San Francisco Bay Conservation and Development Commission

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State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

Commission Cease and Desist Order:	CCD2020.001.00
Effective Date:	[*To be determined following Commission action*]
Respondent:	City of Oakland 1 Frank Ogawa Plaza, 11th Floor Oakland, CA 94612 **Attn:** Joe Devries, Assistant to the City Administrator

To City of Oakland:

I. Cease and Desist Order. Pursuant to California Government Code Section 66638, the City of Oakland ("City") is hereby ordered to:

A. Cease and desist from violating the McAteer-Petris Act ("MPA").

B. Carry out the measures described in the City's Encampment Closure and Park Restoration Plan ("Plan"), attached as Exhibit 01, in accordance with the revised deadlines set forth in the letter from the City ("Letter"), attached as Exhibit 02.

C. Fully comply with the Requirements of Sections III, IV, and V of this Cease and Desist Order ("Order").

II. Findings

This Order is based on the findings set forth below. The administrative record in support of these findings includes all documents cited herein and all documents cited in the Index of Administrative Record attached hereto.

A. The violations subject to this Cease and Desist Order occurred at three adjacent locations in Oakland within the Commission's Shoreline Band jurisdiction and public access areas required pursuant to BCDC Permit No. M2003.028.01 and BCDC Permit No. M2008.030.00 ("Permits"). The areas are depicted on Exhibit 03, attached, and include:

1. Union Point Park, subject to Permit No. M2003.028.01, for which the permittees are the City and The Unity Council.

2. Cryer Site Park, subject to Permit No. M2008.030.00, for which the permittees are the City and the Port of Oakland ("Port").

3. A small beach area, located between Cryer Site Park and Coast Guard Island Bridge ("Beach Area"), which is in the Commission's Shoreline Band jurisdiction and subject to the City's control.

B. According to City staff, Cryer Site Park is considered part of the larger Union Point Park, and the two sites are treated as a single contiguous park, although they were constructed pursuant to separate BCDC authorizations. Except where noted otherwise,

for purposes of this Order, and consistent with City practice, references to "Park" or "Union Point Park" refer to the collective area encompassing both sites.

Factual Findings

C. On March 13, 2018, BCDC staff ("Staff" or "BCDC staff") received a report of a violent attack in an unauthorized homeless encampment at Union Point Park. The report was substantiated by a March 10, 2018, news article in the East Bay Times, entitled "Man hurt in apparent hatchet attack at Oakland homeless camp; 1 arrested." The report followed a phone call in January 2018 between Staff and a member of the public regarding the presence of homeless encampments in the Park.

D. On June 5, 2018, Staff received a report that the City had conducted a cleanup operation and declared a closure area in the southeastern portion of the Park on May 15, 2018. According to the report, an arson fire had occurred on May 24, 2018, in the restroom of Union Point Marina, which is immediately adjacent to the Park's public restroom. The report stated the arson followed numerous instances of break-ins and vandalism at the same restroom.

E. On June 12, 2018, Staff received several photos from a member of the public, dated June 7, 2018, depicting unauthorized encampments in the northwestern portion of the Park. The photos also indicated the presence of numerous tents and debris in the adjacent Beach Area in BCDC's 100-foot shoreline band jurisdiction, located outside the boundaries of the Park.

F. On June 18, 2018, Staff received a report that the City had conducted another cleanup operation and declared a formal closure in the central portion of the Park on June 13 and 14, 2018. According to the report, within days, the Park was repopulated with encampments.

G. On June 30, 2018, Staff received additional photos of the newly re-established encampments, along with reports of two instances of crime that had occurred nearby.

H. On July 28, 2018, Staff spoke by phone with City staff members who reported that the City had cleaned up the Park approximately 18 or 19 times. The City staff stated that during those cleanup operations, individuals living in encampments had been asked to leave the Park, but had usually returned after each operation. The City staff reported the City was unable to conduct maintenance work in the Park, due to individuals threatening City workers. They also reported the City once had rangers operating in the Park who provided needed services and security, but that the rangers had ceased operations in the Park approximately five or six years prior to 2018.

I. On August 4, 2018, Staff received a report that many encampments previously located in the central or southeastern parts of the Park had relocated to the northwestern portion of the Park. The report also stated that Oakland Police reported that a member of the public had recently been severely beaten with a baseball bat in the Park and that there were repeated instances of threats, intimidation, and theft, making the area undesirable for the public.

J. On November 2, 2018, Staff received a complaint from a member of the public, who described a lack of law enforcement occurring at Park, and reported he had been physically assaulted once, threatened several times, and robbed three times in the Park.

K. On January 25, 2019, Staff received a report that the unauthorized encampments in the park were ongoing, and that a fire had occurred on January 23, 2019, in the northwestern portion of the Park.

L. On February 1, 2019, Staff, along with the State Coastal Conservancy and the Association of Bay Area Governments, sent a joint letter to the City, the Unity Council, and the Port, formally expressing their concerns with the lack of maintenance and safe management of the Park.

M. On February 4, 2019, City staff responded by email to the joint letter, stating that the City's Encampment Management Team was aware of the concerns and had addressed issues at the Park on a regular basis. The email stated that the City received similar complaints about access to the Park and would continue to provide regular clean-up operations.

N. On February 7, 2019, Staff received a report of a new encampment of Recreational Vehicles ("RVs") at the Park's southeastern parking lot.

