

# San Francisco Bay Conservation and Development Commission

455 Golden Gate Avenue, Suite 10600, San Francisco, California 94102 tel 415 352 3600 fax 415 352 3606

August 13, 2019

**TO:** Enforcement Committee Members

**FROM:** Brad McCrea, Regulatory Program Director (415/352-3615;  
brad.mccrea@bcdc.ca.gov)

**SUBJECT: Approved Minutes of July 24, 2019 Enforcement Committee Meeting**

**1. Call to Order.** The meeting was called to order by Chair Scharff in Conference Room 1, 654 Mission Street, San Francisco, California at 9:36 a.m.

**2. Roll Call.** Present were: Chair Scharff and Members Vasquez, Techel, Ranchod.  
Not present was Member Gilmore.

Staff in attendance included Executive Director Larry Goldzband, Regulatory Director Brad McCrea, Staff Counsel Karen Donovan, Chief of Enforcement Adrienne Klein and Analysts Matthew Trujillo and Schuyler Olsson.

Also in attendance were Shari Posner and David Pai on behalf of the Office of the Attorney-General.

**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.

**4. Approval of Draft Minutes for the July 11, 2019 Meeting.** Chair Scharff asked for a motion and second to adopt the minutes of July 11, 2019.

**MOTION:** Member Vasquez moved approval of the July 11, 2019 meeting minutes, seconded by Member Techel.

**VOTE:** The motion carried unanimously with a vote of 4-0-0 with Members Vasquez, Techel, Ranchod, and Chair Scharff voting "YES", no "NO" votes, and no "ABSTAIN" votes.

**5. Report of the Chief of Enforcement.** Ms. Donovan gave the report as follows.

Adrienne Klein is now back working full time with the Enforcement Committee.

Staff is working on process changes to respond to the audit report and holding weekly meetings to discuss and resolve active cases.

Last Friday they submitted the required 60-day response to the State Auditor. Their next response is due in four months.

Ms. Donovan discussed a few scheduling and process issues.

- Staff will be using a new, simpler process to confirm attendance and the availability of a quorum at meetings. Approximately three days before each upcoming meeting, the

APPROVED ENFORCEMENT  
COMMITTEE MINUTES  
FOR JULY 24, 2019

info@bcdc.ca.gov | www.bcdc.ca.gov  
State of California | Gavin Newsom – Governor



Members will receive an email message asking for a Yes or No response.

- In the past, Ms. Klein had distributed binders during the meetings containing the laws, BCDC's regulations, the Bay Plan, and any other relevant documents. If the Committee would like, staff can re-institute this process. Ms. Donovan has put together a binder containing those materials for Chair Scharff; if other Members would like one, they can notify staff.
- The next meeting is Thursday August 8 at the Bay Area Metro Center on Beale Street.

The three members present agreed that if there are reference materials they will need in the meeting, they would like them distributed for that meeting.

Member Vasquez commented that for him, the audit is not driving what the Enforcement Committee does—it is the best practices that will decide. An audit is only a snapshot in time; the work on the processes had been started prior to the audit. Ms. Donovan agreed with this observation. This committee has been giving valuable guidance and insight on how to keep the caseload going and have an effective enforcement program—this long predated the audit.

**6. Briefing on the Case Backlog and Proposed Measures to Address the Backlog.** Mr. Trujillo gave a brief background on the current status of the case backlog, then a proposed plan to address the backlog in light of the audit findings and the other processes BCDC is implementing.

- He provided backlog characteristics. The total number of inactive cases is 249.
  - By prioritized score, 26 cases are high priority, 60 are mid-range, and 163 are low priority.
  - 52 are 10 years or older.
  - Approximately 130 are against public agencies; Ms. Klein noted that they may be solely against a public agency or jointly against co-permittees.
  - Of the cases open more than 10 years, Ms. Klein reported that 11 of the cases between 1988 and 2008 are high priority.
- Mr. Trujillo gave the ages of the backlog cases. Of the 249, 135 are from 2016-19.

