

San Francisco Bay Conservation and Development Commission

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December 5, 2019

TO: Enforcement Committee Members

FROM: Karen Donovan, Staff Counsel (415/352-3628; karen.donovan@bcdc.ca.gov)

SUBJECT: Minutes of November 20, 2019 Enforcement Committee Meeting

1. **Call to Order.** The meeting was called to order by Chair Scharff at the Bay Area Metro Center, 375 Beale Street, Redwood Room, Fifth Floor, San Francisco, California at 9:30 a.m.

2. **Roll Call.** Present were Members Gilmore, Scharff and Vasquez.

Not present were Members Ranchod and Techel.

Staff in attendance were Executive Director Larry Goldzband, Regulatory Director Brad McCrea, Staff Counsel Karen Donovan, Chief of Enforcement Adrienne Klein, Enforcement Policy Manager Priscilla Njuguna, and Coastal Program Analyst Schuyler Olsson.

3. **Public Comment.** Chair Scharff called for public comment on subjects that were not on the agenda.

No members of the public addressed the Committee.

5. **Update on Union Point Park in the City of Oakland, Alameda County.** Mr. Olsson began the update.

He reported that since the last meeting of October 10, BCDC staff had met twice more with the City of Oakland. The City prepared a draft encampment closure and restoration plan for the park.

Mr. Olsson shared BCDC's proposed approach for moving forward with this enforcement phase:

- Staff drafted two violation reports, one to be issued to the City of Oakland and Unity Council, and the other to the Port of Oakland and City of Oakland. This is because the homeless encampments are spread over two separate BCDC permits and parcels.

- Staff plans to issue a single Cease and Desist Order, to order the City to undertake activities affecting both permits and parcels. Staff will bring the order to the Committee in the next couple of months.

Mr. Olsson discussed the draft plan with Brock de Lappe, the Oakland Harbormaster and Marina Manager, as well as Jim Hayes of Almar Marinas.

Joe DeVries, Assistant to the City Administrator, presented the draft Encampment Closure and Park Restoration Plan.



Phase I is to create a containment zone in the north area of the park.

- The City hopes to begin outreach to the encampment residents the first week of December.
- Public Works will remove the extra debris in early January.
- In December the City will continue to discuss the Ambassador program with the Unity Council.

Mr. Devries explained that a similar plan of action was successful in other parks. Moving forward, if the City enters into a longer contract, they hope that the Ambassadors will help them to re-engage the public to use the park for positive purposes once again.

The City has tried to use the containment zone concept as an encampment management strategy throughout the city. It has been effective at 24 sites around the city.

Phase II is to intensify the housing navigation efforts.

- Unsheltered people in Union Point Park will have priority for the nearby Miller Community Cabins.
- For people living in vehicles, the City is opening up more RV and safe parking sites.
- The City is making every effort to give people an option for placement before the final closure.

Phase III is closure.

- The City will specifically follow its policies. They will advise people in the park 30 days prior, advise the Homeless Advocacy Working Group, and post legal notices.
- The City will close the park to residential use in late April, removing the Porta-Potties and the fencing.
- They expect that not everyone will take them up on their services but they will not allow anyone to remain.

Phase IV is restoration.

- The City feels strongly that a CIP project is necessary. They will address it during the mid-cycle budget adjustment.
- The dim lighting in the west parking lot will be addressed in the interim to provide the necessary level of safety.

Phase V is future development.

The Cryer Building is old and has environmental remediation issues. There is no development interest at this time.

The goal with the containment zone for the first phase is to make the rest of the park and the parking lots accessible to the public and marina residents.

a. **Public Comment.** Mr. de Lappe, Oakland Harbormaster and Marina Manager, stated that the conditions onshore at Union Point Park have had a dramatic financial impact on his operation. Tenants have been threatened with violence. There has been a long history of dealing with the problems from the encampment. He pointed out that the park property is owned by the Port of Oakland, and leased to the City of Oakland which is responsible for maintenance. He showed photographs of the damage and mess around the park.

