

San Francisco Bay Conservation and Development Commission

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September 4, 2020

TO: Commissioners and Alternates
FROM: Enforcement Committee Members
SUBJECT: Enforcement Committee's Recommended Enforcement Decision Regarding Proposed Commission Cease and Desist Order No. CDO2020.001.00; City of Oakland
(For Commission consideration on September 17, 2020)

Enforcement Committee's Recommendation

Executive Summary. On May 21, 2020, the Commission considered the adoption of proposed Cease and Desist Order No. CCD2020.001.00 (Order), which was approved with revisions by the Enforcement Committee on April 22, 2020. The proposed Order requires the City of Oakland (City) to clear the homeless encampments from Union Point Park and restore the Park to the conditions in the BCDC permits. As described below, instead of approving the proposed revised Order at the May 22, 2020 meeting, the Commission voted to remand it to the Enforcement Committee for consideration of additional revisions. The Order has now been revised following further negotiations with the City, and the Enforcement Committee is recommending that the Commission adopt proposed Cease and Desist Order No. CCD2020.001.00, as revised.

Background on the Order revisions. At the May 21, 2020 Commission meeting, Enforcement Committee Chair Scharff explained that the Enforcement Committee had originally voted to approve Cease and Desist Order No. CCD2020.001.00, which was developed in negotiation with the City, at a public hearing on March 12, 2020. Shortly after the proposed Order was approved, the City determined that it was unable to meet the negotiated deadlines for clearing and restoring the Park due to the COVID-19 pandemic emergency, and the City requested that the deadlines be changed. Staff and the City then negotiated changes to the deadlines, and a revised proposed Order was approved by the Enforcement Committee following a noticed public hearing on April 22, 2020. This revised proposed Order was then scheduled for adoption by the Commission at the meeting on May 21, 2020.

At the May 21, 2020 Commission meeting, Commissioner Scharff explained that while the COVID-19 shelter-in-place measures are in effect, the Enforcement Committee is not undertaking any actions that conflict with the guidance from the Centers for Disease Control (CDC) or local public-health officials. This includes requiring the City to relocate individuals from the Park, because this is not consistent with the CDC guidance. The proposed Order was thus revised on April 22, 2020 to include new deadlines, as well as a provision allowing for further extensions if the COVID-19 emergency prevented the City from relocating individuals in accordance with the new deadlines.

At the Commission meeting on May 21, 2020, City staff informed the Commission that rather than approving the revised proposed Order with the new deadlines, the City preferred that the Union Point Park matter be delayed for 90 days until there is more certainty regarding the COVID-19 situation. After some discussion, the Commission voted to remand the revised proposed Order back to the Enforcement Committee to allow for further discussion with City staff regarding the deadlines and the provisions allowing for an extension of the deadlines where necessary to address the COVID-19 emergency and comply with local public health orders.

After the May 21, 2020 Commission meeting, BCDC staff and City staff met to discuss revisions to the proposed Order. The City developed a new proposed Encampment Closure and Restoration Plan for Union Point Park, with new deadlines tied to the resolution of the COVID-19 emergency. As they had done previously, BCDC staff and City staff used this new proposed Plan as a basis for negotiating the revisions to the proposed Order. A new revised Order, with the accompanying revised Plan, was then presented to the Enforcement Committee, and the Enforcement Committee voted to approve a revised proposed Order No. CCD2020.001.00 at a noticed public hearing on August 13, 2020.

The section below briefly summarizes the Enforcement Committee proceeding and the Enforcement Committee's decision to adopt the Executive Director's Recommended Enforcement Decision and the revised proposed Order No. CCD2020.001.00.

Enforcement Committee Recommendation. At the Enforcement Committee hearing on August 13, 2020, BCDC staff described the changes to the proposed Order and the attached Encampment Closure and Park Restoration Plan and the reasons for the proposed revisions to both of these documents.

Recognizing that homeless individuals should not be moved while COVID-19 is still spreading in the community and that it is uncertain when the COVID-19 emergency measures will be discontinued, the City proposed revising certain deadlines in the Plan and the proposed Order related to clearing the encampments to tie these to the occurrence of a "Triggering Event" which would signal the end of the COVID-19 emergency. The Plan defines a "Triggering Event" as the earliest of four listed events, including a declaration by the Oakland City Administrator that the local emergency has ended. The revised proposed Order references the Plan definition of "Triggering Event." The proposed Order, as revised, would require the City to enact a partial encampment closure and then later a full encampment closure within 60 to 90 days of the Triggering Event.

The proposed Order also includes revised deadlines for the occurrence of certain actions which are not tied to a Triggering Event. For example, the proposed Order requires that by September 1, 2021, the City will submit both a long-term maintenance plan and a comprehensive restoration plan for the Park. This deadline has been extended approximately one year beyond the previous proposed deadline, which was November 1, 2020.

The proposed Order also requires that by April 1, 2022, the City will restore the Park to a working condition consistent with the permit terms. This is the only aspect of the Order that the City has contested. The City has argued that the Park cannot be fully restored until 2023, or

later. BCDC staff determined, however, that pushing this requirement out more than two years beyond the original deadline would not provide a sufficient incentive for the City to ensure that the Park complies with permit terms. BCDC staff have also noted that the Order includes provisions that would allow for the April 1, 2022 deadline to be extended if the City is unable to restore the Park by that date.

After hearing from BCDC staff and the City, the Enforcement Committee voted to approve the revised Order, with the accompanying revised Plan, and to recommend that the Commission adopt the Order, as revised. The Executive Director's Recommended Enforcement Decision and the Enforcement Committee's proposed Cease and Desist Order, as amended, are attached to this memo as Exhibits A and B, respectively. The Index of Administrative Record in support of the findings in the Order and the documents cited therein are available to view online at <https://www.bcdc.ca.gov/enforcement/2020/0312-%20Union-Point-Park-Administrative-Record.htm>.