Chair Scharff stated that it would be useful to have the number of closed cases per year. Ms. Klein responded that for the last two years, the number is about 12-13. The group discussed the need to close 50-60 cases per year to eliminate the backlog.

- Mr. Trujillo reported that approximately 50% of violations are permit requirements while approximately 50% are unpermitted/unauthorized activities.
- He listed the number of open cases per year since 2006. Factors affecting the recent increase are work being done on prioritization, staff turnover, and the audit. Ms. Donovan added that starting around 2015-16, a significant amount of staff had been devoted to process improvements and to contentious cases.

Chair Scharff asked how many open cases we have now.

Mr. Trujillo answered that it is 277.

Member Techel asked how many of those cases are contentious. Ms. Donovan answered that until you initiate efforts to resolve the case, it is difficult to understand the extent of how controversial it will be. Ms. Klein expressed the hope that if staff can send cases sooner to the Committee, the record

will be smaller and the effort to compile the Violation Report and Complaint for Administrative Civil Penalties will be simpler.

Mr. Olsson stated that sometimes cases that seem minor turn out to be long and complicated, and we discover additional violations.

Mr. McCrea added that some of it also depends on the violator and their reaction to the case being opened in the first place.

Member Vasquez asked if staff tracks time against the violation itself. Ms. Klein replied that they do not. Chair Scharff and Member Techel felt that they should. Ms. Donovan stated that they would look at this, including acquiring software that could assist. Member Vasquez pointed out that this information would be valuable in making a plea for additional help.

- Mr. Trujillo gave the staff's programmatic proposal: to eliminate the existing backlog within five years. At the same time, staff sought committee input on whether they should prioritize new casework over backlog casework.
- Mr. Trujillo then listed a five-year plan for eliminating the backlog, pointing out that the existing 249 cases were the backlog they are referring to.

Chair Scharff stated that they need a plan that there is no new backlog.

Member Vasquez stated that in order to reduce the backlog over the next five years and to resolve all the cases that come in yearly, BCDC needs additional staff. How do we go about asking for that? Executive Director Goldzband replied that the auditors suggested doing a workforce analysis of the entire regulatory program. The result of the analysis would be to learn the capacity you need to get to certain points. You then go to the Department of Finance and ask for the positions and funds with a Budget Change Proposal. At the same time, it is not protocol for Commission staff to publically announce what we seek from the Department of Finance as part of the Budget Change Proposal.

Ms. Posner noted that that this financial discussion was not on the Agenda, although it sounded like it should be added because it is a component of the larger topic.

Chair Scharff stressed that we have to get all the new cases done and that he would prioritize efficiency over discovering new violations in pursuit of an action. Ms. Donovan stressed that the next part of the presentation involved how to increase efficiency with the cases.

Member Techel asked about the priority scoring, and Ms. Posner advised waiting to hold lengthy discussions until after the briefing was finished.

- Mr. Trujillo explained the proposed strategies.
  - Pursue high priority inactive cases before low priority inactive cases.
  - Prosecute mid and low priority inactive cases with consideration of age, looking at the old ones first.
  - Activate cases when a permit application is submitted by a violator.
  - Focus on reported violations more than taking a comprehensive look at the permit, in order to control the scope of the investigation.
  - Renew stale cases when a new allegation report is received.
  - Enter into settlements or issue orders with holders of multiple permits, i.e., public agencies.

- Use templates and form letters.
- Improve technological resources.

Member Techel asked about the term “prosecute.” Mr. Trujillo replied that it means to pursue and get a result.

#### **Public Comment**

Ben Eichenberg, Staff Attorney for San Francisco Baykeeper, stated that Baykeeper would be happy to work with BCDC on enforcement; they frequently hear from the public on this. When local politicians come to the Baykeeper asking about legislation to help the Bay, they can add obtaining additional funding for BCDC enforcement staff to the list. He pointed out that the regulated community is used to a certain standard of operation and is used to lack of enforcement. As BCDC tries to step up enforcement, complex and contentious cases arise because the regulated community is upset about actually having to follow the law. Mr. Eichenberg noted that the process will be painful, but that BCDC must ‘stick to their guns’.