Richard James, coastodian.org, stated that he lives on the Marin Coast and has been picking up trash there for years. He stated that needles washing down from the streets of Oakland, Berkeley, Richmond, and Albany end up on the Marin beaches. He saw a complete lack of enforcement of laws by the communities. The trash is the result of a humanitarian crisis; many of the homeless community are deeply troubled and being constantly uprooted by CalTrans does not help them. He recommended regional coordination so communities can work together.

Steve Hanson stated that he was involved in the development of this park when he worked for the Port of Oakland. The Unity Council had responded to the lack of parks in that part of Oakland. He discussed the funding sources for the \$7 million in improvements made to the park. He expressed concern about the \$500,000 it will take (at a minimum) to fix the park. He now represents local businesses and has signatures from business owners requesting the park be restored.

Richard Sinkoff, Director of Environmental Programs and Planning at the Port of Oakland, expressed the Port's support for the City's efforts. They understand the City's plan to move the bulk of the encampment area to the containment area. They support the closure plan as drafted.

Chris Iglesias, CEO of the Unity Council, described that organization. He identified racial undertones in the comments he had heard. He asserted that East Oakland is taking the brunt of the homeless problem; it is not isolated to this particular park. He explained that Unity Council is working in and around the homeless encampments every Saturday to pick up illegal dumping. The Unity Council will do whatever they can to support the City's plan. He noted that East Oakland is the densest part of Oakland and the area where the majority of families live. The Unity Council runs the Ambassador Program. He described their efforts to secure housing for those in need.

b. **Committee Questions and Discussion.** Chair Scharff asked where BCDC staff is regarding the closure plan. Mr. Olsson replied that they are generally in support. They will need to work out some details as they draft the proposed Cease and Desist order. He commented that the current timeline is fuzzy because of the massive restoration cost.

Chair Scharff felt that the plan was humanitarian and compassionate while solving the problem of getting everyone out of the park. His concerns were the park restoration and ensuring that encampment does not happen again. He confirmed with Mr. Olsson that the Cease and Desist order will be stipulated and that the City of Oakland will be agreeing to meet specific terms. The City of Oakland will be fined if they do not meet the terms and conditions within specified timelines.

Chair Scharff pointed out that the fault was the City's that the park had gotten stripped and destroyed. He asserted that the City needs a plan to protect against future encampments. He encouraged staff to work with the City on this, and also to set a timeline.

Member Gilmore was also in favor of the plan. She expressed concern about the interval of time when the park is cleared and restoration has not yet started.

Mr. DeVries agreed with the speakers that the situation is dire. He noted that the impact of homelessness is felt most by the homeless themselves. Yet the problem has created enforcement challenges for the City. There is a balancing act between being compassionate and creating public spaces. The need for the City of Oakland to have a clear enforcement policy was not lost on Mr. DeVries. The City of Oakland has been successful thus far in court, which has resulted, for example, in a federal judge agreeing that the City could remove the pile of debris shown in one of Mr. de Lappe's photos. The City's success in court tells them that their measured approach and policies are sound, and that they need to enhance them. On the enforcement side, the City will be seeking greater direction from the City Council.

Mr. DeVries continued that when they have done closures, they have been successful in many and unsuccessful in others. A Cease and Desist order from BCDC that stipulates what they are to do will help them in their work.

Member Vasquez felt that a timeline for the park restoration was important as well as instructions for maintaining the restoration.

Mr. DeVries stressed the importance of an ongoing relationship between City staff and BCDC staff to make sure the City is checking in on a regular basis and meeting milestones.

Chair Scharff confirmed with Mr. Iglesias that there are no families visiting the park anymore. He asked what would happen to the rest of the park when everyone is moved out and the encampment area in the corner is established. Mr. DeVries hoped that the nearby school would begin activities in the park. Mr. DeVries noted that when you create positive activities in a location, negative activities tend to dissipate. He hoped that the Embarcadero Cove businesses would have reason to use the park, and he hoped to have special events in the park.

