

San Francisco Bay Conservation and Development Commission

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DRAFT MINUTES FOR ITEM #10 - PROPOSED REVISED CCD2020.001.00

10. Commission Consideration and Possible Vote on the Enforcement Committee's Recommended Enforcement Decision Involving Revised Proposed Uncontested Cease and Desist Order No. CCD2020.001.00. Item 10 is the Enforcement Committee's recommended decision on a revised proposed uncontested cease and desist order for Union Point Park in Oakland. Enforcement Committee Chair Scharff will introduce the item.

Commissioner Scharff stated: I know staff has a presentation on this so I will not go into too much detail other than to say we went back and we looked at the deadlines, staff did a really good job working with the city of Oakland and we came to an agreement on all things except for what date the Park needs to be restored. The date we agreed to was April 1, 2022, the deadline to be extended if the City is unable to restore the Park by that date. The city of Oakland actually wanted a year later than that but if we want that Park restored I think we need to have an earlier deadline and I think staff felt strongly about that. I think that was the only area where there was a little disagreement between us and the City at the end of the day.

Staff Counsel Karen Donovan presented the following:

This item is Union Point Park which you saw first in May and are now seeing with our revisions.

I wanted to briefly go over a bit of background on Union Point Park. Union Point Park was created more than 10 years ago on a former industrial site along the Embarcadero in Oakland near Coast Guard Island. This slide shows the location of the Park. The Park was the result of collective efforts by a broad range of community groups, agencies and individuals.

BCDC issued two permits for the Park in 2004 and 2010. The violations stem from the failure to maintain the required public-access areas and associated amenities of the Park. For several years there have been unauthorized encampments in the Park and the benches, playground equipment and other amenities that were listed in the permits are either missing or severely degraded.

BCDC opened an enforcement case in 2018 and began discussions with the City in 2019. BCDC staff and City staff began a collective effort to resolve the situation and clear the Park of encampments and restore it to a condition where it would be available for the surrounding community. The result of these efforts was an encampment closure and a Park Restoration Plan developed by the City and a cease and desist order developed by BCDC which is intended to ensure the City executes the encampment closure and Park Restoration Plan.

I wanted to note first off that BCDC is seeking injunctive relief only, which is ordering the City to clear and restore the Park. We are not seeking civil penalties in part because in this case the City's funds are best spent on restoring the Park so it can be used by the public and the surrounding communities as the original funding agencies intended. We would also prefer the City spend money on moving forward with efforts to address the larger issues that created this situation.

The map here shows the adjacent Union Point Park Marina. The map also shows the areas that BCDC permitted. I point this out only because I believe we do have some speakers present from Union Point Marina and as you will note the Commission has received numerous comments from residents and users of that marina.

In February, the City had begun moving forward with its plans to move all of the individuals in the Park to a defined area and to clear and begin restoring the rest of the Park. However, before the plans for clearing could be completed, COVID-19 cases began appearing in the Bay Area and state, local and federal agencies put in place guidance and measures to stem the spread of the disease. The result is that the local orders put in place by the Oakland City Council and the Alameda County Public Health Department to control the spread of COVID limit the ability to relocate people in encampments

unless they have COVID or other public health needs necessitate relocation. Notably though, these orders do also require that hygiene facilities and restrooms and trash collection be provided.

The result of this pause in the City's ability to address the Union Point Park situation is that the conditions in the Park have deteriorated. I wanted to show these slides because BCDC does recognize this. The attached photos were provided by a manager of the adjacent marina and we do expect that people from the adjacent marina would like to speak about the current conditions in the Park.

Now, to give you a bit of background on this proposed order - Cease and Desist Order 2020.001.00 was first approved by the Enforcement Committee on March 12. Within days the area's shelter-in-place orders were put in place. The City recognized it would be unable to meet the deadlines in the Order and requested an extension of these deadlines.

We then extended the deadlines and brought a revised order to the Enforcement Committee on April 22. By that time the City was requesting that we consider deferring the entire matter for 90 days. As Commissioner Scharff previously noted, BCDC staff wanted to ensure that this issue was prioritized by the City in their planning and budgeting decisions and thus we did not want to delay putting the requirements in place. The Order was amended to include

provisions allowing for the extension of the deadlines if COVID-19 orders made compliance infeasible.

Then this Order came before the Commission on May 21 and there were some questions about the extension provisions and the feasibility of the current deadlines. The Commission then remanded this for further negotiations with the City regarding the deadlines for clearing and restoring the Park.

A revised order was approved by the Enforcement Committee on August 13 and that is the Order before you today.