O. On January 14, 2019, the Oakland Parks and Recreation Foundation released their "2018 Report on the State of Maintenance in Oakland Parks", which stated that Union Point Park was "completely unusable" and gave it a score of "F" – the lowest possible score in the report, and the only park in Oakland to receive that score.

P. On March 19, 2019, Staff received a complaint from a member of the public, alleging a dramatic increase in the instances of crime in the Park's parking lots.

Q. On March 21, 2019, Staff received an email stating the City had aborted an attempted cleanup operation at the Park on March 19 after a group of homeless individuals, with the help of advocates, sought a Temporary Restraining Order in Federal Court against the City.

R. On April 5, 2019, Staff visited the Park to assess its current condition and found numerous tents and piles of debris throughout the Park.

S. On April 23, 2019, Judge Charles Breyer of the United States District Court for the Northern District of California issued an order in the *Le Van Hung v. Schaff* matter enjoining the City from cleaning the Park in a manner that violates the City's stated policies. The Court referred the parties to a magistrate judge for further negotiations regarding: (1) the City's voicemail policies and practices rand Vacate Notices for addressing issues relating to personal belonging; and (2) the City's policies regarding shelter availability. The Order stated that after the parties reached resolution on the listed issues, the City could clean and clear the Park in compliance with its stated policies.

T. Over the next several months, BCDC staff continued to receive multiple complaints about the state of the Park and its parking lots from members of the public, some of whom had previously contacted Staff. These include communications on April 23, May 17, May 24 (in which the reporter stated they would not bring their children to the area), June 24 (in which it was reported that a child had been shot in the Park), July 11 (when it was reported that conditions had deteriorated and rats were prevalent), July 23, and August 7.

U. On August 20, 2019, BCDC staff were notified by the Oakland City Attorney's office that the federal injunction had been lifted on August 12 and that the City would conduct a clean and clear operation on August 20.

V. On October 1, 2019, BCDC staff met with representatives from the City and The Unity Council, who informed Staff that on August 20, the City had conducted a clean and clear operation in the Park and its parking lots, including removing several tons of debris. The parking lots were declared formal closure areas, while the remaining portions of the Park were not. The City stated that many people and tents remained in the Park after the operation, and that upon Staff's request, the City would consider a formal closure operation in the inhabited areas of the Park. Also on that day, Staff visited the site and visually confirmed the presence of numerous tents in the Park.

W. On October 2, 2019, Staff visited the site again and found that, while the parking lots had been cleared, there remained numerous tents and facilities in need of maintenance throughout the Park.

X. On October 22, 2019, BCDC staff again met with representatives from the City and the Unity Council. In that meeting, City staff shared a draft Encampment Closure and Park Restoration Plan, and BCDC staff provided feedback on that plan.

Y. In October and November of 2019, Staff received additional complaints about the Park from members of the public, including the lack of enforcement of parking rules, and other complaints about multiple issues at the Park.

Z. On November 6, 2019, BCDC staff again met with City staff and provided additional feedback on their draft Encampment Closure and Park Restoration Plan. In particular, BCDC staff requested additional details about the timeline for fully restoring the Park after the encampments were removed.

AA. On November 8, 2019, BCDC staff again visited the Park to examine its condition. Staff found numerous tents, vehicles, and other evidence of people living in various areas throughout the Park; substantial amounts of dead or overgrown vegetation; numerous piles of debris; substantial graffiti; poorly maintained restrooms, barbeques, and benches; multiple picnic tables that had been burned to the ground; and other instances of poor maintenance. Furthermore, Staff found that numerous public access amenities required under the Permits were missing entirely, including one bicycle rack, four required public shore and/or Bay Trail signs, and several picnic tables. Staff was not able

to fully assess the specific number of missing amenities and improvements, due to the presence of encampments which prohibited access to many portions of the Park. Staff observed that the Park was unavailable to the public for safe walking, picnicking, or related purposes.

BB. Also during the site visit on November 8, 2019, Staff observed numerous tents and debris in the Beach Area, which is located adjacent to and outside the boundaries of the areas required as public access under the Permits.

CC. On November 13, 2019, the City submitted an updated Encampment Closure and Park Restoration plan. City staff then presented this plan to the BCDC Enforcement Committee on November 20, 2019. At that meeting, the Enforcement Committee concurred with BCDC staff's plan to issue two Violation Reports, one for each Permit that had been violated, and to begin work on a proposed Cease and Desist order that would require the City to implement the Encampment Closure and Park Restoration Plan.

DD. On December 2, 2019, BCDC staff mailed two Violation Reports. One was issued for BCDC Permit No. M2003.028.01 and named the City and the Unity Council as co-respondents, while the other was issued for BCDC Permit No. M2008.030.00 and named the City and the Port as co-respondents. The specific violations subject to this Cease and Desist Order are outlined in those two reports.

EE. On January 6, 2020, the Port submitted a Statement of Defense in response to the Violation Report issued for Permit No. M2008.030.00, requesting that the Violation Report against it be dismissed by BCDC. The Port attached a copy of its lease with the City for lands on which the Violations occurred, and pointed out provisions in the lease requiring the City to maintain the Park and associated public access improvements. The Statement of Defense asserted various legal defenses, including failure to state a claim against the Port and that the issuance of injunctive relief against the Port constitutes an improper demand of a gift of public funds. BCDC disputes the validity of the defenses asserted. However, the Port is not included in this Order. The injunctive measures in this Order require action by the City to bring the Park into compliance with the terms of the permits issued by BCDC.

