the boat docks shall not be anchored to the wall nor shall they be allowed to make direct contact with the wall. (The use of fenders or other protection devices shall be employed to protect the wall).
4. All boat docks shall be constructed as floating docks with hinges at the gangway connection points (i.e., where the gangway connects to the boat dock and where the gangway connects with the bulkhead). Due to the seasonal fluctuations of the lagoon water level, the boat dock shall be hinged with a minimum of two-foot (2') lift/drop capability.
5. In order to provide dock flotation, Styrofoam³ or similar plastic material shall be used. Metal tanks and/or wood shall not be used for flotation purposes in the construction or reconstruction of boat docks.
6. No portion of a private boat dock shall be allowed to extend into a publicly owned water area.
7. All metal used in construction of boat docks or used to fasten a dock shall be stainless or galvanized steel.

B. Deck Design Criteria:

1. For single family residences on the waterfront the maximum allowable width of a deck shall not exceed the width of the

³ Styrofoam shall be wrapped, coated or otherwise contained to avoid abrasion and/or deterioration.

EXHIBIT D

THE DAILY JOURNAL

Leading local news coverage on the Peninsula

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www.smdailyjournal.com



Atria Park is located at 2883 S. Norfolk St. in San Mateo.

Atria worker charged with involuntary manslaughter

Case tied to alleged industrial cleaner mistaken for juice that killed 2 residents

DAILY JOURNAL WIRE REPORT

An employee of Atria Assisted Living Facility in San Mateo is being charged with two counts of involuntary manslaughter and elder abuse after three residents became ill and two died from ingesting industrial cleaner placed in a juice pitcher on the counter during breakfast, according to the San Mateo County District Attorney's Office.

On Aug. 28, 2022, Alisia Rivera Mendoza allegedly poured toxic cleaning fluid into a juice pitcher intending to use it to clean the kitchen later but left it on the counter. Another

See ATRIA, Page 17

ATRIA

Continued from page 1

employee picked up the juice pitcher believing it contained juice for the residents and poured it into glasses for three residents, who drank the fluid, believing it was juice. After a few sips, the residents went into serious distress, according to the DA's Office.

Two residents died, Gertrude Maxwell, 93, and Peter Shroeder, 93, from ingesting the fluid. The third victim, Richard Fong, survived, according to the DA's Office.

"The families of the victims are devastated,"

District Attorney Steve Wagstaffe said, adding he hasn't seen anything like this before in the county.

In September, the family of Maxwell filed a wrongful death lawsuit against the company, calling for policy changes and accountability. The lawsuit alleges negligence and bad decisions from Atria staff and that the company had been misleading and downplaying the incident.

Maxwell was in pain and had severe damage to her mouth, throat and esophagus before her death. Atria employees also allegedly waited 30 minutes before calling 911.

"This shouldn't have even been possible," her son James Maxwell previously said. "It

isn't just that someone made a mistake. It should never have been possible."

According to the lawsuit, Atria put out a misleading press release calling the substance "dishwashing liquid" when it knew it was industrial cleaner, misrepresented facts about a similar Atria Park Walnut Creek incident days earlier, and Atria employees misled first responders into thinking the patients drank the liquid themselves.

The lawsuit names Atria San Mateo, Atria Senior Living and Atria San Mateo administrator Jennifer Duenas.

Atria Senior Living issued a statement about the lawsuit in September.

"Our residents will always be our top

priority," the statement said. "We devote significant resources to ensure our staff are thoroughly trained and able to meet our residents' needs at all times. We take this incident very seriously. We're continuing to work with authorities and the Department of Social Services to fully review and assess the incident. Our hearts remain with the residents affected, their families and loved ones."

Rivera Mendoza was in court Wednesday, July 19, but her attorney Joshua Bentley wants more information from the victims' families. Mendoza returns to court Aug. 9. She remains out of custody on her own recognizance. She could face up to eight years in state prison if convicted, the DA's Office said.