#### **Commission Discussion**

Member Ranchod said that our fundamental challenge is one of resources and has been for a long time. It’s why we have such a backlog. The scoring system was developed to bring consistency to applying our limited resources to the backlog. The proposed five-year plan and goals are fine, but without understanding the resources we have as compared to those it will take to work through the backlog, it is not well-grounded. What is the timing for this essential workforce assessment? Further, over the next 11 months, what do we prioritize in the backlog? Having cases over 20 years old is unacceptable; we must find a way to resolve those.

Mr. McCrea responded that we expect the workforce study to be done this fiscal year and by the end of this calendar year we hope to make some headway on it. We need to find the money to do it – it needs to be done by an independent entity.

Executive Director Goldzband stated that Anissa Kotey in HR has already started working with Cal HR, whose state policy is that the workforce study is done by the agency/organization that wants it, that is, BCDC. There is a concern that if it is done internally, it will be worthless in the viewpoint of some. Executive Director Goldzband’s plan was to talk with the Department of Finance and ask how to get around this. Regarding the five-year plan, he felt that it is a good goal given the history of BCDC’s backlog: you can put the analysis of your capacity against the five-year goal to determine what you need to increase your capacity to achieve the goal.

Member Ranchod stated that if we are unable to get the resources needed to close the gap, we are going to have to take a different approach to close the backlog. It will involve more extreme steps – perhaps taking very old, stale matters off the books.

Chair Scharff stated that capacity is one leg to that stool. We also need to look at writing permits so that they are easier and quicker to enforce, and we need to figure out how to approach cases. Regarding goals, he hoped for us to use a goal that we expect to be able to meet rather than an aspirational or stretch goal. He felt that we should not provide amnesty in any of the cases.

Executive Director Goldzband argued that any goal that this committee sets is not aspirational or stretch, but is what we need to do. Further, unless you have the gap analysis, no one can put a

timeline on anything. Senior staff is in agreement with the committee that we cannot do things the way we have in past years. Time limits for enforcement cases must be set and transparent.

Member Techel asked about the definition of “inactive” used in the proposed strategies. Mr. Olsson replied that it means we are not currently working on the case. Mr. Trujillo explained that the term “backlog” applies only to inactive cases.

Member Techel felt that if the public saw this, they would have questions about the terms; “stale” is a colored word. Mr. Olsson responded that “stale” came from the audit.

Chair Scharff asked for a run-through of what happens when a new case comes in. Mr. Trujillo responded that the first step is to score and prioritize it; this takes on average about 30 minutes. A score of 60 or above makes the case a priority case. Staff looks at the list of priority cases to see who has the capacity to take on another case. There are times when a case may not score a priority, but we still take a look at it.

Member Vasquez asked about cases that score a 58 – are they still active? Ms. Klein responded that we developed the prioritization system to focus the limited resources on the most impactful cases. The prioritization scoring system was applied to the existing caseload, of which some cases were being actively resolved although they may or may not have been priority cases. Staff continued to work on all active cases. We have many inactive cases with the variety of scores. As we proceed through this process, we will be working to activate all new reports so that we are not contributing to the backlog.

Mr. Olsson stated that many of the cases that come in get scored and become inactive. He added that some priority cases may be inactive while some non-priority cases may be active.

Ms. Donovan stated that having a timeline or schedule attached to each case is very new. BCDC has few new cases for which it has been able to roll out the new management plan. When BCDC rolled out the prioritization system, it took the entire caseload and scored it. We made sure that as capacity was available, there was a focus on the highest priority cases. At that time, some cases were still being pursued, but would not have been in hindsight because they did not have a score of 60.