FF. On January 14, 2020, BCDC staff met with City staff to discuss the two Violation Reports and the City's Encampment Closure and Park Restoration Plan. Staff again requested several changes to the Encampment Closure and Park Restoration Plan. In particular, Staff requested additional information regarding the City's plans to fully restore the Park after removing the encampments.

GG. Between January 28 and February 26, BCDC staff and City staff negotiated the provisions of the Encampment Closure and Park Restoration Plan and the requirements of the Cease and Desist Order, including deadlines for full restoration of the Park after removing the encampments. The City explained its concerns with committing to a fixed deadline, as full Park restoration will require new City funding, City Council approval, and a formal procurement process. Ultimately, BCDC staff and City staff agreed on a

plan that includes a series of milestones as specified in greater detail in Section III below, including: removing all encampments from the Park and offering alternative housing options to the individuals affected; implementing near-term restoration and encampment enforcement measures; developing and implementing long term plans for park restoration, maintenance, and enforcement; and fully restoring the Park and its amenities. The Order also allows the Executive Director, upon request by the City, to grant time extensions of deadlines for appropriate reasons.

HH. On February 4, 2020, City staff reported to BCDC that they had successfully closed encampments in the majority of the Park, established a temporary reprieve zone, and relocated remaining Park residents to that zone, as required under Condition III.A below. The operation included: removing remaining debris from the former encampment sites in the Park and Beach Area; installing mesh fencing, wash stations, and portable toilets in the reprieve zone; and community engagement and assistance offering by Operation Dignity, a partner organization. The photos in the report indicated that three abandoned vessels remained on the beach, which the City has committed to removing by September 1, 2020.

II. On February 21, 2020, the City submitted a Statement of Defense in response to the Violation Report issued for BCDC Permit No. M2003.028.01. The City admitted that it had inadequately maintained the public access improvements required in the Permit, and admitted that the violations had persisted since at least March of 2018. The City also noted that certain required amenities were still in place, although some were missing. In addition, the City noted that third parties had placed many of the unauthorized structures and materials in the Park.

JJ. Also on February 21, 2020, the City submitted a second Statement of Defense in response to the Violation Report issued for BCDC Permit No. M2008.030.00. The City admitted that it had inadequately maintained the public access area and improvements required in the Permit, and that the violations admitted to had persisted since at least June of 2018. The City also that certain required amenities were still in place, although some were missing. In addition, the City noted that third parties had placed many of the unauthorized structures and materials in the Park.

KK. In both Statements of Defense, the City stated they are undertaking a needs evaluation to determine the extent of park maintenance needs, and included evidence regarding their efforts to address a significant increase in unsheltered people and the challenges the City faces regarding funding for parks and park maintenance. While BCDC staff disputes some assertions in the Statements of Defense, BCDC acknowledges the challenges the City faces regarding homeless encampments in City parks.

LL. On March 12, 2020, at BCDC's Enforcement Committee meeting, the Committee voted to adopt the proposed Order as written at that time. The proposed Order was tentatively scheduled for Commission consideration on April 2, 2020.

MM. On March 16, 2020 in response to the COVID-19 emergency, six Bay Area Counties, including Alameda County and the City and County of San Francisco, issued a public

health shelter-in-place order. BCDC cancelled the April 2, 2020 Commission meeting, and the proposed Order was not presented to, or adopted by, the full Commission at that time.

NN. Also on March 16, 2020, the City emailed BCDC staff a request to extend certain deadlines in the proposed Order by 30 days, explaining that the City had to re-deploy resources to emergency response efforts. Staff replied with an email granting the requested extension.

OO. On April 9, the City sent a letter to BCDC staff (Exhibit 02, "Letter"), requesting further extensions of between 60 and 120 days, depending on the measure, to the deadlines in the proposed Order. In the letter, the City stated that many of the Order's requirements would contravene the local shelter-in-place order and endanger public health, and that the City's encampment priorities were currently focused on following Center for Disease Control guidance and preventing the spread of the disease.

PP. On April 22, 2020, at a noticed Enforcement Committee meeting, the Enforcement Committee voted to adopt revisions to the proposed Order incorporating the revised deadlines requested by the City in the April 2, 2020 Letter. The conditions set forth in Section III below incorporate the revised deadlines as requested in the Letter.

QQ. On ____, the Commission considered the Enforcement Committee's recommended decision, including a proposed Cease and Desist Order with the revised deadlines, and the arguments and comments presented by BCDC staff and the City. The Commission adopted the Enforcement Committee's recommended decision, including the Cease and Desist Order, without any changes.

Legal findings

A. The encampments and unauthorized activities in Union Point Park interfere with the use of the Park by the public for public purposes including walking, viewing, picnicking, and related purposes, in violation of Special Condition II.C.1 of Permit No. M2003.028.01 and Special Condition II.B.1 of Permit No. M2008.030.00.

B. Park amenities, including benches, picnic tables, bicycle racks, and signs, are either missing from Union Point Park or substantially degraded, in violation of Special Condition II.C.2 of Permit No. M2003.028.01 and Special Condition II.B.2 of Permit No. M2008.030.00.

C. The numerous maintenance issues detailed above, including accumulated trash, degraded landscaping, and damaged park amenities violate Special Condition II.C.3 of Permit No. M2003.028.01 and Special Condition II.B.4 of Permit No. M2008.030.00.