The main change in this Order is that the deadlines have been pushed out. This Order is not being contested by the City and it is actually based on a Revised Encampment Closure and Park Restoration Plan that was developed by the City.

The key change for clearing the encampments from the Park is that this is now tied to a defined triggering event. In other words, we have not set out specific deadlines. What the Order does is that a triggering event, which is specifically defined in the Encampment Closure and Park Restoration Plan, which is intended to signal that the COVID-19 emergency measures have lifted, will be the starting date by which the City must meet deadlines to clear the encampments from the Park.

Within 60 days all of the encampments that have moved outside of the originally established area will have to be

cleared.

I am going to go back just briefly to show you. As you can see by these slides provided by some public commenters, after the City became unable to relocate encampments and move the homeless individuals in order to control the spread of the disease, they started to see the encampments go beyond the originally established zone. By February the City had been able to relocate people to an established area and begin restoring the Park. Once again, we recognize the conditions have deteriorated.

So to take you back to the Order, within 60 days of a triggering event essentially the conditions will be such that all of the encampments have been moved to a designated area and the City can once again begin restoring the rest of the Park.

Then within 90 days of a triggering event we would expect that the City has begun to achieve full encampment closure and the relocation of everybody within the Park.

A triggering event is defined in the City's plan. A triggering event occurs when the first of any of these occurs. The first three are self-explanatory; it is essentially when the orders that currently preclude the City from relocating people would be ended. The fourth item was actually originally included by the City to recognize BCDC's role in this matter and the urgency we see for closing this

area. We would not expect, however, that BCDC would ever request that the City would take actions that would conflict with City and County orders and thus we negotiated language saying that a triggering event could be mutually agreed upon by both the City and BCDC.

The triggering event defines only those deadlines for moving the encampments. There are other deadlines in the Order and in the City's plan for restoring the Park. We have pushed out those deadlines as well recognizing the infeasibility of the original deadlines due to the COVID-19 emergency. I wanted to point out that I highlighted in green the deadlines for reinstalling the missing bike racks because the City is actually ahead of schedule on this. We expect the bike rack installations will be completed soon.

As Chair Scharff noted, the deadline for completing park restoration was originally a subject of disagreement between BCDC and the City. The City is not contesting this Order, although they had originally requested that the deadline for complete park restoration be April 1, 2023 instead of April 1, 2022. Once again, they are no longer contesting the Order and we wanted the 2022 deadline, recognizing that it could be extended if it becomes infeasible because we want to ensure that the City in its planning and budgeting decisions is prioritizing the restoration of this Park.

I am going to hand it back to Chair Scharff to provide the Enforcement Committee recommendation.

Commission Scharff addressed the Commission: The recommendation is to approve the revised Order with the accompanying revised plan, to have the Commission approve it.

Chair Wasserman opened the floor to comments from the public.

Val Hammel commented: I am grateful for the opportunity to speak to you. I must say I am also terrified to identify myself because of fear of repercussions from people in the homeless encampment for speaking out against it. I have had a boat at Union Point Marina for 20 years now. I have been an official live-aboard there for many, many years now.

On a normal day what you would see as you drive into the parking lot is you would see a few pathetic trash cans surrounded by mountains of trash, trash strewn all over the parking lot and the surrounding area. You would see graffiti. You would see rats, not just at night swarms of rats but during the daytime also as well. You would see people bathing themselves and their children and their dogs and their dishes and their clothing in the one open spigot near the public bathrooms. You would hear dogs barking day and night. You would hear loud music coming both from the homeless encampment and from cars parked in the parking lot. You would see people drunk in the parking lot, you would see

children, some of them toddler age or younger, playing in the parking lot, playing in the homeless encampment. You would easily see prostitution, sex trafficking and drug deals happening in the parking lot.

Over a year ago, I woke up one morning and my van had had its tires removed and was put on blocks. There is broken glass in the parking lot from break-ins regularly. However, all these things I am describing have been going on for a very long time and this is what I would call the previous, more peaceful normal.

In the last few weeks things have taken a dramatic turn for the worse in terms of violence, aggression and hostility in the homeless encampment. There are now frequent if not daily fights in the parking lot. You can hear the arguments and the fighting from the boats. There are guns. I have seen guns in the parking lot. We hear gunshots from the parking lot. There have been two murders. There are people trying to run each other over in the parking lot and crashing into cars. I am not making this up.

On Wednesday, September 9, close to a dozen Marina residents called the police because 30 people from the homeless encampment got through the Marina gate and started running down the dock with all of their stuff and their kids screaming and shouting and partying and they were going to take over one of the boats that is actually two boats down

from mine. They were planning to take it over. Fortunately the police came after enough of us called and were able to remove them.

