

San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190
State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

December 12, 2019

TO: Enforcement Committee Members

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

SUBJECT: Approved Minutes of December 12, 2019 Enforcement Committee Meeting

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

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

Not present were Members Ranchod and Scharff.

Staff in attendance included Executive Director, Larry Goldzband; Regulatory Director, Brad McCrea; Enforcement Attorney, Karen Donovan; Enforcement Policy Manager, Priscilla Njuguna; Lead Enforcement Analyst, Adrienne Klein; Coastal Program Analyst, Schuyler Olsson; Coastal Program Analyst, Matthew Trujillo; and Legal Secretary, Margie Malan.

Also in attendance was Shari Posner on behalf of the Office of the Attorney General.

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

No members of the public addressed the Committee.

4. **Approval of Draft Minutes for the November 14, 2019 and November 20, 2019 Meetings.** Acting Chair Gilmore asked for a motion and second to adopt the minutes of November 14, 2019.

MOTION: Commissioner Vasquez moved approval of the November 14, 2019, meeting minutes, seconded by Commissioner Techel. The motion carried with a vote was 2-0-1 with Member Vasquez and Acting Chair Gilmore voting "YES", no "NO" votes, and Member Techel voting "ABSTAIN" because she was not present at the meeting.

Acting Chair Gilmore asked for a motion and second to adopt the minutes of November 20, 2019.

MOTION: Commissioner Techel moved approval of the November 20, 2019, meeting minutes, seconded by Commissioner Vasquez. The motion carried unanimously with a vote of 3-0-0 with Members Techel, Vasquez and Acting Chair Gilmore voting "YES", no "NO" votes, and no "ABSTAIN" votes.

Acting Chair Gilmore asked two procedural questions:

1. Whether a quorum of three commissioners was needed to approve the Minutes.
2. Whether a Committee Member absent for a meeting who reviews the meeting minutes, can vote to approve the minutes.

Ms. Donovan recommended holding the approval of the November 14, 2019, minutes until the next meeting. She stated that in the future, the members will receive a notification email when the minutes are posted so that they can review them promptly.

She stated that answers to Acting Chair Gilmore's questions would be provided prior to the next meeting.

5. **Enforcement Report.** Ms. Njuguna gave the report, which primarily discussed updates on the oldest cases.

The Committee last received an update on August 7 from Ms. Klein. Of the eight cases mentioned then, Ms. Njuguna reported that one case was closed and staff are making progress on the other seven. She stated that for the Rich Island Duck Club case, meetings have been scheduled to determine current conditions in order to resolve the case.

Ms. Njuguna explained that Staff is looking to combine two enforcement cases pertaining to India Basin into one for streamlined resolution.

She further reported that Staff has received feedback from the Richardson's Bay Regional Agency (RBRA) that they are making progress in reducing the number of vessels on the bay.

She then reported that meetings have been scheduled with the Port of Oakland regarding Middle Harbor Shoreline Park to ensure that they are making progress in resolving the remaining maintenance issues.

Ms. Njuguna informed the Committee that Staff anticipates a delay in the previously scheduled February update regarding Union Point Park because of recent developments that impacted the City of Oakland employee handling the matter.

Ms. Njuguna announced that the next Enforcement Committee meeting is scheduled for January 9, 2020, at the Bay Area Metro Center. She forecasted that the committee would receive updates on pending cases, on internal policy (the proposed Penalty Policy and the Supplemental Environmental Projects Policy as well as guidance on Delineation of Violations) that will eventually go to the full Commission for approval.

Member Techel noted that she will not be in attendance on January 9.

6. **Process Changes.** Ms. Njuguna briefed the Committee as follows:

a. The template of the violator contact letter has been finalized and will be piloted from December 2019 to March 2020. Acting Chair Gilmore asked who will receive these letters. Ms. Njuguna answered that the contact letters will be used for new cases. Acting Chair Gilmore agreed with that approach.

b. Regarding case review, Staff is looking to have a standardized process from when cases are received to their resolution to define a level of accountability in which analysts' work is being verified.

c. For certification of compliance with terms and conditions, Staff will designate someone from the violator's entity as a contact person to make sure any terms and conditions that are part of case resolution are being met.

Acting Chair Gilmore asked if this will be an ongoing requirement for applicants: If people leave or get shifted to another role, they will be responsible for designating another individual and letting the Enforcement Committee know. Ms. Njuguna confirmed that BCDC will seek to assure continuity regardless of who within the violator's organization, holds the seat.

d. An aged report will be produced every three months to ensure that some progress is being made toward new case resolution. Improved information technology should facilitate this report. Staff is receiving presentations from outside entities on technology options for streamlining case management and case review.

e. Staff is devising case management milestones related to the process of resolution: Intake → Assignment → Investigation → Resolution → Closure.