D. The encampments and unauthorized materials in the Beach Area adjacent to Union Point Park constitute unauthorized fill in violation of Section 66632 of the McAteer-Petris Act and the encampments could not be authorized consistent with San Francisco Bay Plan Recreation Policy 3.g "Beaches", which states that "Sandy beaches should be preserved, enhanced, or restored for recreational use, such as swimming, consistent with wildlife protection", among other relevant Bay Plan policies.

III. Conditions

A. **Establishment of Reprieve Zone**. No later than January 31, 2020, consistent with the attached Encampment Closure and Park Restoration Plan ("Plan") and Letter, the City shall create a temporary reprieve zone ("Reprieve Zone") at the northwest end of the Park and temporarily relocate all individuals residing in the Park, including those residing in the Beach Area, to the Reprieve Zone. Once individuals are relocated to the Reprieve Zone, the City shall clean up and remove any debris, abandoned vessels, or other unauthorized structures remaining in the other areas of the Park and the Beach Area.

1. Within one week of establishing the Reprieve Zone, the City shall submit documentation to BCDC, including photographic evidence, that the Zone has been established in accordance with the Plan and that the surrounding areas have been cleared of any remaining debris. Thereafter, on or before the 10th day of the month, the City shall submit monthly updates on the number of individuals residing in the Reprieve Zone.

2. The City shall provide services to the individuals residing in the Reprieve Zone as described in the Plan, including social outreach and offering of alternative housing options, as well as portable toilets, wash stations, and weekly garbage pickup.

3. No later than September 1, 2020, the City shall ensure that the Beach Area is free of any unauthorized structures, abandoned vessels, or other materials.

B. **Closure of Reprieve Zone.** No later than September 1, 2020, consistent with the attached Plan and Letter, the City shall close the Reprieve Zone and relocate all remaining individuals residing in the Reprieve Zone to a location outside the Park and Beach Area. Upon closing the Reprieve Zone, the City shall remove all temporary amenities including fencing, portable toilets, and wash stations, and clean up and remove any remaining debris. The City shall then reincorporate this area into the larger Union Point Park.

1. Within one week of closing and cleaning the Reprieve Zone, the City shall submit documentation of the action to BCDC, including photographic evidence.

C. **Encampment Prevention.** Starting immediately after establishment of the Reprieve Zone, the City shall conduct regular and ongoing patrols of the Park and Beach Area to prevent the establishment of new encampments.

1. Starting upon closure of the Reprieve Zone, these regular patrols shall extend to the area formerly enclosed by the Reprieve Zone.

2. No later than August 15, 2020, the City shall develop and submit for review and approval by BCDC staff a formal long-term encampment enforcement plan. The plan shall include: (1) regular patrols of the Park and Beach Area; (2) protocols for identifying and responding to any persons or vehicles remaining in the Park overnight; (3) establishing and posting at the Park, in a clearly visible location, a reporting telephone number for area residents and stakeholders to report any incidents to the City, and regularly ensuring that posting is maintained and clearly

visible; and (4) any other measures as deemed necessary and appropriate by the City.

3. The City shall make changes to the plan as requested by Staff and resubmit that plan in a timely manner.

D. **Park Activation.** No later than August 15, 2020, the City shall submit information to BCDC on its plans to activate the Parks and promote their use by area residents, businesses, and other stakeholders. The information provided shall be sufficient to allow Staff to evaluate the planned measures and inform the City of any BCDC approvals required for such park activities. The City shall respond to requests from Staff for further information in a timely manner.

E. **Park Restoration, Maintenance, and Enforcement.** Consistent with the attached Plan and Letter, the City shall take the actions specified below to ensure that the Park and associated amenities remain well-maintained, fully accessible to the public, free of unauthorized encampments, and in full compliance with the Permits, in accordance with the following timeline:

1. **Near-term Restoration Measures**.
   a. No later than April 15, 2020, the City shall install and maintain temporary safety lighting in the northwestern parking lot area to promote safe use of this area and deter unauthorized activity.
   b. No later than August 15, 2020, the City shall install the missing bicycle rack required under Permit No. M2003.028.01 in accordance with the currently approved plans.
   c. No later than August 15, 2020, the City shall submit to BCDC staff for review and approval its plans for installing missing public access signage as required under the Permits, including the proposed locations, specifications, and dimensions. The signage plans shall comply with BCDC's latest signage guidelines and signage graphics, found on the BCDC website.[1] The City shall make any changes to the plans requested by BCDC and resubmit the plans in a timely manner.
   d. The City shall install the required public access signage within 60 days of receiving plan approval by BCDC.
2. **Needs Assessment**. No later than October 1, 2020, the City staff shall complete a needs assessment for the full restoration of the Park, for inclusion in a proposal during the City's mid-cycle budget process. At the same time, the City shall submit the needs assessment to BCDC staff.
3. **Long-term Maintenance Plan.** No later than November 1, 2020, the City shall develop and submit for review and approval by BCDC staff a long-term Maintenance Plan to ensure the City complies with Special Condition II.C.3 (Maintenance) of

[1] For BCDC's Public Access Signage Guidelines, see: https://www.bcdc.ca.gov/planning/SSSG.pdf
For BCDC's Public Access Signage Graphics, see: https://www.bcdc.ca.gov/publications/signage/getSigns.html

Permit No. M2003.028.01 and Special Condition II.B.4 (Maintenance) of M2008.030.00. The City shall make changes to the Maintenance Plan as requested by BCDC and resubmit the plan in a timely manner.