There are rumors that there is a meth lab, that somebody is cooking meth. Something has taken a dramatic and horrifying turn for the worse in the last few weeks. There are anchor-outs. One morning I woke up and there were anchor-outs not 15 feet from the back of my boat. There are people in dinghies casing out the boats, looking in my windows.

Some of us have no options. A lot of people have left because they consider it unsafe to be there anymore. Some of us do not have options. Some of us live there with children. I beg you for your swift and drastic action. We are terrified. And when I hear mention in this meeting that the homeless encampment might not be cleared until 2022 I feel shocked and desperate. Please do not let that be the case. If you knew what we live with you would do something about this.

Ariel Edwards was recognized: I have been a Marina resident for a little over three years now. I concur with Val to say really the last couple of months there has been a severe uptick in violence and fights. I live there with my nine-year-old son and my dog. My son now knows the difference between tires exploding and gunshots because we

hear them so regularly. There was one time during lunch, around noon, there was a fight in the parking lot and they had guns out shooting them up into the air. When we do call the authorities they don't usually come out. There was one time there was a fire in the Park and I called the fire department and even they were hesitant to come out to the area so I don't know if it is just because they don't feel like the area is worth patrolling or if they just have a lot of other things going on.

My truck a couple of weeks ago was recently totaled because there was a woman trying to kill another woman in the parking lot and she hid behind my truck. That will not be replaced. They just paid off the loan and I cannot replace that truck. I have had to flee to Florida. I am calling in from Florida because I am not safe there in the parking lot because I was identified as someone who did contact the authorities when 30 or so of the encampment residents came in with the intention of squatting on the boat to take it over.

I can confirm that there is an active methamphetamine operation going on in the parking lot, both with cooking and distribution. They have an active operation going on, which has not been the case in all of the time that I have been at the Marina but that is why the violence has escalated.

I will not be able to return to the Marina if this is not taken care of because it is just not safe to be there for

my son.

And so to hear people discussing bike racks, there is no person who will ever come to that Park and chain up their bike to enjoy the Park, it is absolutely impossible to do that. I have to walk my dog at night and there are no Park lights. Every single light has been ripped out; it is pitch black dark. There is no security. My plea today is for you to empower the harbormaster to be able to take the action that I know he wants to take to make it safer for everybody to be there. But this is no place for anybody to come and enjoy the Park unless you actually take care of the residents. There is no soap, there is no sanitation and this is a COVID outbreak waiting to happen if it hasn't happened already. I also agree with there's loose dogs and prostitution going on as well. It is a really terrible, untenable situation to have people living there.

Michael Tenuto addressed the Commission: I am a tenant at the Union Point Marina and have been a resident for a little over three years. I am an ex-police officer and I am kind of shocked at what I have seen since I have been here, it has escalated. I won't repeat what the previous speakers have said. I agree 100 percent with everything they are doing.

Our harbormaster Brock has done an excellent job in trying to handle this problem but his hands are tied. You

have an unsafe situation. So unsafe that I have a permit to carry, which I do carry every time I go in and out of the parking lot. Bike racks, obscene to hear that even mentioned. It is an issue that is unsanitary, unsafe and the next step in this would probably be the Marina not being able to be used because it is that unsafe for people to walk from the Marina to the parking lot. And to hear the date of 2022, it is disheartening.

I do remember when the Park did not have any homeless residents. I do feel for their situation but they have been offered housing, they have been offered many things and basically they decide to live the way they live and do what they do. I have seen many programs in there trying to give them housing, trying to give them a place to go. There is one particular family that is basically the root of all the problems. In the last six months probably 12 shootings where the police have been called, chasing suspects with their car down the sidewalk. In the Marina where the gate is and it is the only opening that you can get into the Marina. It's unbelievable to me.

I beg you to do something. In 2022 you are just going to have a huge problem. There's people parking their cars inside the Park on the grass because there's no repercussions from it, it is insanity. A lot of cars have been towed recently because they were stolen. I have seen drug deals go

on. The shootings are the biggest concern for me because they have no concern for anybody's safety. I did witness Ariel's car being totaled the other day. There was a lady hiding behind it and that's why her car was flipped over. It was a truck, it wasn't a small car. Her car was flipped over and totaled. Basically the driver had no insurance and Ariel was stuck to deal with that.

It has gone past the point of absurdity and I have seen a lot in my days, trust me. This is unbelievable what has transpired. The other night when they came down to take over a boat I'm the one who did call the police and actually I am the one who went down and tried to intervene with the police to get them out of here. They did get on the boat, they trashed the boat and they broke many items. It is just the latest of incidents where they're being unchecked. There are no repercussions for anything they do because everybody points to the COVID. That's not the issue. If anything there may be an issue with COVID there, from what I'm hearing, because there's a couple of the kids who contracted COVID. I try to keep in touch with some of the people in the homeless encampment and this happened in the last week and a half that they have been treated for COVID-19.