EXHIBIT E

STATE OF CALIFORNIA

CERTIFICATION OF VITAL RECORD

COUNTY OF SAN MATEO

REDWOOD CITY, CALIFORNIA

3052020203550

CERTIFICATE OF DEATH

3202041003322

STATE FILE NUMBER		LOCAL REGISTRATION NUMBER	
1 NAME OF DECEDENT - FIRST (Given)		3 LAST (Surname)	
MISCHA		COLEMAN	
2 MIDDLE		4 DATE OF BIRTH	
NICOLE		12/12/2008	
5 AGE Yrs		6 SEX	
11		F	
8 BIRTH STATE/FOREIGN COUNTRY		10 SOCIAL SECURITY NUMBER	
CA		[REDACTED]	
9 BIRTH STATE/FOREIGN COUNTRY		11 EVER IN U.S. ARMED FORCES?	
CA		☒ YES ☐ NO	
12 MARRIAGE STATUS (as of Date of Death)		13 DATE OF DEATH	
NEVER MARRIED		09/04/2020	
14 EDUCATION - Highest Level (Specify on back)		15 DECEDENT'S RACE - Up to 3 races may be listed (see worksheet on back)	
05		CAUCASIAN	
16 USUAL OCCUPATION - Type of work for most of life. DO NOT USE RETIRED		17 KIND OF BUSINESS OR INDUSTRY (e.g., grocery store, road construction, employment agency, etc.)	
STUDENT		EDUCATION	
18 YEARS IN OCCUPATION		19 DECEDENT'S RESIDENCE (Street and number, or bracket)	
5		313 DRAKE AVE	
20 DECEDENT'S RESIDENCE (Street and number, or bracket)		21 CITY	
313 DRAKE AVE		SAUSALITO	
22 COUNTY/ZIP CODE		23 YEARS IN COUNTY	
MARIN 94865		7	
24 STATE/FOREIGN COUNTRY		25 INFORMATION NAME, RELATIONSHIP	
CA		ERIN COLEMAN, FATHER	
26 NAME OF SURVIVING SPOUSE/SPOUSE - FIRST		27 INFORMATION NAME, RELATIONSHIP	
-		313 DRAKE AVE, SAUSALITO, CA 94865	
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STATE OF CALIFORNIA

CERTIFICATION OF VITAL RECORD

COUNTY OF SAN MATEO

REDWOOD CITY, CALIFORNIA

3052020203550

STATE FILE NUMBER

1.1

PHYSICIAN/CORONER'S AMENDMENT

NO ERASURES, WHITEOUTS, PHOTOCOPIES,
OR ALTERATIONS

3202041003322

LOCAL REGISTRATION NUMBER

☐ BIRTH ☒ DEATH ☐ FETAL DEATH

TYPE OR PRINT CLEARLY IN BLACK INK ONLY - THIS AMENDMENT BECOMES AN ACTUAL PART OF THE OFFICIAL RECORD

PART I INFORMATION TO LOCATE RECORD

INFORMATION AS IT APPEARS ON ORIGINAL RECORD	1A NAME—FIRST MISCHA	1B MIDDLE NICOLE	1C LAST COLEMAN	2 SEX F
	3 DATE OF EVENT—MM/DD/YYYY 09/04/2020	4 CITY OF EVENT REDWOOD CITY	5 COUNTY OF EVENT SAN MATEO	

PART II STATEMENT OF CORRECTIONS

6 CERTIFICATE ITEM NUMBER	7 INFORMATION AS IT APPEARS ON ORIGINAL RECORD	8 INFORMATION AS IT SHOULD APPEAR
119	PENDING INVESTIGATION	COULD NOT BE DETERMINED
120		NO
121		09/04/2020
122		UNK
123		HOME
124		HANGING BY LIGATURE
125		1548 MARLE STREET, SLIP 107, REDWOOD CITY, CA 94063

DECLARATION
OF
CERTIFYING
PHYSICIAN OR
CORONER

I HEREBY DECLARE UNDER PENALTY OF PERJURY THAT THE ABOVE INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

9 SIGNATURE OF CERTIFYING PHYSICIAN OR CORONER

10 DATE SIGNED—MM/DD/YYYY

11 TYPED OR PRINTED NAME AND TITLE/DEGREE OF CERTIFIER
CHIEF DEP CORONER12 ADDRESS—STREET AND NUMBER
50 TOWER ROAD13 CITY
SAN MATEO14 STATE
CA15 ZIP CODE
94402STATE/LOCAL
REGISTRAR
USE ONLY

16 OFFICE OF VITAL RECORDS OR LOCAL REGISTRAR

STATE REGISTRAR - OFFICE OF VITAL RECORDS

17 DATE ACCEPTED FOR REGISTRATION—MM/DD/YYYY

12/31/2020

STATE OF CALIFORNIA, DEPARTMENT OF PUBLIC HEALTH, OFFICE OF VITAL RECORDS

FORM VS 24As (REV. 1/08)
"020101004767181"

11



I00014781

CERTIFIED COPY OF VITAL RECORDS
COUNTY OF SAN MATEO, STATE OF CALIFORNIAMark Church
MARK CHURCH
Assessor-County Clerk-Recorder

This is a true and exact reproduction of the document officially registered and placed on file in the office of the San Mateo County Assessor-County Clerk-Recorder.

By ANA MALDONADO Deputy

DATE ISSUED

APR 25 2023

CASARINATO

This copy not valid unless prepared on engraved border displaying date, seal and signature of Recorder.

ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE



EXHIBIT F

**REDWOOD CITY FIRE DEPARTMENT
FIRE PREVENTION BUREAU**

PLAN REVIEW COMMITTEE

**COMMENTS AND RECOMMENDATIONS
FOR
1548 MAPLE STREET**

January 15, 2008

**(ALL COMMENTS REFERENCE THE NEW INTERNATIONAL BUILDING
CODE STANDARDS EFFECTIVE JANUARY 1, 2008)**

- ✓ **An approved automatic fire sprinkler system shall be installed in the new buildings and structures. (IBC 904.2.9 and City Ordinance)**
- ✓ **Approved fire apparatus access roads shall extend to within 150 feet of all portions of the facility and all portions of the exterior walls of the first story of the building as measured by an approved route around the exterior of the building or facility. (IFC 503.1.1)**

Major portions of the proposed project are beyond 150 feet from fire apparatus access.