Chair Scharff agreed with the approach of activating the park. He asked when to expect an agreement between BCDC and the City. Mr. Olsson said that staff was presently working on the violation report for both permits and could probably issue them next week. He hoped the Cease and Desist order would be final by the end of the year. Ms. Donovan stated that staff would bring a stipulated order to the Committee that would then go through the regular process to be approved by the full Commission. That should happen by early next year.

Chair Scharff hoped to have the agreement in place by the second week of January when Phase I closure is completed. He would like to aim for the full Commission meeting on the third Thursday in January.

Mr. DeVries stated that getting people from the cabins into transitional or permanent housing is the bottleneck in the problem.

Andy Price, a long-time homeless advocate, felt that the real issue was the defunding of mental health institutions in California.

David (no last name given), who had been in the marina for three years, felt that some people do not deserve help. He asserted that it is important to take care of the people with mental health issues which is further complicated by the 5150 ruling (a reference to Welfare and Institutions Code 5150). David said he was hit on the head with a hammer in the area of the park and had recovered from a coma.

6. Update on the Management of Vessels in Richardson's Bay, Marin County. Ms. Klein began the update.

She reviewed BCDC's negotiations of the past months.

Joan Cox, Council Member, City of Sausalito, gave a presentation beginning with a background of the situation.

After withdrawing from the Richardson Bay Regional Agency (RBRA) in June 2017, the City of Sausalito established Waterfront Management Plan Priorities which Ms. Cox discussed.

The City of Sausalito researched their authority to regulate the anchor-outs. Special legal counsel confirmed their jurisdiction over activities in the Coast Guard - designated Special Anchorage Area and the overlap of that area with the waters of the City of Sausalito.

Ms. Cox reviewed their staffing. They are confident in their ability to expand their enforcement efforts.

The number of vessels has gone from 74-77 (or perhaps 90) vessels in July 2017 down to 15, including dinghies. Ms. Cox then showed a chart of the number of new vessels observed by month. The number has been between 0 and 1 for the last six months. She continued with photo illustrations of the vessels.

Member Vasquez asked how they get rid of the vessels designated as marine debris. Ms. Cox answered that they tag them, tow them to a boatyard, and dispose of them after giving proper notice.

She stressed the importance to the City Council of giving ample notice to every boat.

She described the actions taken regarding over 20 unoccupied vessels since the start of the Waterfront Management Plan.

They have removed over 50 mooring balls or devices from Richardson Bay.

They are now advertising the annual debris collection event.

Ms. Cox reviewed the public safety impacts related to the waterfront. She illustrated the congestion problem at areas where anchor outs come ashore with photographs and described impacts on boats adversely affected by the strong winds of last October 27.

In addition to abating marine debris and unoccupied storage boats, the City Council has come up with a concept to assist people living on their boats in Sausalito waters: The Safe Harbor program. Another service is the mobile shower program. The Safe Harbor program involves multiple agencies working together to empower anchor-outs toward an independent life.

Ms. Cox gave details. Participants enrolled in the pilot program are assigned a case manager to ensure their access to programs and resources intended to facilitate their transition out of homelessness. Ms. Cox listed the funding sources. She described the progress so far with individual anchor-outs.

Ongoing collaboration between the City of Sausalito and RBRA is critically important to the success of enforcement efforts. Ms. Cox commented on RBRA's 72-hour rule and noted that Sausalito has assisted RBRA in mapping boats in RBRA waters.

Ms. Cox asserted that the City has a proven track record of success with its focused enforcement in the past 24 months. They feel that RBRA may benefit from collaborating with the City on some enforcement efforts or even allow the City to take over some of them. An ideal collaboration would include shared policies, shared software, shared resources, regular meetings, collaboration on the waterfront, and mutual aid.

The City does not believe a mooring field is an expedient enforcement strategy.

