

Enforcement Case Management Procedure Implementation

Committee Agenda Item 6

Priscilla Njuguna

June 24, 2020



Outline

- Staff level resolution - standardized fines
- Commission level resolution—significant harm determination; formal proceedings
- Case management procedure
 - Hypothetical Example
 - Milestones—Assignment, Investigation, Negotiation, Resolution
 - Reports—Aged Case Report (prevent case stagnation)
Closed Case Report (track case resolution)
- Questions

Enforcement Program Goals

- **Deterrence:** Removing violator incentives obtained by violating BCDC laws, policies and regulations.
- **Fairness:** Removing any competitive economic advantage from non-compliance; treating all violators fairly.
- **Transparency:** Maintaining a clear, documented enforcement process that is publicly transparent.
- **Consistency:** Procedurally treating violations with similar nature and impact to the Bay and public access similarly (will not necessarily equate to the same outcome).

Staff level Resolution: Standardized Fines

When applicable: Regulation § 11386 (e)

Failure to return executed original permit or notice of completion or submit other document;

Failure to comply with any permit condition;

Failure to obtain Commission permit before undertaking activity that can be authorized by administrative or regionwide permit;

Commencing an activity that cannot be permitted similar in size and scope to minor repairs or improvements.

Tools: *35 Day Notice – Commencement of Standardized Fines process*

If corrected within 35 days, then no fines assessed; case closed.

If resolved within 125 days, then fines assessed. May double fines if respondent repeat violator within preceding 5 years. Respondent may request a formal proceeding.

If no good-faith effort to resolve within 125 days, formal proceeding commences. Respondent may request a time extension.

Stipulated Order; Settlement Agreement

Enforcement Committee involvement. Committee informed of staff-level resolution (fines collected) or informed if staff level resolution stalls and a formal enforcement proceeding is initiated.

Commission level Resolution-Formal Enforcement Proceedings : Significant Harm Determination

How:

- 1) Executive Director may issue Cease and Desist Order (valid for up to 90 days)
- 2) Commission may issue Cease and Desist and/or Civil Penalty Order
- 3) Referral to Office of the Attorney General

Penalty:

- Commission can assess Civil penalty \$2,000 per day/per violation up to maximum \$30,000; or
- Commission can elect to seek court-imposed penalties of up to \$6,000.
- For knowing and intentional violations, Commission may seek court-imposed penalties up to \$6,000 per day/per violation + exemplary damages

Tool: Violation Report - receive Statement of Defense, prepare Cease and Desist and/or Civil Penalty Order, set Enforcement Committee hearing date

Enforcement Committee involvement - recommends approval, disapproval, or modifications to Commission
Commission - votes to approve or disapprove or remand back to Committee to modify

Case Management Procedure: Hypothetical Example

Wiley Respondent (WR) constructed structures on property within BCDC jurisdiction without obtaining a BCDC permit. WR completed the work during a period when shoreline construction is unauthorized because of its impact on endangered species that spawn during that timeframe. WR also has an unpermitted fence that is blocking public access to the Bay Trail next to WR's property. None of the work was authorized by the local government planning department. WR previously paid a fine to BCDC for unpermitted work 6 years ago on property it owns three blocks away. In that case WR had built a gate blocking required public access.

Date reported: January 24, 2020

Date initial contact letter mailed: February 4, 2020

Date investigation completed: February 28, 2020

Date negotiations were completed: May 21, 2020

Date the case was resolved: June 17, 2020

Case Management Procedure Overview: Milestones

- **Assignment**

Occurs within 45 days of report.

Ends when Initial Contact Letter is mailed.

Example:

Report date - January 24, 2020

Assignment milestone deadline - March 9, 2020.

*Exception: All milestones are not applicable to cases in litigation

Case Management Procedure: Milestones

- **Investigation**

Occurs within 100 days of the Assignment milestone deadline.

Ends when a 35-day notice is mailed, or a violation report is issued.

Example:

Assignment milestone completed - February 4, 2020.

Investigation milestone deadline - May 14, 2020.

Case Management Procedure: Milestones

- **Negotiation**

Occurs within 240 days of the Assignment milestone deadline.

Ends when an order is issued, a settlement agreement is signed, or the Commission remands the enforcement case to the Committee for a modification.

Example:

Assignment milestone completed - February 4, 2020.

Negotiation milestone deadline - October 1, 2020.

Case Management Procedure: Milestones

- **Resolution**

Occurs within 90 days of the Negotiation milestone deadline.

Ends when fines or penalties have been received or the permit application has been filed.

Example:

Negotiation milestone completed – May 21, 2020.

Resolution milestone deadline – August 29, 2020.

Case Management Procedure: Reports

Aged Case Report:

- Frequency of data export: every 45 days beginning January 2, 2020
- Data focused on—date reported, case review status code since last review, if date resolved is complete

Closed Case Report:

- Frequency of data export: end of every month
- Data focused on—date case opened, date resolved, respondent contact for compliance, resolution description, and verifying required data fields have been completed

Questions?

Why these milestone timeframes?

To accommodate all case types, i.e. easy to resolve cases and outliers with delays outside BCDC control.

How effective have they been?

Only in place for 6 months; need additional time to fully vet. Limited by staff resources.

What else is staff doing to prevent case stagnation?

Weekly case updates during team meetings.

Immediate escalation for cases where good-faith efforts towards resolution prove ineffective.

12