- 1. Along the wetlands acres.**
- 2. Along the pedestrian circulation paths.**
- 3. Along the non-existing portion of Blomquist Street.**

- **Fire apparatus access roads shall have an unobstructed width of not less than 20 feet and an unobstructed vertical clearance of not less than 13 feet 6 inches. Fire apparatus access roads shall be designed and maintained to support the imposed loads of fire apparatus (American Association of State Highway Transportation Officials Standard H20) and surfaced so as to provide all-weather driving capabilities. The outside turning radius of a fire apparatus access road shall be a minimum of 45 feet with a maximum inside turning radius of 22 feet. Both radii shall share the same center point. (IFC503.2)**
- **Class I standpipes shall be installed. (IBC 905.3.1)**
- **Parking levels below grade shall be provided with a Class I standpipe system in accordance with NFPA 14. (NFPA 88A – 2002 Edition, Section 6.4.1)**

- The required fire flow at the minimum residual pressure of 20 psi shall be required. (IFC Appendix B)

There are currently no water mains serving the area.

- The minimum number of fire hydrants and spacing requirements available to the building shall not be less than that listed in International Fire Code Appendix C.

There are currently no fire hydrants within the required distances serving the area.

- A fire hydrant shall be located within 50 feet of the fire department connection. (Redwood City Engineering Standard)
- All valves controlling the water supply for automatic fire sprinkler systems and water flow switches on all fire sprinkler systems shall be electrically supervised. (IBC 903.4)
- Alarm, supervisory and trouble signals shall be distinctly different and automatically transmitted to an approved central station with central station service. (IFC 903.4.1 and City Ordinance)
- Approved audible devices shall be connected to every automatic fire sprinkler system. Such sprinkler water flow alarm devices shall be activated by water flow equivalent to the flow of a single sprinkler of the smallest orifice size installed in the system. Alarm devices shall be provided on the exterior of the building in an approved location. Where a fire alarm is installed, actuation of the automatic fire sprinkler system shall actuate the building fire alarm system. (IFC 903.4.2)
- Occupant notification shall result from actuation of any flow of water or operation of any manual station. At least one manual station shall be installed at an approved location. All initiating and indicating devices shall be electrically supervised. (IFC 907.2.9 and NFPA 72 – 2002 Edition, Section 6-8.5.1.2)
- For the purpose of fire alarm annunciation, each floor of the building shall be considered as a separate zone. (NFPA 72 – 2002 Edition, Section 4.4.6.3)
- Approved single- or multiple-station smoke alarms shall be installed in the following locations in Group R-2:
 1. On the ceiling or wall outside of each separate sleeping area in the immediate vicinity of bedrooms.

2. In each room used for sleeping purposes.
3. In each story within a dwelling unit, including basements but not including crawl spaces and uninhabitable attics.

(Title 24, Part 2, CCR, Section 907.2.10.1.2)

- In buildings of four or more stories in height, a cabinet or other enclosed facility shall be provided in every stairwell, smoke tower, or such similar structure on alternative floors, commencing with the third floor, for the storage of fire hose and related equipment. Said cabinets, devices, hoses and related equipment shall be furnished by the building owner or property developer who constructs such building. (City Ordinance)
- Whenever the size, orientation, construction and/or components of a building or structure attenuate public safety radio frequency signals, an in-building communication system shall be installed by the owner to enable point-to-point fire department radio communications within, to, and from said building or structure. (City Ordinance)
- Accessible spaces shall be provided with not less than one accessible means of egress. In order to be considered part of an accessible means of egress, an exit stairway shall have a clear width of 48 inches minimum between handrails and shall either incorporate an area of refuge within an enlarged floor-level landing or shall be accessed from either a compliant area of refuge or a horizontal exit. (IBC 1007.3)
- Exterior walls shall be fire-resistive rated in accordance with *International Building Code* Tables 601 and 602. (IBC 704.5)
- In addition to the means of egress required, provisions shall be made for emergency escape and rescue in Group R occupancies. Sleeping rooms below the fourth story grade plane shall have at least one exterior emergency escape and rescue opening. Emergency escape or rescue openings shall have a minimum net clear opening of 5.7 square feet. The minimum net clear opening height dimension shall be 24 inches. The minimum net clear opening width dimension shall be 20 inches. The escape and rescue openings shall have the bottom of the clear opening not greater than 44 inches measured from the floor. (IBC 1026)
- A sign shall be provided at each floor landing in interior exit enclosures connecting more than three stories designating the floor level, the terminus of the top and bottom of the stair enclosure and the identification of the stair. The signage shall also state the story of, and the direction to the exit discharge and the availability of roof access from the stairway for the fire department. (IFC 1020.1.6)