Ms. Cox requested that BCDC provide the City with clarity regarding enforcement of its policies, continued support for Sausalito's legacy anchor-out population (down to fewer than 10), and an increase in Sausalito's live-aboard allocation from 10% to 15% per marina, to facilitate the transition from anchor-out to Safe Harbor to live-aboard.

a. **Questions and Discussion.** Chair Scharff asked if "clarity of enforcement regarding Richardson Bay" refers to waters not part of Sausalito. Ms. Cox confirmed that it did. Assuming the pilot program works, the City's plan is to ask the City Council to expand it to collaborate with RBRA – but only once RBRA demonstrates success in enforcing its 72-hour rule.

Chair Scharff asked the number of legacy boats. Ms. Cox answered that in Sausalito there are fewer than 10 while in the rest of Richardson Bay there are 100 existing anchor-outs.

Curtis Havel, RBRA Interim Harbormaster, noted that RBRA does not use the term "legacy."

Beth Pollard, RBRA Executive Director, and Mr. Havel presented an update on RBRA's progress. It focused on what has happened since the September meeting and what they are currently undertaking.

RBRA has expanded its enforcement activity and is focusing on the 72-hour time limit as well as unoccupied vessels being stored on the Bay. Patrol and follow-up has been more consistent.

Recently RBRA has reached out to the member cities of Belvedere, Tiburon, and Mill Valley about accompanying the harbormaster on patrol. Officers from two have signed up to help in the enforcement work. Having law enforcement participating is practical and also sends a stronger message about the enforcement resource commitment from the agencies and RBRA.

RBRA is partnering with other agencies to compile vessel and population information.

RBRA just received the completed Mooring Feasibility & Planning Study and has not yet taken any action. Regardless of whether there is a mooring field, it would be helpful to know where on the bay the best places are for people to be from an ecological standpoint.

Mr. Havel explained the enforcement work he is doing.

He described the two types of 72-hour notice: (1) A “Welcome to Richardson’s Bay” notice for cruisers; and (2) A directly-worded notice for vessels being stored on the bay.

Cruisers that come through may be issued 30-day permits to allow the mariners to check out the area.

Of the 192 vessels on the bay, a large part of the initial enforcement work was identifying marine debris. Mr. Havel worked with the Marin County sheriffs and developed a spreadsheet, identifying who is on each vessel and its condition. His most recent survey showed 180 vessels, 16 of which are posted with marine debris notices. Mr. Havel tagged another six last week. Yesterday, with the assistance of the Sheriff’s office, they pulled six vessels out of the water. Some of the people in the anchorage have told Mr. Havel that they will resist the removal of their vessels.

Mr. Havel stated that some of the vessels identified as marine debris have people living on them. He reflected on whether it is safe or moral to let people live on vessels that are barely floating and barely seaworthy.

Chair Scharff asked how RBRA’s priorities are different from Sausalito’s. Mr. Havel answered that it is nuanced because RBRA’s scale is so much larger than the City of Sausalito’s.

He noted that he is compiling the number of boats that are currently having their sewage pumped. Of the 100 occupied boats on the anchorage, about 40 are on the list. Mr. Havel does not know what the remaining boats are doing with their sewage. He stated that the Coast Guard is very interested in this.

He asserted that one method of effecting change and letting the population out there know that RBRA is serious about enforcement is to use all the available tools. Mr. Havel is learning how to communicate with the different agencies and learning what they can and cannot do. He stated that the Coast Guard is going to begin to do inspections of their own in the anchorage regarding the vessels not using the sewage service.

He noted that since RBRA has been doing enforcement, the number of boats at China Camp State Park has increased to double digits. When vessels leave Richardson’s Bay, Mr. Havel stated he does not have the time to find out where they go.

Chair Scharff asked if BCDC is responsible for China Camp. A law enforcement officer in the room stated that during the last wind event several boats washed up on the beach there.

Mr. Havel expressed appreciation for the Army Corps of Engineers. During the October 27 wind event, they helped him manage the situation. That part of RBRA operation deserves more attention. Perhaps they can help RBRA provide a place for vessels to go as opposed to running a circuit of further stops when they must leave an anchorage.

Since Mr. Havel began, RBRA has crushed 15 boats and 9 or 10 boats have left the anchorage. When you deduct the vessels currently subject to enforcement action, the number is down to 164. He intends to continue enforcing the 72-hour rule and going after marine debris.