4. **Restoration Plan and Permit Amendment Request.** No later than November 1, 2020, the City shall develop and submit for review and approval by BCDC staff a comprehensive Restoration Plan for restoring the Park and associated amenities to a condition compliant with the requirements of the Permits. The Restoration Plan shall address all existing amenities required in the Permits, including bicycle racks, benches and seating areas, landscaping, pathways, picnic tables, the playground and pergola, public access and/or Bay Trail signage, restrooms, and trash containers. In the event that the City wishes to add new permanent safety lighting, or retain and repair the existing lighting in the Park, the Plan shall also include a long-term plan for permanent lighting. The Restoration Plan shall include an assessment of the total cost required, a Scope of Work, and an implementation schedule with deadlines for completion of individual tasks. In the event that the Restoration Plan proposes changes to the Park's design, layouts, and/or amenities as set forth in the Permits and accompanying approved plans, the City shall also submit a formal request to amend one or both of the Permits, or, as appropriate, a request for plan review and approval by BCDC, in advance of commencing related work. Should the City question whether a permit amendment and/or plan approval is required, the City shall contact BCDC staff to receive guidance sufficiently in advance of the November 1, 2020, deadline. The City shall make changes to the Restoration Plan as requested by BCDC and resubmit the plan in a timely manner.

5. **Progress Reports.** No later than 10 days after completing each task specified in the Restoration Plan, the City shall submit to the Enforcement Program Manager a written statement certifying that the task has been completed in accordance with the Restoration Plan. The statement shall be signed by the Oakland City Administrator or his/her designee and shall be accompanied by photographs or other evidence to document the completion of the task.

6. **Completion of Park Restoration**. No later than April 1, 2022, the City shall fully restore the Park to a condition compliant with all requirements of the Permits, as they may be amended. The City shall continue to maintain the Park and all associated amenities in accordance with the requirements of the Permits and shall prevent the establishment of new encampments in the Park and Beach Area in accordance with the Maintenance Plan and Encampment Enforcement Plan. Notwithstanding Section III.F.1 below, if the City determines that additional time is required to fully restore the Park, the City shall submit a written request for time extension no later than January 2, 2022. The request shall include: 1) an explanation of why additional time is required, and 2) a description of restoration actions that can be completed prior to April 1, 2022, and those that will require additional time. The Executive Director may grant an appropriate extension of time, for demonstrated good cause, based on the submitted request.

F. **Extension of time**.

1. If the City encounters any unforeseeable event arising from a cause or causes beyond its control that will delay timely compliance with the provisions of paragraphs III.A through III.E above, the City shall notify BCDC's Enforcement Program Manager by writing within five (5) business days of when the City first knows of the event. The written notice must describe the cause(s) of the delay, the anticipated length of time the delay may persist, the measures taken or to be taken by the City to prevent or minimize the delay, the schedule by which the measures may be implemented, and the additional time requested to comply.
2. The Executive Director may grant an appropriate extension of time, for demonstrated good cause, to comply with any provision of paragraphs III.A through III.E above.

IV. Terms

A. Under Government Code Section 66641, any person who intentionally or negligently violates any cease and desist order issued by the Commission may be liable civilly in the sum of up to $6,000 for each day in which such violations persist. In addition, upon the failure of any person to comply with any cease and desist order issued by the Commission and upon the request of the Commission, the Attorney General of the State of California may petition the superior court for the issuance of a preliminary or permanent injunction, or both, restraining the person or persons from continuing any activity in violation of the cease and desist order.

B. This Order does not affect any duties, right, or obligations established under private agreements or by the laws and regulations of other public bodies.

C. The City must conform strictly conform to the express terms of this Order.

D. This Order does not constitute a recognition of property rights.

E. This Order is effective upon issuance thereof.

V. Opportunity for Judicial Review. Under Government Code Sections 66639 and 66641.7(a), within thirty days after service of a copy of a cease and desist order and civil penalty order issued by the Commission, an aggrieved party may file with the superior court a petition of writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure.

For the San Francisco Bay Conservation and Development Commission

_____

LARRY GOLDZBAND
Executive Director

EXHIBIT 01

Note: At the request of the City of Oakland, due to the 2019/2010 global coronavirus pandemic, many of the deadlines in the Plan below have been extended in the proposed Order. See Exhibit 02, "Letter from City of Oakland to BCDC requesting deadline extensions under the proposed Cease and Desist Order".

Union Point Park

Encampment Closure and Park Restoration Plan

February 25, 2020

Drafted by the City of Oakland

Re: BCDC Cease and Desist Order No. CCD2020.001.00 / Enforcement Case No. ER2018.028 / Permit Nos. M2003.028.01 and M2008.030.00

I. Background:

Union Point Park began to see homeless encampments appear in the central area of the park four years ago as the homeless crisis increased in Oakland. Over time this population grew to include the hill area, the area above the Western parking lot, and the Eastern parking lot.

In June 2018, the City's Encampment Management Team reduced the encampments in the park through clean-up and enforcement action. This effort was successful at removing encampments from the Eastern parking lot, the hill area, and most of the central portion of the park. A small group remained under the berm along Embarcadero and in the westernmost section of the park which continued to be problematic.

In March 2019, in response to a new group of people living in RVs that moved into the Eastern parking lot, the City planned a closure/enforcement action but a Temporary Restraining Order was granted in Federal Court halting the City's efforts. Although the City eventually prevailed in this case, the settlement conference extended over several months and the City was prevented by court order from enforcing the closure until August.