- Where exit signs are required, additional floor-level exit signs or approved path marking shall be provided or installed in all interior corridors of Group R-2 occupancies. (Title 24, Part 2, CCR, Sections 1011.6 and 1011.7)
- All buildings and structures with one or more passenger service elevators shall be provided with not less than one medical emergency service elevator to all landings. (Title 24, Part 2, CCR, Section 3002.4a)
- A complement of fire extinguishers with a minimum classification of 2A:10BC shall be mounted and placed so that the maximum travel distance to an extinguisher on a floor by floor basis is 50 feet. The top of the extinguisher shall be mounted no higher than five feet from the floor. Extinguishers that are not visible from all directions shall be provided with signage to indicate its location. (IFC 906)
- New buildings shall have approved address numbers, building numbers, or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. Recommended minimum height of characters is six inches. (IFC 505.1)
- Key boxes shall be installed in approved locations where access to or within a structure or an area is restricted because of secure openings. (IFC 506.1)

EXHIBIT G

OCTOBER 26, 2020

**PROGRESS REPORT PURSUANT TO SETTLEMENT AGREEMENT BETWEEN
CITY OF REDWOOD CITY AND CITIZENS FOR PUBLIC TRUST AND TED J.
HANNIG**

The City of Redwood City and Citizens for the Public Trust and Ted J. Hannig entered into a Settlement Agreement, effective as of January 26, 2016. Pursuant to paragraph 5.2 of that Settlement Agreement, the City agreed to email to Ted J. Hannig on a quarterly basis progress reports of its actions related to the City's efforts in adopting a Docktown Plan by December 31, 2016, completing an environmental site assessment and report by December 31, 2016, and submission of applications to third party agencies by July 1, 2016 to build a pedestrian underpass crossing under Highway 101 leading from Docktown to downtown Redwood City and thereafter promptly pursue all necessary approvals. In furtherance of its obligations under paragraph 5.2 of the Settlement Agreement, the City submits this progress report, which covers the period from July 26, 2020 through October 26, 2020. Another progress report will be submitted by January 26, 2021.

1. Progress Related to Adoption of Docktown Plan ("Plan")

Paragraph 3.1 of the Settlement Agreement required the City to take formal action no later than December 31, 2016 to adopt a Plan that will be in conformance with the Commission's policies concerning residential use of the public trust portion of Docktown and consistent with the AG's 6/9/15 letter, and to undertake its best efforts and action towards prompt implementation of the Plan by December 31, 2017.

Please refer to prior reports: no updates to provide this quarter.

2. Progress Related to Paragraph 3.2, Environmental Site Assessment

Paragraph 3.2 of the Settlement Agreement requires the City to complete the environmental site assessment and sampling work described in the December 22, 2015 Technical Proposal prepared by Erler & Kalinowski, Inc., to prepare a report, to submit the report to relevant federal, state and local agencies, and to work cooperatively with these agencies regarding remedial action, if any, in connection with the report.

Please refer to prior reports: no updates to provide this quarter.

3. Progress Related to Paragraph 3.3, Pedestrian 101 Underpass Crossing

Paragraph 3.3 of the Settlement Agreement requires the City to have submitted, by July 1, 2016, applications to build a pedestrian underpass crossing under Highway 101, leading from Docktown to downtown Redwood City, with all relevant third party agencies, to promptly pursue all necessary approvals, and to commence construction within 12 months after it receives all necessary approvals.

Please refer to prior reports: no updates to provide this quarter.

4. Litigation related to approval and/or implementation of Docktown Plan

(i) *San Francisco Bay Marinas for All, Inc. v. City of Redwood City*, San Mateo County Superior Court Case No. 17CIV00276 [CEQA Challenge];

(ii) *Madden/San Francisco Bay Marinas for All, Inc. v. City of Redwood City*, San Mateo County Superior Court Case No. 17CIV00316 [Jurisdiction Challenge];

(iii) *Fambrough, et al. v. City of Redwood City*, San Mateo County Superior Court Case No. 17CIV04680 [Fambrough Writ Petition];

(iv) *Fambrough, et al. v. City of Redwood City*, San Mateo County Superior Court Case No. 17CIV05387 [Fambrough Class Action];

(v) *Sole v. City of Redwood City*, San Mateo County Superior Court Case No. 17CIV04898 [Sole Writ Petition]; and

(vi) *Unlawful Detainer Actions Against Hold-Over Tenants of Docktown Marina*.

Below, we discuss proceedings and rulings this quarter regarding the City's implementation of the Docktown Plan.