Mr. Havel described the way the marine debris process works.

- (1) He identifies the marine debris.
- (2) He attaches a notice to the vessel.
- (3) At the office, he tracks down the last known registered owner and mails a notice as soon as possible.
- (4) He lets the notice term expire. After 10 days, the vessel is disposed of. RBRA tries to give owners the opportunity to retrieve their possessions from the vessel before disposing of it.

If someone appears saying they have bought the boat, it is still marine debris – the issue is not ownership.

Mr. Havel has consulted with Officer Albino in Oakland, who has said that this is the most effective way to whittle numbers down.

During the October 27 wind event, more than 15 vessels went adrift. When a vessel goes adrift, Mr. Havel considers it a problem vessel because a responsible mariner would not let that happen. He is trying to spread the word among the anchorage that they are responsible for their vessels.

Ms. Pollard did not feel that there is much difference between RBRA's and the City of Sausalito's policies.

She stated they have made progress in identifying who is on the vessels.

She stated that vessel abatement needs more funding for staff on the bay – one person is not sufficient – and for abatement funds themselves. Abatement for a vessel can run between \$2,000 and \$20,000. A rule of thumb is \$6,000 per vessel.

Chair Scharff asked which localities comprise the RBRA. Ms. Pollard answered that it is the cities of Belvedere and Mill Valley, the town of Tiburon, and the County of Marin.

Ms. Pollard indicated that the RBRA is looking at how a mooring program could assist with ecological preservation, with ensuring that vessels are securely attached, and with managing the anchorage. However, there are many, many policy and management issues to consider.

The next steps include:

- Using resources strategically and efficiently. It takes time to deal with the people on the anchor-outs.
- Looking at a plan/vision for the anchorage.

- Deciding whether to pursue a mooring program. Moorings would be ecologically appropriate for Richardson’s Bay and strong enough to withstand the conditions on the bay. They would be placed in permitted areas. Incoming vessels would attach to the mooring ball and register. They would be given 72 hours or 30 days.

- Looking at enforcement scope and related capacity.
- Obtaining more funding assistance, from the Surrendered and Abandoned Vessel Exchange (SAVE) program through the Division of Boating and Waterways. RBRA would also like to ask BCDC to provide cleanup and abatement funds.

Member Gilmore asked about partnerships with the City of Sausalito. Ms. Pollard responded that the Board would entertain that discussion. On the field level, that collaboration happens all the time.

Chair Scharff asked RBRA to consider whether they are aligned with BCDC’s vision of what should occur.

Ms. Klein returned to the initial presentation. On November 14, BCDC had issued a draft communication stating that it wanted to see RBRA enforce the permitted time limits for vessels entering Richardson’s Bay. BCDC also asked that in collaboration with each RBRA member agency, RBRA work to secure sufficient funding and resources to enable success of the following initiatives by March 31, 2020:

- Initiate all appropriate actions to remove all marine debris, unoccupied vessels, unregistered vessels, and vessels that are possibly unsafe.
- Submit a plan with timelines to transition all other vessels off the water.

BCDC staff requested monthly reports from RBRA, an interim update in February, and an April review.

BCDC has drafted a similar letter to the City of Sausalito.

Chair Scharff commented that while RBRA does not appear close to meeting the requirements, the City of Sausalito does. Ms. Klein agreed – the respective numbers of vessels involved are very different.

Ms. Klein listed the Enforcement Committee/Commission options, then the possible elements of an order that would apply to the RBRA JPA and its local government members.

Member Gilmore asked about the possible mooring regulation requiring “same owner/occupant per vessel.” Ms. Klein answered that if a boat becomes unseaworthy, the owner cannot switch to a different boat. Ms. Donovan added that staff is trying to address the problem of people swapping out and accumulating boats.