Ms. Donovan continued that a new practice is to hold weekly meetings to go over the caseload of each analyst. They are trying to get aggressive with these cases and ensure that all are advancing. New cases get slots with consideration of priority.

Chair Scharff asked why we take on cases that are not priority cases. Mr. Olsson gave examples: the Golden Gate Bridge’s suicide deterrent system, begun without authorization, but having high political visibility; and the Oracle facility in Redwood City making changes to their parking lot – other fixes were also adjusted at that time for efficiency.

Mr. Trujillo stated that unless directed by management to take on a non-priority case, staff should be taking on only priority cases.

Ms. Klein pointed out that in prior meetings, staff was given direction to have an 80% focus on high priority cases and 20% on non-priority cases.

Mr. Trujillo cited reasons for why work may begin on non-priority cases: the violator is willing to work with BCDC and get the violation resolved, or the land is transferring hands and the corporation selling the property wants to clean it up – the timing is right in many cases to begin work.

Chair Scharff affirmed this explanation: if the timing is right, the case gets worked on. He

expressed concern about the term “caseload capacity.” If we are receiving 60 new cases per year, roughly how many of those score over 60? Staff estimated the answer at about 20%. Chair Scharff asked how many of those high priority cases are not being worked on. Ms. Donovan responded that in the past couple of years, staff time has been diverted to other matters such as questions from the public and the state auditor. It is very difficult to use the past two years as a set data point for reflecting staff capacity.

Chair Scharff asked what will happen, going forward, to a new case. Mr. Olsson pointed out that time staff is spending on these audit-related questions is time that we are not working on cases, so the backlog is going to continue to grow in the coming months. Ms. Donovan stated that the goal is to soon get the analyst staff devoted to handling cases, with a focus on the priorities.

Executive Director Goldzband stated that from his perspective, BCDC’s most pressing issue with regard to enforcement is resolving these policy issues and changing these processes quickly, not solving cases. We hope to get a lot of this done by the end of the year so we can report to the Legislature that we are starting a new way of dealing with the cases. The longer it takes for BCDC to change its processes, the more criticism will come to BCDC.

He continued that he has never been told to pursue an enforcement case based upon politics. The Golden Gate Bridge District had for years denied that it was in BCDC’s jurisdiction. The pursuit of an action was strategic on BCDC’s part.

Member Ranchod noted that by the end of the year, inactive cases on the backlog are going to increase – for the good reason of system improvements. He asked about the plan for resolving cases 20 years old or older. Ms. Donovan responded that staff recognizes that allowing those cases to linger any longer is unacceptable. They have made a rough preliminary examination of those cases.

Member Ranchod stressed that the issue of resources, and how to acquire the resources, is key in all of this. How do we empower our people to do their job, and allow for mistakes to occur?

Mr. McCrea agreed that the five-year goals need a reality check on whether they are expected goals or stretch goals. He suggested that working on the oldest cases first would be good focused direction for today.

Ms. Donovan asked if the Committee agreed that staff should pilot this effort to get the oldest cases resolved, reporting back in a month and a half on progress.

Mr. Trujillo suggested a review of the oldest cases and their status at the next meeting. Executive Director Goldzband clarified that this would entail a paragraph on each case with a recommendation on whether to pursue. Member Techel requested to see the scoring.

The Committee agreed to address the cases Ms. Klein listed that have been open from 1999 back to 1988.

Chair Scharff summarized that the policies and procedures are the most important thing. There is yet a tension with that: we want to see some progress on the cases. Making some progress is important, and if we can make progress on the oldest cases, that is easy to point to.

For the 0-6 month timeframe on the five-year plan which Mr. Trujillo had mentioned, Chair Scharff felt that whatever date you think this process is going to start should be considered 0. Mr. Trujillo agreed.

To accommodate the members of the public present, Mr. McCrea suggested to change the order of the agenda to address Item #8 next instead of Item #7.

**8. Update on Union Point Park Enforcement Action.** (Item 8 was heard before Item 7.)

Mr. McCrea provided a brief update.

