

San Francisco Bay Conservation and Development Commission

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August 13, 2020

TO: Enforcement Committee Members

FROM: Priscilla Njuguna, Enforcement Policy Manager (415/352-3640;
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SUBJECT: Approved Minutes of August 13, 2020 Enforcement Committee Meeting

1. Call to Order. The meeting, held online via Zoom, was called to order by Chair Scharff at 9:30 A.M. He noted that Facebook Live was again being tested for broader community participation during the meeting.

2. Roll Call. Present were Chair Scharff and Commissioners Techel and Vasquez.

Not present were Commissioners Gilmore and Ranchod.

Staff in attendance included Executive Director, Larry Goldzband; Chief Deputy Director, Steve Goldbeck; Regulatory Director, Brad McCrea; Staff Counsel, Karen Donovan; Staff Counsel, Michael Ng; Legal Secretary, Margie Malan; Associate Bay Design Analyst, Ashley Tomerlin; Principal Enforcement Analyst, Adrienne Klein; and Enforcement Policy Manager, Priscilla Njuguna.

Shari Posner, Deputy Attorney General, also attended the meeting.

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

No members of the public addressed the Committee.

Chair Scharff made the motion and Commissioner Techel seconded the motion to close public comment. There were none opposed.

4. Approval of Draft Minutes from the July 9, 2020 Meeting. Chair Scharff asked for a motion and second to adopt the minutes of the July 9, 2020 meeting.

MOTION: Commissioner Techel moved for approval of the July 9, 2020 meeting minutes and was seconded by Chair Scharff. The motion carried unanimously with a vote of 3-0-0 with Commissioners Techel, Vasquez, and Chair Scharff voting “YES”, no “NO” votes, and no “ABSTAIN” votes.

5. Enforcement Report. Ms. Njuguna presented the Enforcement Report, covering developments within Enforcement during the period beginning July 1 and ending on August 12. She informed the Commissioners that after the July 29 workshop Staff integrated the feedback from members of the public and that the draft changes to the enforcement regulations were projected to be

presented to the Committee in September. She then reported that Staff received 19 applications for the open enforcement analyst position left by Schuyler Olsson's transfer to permitting. She informed the Committee that three applicants were interviewed and that an offer would soon be made.

Ms. Njuguna then informed the Commissioners that Staff met with Senator McGuire via teleconference and received information on the alternate housing options that the City of Sausalito and the Richardson's Bay Regional Agency (RBRA) are pursuing to further the effort to bring Richardson's Bay into compliance. She told the Commissioners to expect a more detailed update on the Richardson's Bay action in late September.

Ms. Njuguna also reported that Staff opened 13 cases and closed 15. She explained that of the cases that were closed, six were closed because there was no violation; four were duplicate reports of existing cases; three were resolved when documents regarding completion of Bay Trail maintenance were provided; and two were closed because previous work by Staff indicated the cases were resolved. Ms. Njuguna informed the Commissioners that as of August 12, BCDC had a total enforcement caseload of 257. She noted that Staff continue to work on resolution of the oldest cases and informed the Commissioners that a written update will be made available in November. She then reiterated that Staff continue to refine their case management process and case review procedures to ensure effectiveness in enabling Staff to meet the enforcement goals of deterrence, consistency, fairness, and transparency. She concluded the report by noting that the process of integrating the simplified case status codes is ongoing as is the tracking of aged and closed cases.

Ms. Tomerlin, Associate Bay Design Analyst, provided an overview of temporary public access closures related to COVID:

- She noted that San Francisco County has the most authorized temporary public access closures with 14 sites. She emphasized that the Port of San Francisco has been a proactive partner with BCDC in working to identify any of their temporary closures related to COVID-19.
- She then noted that Marin County and Alameda County have two closures each.
- She reported that San Mateo County has one closure, one detour, and explained that the Golden Gate National Recreation Area (GGNRA) site closures are affecting the coastal side more than the bay side.
- She then noted that Contra Costa County has one closure--the Bay Trail at the Craneway Pavilion which is serving as an overflow COVID-19 treatment location.

- She reported that there are no reported closures in Napa, Santa Clara, Solano, or Sonoma Counties.