In August 2019, the City performed a major operation resulting in the closure of the parking lots, which have remained mostly free of homeless in vehicles; however, full use of the park for the public had not been restored. The City, in consultation with BCDC staff, prepared this plan for completing encampment closures, restoring use of the park to the public, and coming into compliance with the requirements of BCDC Permit Nos. M2003.028.01 and M2008.030.00.

II. Addressing the Remaining Homeless Encampments:

Phase I: In January of 2020, the City created a temporary reprieve zone in the western portion of the property where any remaining encampments were required to relocate temporarily (see red and blue outlines in photograph below). Portable toilets, wash stations and weekly garbage service are being provided, and temporary mesh construction fencing was used to demarcate the area. Once a zone is created, it is much easier to prohibit encampments outside the zone through routine patrol.

The City is also exploring the implementation of an Ambassador Program with the Unity Council for the park to provide daily engagement and outreach to prevent any new encampments inside the park proper. This will be modeled after a successful effort in Lakeside Park (Lake Merritt) that occurred in early 2019 when encampments in that area were closed. In this model, Ambassadors are trained in engagement techniques that are non-confrontational and provided with a directive to make ongoing contact with both encamped individuals and other park users to

provide key messaging about the restoration plan. They also are trained to report activity on a regular basis to City Staff, including police personnel, when they observe activity that requires a heightened intervention such as illegal dumping, a tent established in the closure zone, or other park maintenance needs. This effort will put "eyes in the park," will help change the behavioral culture that has evolved over the past couple of years, and help to make the park a welcoming place again for recreation.

Timeline:

> **November 10-December 1, 2019:** Discussion resumed with the Unity Council, a protocol template has been shared.
>
> **January 24, 2020**: Legal Closure Notices posted, final outreach conducted
>
> **January 28-31**: Closure operation of encampments throughout the park, moving of people into the temporary reprieve zone, including individuals who are located near the shoreline adjacent to the Cryer building. Delivery of portable toilets, wash-stations, and the mesh fencing installation occurred.
>
> **January 31-Ongoing**: Follow-up security checks by the Oakland Police Department (OPD)

Phase II: Human Services will continue outreach and Housing Navigation efforts with the individuals who relocated to the temporary reprieve zone. The active census, outreach efforts, and enforcement will seek to maintain the population at its current size or reduce it through the placement of individuals into shelter or other housing options. The nearby Miller Community Cabins will be prioritized for encampment residents as those cabins become available. During the first week of each month, the City will submit to BCDC updates on the number of individuals residing in the Reprieve Zone.

Follow-up security checks and monitoring will be conducted by OPD in addition to any Ambassador program. The Public Works Department will continue to provide weekly garbage service and the City will continue portable toilet maintenance within the temporary reprieve zone.

The City, with the assistance of Unity Council, will reach out to community partners to search for opportunities to activate the reclaimed park space, including with Marina residents, Embarcadero Cove businesses, and nearby schools. Regular use of the park by community groups will generate positive activity and reduce the likelihood of new encampments and negative behavior.

Timeline:

> **January 31 to March 2020:** The City will continue outreach for potential placement into shelter/housing options, security checks, ambassador engagement, and weekly garbage service.

January 31: The City will begin engaging with community partners to discuss activation of the park.

April 15: The City will submit to BCDC a long-term Encampment Enforcement Plan outlining the City's regular patrol of the park, protocols for when an individual sets up a new encampment, the City's 311 telephone service for reporting incidents, and any other measures deemed necessary and appropriate by the City.

April 15: The City will provide BCDC staff with information in writing on efforts for park activation, with a request that BCDC inform the City of any approval necessary from BCDC for such park activation.

Phase III: In April 2020, the City will conduct a final closure of the temporary reprieve zone and continue security efforts and outreach to maintain the park free and clear of encampments.

Timeline:

March 23, 2020: Remaining encampment residents and the Homelessness Advocacy Working Group (HAWG) will be advised of 30-day closure

April 1-April 27: Remaining placements into emergency shelter will be offered

April 24: Final Legal Closure Notice will be posted

May 1: City will conduct closure operation and remove temporary mesh fencing, portable toilets, wash stations, and any remaining debris. The enforcement of the park closure will be extended to the entirety of Union Point Park.

III. Further Restoration Efforts

The City conducted a preliminary assessment of the damaged lighting that indicated a repair cost of up to $500,000. City staff are examining the cost of additional repairs to the bathrooms, landscaping, benches, and other amenities. Due to the extent of the property damage a project of this scope and magnitude will exceed existing contract capacities and existing vendor/contractor capabilities. These large repair projects will need to be addressed through a standalone Capital Improvement Program (CIP) public project with corresponding formal procurement timelines, which will require City Council approval. Due to the extent of restoration to be addressed, any CIP public project may include additional discussion about broader improvements and modifications at the park, which could require an amendment to the existing BCDC permits for the park.

In the interim, staff will seek a temporary solution to the specific issue of lighting in the western parking lot area that impacts marina residents on a nightly basis. Although the park is closed from dusk to dawn, this lot serves as residential parking for the marina residents. Separate from the overall restoration, staff is seeking a temporary measure to provide safety lighting in this location during Phase I.

Timeline:

April 15, 2020: The City will put in place safety lighting in the northwestern parking lot area to promote safe use of the area and deter unauthorized activity.