Union Point Park is along the Oakland estuary near the Fruitvale District. BCDC issued a permit in 2003, and the park was built in 2005. The permittees are the City of Oakland and the Unity Council. The land is owned by the Port of Oakland, and there is a no-cost lease of the land to the City.

The park was created through the efforts of the Unity Council, which had led a campaign to build the park for the underserved neighborhoods of Fruitvale and San Antonio. There were many funding sources for the park.

The park has been well-used by the public and has been a great community resource. The problem is that today the park feels very unwelcoming and unsafe. There has been a huge influx of homeless encampments over the last several years.

Complaints began early in 2018 about the condition of the park. Last February BCDC, the Coastal Conservancy, and the Bay Trail Project sent a letter to the City expressing their concerns. Last November, a chain link fence was installed as a stopgap measure to protect the marina restroom. Since November 2018 the community has continued to receive complaints from numerous members of the public.

The City made various efforts to clean up the park, but the homeless encampments reestablished themselves shortly thereafter. Last March a group of homeless individuals filed a Temporary Restraining Order to prevent the City from completing the cleanup operations. In April, a federal district judge issued a Preliminary Injunction preventing the City from moving forward with its plans to clear the park. That injunction stands.

BCDC is standing by waiting for the injunction to be lifted and the park to be accessible for everyone. No action on this item is needed; it is for informational purposes only.

**Public Comment**

Brock deLappe, Harbormaster and Marina Manager for the Oakland Marinas, stated that renting slips to tenants at that marina is extremely difficult given the shoreline conditions. An arson fire in the restrooms cost over \$60,000 to repair. The Embarcadero Business Coalition held a standing-room-only meeting in December; it was attended by public officials and local businesses. They all said the same thing: the park is attracting crime, it is unacceptable, and the public cannot use this park as is. Since the meeting the situation has deteriorated further.

Mr. deLappe stated that the problem is the *Martin v. City of Boise* ruling, which says that people must be able to sleep—you cannot criminalize homelessness. This park has been taken over by a handful of individuals who have usurped this resource from the general public. Mr. deLappe described the legal proceedings and expressed his frustration.

Member Vasquez asked about the Unity Council. Mr. Olsson explained that the Unity Council has changed their focus and were not aware that they had anything to do with the park. Mr. deLappe stated that when the City of Oakland signed the lease with the Port of Oakland, they were required to keep the park in “clean, first class, and lawful condition.” They are thus in breach of their lease. Mr.

deLappe said that there was no way to police the stealing of water from stand pipes and fire lines.

Mr. McCrea stated that BCDC can reach out to the Unity Council and ask how the larger community feels about the park. We can also reach out to the Port of Oakland and get better understanding from the Real Estate Division about the lease.

Mr. Olsson added that there are grants from the State Coastal Conservancy and the Bay Trail using Coastal Conservancy funds, that include maintenance provisions. Ms. Donovan noted that staff is watching this situation. Once the court put the injunction in place, we recognized that ordering the City to do anything in the short term was not going to result in any action. BCDC has been in contact with the City as well, trying to keep apprised of the litigation.

Member Vasquez felt that the solution will take everyone coming together, maybe making a plea in court. Presently the park is not what it was intended to be. Looking at the environmental justice aspect, the community had fought to get this open space and this park, and now it's been overtaken by someone else.

Executive Director Goldzband asked if the Committee had any recommendations for staff. Chair Scharff stated that he wanted to read the injunction. Since we are not covered by the injunction, we could fine the City of Oakland. He was not sure about going after the Unity Council.

Ms. Donovan stated that Mr. McCrea has reached out to officials at the City. The two issues in play are the City's ability to follow its own procedures to handle personal property in the encampments, and whether the City has adequate alternative accommodations for the people in the encampments. According to the City's attorneys, the primary issue is having alternative accommodations.

Mr. deLappe described how the City was able to clean up Lake Merritt. Union Point Park needs the City to rise to the level of priority where they are willing to do that.