Member Techel asked about the aged report. Ms. Njuguna explained the three-month aged case review process.

f. For case prioritization, the impact score and effort score are in place. Additional prioritization options under consideration include case context, grouping by violator, and pairing by violator.

Acting Chair Gilmore asked if there is any common factor for why we have so many public entity cases. Ms. Njuguna answered that the primary factor is public entity maintenance funding shortfalls. Another factor is the passage of time – what might have been a priority for an agency five or ten years ago is no longer a priority. Ms. Donovan added that many BCDC permits are issued to co-permittees; many cases involve public entities plus a lessee.

Member Vasquez referred to Union Park which involved the Port of Oakland, the City of Oakland, and a non-profit (Unity Council); asserting that the parties did not take BCDC seriously because of the delays in resolution. Mr. Olsson asserted that the parties have taken BCDC seriously, are working with Staff and had come up with a plan at Staff's request.

Mr. Olsson added that we have a high number of public agency cases because they have so many permits. Member Vasquez asked if we give the private sector the same amount of deference that we give public agencies. The playing field should be level. Ms. Njuguna responded that with the passage of time, what was anticipated and what ends up being done may vary. Rather than focusing on why public agencies are not complying Staff are focusing on what we can require agencies to do so we can move forward and change the way things have always been.

Member Techel commented that for a local jurisdiction there is always more that you can and should do. She viewed the issue less as enforcement and more as bringing the agencies into compliance. Ms. Njuguna referred to the perspective of enforcing in the context of deterrence as well as fairness and consistency in Staff's approach.

Acting Chair Gilmore agreed with both her colleagues. Going forward, she asserted, BCDC should expect the same from individuals or corporations that we expect from public agencies. The same timelines should apply.

Member Vasquez felt that the Committee Members were in favor of setting things in advance to help people come into compliance, stay in compliance, and be aware that there are certain outcomes if they do not.

Member Techel noted that the difference for some of our private permittees versus public permittees is dealing with a financial piece of unfair competition or of them making a profit from not following the permit conditions.

g. Ms. Njuguna returned to the presentation. She gave current case resolution numbers for the period since the last case resolution rates were reported.

Member Techel asked if staff is now able to deal with cases rather than dealing with processes and getting things in order. Ms. Njuguna answered that the Department of Finance is still conducting the review of staff work which has impacted case resolution. However, Staff are hoping that in the coming year there will be additional time available to spend in case review which should help future case resolution rates.

8. Future Agenda Items. Acting Chair Gilmore requested information on what the Committee will be discussing in the New Year.

Ms. Donovan stated that Staff is treating much of the work on procedures and improvements as a pilot that can be adjusted. She hoped to have a draft internal Penalty Policy ready for review by February. She explained that the definition of “significant harm” is awaiting the comprehensive set of regulatory changes that BCDC may want to pursue. She mentioned that she already has the criteria for delineating violations. She explained that there are other regulatory changes Enforcement would like to start teeing up for Committee discussion, such as changing the requirements for mailing and that certain things have to be sent by registered mail. She also said that the Committee may want to update the resolutions under which it operates. She noted that some of the regulations are further out in the coming year, whereas Enforcement is hoping to get some consensus on the internal policies and guidance to move them through necessary processes for Commission approval by the end of the spring.

Executive Director Goldzband stated that in January the list just described by Ms. Njuguna and Ms. Donovan would be placed in a calendar. He explained that BCDC Executive Staff are working to get on the same page with Assembly Member Mullins’ staff about how they view the legislative side of possible regulatory changes.

He noted that the second overlay is that last month the Department of Finance started its in-depth look at the mission-based workforce budget analysis of the enforcement unit. He informed Committee members that at the conclusion of the meeting Molly McGuire of the Department of Finance would speak to them and to BCDC staff about the enforcement process.

He highlighted the need to ensure that we have time for the full Commission to hear from the Enforcement Committee on necessary changes that the full Commission will need to consider.

Ms. Njuguna mentioned that staff will be giving the Committee updates on case resolutions they are able to make with public agencies based on strategies that will have proven effective by integrating lessons learned from various environmental entities that have effective enforcement programs.

9. Adjournment. There being no further business, Acting Chair Gilmore adjourned the meeting at 10:09 a.m.