I just ask you to do the sensible thing before it is a situation that is way beyond control. Thank you very much.

Jim Hayes commented: I am the COO of Almar Marinas and we own and operate the Union Point Marina. I don't have to tell you how frustrating this is but it is extremely frustrating.

Somebody said the park has been open for ten years. Well three of those years or probably more there has been an encampment in the Park. That's 30 percent of the time that that Park has been open that it has been occupied by people.

I have a couple of questions. It says that after 60 days the encampment is moved to a secondary priority area. Where is that? My other question is, the City has asked for extensions on some of their action plans. Why would we delay anything that didn't involve moving people? You are putting together a plan. You should be able to do that if it had nothing to do with moving people. So we would like to see any extensions that don't require moving people to be denied.

I was encouraged the other day, we were able to speak to Mr. Dunston, the new City Homeless Administrator, and I am hoping that the City can prepare so that when the triggering event does happen that we could move forward. All of these delays and delays have just gone on and on and it is enough, we need to do something.

My biggest concern is for the staff that works at the Marina, the people that actually work there. They are required to go to the Marina to try and help the tenants.

That is a terrible thing for us to have to do. Let's see if we can get something done, I appreciate it.

Justin Wertzer was recognized: I have a boat over at Union Point Marina and I also work on a charter boat over at Union Point Marina. I am pretty new to the Marina, I have been here for about two years.

When I first showed up and saw the encampment I noticed of what goes on in Oakland, it is going on in the parking lot. At first I tried to help people and get to know people around there and quickly I realized how bad things were. It was very barbaric. I think Val did a very good job on touching how things are around here. I am a grown man, I am afraid to go in and out of the parking lot at night sometimes. There was one time I was coming back from the charter boat late at night and there was gunshots going off all around me, I had to run into the bathroom and call the police. I literally heard gunshots whizzing by me, I was scared for my life. My window got shot out of my minivan one time here. It is just pure chaos.

I urge the BCDC to please help out the community, Almar, the tenants here, all of Oakland and please hear our drastic plea for urgent help. 2020 (sic) seems to be too long. I don't know if maybe someone could get hurt by then, people here in the Marina. It has been really bad around here. And that is pretty much all I have to say about it, it really

needs to urgently get taken care of.

And it is a park also. I would like to also add that this is a park and there are many parks in Oakland that this would just not even be close to allowed at. Like they said, it was only built ten years ago and 30 percent of the time it has been occupied where people can't use the Park. I would love to see where the Park could be used by kids and families like it was built to be. That's all, thank you.

Brock de Lappe gave public comment: I am the harbormaster and Marina manager for the Union Point Marina.

I would like to use a little bit of my time to address the issue about the Bay Trail, which I was not able to address earlier in the meeting. There is section of the Bay Trail beyond that which exists within Union Point Park which is on the west side of the bridge that goes to Coast Guard Island. That portion of the Bay Trail, which you exalt in in terms of how wonderful it is around the Bay, has been totally occupied with an encampment. This is not part of the Union Point Park although it is an encampment where there was a murder in late February where an inhabitant of the Park bludgeoned somebody to death in that section. My question to you is: why is there no enforcement on preserving the Bay Trail as it was intended? Or in this day and age of COVID is that a green light for people to camp out wherever and however they want, anywhere on public property? That is a

travesty.

As far as what is going on in the Park, you have heard from many of the people there. There has been great expense spent over the last couple of years doing clear-and-cleans of the Park and every time that happens people are allowed to move back in. And lately there are people parking their cars right in the Park proper, not in the, quote, containment area. Why go through that effort? You are just repeating yourself over and over again. There is no enforcement.

There is no enforcement of the parking regulations in the parking lot. People are supposed to have permits to be able to park overnight; there is no enforcement of that. People in the Marina come to me and expect me to do something. I don't have the authority to tow cars out of the parking lot, that is the city of Oakland's responsibility, they are not doing it.

The situation there is completely unsafe. There have been murders right in the parking lot. There are gunshots frequently. There is a huge rat population. You should talk to the Alameda County vector control to see how totally out of control that is. It is not a safe environment for anybody to live in and there are very small children there, very small children. Why isn't Alameda County Child Protective Services engaging and getting those people out?