Chair Scharff felt that staff is doing everything right. They do need to meet with the City of Oakland and tell them to make this a park – to clean it up and serve the people. Once the injunction is lifted, they need a plan because then we are going to start enforcement procedures.

Executive Director Goldzband pointed out that the meeting has to occur with both permittees, not just one of them.

Ms. Donovan felt that there is interest from the surrounding community. It has made local papers and BCDC staff does receive emails.

Member Vasquez asked about if the present homeless population is moved out: does that leave the park open for a new population to move in? Ms. Donovan responded that BCDC wants to have this discussion with the City, to ensure that they are meeting the terms of the permit.

#### **7. Briefing on Standardized Fines Process.** Ms. Klein presented the briefing.

The standardized fines regulation comes from the ability in the law to impose administrative civil penalties up to an administrative maximum of \$30,000, in an amount not less than \$10 nor more than \$2,000 per day.

The fines can go to anyone for any violation of the law or any term or condition of a permit. The Suisun Marsh Preservation Act does not have administrative civil penalty authority, and therefore standardized fines are not used for violations in Suisun Marsh.

There are six types of violations that are eligible for resolution using this regulation. Staff can

use the standardized fines for these types of violations when the violation has not resulted in significant harm to the Bay, and when the violation can be corrected in a manner consistent with the McAtteer-Petris Act.

Staff initiates the standardized fines by sending a letter outlining the nature of the violations, how to resolve them, and the penalties that will accrue if the violation is not resolved within 35 days.

Ms. Klein described a hypothetical shoreline band violation to explain how the regulation actually works.

Chair Scharff asked, once the fine reaches \$30,000 and stops, where is the incentive to do anything? Ms. Klein answered that the incentive is to avoid fines at all. Also, the grounds for an appeal of the accrued fine are better if the response was more proactive. Mr. McCrea added that it used to be that when the fines max out, BCDC continued to call and work with the violator. We do not do that anymore. We now send a letter stating that we have stopped the standardized fine process and are moving into enforcement – the Cease and Desist Order.

Executive Director Goldzband stated that we are trying to remove the disincentive that when the violator reaches \$30K, they do not care anymore because the amount will never go above that.

Member Scharff stated that it seems almost worse: if the violator never resolves it, they never have to pay.

Mr. Trujillo stated that fines do not accrue on cases that are on the inactive list.

Ms. Klein continued with the hypothetical violation and showed what kind of fine amounts the violation would accrue. She pointed out that some reduction is often granted for good faith efforts.

A respondent can request a formal enforcement proceeding pre-resolution if s/he believes that the timeline to resolve the violation is inadequate, or to fairly determine the appropriate remedy; post-resolution, the respondent may not like the amount of the civil penalty. The Executive Director can terminate the opportunity for resolution using standardized fines and elevate for two reasons: the responsible party has not corrected the violation and paid the fines within the time limits (usually 125 days), or the Executive Director determines that the responsible party has not made a good faith effort.

There are provisions of the regulation pertaining to repeat violations.

Staff has made changes that are working:

- They are focusing on fewer cases so they can pursue each through resolution.
- They are elevating cases more quickly to the Enforcement Committee.
- They are pursuing procedures to elevate the inactive cases to the Enforcement Committee for which they have already issued a 35-day letter.

Potential changes to the regulation for the Committee to discuss are:

- To define “substantial harm.”
- To modify the regulation to explicitly enable use of fines for certain dredging violations.
- To extend the period beyond five years for double fines for repeat violators who have previously paid a fine.
- To increase the amount of \$100/day for quick fix repeat violations.
- To consider automatic adjustments of fines amounts for inflation.

Ms. Donovan added that staff had listed the potential changes to the regulation to show how it

can operate more efficiently, but any changes are going to be done as part of a more comprehensive package after we undertake a full examination.