In *Fambrough, et al. v. City of Redwood City* [Fambrough Class Action], eight tenants filed petitions to intervene in the lawsuit for which the Court had denied a motion for class certification. On January 9, 2020, Judge Weiner ruled that they may join the lawsuit, bringing the total number of plaintiffs to eleven. On January 10, 2020, the new plaintiffs filed their Complaint in Intervention, which alleges the same causes of action as the original three plaintiffs. As to three of the new plaintiffs (Madden, Stancil, and Chambers), the City filed a demurrer to the Complaint in Intervention on the ground that their causes of action are barred by res judicata due to the final judgment in the Fambrough Petition for Writ of Mandate. On June 12, 2020, Judge Weiner denied the demurrer with respect to two of the plaintiffs. Judge Weiner took the demurrer hearing as to the third plaintiff, Alison Madden, off calendar, and the City subsequently withdrew the demurrer. Trial has been set for August 2, 2021.

In *Madden/San Francisco Bay Marinas for All, Inc. v. City of Redwood City* [Jurisdiction Challenge], plaintiff's appeal was fully briefed as confirmed by communication from the appellate court on June 23, 2020. Oral argument occurred on September 22, 2020 and the City is awaiting a decision.

EXHIBIT H-I

RESERVED

EXHIBIT J

Memorandum

To: City Council
cc: Ed Everett, City Manager
John LaTorra, Building and Inspection Manager
Francois Sorba, Assistant City Attorney
Carlos Bolanos, Police Chief

From: Council Member Claire

Date: 04/12/00

Re: Docktown Marina, 1548 Maple Street

The Issue

Docktown Marina is currently being used as residential live aboard marina. This is a violation of their revocable permit with the City. The resulting contamination and pollution puts the City at risk through fines, abatements, assessments, lawsuits, etc. by other agencies, organizations or private parties.

The Facts

The City has jurisdiction over Redwood Creek through a grant from the State.

The owner of the property, J. Franklin Salaman, had a lease with the City for the use of the water adjacent to his property for the use as a marina. The property is zoned Tidal Plain. (Exhibit A)

Fred Eamhardt, Jr. is the current owner of the marina business and has a revocable permit with the City. (Exhibit B)

Water sampling has been done by San Mateo County Environmental Health. Docktown Marina currently has signs posted by Environmental Health stating that the water is "contaminated". (Exhibit C)

April 12, 2000

History

The City was granted control over the waterways beginning in 1945 (Exhibit D).

In the 1960's, the property owner, J. Franklin Salaman, convinced the City Council to lease him the water for a marina. The business interest is later conveyed to other parties. Fred Earnhardt, Jr. inherited the business in 1986.

Gradually, a residential use has developed as more people permanently live aboard their boats, house boats and floating homes. Floating homes are actually built in the marina and are currently being built at an accelerated rate (Exhibit E). All of this development has been done without permits or approvals. The infrastructure does not exist at this time to support the residential use (There are no legal sewer connections. The water supply is undersized, etc.) There are not proper facilities on shore to support the community. Multiple violations exist which may include violations of the Clean Water Act and other federal and state laws, along with City ordinances (Exhibit F).

The City has been aware of the situation for a number of years. The marina is in a state of disrepair. Code Enforcement has been attempting to compel Mr. Earnhardt to get permits and make repairs (Exhibit G).

Recommendations

I have met with City staff on April 6, 2000 and directed Code Enforcement to enforce any issues concerning health and safety. I recommend that the Council direct the City Attorney to issue a Cease and Desist order to curtail any further development in violation of the Redwood City code, applicable state law, and the terms and conditions of the permit. I further recommend that we address the issue through a comprehensive ordinance dealing with live aboard vessels, floating homes and marinas throughout the City.

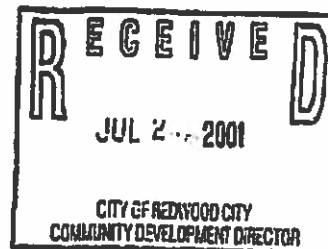
EXHIBIT K

Office of City Manager



Miller — 171
P.O. Box 391
Redwood City, CA 94084-0391
Telephone (650) 780-7300
FAX (650) 780-7225

July 23, 2001



Mr. Fred Earnhardt
dba Docktown Marina, Inc.
1548 Maple
Redwood City, CA 94063

Re: Hazardous and Unauthorized Structures/Vessels—Redwood Creek

Dear Mr. Earnhardt:

You presumably are aware of the fact that operation of the Docktown Marina on Redwood Creek has, for many years, been a major concern to the City. As described below, it has become a public nuisance. In the past several months, tenants in the Marina have been alerted to the City's concerns, and appear to recognize the seriousness of the matter. The purpose of this letter is to provide you the opportunity to address the situation in a responsible and effective manner.

Review of City records indicates that your operation of Docktown Marina initially commenced under a Revocable Permit issued by the City to Wells Fargo Bank in 1983. Further review indicates that, although a similar revocable permit was presented to you, it apparently was not signed or returned.