And as far as the city of Oakland goes, during our recent discussion with Mr. Dunston we asked what the census was of the people that are there. Because you would think that if the City was intent on doing anything about it they would at least perform a perfunctory census of how many people they have to deal with, and he said it was between 20 and 30. So we have 20 or 30 people that are taking over a multimillion dollar park and not allowing the public to use it as it was intended. We have 20 or 30 people that the city of Oakland can't find housing for. How ridiculous is that? In San Francisco the City was able to relocate hundreds of people out of the Tenderloin but in Oakland they can't prioritize and move 20 or 30 people out of this Park. This is a travesty.

And by the way, for everybody to hide behind what CDC says about dealing with encampments and the COVID crisis, CDC says the most important thing is to find people suitable housing. They never said, don't close the encampments. They never ever said, don't close the encampments; they said the priority was to find them housing. And I know that the city of Oakland has gotten millions of dollars from the state and federal government and yet they can't find housing for 20 to 30 people? Give me a break. This is a travesty. This is an absolute nightmare for the people that are forced to live there. And it should not go on and it has gone on way, way

too long. And I would think that you - BCDC - as the permit holder, would certainly hold the City's feet to the fire on this and get them to do something sooner than two or three years down the road, that's absurd.

And by the way, this is having a tremendous impact not only our business but many businesses along the Oakland Embarcadero. And why should these businesses suffer because the City can't find housing for 20 or 30 people? It's an outrage.

Chair Wasserman thanked the public speakers and opened the meeting to comments and questions from Commissioners.

Ms. Donovan stated: Chair, I would like to note before we move to that that we do have representatives of the City here if you have any questions for the City. And also just to note once again, the encampment closure, the deadline for moving people out of the encampments according to the terms of the Order, the deadline for that is not 2022, the deadline for that would be a complete clearing of the Park 90 days after a triggering event which signals the end of the COVID-19 emergency.

Chair Wasserman asked: Who is present from the city of Oakland?

Ms. Donovan replied: We have Joe DeVries and we also have Michael Branson from the Oakland City Attorney's Office.

Commissioner Randolph commented: I am sympathetic to what the public speakers just shared with us. We can't at BCDC deal with all the encampments everywhere but this one is actually to some degree on our watch, we do have a level of jurisdiction, as well as on the City's. I am reminded that not long ago, maybe two months or three, we had an uncomfortable decision to make around Galilee Harbor in Sausalito where anchor-outs were coming in and using the pier that we had permitted and the residents there at the harbor provided evidence and the local police provided evidence that there was dangerous and rowdy behavior going on. Loath as we are to take out public access we voted to allow the pier to be taken out.

That was a much less threatening situation than what we are hearing about today. I think we should listen very carefully to what we are hearing today. I think it is very hard to tell people that we are not going to really use our authority or apply it directly until some indefinite date in 2021 or beyond that.

Commissioner Butt chimed in: Like Commissioner Randolph I have an incredible amount of sympathy for the speakers. But from a practical standpoint, regardless of what BCDC does, this is not going to go away. It is really a city of Oakland problem and they for a variety of reasons, some of which are legitimate; they are not going to act. I think if

people are expecting that whatever action we take is going to solve the problem it is just not going to happen.

I think there are only two ways to do this and it is to put political pressure on the city of Oakland or to litigate. Litigation has proven to be probably the most effective way to deal with something like this and that is what I would advise people do. The other remedy is they can all move to Richmond. We have got lots of space at Marina Bay and Point San Pablo Harbor and Brickyard Cove. We don't have any encampments at those areas or in the parking lots so come on over to Richmond.

Mr. McCrea thanked Commissioner Butt for his comments and stated: Commissioner Butt has put forward that there is nothing that we can do, "we" being the Commission, that the Commission can do and that this is up to the city of Oakland. Can you talk a little bit about if this Order is issued what happens if there is a failure to comply with that cease and desist order?

Ms. Donovan explained: We have provisions in the McAteer-Petris Act that would allow us to enforce the Order and begin imposing penalties if the City is not complying with the provisions. We recognize that the most important thing the City needs to do to ensure the safety of the surrounding community is to clear the Park of its encampments and Joe can address how that is going to happen.

Mr. McCrea interjected: Before he does, Karen, can I just finish this line of thought, please? Marc, do you have anything to add? If the City fails to pay those penalties that we impose what happens?

Mr. Zeppetello stated: There could be a referral to the Attorney General's Office to enforce the Order and imposed penalties through a judicial proceeding.

Commissioner Addiego was recognized: I just wanted to share, Chair Wasserman, I have heard public comments for the decades that I have served in government and never have I heard more compelling arguments from citizens and it is going to be very hard for me to want to be party to a decision that potentially puts off the solution for one and a half years. I appreciate Brad sharing the information that we can put some pressure on the local government to take better care of their citizens.