Ms. Klein stated that staff sought input from the Enforcement Committee on direction to RBRA and the City of Sausalito.

b. **Public Comment.** K.C. Pederson, marine operator, stated that the City of Sausalito and the police department had listened to the concerns of the marine operators, including those in the private marinas, and worked with them. The marine operators liked the results. He expressed concern that Galilee Harbor is overrun with dinghies – they should be tied to the dock, not to each other. For the anchor-outs, checking the mooring lines would be of help.

Reverend Paul Mowry, Sausalito Presbyterian Church, stated that the church holds a twice-weekly hot lunch for homeless and hungry people, which mostly consist of anchor-outs. He knows the people living on the boats, and it is a diverse community. Most of these people do not have money and are not able to bring their boats up to some of these standards. What looks like debris may be home for some people. Reverend Mowry expressed the hope that historical frustration and impatient critics who live comfortable lives would not dictate the action plan. The people who suffer from a timeline designed around data goals are the people who live on the water and cannot protest or fight for due process or greater influence. Mr. Mowry noted that as long as we just care about moving people out of our jurisdiction and do not care where they go, we do not have a solution.

Ashley LaBass, Bay Planning Coalition, commended staff for all the work they have done on the complex issue of Richardson's Bay.

c. **Committee Questions and Discussion.** Chair Scharff felt that BCDC and Sausalito have the same vision. He addressed the question of increasing the liveaboard allowance by 5% -- he liked the suggestion of authorizing the increase for a period of time and then ramping it back down.

Member Vasquez liked the timeline. Acting in his role as an Enforcement Committee member, he needs to do what is best for the Bay itself. We can give the RBRA and City of Sausalito a timeline, and if they want to they can come back to the Committee to say they cannot make it. The Committee can then make a recommendation that they go before the full Commission. That is where the compassion can come in.

Member Gilmore would support the 5% increase for the slips with liveaboards, but only with a discrete time period. She was concerned that when it comes time to ratchet back down the funding, the homeless situation may not have improved. Chair Scharff said that the funding would be for transitional housing. Member Gilmore specified that the allowance increase should not be used for additional slips, but for the transition.

In view of the RBRA's resource constraints, Chair Scharff sought to enforce the requirements against the RBRA plus the member cities and County of Marin.

Chair Scharff asked if the RBRA has a vision of having an anchor-out population forever with a mooring plan. This view is inconsistent with the McAteer-Petris Act. The Enforcement Committee wants to work with RBRA, but wants this anchor-out situation to end. He asserted that figuring out how to get there is the answer.

Ms. Pollard responded that RBRA has not worked out whether to have a transition program for long-term anchor-outs on seaworthy vessels with mariner skills. She will address this with the RBRA and bring it back to the Committee.

Chair Scharff agreed and stated that if RBRA wants to allow such anchor-outs to continue living on the water, RBRA needs to identify the number of people that would be and ensure that the number would not grow. The plan would need to be very clear.

Member Gilmore stressed the need for a long-term plan and goal. The Committee can only be helpful if it understands where RBRA is trying to go. Chair Scharff agreed.

Ms. Cox stated that while the Sausalito City Council is fully behind everything that Sausalito is doing, the RBRA member agencies may not all be fully apprised on this issue. Ms. Cox asked if the letter going to RBRA was also going to the individual member entities. Chair Scharff responded that any fines and enforcement will be against all the member entities.

Ms. Klein summarized the next steps: Staff will pursue the recommendations outlined in the draft correspondence as presented.

4. **Enforcement Report (this item was taken out of order.)** Executive Director Goldzband reported that the Department of Finance was going to BCDC the following day to begin its mission-based budgeting and workforce review of the Enforcement Program. He stated that such reviews last from six months to a few years as the Department of Finance gains understanding of the agency. They are working toward a spring finance letter issue for a budget change if that is doable.

Executive Director Goldzband wanted BCDC staff to remember that the people who are coming from Finance are not auditors, but are experienced budgeting and workforce professionals who understand how state agencies actually work. They are very well-acquainted with the audit.

7. **Future Agenda Items.** There were no future agenda items.

8. **Adjournment.** There being no further business, Chair Scharff adjourned the meeting at 12:23 p.m.