The Wells Fargo Permit and the permit offered to you allowed, or would have allowed, use of a portion of Redwood Creek and Steinberger Street for marina purposes, legal title to both of which is held by Redwood City. Notwithstanding doubts cast upon your right to use the City's property for the operation of the marina, that operation has, as indicated above, been conducted and expanded so as to constitute a public nuisance. The problems associated with your marina operation are threefold: (i) public health and safety issues related to the condition of the various vessels, docks, utilities, and associated facilities both within the waterway and dockside, (ii) the number of vessels, live-aboards, and floating homes which you have allowed to be moored, constructed, or installed, well beyond the confines of the permit initially issued by the City; and (iii) the kinds of structures you have permitted to be so located, including floating

**Fred Earnhardt
dba Docktown Marina, Inc.
Page 2
July 23, 2001**

homes and other structures not independently navigable. The City's concern, therefore, involves not only the operation of the Marina in a manner which endangers the public health and safety of persons residing on the vessels and floating homes, and those who visit or otherwise use the Marina, but also the extent to which the operation of your Marina has impeded Redwood Creek as a navigable waterway.

The foregoing conditions must be rectified. I am advised by the City Attorney that the City possesses all necessary legal authority to hold you fully responsible for the consequences of the operation of your Marina. Similarly, I am advised that Mr. Salaman, as owner of the property, likewise bears responsibility.

Nevertheless, because many innocent persons, who apparently relied upon your representations regarding the right to use the waterway (and, for that matter, that portion of Steinberger Street occupied by your Marina) would be seriously affected by full exercise of the City's legal rights, I am inclined for the moment to forbear formal legal action pending discussions with you. In sum, I propose that you address this matter in a manner which will balance the concerns of innocent persons with the imperative need to eliminate the hazards, obstructions, and unauthorized encroachments which your operation of the Marina has allowed.

I, therefore, request that you immediately respond to this letter by scheduling an appointment with my assistant, Magda Gonzalez (telephone 650-780-7203) in order to discuss more fully the plans of the City and your corresponding responsibilities in order that the public concerns shall, in time, fully be addressed.

Your immediate response is requested.

Very truly yours,



**Ed Everett
City Manager**

EE:rg

**cc: City Attorney
Director of Community Development
Director of Finance
J. Franklin Salaman**

*For the
City Attorney (Public Hearing)
Cons. Management*

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Copy
ORIGINAL

REVOCABLE PERMIT
for
REDWOOD CREEK PROPERTY

Pursuant to the provisions of Resolution No. 9449 of the Council of the City of Redwood City, adopted September 26, 1983, permission is hereby granted to Wells Fargo Bank (hereinafter called "Permittee"), to use real property of the City of Redwood City (hereinafter called "City") described in that document labeled "Exhibit A," (hereinafter called "the Subject Premises"), attached hereto and incorporated herein by this reference, for the purpose of conducting a commercial small boat marina business, including the right to maintain piers, docks, wharves, floats and other facilities necessary or convenient for the berthing and servicing of boats, including the operation of a sailing school, a yacht sales and brokerage business, and for no other purpose.

1. This permit is temporary in nature, does not constitute a deed or grant of easement, and may be revoked without cause at any time at the will of the Council of the City of Redwood City, effective immediately upon giving notice of such revocation to Permittee at Wells Fargo Bank, Trust Department, P.O. Box 330, Palo Alto, CA 94362.

2. Permittee shall pay to City for use of the subject premises the sum of One Thousand Seven Hundred and No/100 Dollars (\$1,700.00) per month for each month or portion thereof while this revocable permit is in effect, commencing March 1, 1983.

3. Permittee shall not construct, or have constructed, or authorize the construction of, any improvements on any of the property which is the subject of this permit without first obtaining the approval of the City. Any such improvements shall not enhance valuation in the event of any eminent domain action related to the subject property. Such valuation shall be made as if the improvements had not been made.

This provision shall apply to any such improvements that are commenced or completed after March 1, 1983, the effective date of this agreement.

4. Any improvements shall be constructed and maintained in conformance with all applicable laws, statutes, ordinances, rules and regulations.

5. Any construction or landscaping on the Subject Premises approved by City shall be at the sole cost and expense of Permittee.

6. Permittee shall, at its own cost and expense, immediately repair and restore the Subject Premises and improvements thereon to a condition acceptable to City, in conformance with all applicable health, safety and building standards, and shall thereafter and at all times during the term of this permit maintain the Subject Premises, appurtenances and every part thereof in good order, condition, repair and appearance.

Upon revocation of this permit, Permittee shall surrender the Subject Premises in good condition, ordinary wear and tear and damage by fire, earthquake, Acts of God, or the elements alone, excepted, and shall promptly remove or cause to be removed at

Permittee's expense from the premises any signs, notices and displays placed by Permittee. City, at its option, may determine that any improvements made by Permittee to the Subject Premises, including landscaping, constitutes a benefit to City, and may, elect to compensate Permittee in an amount to be negotiated by the parties hereto for such improvements.

7. Permittee shall pay for all water, gas, heat, electricity, fuel, power, telephone service, and other utilities which may be advanced to or used by Permittee in or about the Subject Premises during the term or terms of this permit.