Commissioner Gunther commented: I am trying to understand the concept of a triggering event. Which the decisions that would lead to that are about public safety related to COVID and yet I am hearing incredible, compelling testimony of extraordinary, public health and safety dangers and we are proposing that those do not qualify as a triggering event, it is only related to questions about the County deciding that there is no longer a COVID danger. There are other dangers. We have had this explicit testimony

about what is going on and I am not quite sure why what we are hearing does not qualify as a triggering event for moving forward with the conditions in the cease and desist order.

Chair Wasserman called on City personnel to comment: Joe, I know from a number of circumstances the yeoman work and struggles you are dealing with but will you please address your and the City's view of this issue?

Joe DeVries, City of Oakland, responded: Absolutely. Thank you, Chair Wasserman and to the entire Commission. Really first I want to offer my empathy to the members in the Marina that are having to experience this. They are absolutely right; we have seen a significant uptick in violence in the vicinity of Union Point Park. One murder suspect who was taken into custody had actually threatened to murder me and so I know him personally; sadly he did commit an act of murder near the Park and was taken into custody. There have been other shootings in the vicinity.

We are aware of that and I have been actually emailing the captain, the area commander, while this meeting has been going on to try to get some more details about the open projects that he has. As you know the police are in a very unique situation right now across our country but they still do take violent crime as their highest priority and I know that this area and the violent crime that has been happening there is the highest priority for the area's commander. When

it comes to criminal activity that hides in a homeless encampment, we really need to separate the criminal actions with the status of homelessness and we do look at them differently.

I will point out that we have Union Point Park on our radar to close sooner rather than later. We have a new policy that the City Council adopted when COVID hit that only allows us to close an encampment if there is an eminent, public safety and public, health risk. It is hard to hear what we are hearing today and not see that this is an eminent, public-health, safety risk, it is. I have also had our new homelessness administrator on the phone while you have been deliberating to let him now that we may need to pull our own internal trigger at the City faster than a county health order would pull it.

I will draw a reference, a comparison for you. The only encampment that the City has scheduled to close since the new order came out with the pandemic is scheduled to close next week. It is under the BART tracks near 81st and 85th in San Leandro. That encampment has had several large fires that have shut down the entire BART system and actually caused damage to the BART structure. We felt that was enough of an eminent threat that that encampment is being closed next week. Once that is done I think the City could really take a look at Union Point Park and see if it can get that on the

list. It is not just about finding housing for 20 or 30 people. As this Commission may know, and I know the Enforcement Committee knows, we have offered many housing options to many of the people in this encampment and they have not taken us up on the offer. Usually if we have shelter to offer at the same time that we are conducting a closure we get more of an uptake.

I also want to remind the Commission that one of the factors in allowing this encampment to get so bad was in fact litigation. We were closing Union Point Park of encampments, we were slowly cleaning it, when a federal injunction was entered against the City. I was personally named in it. We spent some months in federal court in a settlement conference with some of the encampment residents that ultimately we prevailed but they didn't agree to what we were offering. Their attorneys didn't seal the deal and we were able to close the southern parking lot and that was when we were able to resume cleaning. We are in a precarious position because we have six active federal cases against the City around our encampment activity. Although we have won every one we have only done so by being extremely cautious in taking action against the encampments.

So it is not going to be 2021 or 2022 when this encampment gets closed. It will be 2022 that we finish the full restoration of the Park which we are estimating at about

\$1.2 million right now. We have had conversations with our Capital Improvement Project Team to get this on the list and we have briefed the City Council about it as well. We are moving in the right direction but I acknowledge how absolutely unacceptable the conditions are currently out at the Park.

Commissioner Showalter commented: I do not understand why the police chief is not here. What we have heard about is a lot of criminal activity and it really should not be the job of the supportive housing or homeless department to be dealing with this. Criminal activity is supposed to be dealt with by the police department; so where are they? I would say that, as people said earlier, we are really hearing about egregious behavior. I know in our community that is not what we experience, fortunately. I think that we have to separate out here what is criminal activity versus what are people who are just sadly very poor; and there are many homeless people who are very well behaved. This is a really distinct situation and it calls for the police.

Commissioner Scharff added: I wanted to say some things about where we have come and where we were. I actually do not support this Order and I do not think most of the Committee really does either; but we had an Order that we did support, which was our April Order, which did not have this concept of a triggering event. The concept was different,

the concept was we would set dates and if the city of Oakland was working in good faith and there were reasons not to have those dates the Executive Director would have the authority to extend those dates. When we went to the Commission with that the Commission basically said no and said, as long as COVID is in effect you will not remove people from the Park, and that is where the triggering event comes in.