April 15, 2020: The City will submit a plan to BCDC for reinstalling missing public access signage.

April 15, 2020: The City will install the missing bicycle rack required under Permit No. M2003.028.01 in accordance with the currently approved plans.

June 30: City staff will complete a needs assessment that would be included in a proposal during the mid-cycle budget process for restoration of the park.

August 31: The City will submit to BCDC a long-term maintenance plan for the park.

August 31: The City will submit a comprehensive restoration plan and as necessary an application for amendments to BCDC permits to reflect modifications to the park, based on any park improvements approved by City Council. Timelines for implementation would be included in the plan or any submitted application for permit amendment. In the event that BCDC denies a requested application for amendments to the BCDC permits, the City will request to meet and confer with BCDC staff to discuss a revised application for amendment to the BCDC permits. The City would then submit to BCDC a revised application within a reasonable amount of time after the BCDC decision to deny the City's first application for amendment and after any conferral with BCDC staff.

When the funding is identified for a full CIP project, implementation of park restoration will begin and will follow the timelines provided in the approved amendment to BCDC permits. In the interim, the City will continue security efforts and outreach to maintain the park free and clear of encampments. The City will file progress reports with BCDC within 10 days after completion of each task identified in the plan.

Temporary Reprieve Zone:

On the following page, the primary reprieve area is outlined in red and blue and allows for access to the pathway from the westernmost end of the park to the rest of the park. The goal is to only use this area of the park. Efforts to keep the walkway open will be in place by using temporary mesh construction fencing. The photo on the last page displays the zone in relation to the entire park for reference.

EXHIBIT 01

EXHIBIT 01

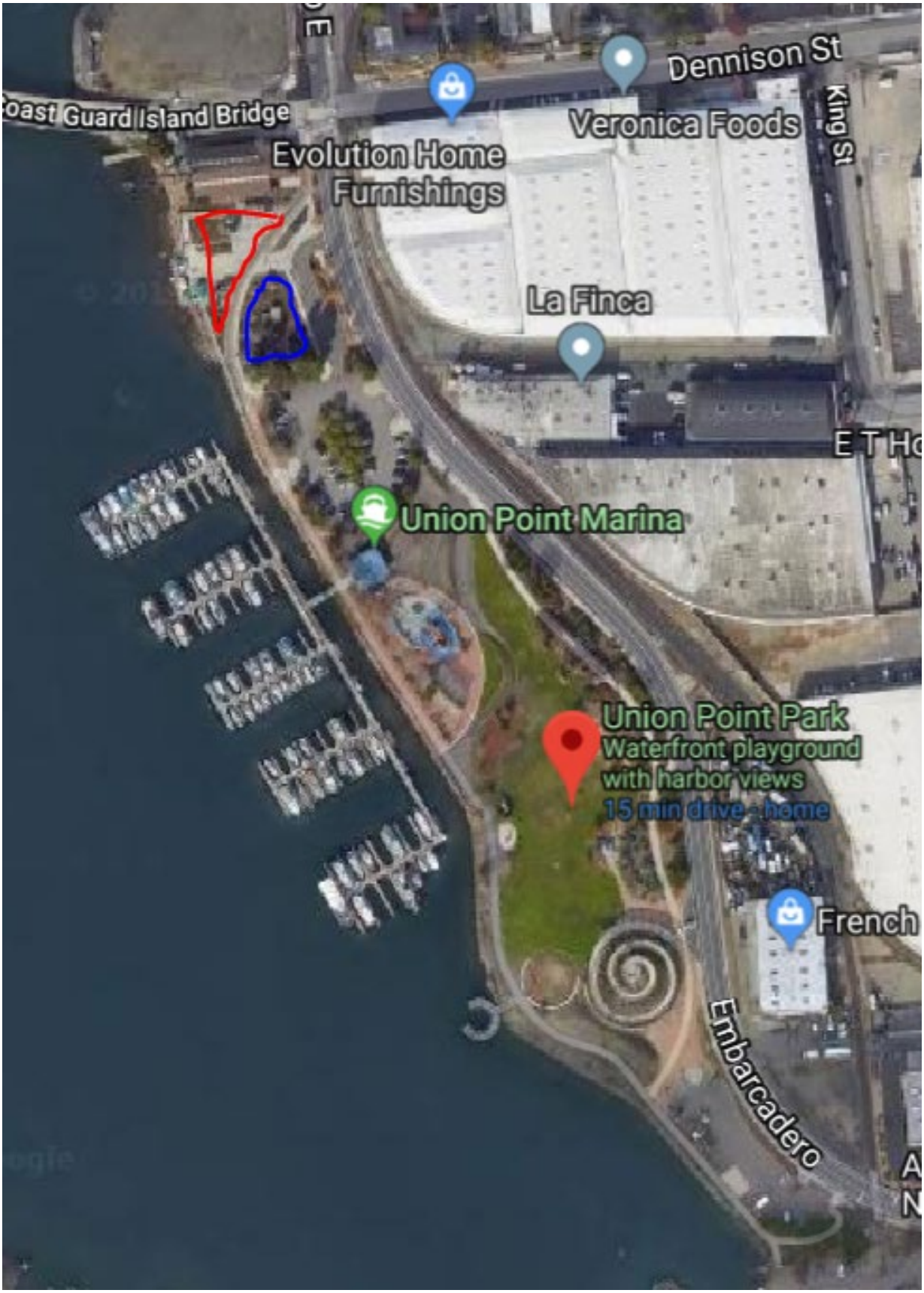
Dennison St
Coast Guard Island Bridge
Veronica Foods
King St
Evolution Home
Furnishings
La Finca
Union Point Marina
Union Point Park
Waterfront playground
with harbor views
15 min drive · home
French
Embarcadero