8. Permittee shall pay all lawful, real and personal property taxes and assessments levied by the State, county, city, or other tax or assessment-levying bodies, upon any and all real and personal property or property interest it has or may have in the Subject Premises, and any goods, wares, equipment, or other materials stored or kept therein.

Pursuant to the provisions of Revenue and Tax Code Section 107.6, Permittee hereby acknowledges, recognizes and understands that this permit may create a possessory interest subject to property taxation, and that Permittee may be subject to the payment of property taxes levied on such interest.

9. Permittee shall not use or permit said Premises or any part thereof to be used for any purpose or purposes other than the purposes specified in the preamble of this permit.

No goods, merchandise or material shall be kept, stored or sold in or upon said Premises which are in any way explosive or

hazardous; and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon; and no machinery or apparatus shall be used or operated on said Premises which will in any way injure said Premises or adjacent structures; provided, however; that nothing in this paragraph shall preclude Permittee from bringing, keeping or using on or about said Premises and buildings such materials, supplies, equipment and machinery as necessary or customary in carrying on its said business.

10. Permittee shall obtain all necessary permits and licenses and shall comply with all ordinances, regulations and laws, and with all of the requirements of all municipal, county, and state and federal authorities now in force, or which may hereafter be in force, pertaining to the Subject Premises, including, but not limited to, any and all environmental regulations pertinent to Permittee's use of Redwood Creek.

11. City reserves the right to enter upon the Subject Premises at any reasonable time to inspect the same and to require Permittee to keep said Premises in good maintenance, order and repair.

12. No signs, placards, or advertising devices of any type shall be inscribed, painted, attached or placed upon any portion of the Subject Premises, or the improvements situate thereon, or upon the public areas adjacent thereto, without obtaining City's prior written consent.

13. Permittee agrees to pay for all labor done or materials furnished in repair, replacement or improvement of the Subject Premises by Permittee, and to keep the Subject Premises and all

improvements and Permittee's possessory interest therein free and clear of any lien or encumbrance of any kind whatsoever created by Permittee's act or omission.

14. Permittee shall not have the right to sublet the Premises, or assign its interest in this permit.

15. Permittee agrees to be responsible and liable for all damages to persons or property, including the injury or death of persons, due directly or indirectly to Permittee's maintenance of the Subject Premises and to the installation of any improvements hereunder, including landscaping and/or any other use which Permittee makes of the Subject Premises, and shall promptly pay any just claim therefor. Permittee further agrees to indemnify and hold harmless the City of Redwood City, its Council, officers, boards, commissions, agents, and employees from all suits, actions, damages, or claims to which the City may be subjected by reason of said maintenance and/or improvement of the Subject Premises.

16. Permittee shall secure, carry and maintain at all times during the period covered by this revocable permit, at Permittee's sole cost and expense, public liability and property damage insurance, which insurance shall be in the following minimum amounts:

- (a) \$500,000 for injury or death of any one person and \$1,000,000 for any one occurrence; and
- (b) Property damage insurance in the amount of \$500,000.

A certificate or certificates evidencing the maintenance of the required insurance shall be deposit with the City Clerk prior to any

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CGM:g-c 8/23/83R

use of the Subject Premises by Permittee. Each certificate shall bear the following endorsements:

- (a) Endorsement precluding cancellation or reduction in coverage before the expiration of thirty (30) days after City shall have received any notification thereof from the insurance carrier; and
- (b) Endorsement naming the City of Redwood City, its Council, officers, boards, commissions, agents, and employees thereof, as additional insureds; and
- (c) Standard cross liability endorsement.

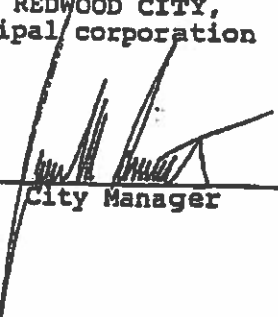
17. This permit shall be non-exclusive and City retains the right, in general, to permit third parties to use portions of the Subject Premises, and the right, specifically, to permit ingress and egress from lands of City in the vicinity of the Subject Premises through Maple Street (formerly Steinberger Street) to Parcel C as shown on Exhibit B and to access to the water.

18. Time is expressly declared to be of the essence of this and of all terms, covenants, agreements, obligations and conditions expressed herein.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first hereinabove written.

CITY OF REDWOOD CITY,
a municipal corporation

By


City Manager

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CGM:g-c 8/23/83R

A C C E P T A N C E

IN CONSIDERATION of the granting to it by the City of Redwood City of that certain revocable encroachment permit, approved and authorized in Resolution No. 9449, adopted by the Council of the City of Redwood City on the 26th day of September, 1983, for itself, and on behalf of its successors and assigns, hereby accepts the terms and conditions upon which the aforementioned permit is granted and agrees to carry out and perform each and all of said terms and conditions mentioned therein.

Dated: September 1, 1983.