So when I hear the relocation will occur earlier. I do not think COVID ends until the middle of next year in terms of a widely done vaccine when you come up with a triggering event. That is probably 90 days. So yes, I think this encampment lasts under this Order through most of 2021. Yes, the city of Oakland can get to it and decide that that is what they are going to do but I do not believe that will happen. I really hope but I know you are really overworked, Joe, and I know that you have lots of homeless encampments and I know you have lots of problems and I know that the City Council has a lot of issues around this.

If we support this I think that is what we are saying. And it is extremely egregious out there. But we as a Commission at the last meeting when this came to us said no, we do not want to remove people until after COVID. So you can send it back to us again or you can hear it, but you have made the decision if you do this that that triggering event probably does not happen until the middle of next year. I

would love it to happen earlier but that is my gut sense of it.

I do think it is a very different tone this time when we came to the Commission and I think the speakers really highlighted it, so maybe we did a poor job as the Enforcement Committee not explaining in detail with pictures and with all of that of how bad it really is out there. That was why we were working to get the encampments removed as quickly as possible while being compassionate and humane at the same time and giving an order when the city of Oakland could then find housing, but it becomes the city of Oakland's priority as opposed to not being a priority, and that is what we were looking for. So I think that is how we ended up here. That is really the decision today is - are we happy with the idea of a triggering event or do we think this needs to happen much quicker?

Executive Director Goldzband interjected: I want to finish your sentence, Greg. Your last sentence was - a triggering event or; how did you end it?

Commissioner Scharff answered: I said, or have dates.

Executive Director Goldzband continued: Or have dates, comma, that the Executive Director could have the authority to change based upon circumstances. Which is what the previous Order had said; is that correct?

Commissioner Scharff replied: That is correct. I am

glad you clarified that Larry because that is what we were looking at. We were looking at holding the city of Oakland's feet to the fire while at the same time giving some flexibility given the circumstances with COVID-19, given the circumstances with the city of Oakland and allowing the Executive Director to work with the city of Oakland while making sure that it stays on the top of their list of something they need to resolve. That is why I believed in the first Order. But when we came to the Commission we did not have support for that so we came back and came up with the triggering events.

Commissioner Vasquez was recognized: I think Greg pretty much said it. As a member of the Enforcement Committee I was very happy with the Order we had sent forward on May 21st, Item 9. If you go back to the Minutes you will see that those of us on the Enforcement Committee talked about how we had worked through this and listened to the community; that we thought we had a good Order. I believed at that time the flexibility was there for the Executive Director to make those kinds of changes. It was rejected by the majority of the Commissioners in a 20-2-1 vote to go back to us. I voted not to send it back to us because I thought it was a good Order to begin with. And I say it again, the last Order was better than this one.

Commissioner Pemberton had a question: I just had a

clarifying question. Is the only way to remove the triggering event to take this back to the Enforcement Committee and have them re-recommend an action without a triggering event or is there another way that the Commission could consider moving forward on this without the triggering event?

Ms. Donovan explained: There is a fourth triggering event definition which would be a date that the City and BCDC mutually agree to. It does say mutual agreement so the City would need to agree that we would move forward before either the County Public Health Order is lifted or the City Council changes its resolution. What I am hearing Joe saying is that they might be able to prioritize it but that is how the Order is currently phrased. There are four possible triggering events and the fourth of those would be that we mutually agree that the encampments will be removed earlier than the occurrence of the other events.

Chair Wasserman commented: I appreciate that observation but I am going to restate Sheri's question, what are our options today?

Mr. Zeppetello replied: The Commission regulations do limit your options today. You can accept the Order or you can remand it to the Enforcement Committee or you can decide to hear this matter yourself de novo and the staff could bring it back, a revised order back to the Commission at the

earliest opportunity. But you cannot modify the Order before you today.

Chair Scharff asked: You cannot approve the April order, can you, today?

Ms. Donovan replied: No, you cannot.

Chair Wasserman continued: But it was a good question. When is the next Enforcement Committee meeting?

Enforcement Policy Manager Njuguna replied: On October 8.

Commissioner Ranchod opined: I do not want to repeat the comments of the other members of the Enforcement Committee but I share the sentiments. I do believe that what we have heard from the members of the public, the photos that were submitted and the public comments we heard today, and I thank the people for making time and expressing all of that detail to us and empathize with what they are going through. It is a public safety crisis there. What we have heard about what has occurred over the past few weeks is certainly different and a whole other level it seems from an already bad situation than was occurring before. I just wanted to highlight that there are new additional facts here that we should take into account and that the City should be taking into account and I would prefer a stronger message with the agreement here.