Chair Scharff noted that cases that come to the Enforcement Committee are no longer bound by standardized fines. However, are there are still limitations on how we can fine? Ms. Klein confirmed that fines are limited to \$10-2,000/day per violation, to the administrative maximum of \$30,000. She added that the standardized fines do not commence until 35 days after issuance of the 35-day letter, whereas the statutory fines commence from the first day we have evidence that the violation began.

Chair Scharff expressed concern that by the time the violation gets to the Enforcement Committee, the fine is almost always \$30,000. All we are doing then is imposing the same fines that the standardized fines process would impose. Chair Scharff felt that the amount should double or triple.

Chair Scharff asked if staff has the authority to collect the money without going to the Enforcement Committee and elevating the case. If violators are at \$30,000, why not just fine them and collect the money? Ms. Klein answered that the Commission-issued Cease and Desist Order has deterrent value even if the fines are the same; there are consequences to not complying with it.

Ms. Klein stated that as the regulation is currently written, there is no way to assess fines before the violation is resolved. The total amount is not known unless the accrued amount is \$30K.

Ms. Donovan noted that the regulations are currently written such that the violation has to be fully resolved before the fines close out. We can explore whether a change to that might make this process better.

Chair Scharff suggested that there may be a more efficient way to use incentives.

Mr. McCrea commented that the standardized fine of \$30,000 maximum takes about a year. After four months we could switch gears to a Violation Report and start that process, getting to a \$30,000 maximum presumably sooner.

Chair Scharff pointed out that when people actually pay out of pocket, they have more incentive. Ms. Klein expressed the hope that the regulated community will begin to be compliant more quickly because they recognize that our process has changed and things will be elevating more quickly – that deterrence will speed things up.

Chair Scharff suggested that maybe we presently allow things to get worse by not acting quickly, using the Union Point Park case as an example. He hoped for us to think it through and best design a system – resolving this in a way that works for the next 20 years.

Member Vasquez felt that giving the Enforcement Committee the ability to set fines higher would be an incentive.

### **Public Comment**

Mr. Eichenberg stated that in trying to find the most efficiencies, everything should be looked at in terms of what takes the most time. There are ways to work with the definitions of staff job descriptions such that permit-writing staff can take on tasks that enforcement staff are doing now. He suggested that if the Legislature seems unwilling to devote more resources, then Baykeeper would be happy to enact a citizen supervision effort to help with enforcement action. Finally, Mr. Eichenberg observed that regarding standardized fines, the regulations were last updated in 2003. We should consider the substantial inflation difference and the property value increase since 2003; the incentive

structures are quite skewed.

Member Techel stated that it would be helpful for the Committee to understand the process the Executive Director uses to evaluate fines – how the Executive Director and the Chair determine whether to reduce them. Ms. Donovan stated that the way the process works is that staff writes a memo to Executive Director Goldzband and the Chair with a recommendation regarding the appeal; they either grant or deny it. Ms. Klein noted that the process has become much more systematic.

Chair Scharff requested information on how we decide what is a violation, and whether it is one violation or two.

Ms. Posner established that there are two sets of regulations at play: standardized fines and penalties, the latter of which is a separate subject.

Ms. Donovan stated that we have a separate discussion teed up on how to determine individual violations; this is following a recommendation of the audit. In addition, staff is in the process of developing a penalty policy for which the Committee will provide guidance.

Member Vasquez felt that staff should be given as many tools as possible to resolve enforcement issues – giving the message to violators that they do not want their case to go to the Enforcement Committee. Ms. Donovan agreed.

Ms. Donovan stated that at the next meeting we will have another discussion on the penalty policy. In terms of how factors are weighed, the penalty policy is not relevant for standardized fines which are a set sum.

Ms. Klein suggested for the Commission to consider providing direction to staff and the Commission Chair on when to grant appeals.

**9. Adjournment.** There being no further business, Chair Scharff adjourned the meeting at 12:29 p.m.

DATED: \_\_\_\_\_

\_\_\_\_\_  
BRAD McCREA  
Regulatory Program Director