Ms. Tomerlin summarized the closures by noting that there were 22 closures around the Bay 26 when counting individual GGNRA sites. She explained that most of the sites being closed are those that encourage congregating namely those with picnic areas and play areas. Ms. Tomerlin noted that many of the counties have opened public parks, open spaces, and beaches for public use, but are encouraging social distancing and limiting the use of picnic areas and barbecues to single households.

Ms. Tomerlin concluded her overview of closures by informing the Commissioners that BCDC has received emails and calls from the public related to closures of public access areas that members of the public are used to having open. She explained that Staff has been working with members of the public to identify these locations and reaching out to permittees who have not already alerted BCDC of their site closures. She noted that in most instances BCDC was already aware of the closures reported.

6. Public Hearing and Vote on Revised Proposed Cease and Desist Order No. CCD2020.001.00. Ms. Donovan presented the revisions Staff has made to Cease and Desist Order No. CCD2020.001.00, which applies to Union Point Park in the City of Oakland.

Ms. Donovan displayed an aerial photograph of the Park and explained that the Park is comprised of two permits, the first for Union Point Park and the second for Cryer Site Park. They are commonly referred to jointly as Union Point Park. Ms. Donovan also indicated an adjacent jurisdictional area that is connected to this action: the beach area which is on City-owned land.

Ms. Donovan displayed photographs of site conditions shortly after the City undertook efforts to clear the park and relocate the remaining individuals to a designated, interim area.

She then provided background on the Cease and Desist Order revisions. The proposed Order was originally approved by the Enforcement Committee on March 12, 2020. Within days, the shelter-in-place orders were put in place. On April 22, Staff brought revisions to the Cease and Desist Order that extended the deadlines for certain actions to occur in light of the challenges that the City was facing. When the Enforcement Committee's recommendation to adopt the proposed Order was presented to the Commission on May 21, 2020, it was remanded by the Commission to the Enforcement Committee, in part to ensure that the provisions regarding an extension due to the COVID-19 emergency were sufficient. BCDC Staff and the City then negotiated revisions to the Order.

Ms. Donovan explained that the primary change is that the closure will now be tied to the occurrence of a Triggering Event – essentially the end of the COVID emergency situation. The revisions establish that encampment closures

will occur 60-90 days after a Triggering Event. In the past few months, encampments and other activities have expanded outside of the original designated zone, and local, state, and federal guidance currently limits the City's ability to move individuals. The proposed Order establishes BCDC's expectation that within 60 days, all areas except the established secondary priority area will be cleared of any newly established encampments. Then, within 90 days of a Triggering Event, the City will clear the remainder of the Park.

Ms. Donovan listed the four actions which are defined as a Triggering Event, as described in the City's plan, noting that a Triggering Event will occur when any one of these events occurs.

Ms. Donovan stated that in addition to the closure events (i.e., moving the encampments out of the Park) which are tied to a Triggering Event, there are set timelines, which have been revised in the proposed Order. She listed the time extensions requested by the City of Oakland. The one that she highlighted for the Committee was the date for completion of park restoration. Ms. Donovan explained that the date now proposed by BCDC in the proposed Order is April 1, 2022. The City is advocating that the Park restoration date be one year later, on April 1, 2023. Ms. Donovan noted that the City representatives would likely be addressing this proposed longer timeframe in their comments.

Ms. Donovan gave the Staff recommendations: to adopt the revised Cease and Desist Order; and for Staff to continue discussions with the City, informing the Enforcement Committee when a Triggering Event is anticipated.

Michael Branson, Deputy City Attorney for the City of Oakland, thanked BCDC Staff for working with the City on this challenging issue. He asserted that the shared goal of both entities is restoring Union Point Park.

Mr. Branson stated that the recent changes outlined by Ms. Donovan acknowledge that the City cannot conduct encampment interventions until the shelter-in-place restrictions are lifted. However, the Order does put in place a structure that will require the City to act as soon as it is feasible through a Triggering Event.

He explained that the City will move forward with efforts wherever it can. They are working on the steps involved in identifying costs, securing funding, and implementing the necessary measures to remedy conditions in the Park. He states that the dialogue with BCDC Staff will certainly continue after the adoption of the Order; acknowledged that it is critical for the City to provide ongoing status updates on the encampment challenges as well as every step the City makes toward park restoration.