WELLS FARGO BANK, N.A. *Executor & Trustee.*

By *Robert L. Fairley* *Assistant Vice President*
(Title)

By *[Signature]* *VICE PRESIDENT
& TRUST OFFICER*
(Title)

REVOCABLE PERMIT

PARCEL A

A portion of Redwood Creek as shown on those plats entitled "Grant to the City of Redwood City, Chapter 34 Statutes of 1954 (1st E.S.) vicinity of Redwood Creek, State of California, State Lands Commission, State Lands Division," on file in the office of the City Engineer of the City of Redwood City, San Mateo County, California, and being more particularly described as follows:

BEGINNING at Station 79 as said station is shown on above mentioned plats; THENCE, South 59° 52' 15" West along the Southerly line of said grant a distance of 185.00 feet; THENCE, North 31° 14' West a distance of 82.00 feet; THENCE, North 60° 20' East a distance of 636.00 feet; THENCE, North 46° 25' East a distance of 161.00 feet; THENCE, North 55° 37' East a distance of 420.00 feet; THENCE, South 34° 35' East a distance of 45.00 feet to the Northwestern line of Steinberger Street; THENCE, South 33° 39' West, along said Northwestern line of Steinberger Street a distance of 58.50 feet to the Southerly line of said grant; THENCE, North 36° 45' 13" West along said grant line a distance of 3.14 feet to Station 72 of said grant; THENCE, the following courses and distances along the Southerly line of said grant: South 58° 55' 42" West a distance of 91.06 feet, South 54° 20' 28" West a distance of 274.46 feet, South 76° 19' 42" West a distance of 38.08 feet, South 34° 11' 10" West a distance of 64.07 feet, South 53° 12' 17" West a distance of 153.60 feet; South 61° 04' 25" West a distance of 260.50 feet, and South 71° 01' 47" West a distance of 101.51 feet to the POINT OF BEGINNING. Containing 2.02 acres, more or less.

PARCEL B

A portion of Steinberger Street as said street is described in that deed from William Holder to the Town of Redwood City, dated February 2, 1893, and recorded in the office of the Recorder of San Mateo County, California, in Volume 64 of Records at page 188, being more particularly described as follows:

BEGINNING at the most Northerly corner of said Steinberger Street, said corner being in Steinberger Slough; THENCE, South 33° 39' West along the Northwestern line of said Steinberger Street a distance of 31.00 feet to the TRUE POINT OF BEGINNING; THENCE, South 34° 35' East a distance of 11.00 feet; THENCE, South 19° 41' West a distance of 111.50 feet; THENCE, South 47° 25' West a distance of 78.00 feet; THENCE, North 45° 00' West a distance of 17.50 feet to the said Northwestern line of Steinberger Street; THENCE, North 33° 39' East along said Northwestern line a distance of 184.50 feet to the TRUE POINT OF BEGINNING. Containing 0.11 acres more or less.

"EXHIBIT A"

FAX

PAGE 1 of 2

DATE: February 10, 1993
TO: Ron Michaelis
FROM: Michael Church
SUBJECT: **CODE ENFORCEMENT IN THE MARINA
AREA**

FAXED
2-11-93
145 PM

Ron, this is the issue I wanted to discuss. Can you make contact with Mike Giari of the Port re the companies to analyze the creek mud.

Perhaps we can meet at 9:30 a.m. on Tuesday before the Park Chevrolet meeting, to discuss how to approach Salamon.



2 of 2

MEMO

DATE: February 2, 1993
TO: Ben, Joel, and John
FROM: Mike 
SUBJECT: CODE ENFORCEMENT IN THE MARINA AREA

When we met on February 1, 1993, we agreed on the following:

1. By February 15, 1993, Building and Planning will survey Docktown Marina and the surrounding area, and define what actions they will demand of the owners/operators in this area. This will include changes in the ways the Marina and its sub-tenants conduct their business on land, as well as changes necessary to bring existing buildings up to code. It is acknowledged that the business owner will not be able to make all the changes at once, so the list of actions will be prioritized.
 2. This list of prioritized actions will be provided to Ron Michaelis so that by May 1, 1993, they can be incorporated into the lease discussions with Fred Earnhardt (sic), the owner of Docktown Marina. The incentive for the owner to agree will be:
 - (a) If not incorporated into the lease, these are all things that Building and Planning will insist on through straight forward enforcement action anyway.
 - (b) The lease might provide for a rental rate that holds for the term of the lease, so long as Mr. Earnhardt makes the improvements on schedule. If he fails to meet the schedule, the rate increased to a new penalty rate.
 3. I will get quotes from companies which would test the Redwood Creek mud for toxicity and estimate the costs and the regulatory likelihood of dredging the creek. Ben felt the cost might be as high as \$30,000. Whatever the price, it was suggested that, if the decision is made to test the dredging option, Mr. Earnhardt must share in the cost.
 4. On a separate front, Ron and I will discuss now best to approach the land owner (Salamon) concerning the Blomquist Extension and the possibility of a land swap.
- c: R. Michaelis, C. Luck, J. Lynch

MMARINA