EXHIBIT 02

CITY OF OAKLAND
Office of the City Administrator

1 Frank H. Ogawa Plaza, 11th Floor • Oakland, CA 94612

Joe DeVries, Assistant to the City Administrator
Email: jdevries@oaklandnet.com

Phone: 510-238-3083
Fax: 510-238-7084

April 3, 2020

Mr. Larry Goldzband
Executive Director
San Francisco Bay Commission
and Development Commission
375 Beale Street, Suite 510
San Francisco, CA 94105

Mr. Brad McCrea
Regulatory Director
San Francisco Bay Commission
and Development Commission
375 Beale Street, Suite 510
San Francisco, CA 94105

RE: Extension of Time Under Proposed Cease and Desist Order No. CCD2020.001.00

Dear Messrs. Goldzband and McCrea:

Due to the ongoing COVID-19 crisis and the continued Alameda County Public Health Shelter in Place Order, the City of Oakland hereby requests a 90-day extension of all dates provided in paragraphs III.A through III.E, as previously extended by BCDC staff, of the proposed Cease and Desist Order No. CCD2020.001.00 against the City of Oakland.

BCDC Enforcement staff and City of Oakland staff have worked collaboratively and in good faith to establish the framework that is outlined in the draft cease and desist order. We thank BCDC Enforcement staff for their efforts to get us to the point we were at when the cease and desist order was heard by the Enforcement Committee in March. Unfortunately, as we all now know, the COVID-19 pandemic has shaken the foundation upon which our society functions, let alone upon which this draft cease and desist order rests. Many of the order's requirements would contravene the Shelter in Place Order and would endanger public health. Further, the City's priorities with respect to encampments is now focused on following Center for Disease Control guidelines and preventing spread of the disease. As a result, we believe it is necessary to press pause on implementation of the draft Cease and Desist Order and to reassess the means of its implementation once we are on the other side of the peak intensity of this devastating event.

Specifically, the City of Oakland requests the following changes in Section III of the draft order:

Section III.A.3. Clear Beach Area. Previously extended from May 1, 2020 to June 1, 2020. We now request an extension to September 1, 2020.

Section III.B. Closure of Reprieve Zone. Previously extended from May 1, 2020 to June 1, 2020. We request an extension to September 1, 2020.

Section III.C.2. Submit Encampment Enforcement Plan. Previously extended from April 15, 2020 to May 15, 2020. We request an extension to August 15, 2020.

Section III.D. Submit Park Activation Plan. Previously extended from April 15, 2020 to May 15, 2020. We request an extension to August 15, 2020.

Section III.E.1.b. Install Missing Bike Racks. Previously extended from April 15, 2020 to May 15, 2020. We request an extension to August 15, 2020.
Section III.E.1.c. Submit Plans for Public Access Signage. Previously extended from April 15, 2020 to May 15, 2020. We request an extension to August 15, 2020.

Section III.E.2. Submit Needs Assessment. We request an extension from June 30, 2020 to October 1, 2020.

Section III.E.3. Long-Term Maintenance Plan. We request an extension from August 31, 2020 to November 1, 2020.

Section III.E.4. Restoration Plan and Permit Amendment. We request an extension from August 31, 2020 to November 1, 2020.

Section III.E.6. Completion of Park Restoration. We request an extension from December 31, 2021 to April 1, 2022.

In the interim, the City, in coordination with the County and State, is implementing resources to provide for isolation spaces for unsheltered population with priority to those who are symptomatic, have been exposed, or are vulnerable due to age or comorbidities. The County has taken possession of two hotels from the state used for that purpose. In addition, the City has accepted trailers from the state that will be located at the Oakland-Alameda County Coliseum Property. The Oakland Public Works Department has continued to provide garbage pickup and the provision of health and hygiene services at Union Point Park, and in fact has expanded these services to twice as many encampment sites throughout the City. Additionally, outreach to individuals at Union Point Park is continuing. A few individuals previously residing at Union Point Park were relocated to temporary housing through the City's violence prevention program. Currently, we do not have available a census count for Union Point Park.

In addition to requesting an extension, this letter is intended to serve as the April 2020 progress report as required under Section III.E.5 of the draft cease and desist order.

Thank you for your attention to our request. Stay safe, in good health and spirit.

Sincerely,

Joe DeVries
Assistant to the City Administrator

cc:
Greg Scharff, Chair, BCDC Enforcement Committee
Karen Donovan, BCDC Counsel
Priscilla Njuguna, Enforcement Policy Manager, BCDC
Schuyler Olsson, Enforcement Analyst, BCDC
Michael Branson, Deputy City Attorney, City of Oakland

EXHIBIT 03. Site Map and Vicinity Map of Union Point Park, Cryer Site Park, and adjacent Beach Area in Oakland, CA.

*According to City of Oakland staff, Cryer Site Park is considered part of the larger Union Point Park, and the two sites are treated as a single contiguous park, though they were constructed under separate BCDC permits. Except where noted otherwise, for purposes of this Order, and consistent with City practice, references to “Park” or “Union Point Park” refer to the collective area encompassing both sites.