Joe DeVries, Director of Interdepartmental Operations for the City of Oakland, concurred with Mr. Branson in his appreciation of BCDC Staff.

Mr. DeVries noted that the bike racks were being installed immediately and that the City has also created a workaround for the lighting in the public parking lot.

Mr. DeVries stated that he will be meeting with various divisions of Oakland Public Works on August 14 regarding how they plan to restore the Park. For the major damage to the irrigation and water systems, Public Works will put out a request for proposals for a consultant to bid to do the assessment. This will give a better idea of the costs involved, and it partly accounts for the request for the deadline extension to April 2023.

Mr. DeVries has lately observed that for the most part, people are staying in the designated containment area. He also noted that the Public Works staff is piloting a trash collection service at Union Point Park whereby the City provides containers and people get weekly service.

Public Comment

Brock de Lappe, Harbor Master and Marina Manager for the Oakland Marinas, commented that the situation at Union Point Park has had a devastating impact on the Embarcadero community. There have been four murders since late February, all tied to Union Point Park. Recently the front door of the Oakland Marina office was smashed; the perpetrator was from the encampment and is now incarcerated at Santa Rita. Mr. de Lappe stated that the site conditions at the Park have deteriorated from what is shown in the February 20 photograph. The parking lot is packed with vehicles and no enforcement of regulations is being done. A large encampment north of the bridge to Coast Guard Island is blocking the Bay Trail. People have moved back into the Park proper. He stated his belief that the City is falling backward on just maintaining the situation.

Commissioner Comments and Questions

Commissioner Techel commented that she appreciates the work being done and understands the challenging times with the homeless due to the inability to relocate because of COVID. She appreciated the thoughtful plan that has been brought before the Committee – and noted that it works well for both BCDC and the City of Oakland.

Chair Scharff reiterated Commissioner Techel's comments: he appreciated everyone working together on this and coming up with a solution in these very challenging times. He recognized Mr. de Lappe's frustration but felt that the City is doing the best it can at this point. He also invited Mr. DeVries to respond to the comments.

Mr. DeVries asserted that he will ask the City's Abandoned Auto detail to look at the east parking lot issue that Mr. de Lappe mentioned. That lot is in much better condition than it was when BCDC and the City first met; there had

been a massive RV encampment there. He will ask the parking staff to look at the upper parking lot as well and acknowledged that debris has accumulated there.

Mr. DeVries addressed the homicides in the area. He stated that they are not all associated with the Union Point encampment. Violent crime is currently up in Oakland and the Embarcadero area is affected.

MOTION: At the conclusion of the discussion, Chair Scharff moved to adopt the proposed revised Cease and Desist Order No. CCD2020.001.00 and schedule the matter for Commission approval in September; and for Staff to continue discussions with the City and inform the Enforcement Committee when a Triggering Event is anticipated. Commissioner Techel seconded. The motion carried unanimously with a vote of 3-0-0 with Commissioners Techel, Vasquez, and Chair Scharff voting "YES", no "NO" votes, and no "ABSTAIN" votes.

7. Future Agenda Items. Ms. Njuguna stated that in September, Staff anticipate presenting proposed changes to the Enforcement regulation to the Committee. She also informed the Committee that Staff expect to present the Committee with an update on one of the oldest cases, an updated plan for the beneficial reuse of dredged material in a managed wetland that has been negotiated related to a consistency determination that was first issued in 1985. She explained that the case would be presented to the Committee because it is one of the oldest enforcement cases.

Executive Director Goldzband requested an update from Ms. Njuguna on the schedule of upcoming Enforcement Committee meeting dates. Ms. Njuguna listed the following dates:

August 26 (pending confirmation of a quorum)

September 10

September 23

Commissioner Techel announced that she would not be running for re-election and that after the first week in December, she will not hold an elected position and will not be a part of BCDC's Commission. She noted that she was appointed to the Commission by the Association of Bay Area Governments (ABAG).

8. Adjournment. There being no further business, upon motion by Chair Scharff, seconded by Commissioner Techel, the meeting was adjourned at 10:14 A.M.