Chair Wasserman stated: I am going to exercise the Chairman's prerogative. I would entertain someone making a motion to return this to the Enforcement Committee with an indication that some of us certainly believe that we should have approved the prior Order, given what we are hearing today.

Commissioner Scharff stated: I will make that motion.

Commissioner Randolph stated: I will second.

Chair Wasserman asked if there were any comments or questions on the motion.

Commissioner Pemberton chimed in: Not really a comment or question on the motion but just in terms of process. If this action is approved by the Commission today when would the full Commission potentially reconsider an action on the Enforcement Order?

Chair Wasserman noted: That was going to be my comment and I would suggest at our meeting on the 17th.

Executive Director Goldzband stated: It is October 15 when the Commission meets. The question is whether it is possible, and I go to Marc and Karen, for the Enforcement Committee to take an action on October 8 and then have it available on October 15 at the Commission meeting.

Ms. Donovan replied: It is a tough lift, to give you the straight answer. We typically do our mailings on Fridays and you need ten days under the regulations, so that would

actually preclude that.

Executive Director Goldzband clarified: So what you are saying, Karen if I can interject, if the Commission says that it wants this back on the October 15 date there would need to be an Enforcement Committee meeting prior to October 8 that would give you the time to have an Enforcement Committee meeting and send information out to the rest of the Commission; is that correct?

Ms. Donovan replied: Yes. Ideally we would want an Enforcement Committee meeting prior to October 3 in order to be able to turn the materials around and do a mailing for you on October 15.

Chair Wasserman asked: So would the maker and the seconder of the motion accept a friendly amendment to say if possible to have a special meeting of the Enforcement Committee so that this matter could return to the Commission on the October 15 scheduled meeting?

Commissioner Scharff replied: Yes.

Commissioner Randolph replied: Yes.

The Reporter: Chair Wasserman, this is John in Sacramento - just a potential point of order here. Does this mean that the scheduled motion and second which was to according to the Agenda here, "approve the revised uncontested order" - is that now null and void?

Chair Wasserman replied: Correct.

The Reporter: Okay, thank you.

Michael Branson, Deputy City Attorney for the city of Oakland commented: I understand the frustration that is being heard here. I think when we were working with BCDC staff it was under an assumption that conditions had not deteriorated to the state that is being discussed today. I do still think if we together want to get some quick action on this I do think it makes sense to actually have a cease and desist order in place, which is the option that can happen today. The City supports the proposed CDO as drafted.

Before this conversation happened we did not think this was the end of the discussion with BCDC or staff and we certainly would be open to having further discussions about that fourth triggering event, but also acknowledging that we have some obligations under the permits and under the CDO to maintain this properly as well and so that is sort of a separate lever.

Chair Wasserman stated: I appreciate the comment, Michael. There is some merit to it. The difficulty here is I think the Commissioners recognize that both the challenges faced by the city of Oakland, but also the competing forces on the city of Oakland could well result in something where the City could not mutually agree with us to an earlier triggering event and I think you heard the consensus of the Commission that that is probably not acceptable. In terms of

the ability to deal internally in the City, I think you can reasonably guess and predict that something very, very close to the April Order recommended by the Enforcement Committee will be approved by this Commission on October 15 if we can do that, if it is at all possible to do that.

The one other comment I would make, and a plea almost to the members of the Enforcement Committee, I would hope this would not be a lengthy discussion for the Enforcement Committee and therefore perhaps make a special meeting somewhat easier.

MOTION: Commissioner Scharff moved to remand the Cease and Desist Order to the Enforcement Committee with the indication that some Commissioners believe they should have approved the prior order. The motion was amended to say, if possible to have a special meeting of the Enforcement Committee so that this matter could return to the Commission for the October 15 scheduled meeting. The motion was seconded by Commissioner Randolph.

VOTE: The motion carried with a vote of 18-0-1 with Commissioners Addiego, Ahn, Butt, Gunther, Pine, Ranchod, Randolph, Sears, Showalter, Techel, Ziegler, Gilmore, Scharff, Pemberton, Stefani, Vasquez, Vice Chair Halsted and Chair Wasserman voting, "YES", no "NO" votes and Commissioner Beach voting "ABSTAIN".

Chair Wasserman stated: I thank you all and I certainly

thank, as other Commissioners did, the residents and operator of the Marina who brought very graphically, figuratively and literally, to us the rapidly deteriorating situation there that I think does raise an issue of eminent health and public safety that may not have been there before but certainly is now.

11. Adjournment. Upon motion by Commissioner Ahn, seconded by Commissioner Pemberton, the Commission meeting was adjourned at 3:46 p.m.