

San Francisco Bay Conservation and Development Commission

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February 22, 2021

TO: Enforcement Committee Members

FROM: Adrienne Klein, Principal Enforcement Analyst (adrienne.klein@bcdc.ca.gov)

SUBJECT: Update on Oldest Cases

(For Agenda Item 6 for February 24, 2021 Enforcement Committee Meeting)

Summary

On November 10, 2020, staff presented the fourth iteration of this report on the enforcement cases that date from 1999 and earlier. The first presentation occurred at the August 8, 2019, meeting. In 2019, staff closed three of the eight oldest cases. This report summarizes the status of the remaining oldest enforcement cases. The information provided for each case includes the impact prioritization score, a description, as appropriate, of the permit or authorization at issue, a description of the violation, staff actions that have been undertaken to resolve the violation, staff's proposed case management plan for the case and the case status as of February 22, 2021.

Case Summaries – Closed Cases

- 1. Enforcement Case No. ER1999.019 located at 1331 Milton Road, Napa County, on the Napa River** was closed on August 23, 2019. For details, see the staff report presented to the Enforcement Committee on March 12, 2020.
- 2. Enforcement Case No. ER1999.081 located at 3393 Petaluma Boulevard S., Petaluma, Sonoma County (alternate address is 4001 Highway 101 South)** was closed on December 31, 2019. For details, see the staff report presented to the Enforcement Committee on March 12, 2020.
- 3. Enforcement Case No. ER1999.005, located on privately-owned, commercially developed property in Redwood City, San Mateo County** was closed on December 27, 2019. For details, see the staff report presented to the Enforcement Committee on March 12, 2020.

Case Summaries – Pending Cases

- 4. Enforcement Case No. ER1988.024 located at 628 Johns Place, Benicia, Solano County**
 - Impact Prioritization Score: 39
 - Authorization: Permit No. 1977.021 authorized subdivision and construction of 10 homes, a concrete block gravity revetment and public access from the street to the beach via wooden stairway on a 2.3-acre site.



- Violation: Public access stairs from blufftop to beach are in disrepair and closed by City mandate. The beach is otherwise inaccessible due to grade change from street to beach.
- Staff Actions: Shoreline protection work by the owner of Lot 5 was necessary before City could reconstruct and reopen stairs pursuant to its maintenance agreement. BCDC and the City of Benicia initiated coordinated compliance efforts in 2014-2015. As of 2019, the City was satisfied with proposed revetment repair design submitted by property owner.
- Proposed Case Management Plan: Next step is to seek regulatory approvals, including BCDC approval, for the improvements. Allow the landowner to continue pursuing design and regulatory approvals for new/repared seawall so that City can then reconstruct public access stairway.
- Status as of March 12, 2020: Staff has received a concept shoreline protection plan from the private property owner's engineer and provided recommendations for modifications. Staff was awaiting the revised concept plan and an application for a permit amendment. Staff had communicated with the City of Benicia staff engineer, who was prepared to oversee the construction of the beach access stairway following completion of the shoreline reconstruction project.
- Status as of July 3, 2020: Staff requested the revised concept plan twice from the owner's engineer for the permit amendment. The engineer responded the week of June 29th indicating that he has been revising the concept plan and is addressing some design challenges. Staff reiterated their availability to answer any questions and requested information on when they can expect to receive a complete amendment request.
- Status as of November 10, 2020: The engineer was resolving some technical issues, finalizing the project design, and preparing a Joint Aquatic Resources Permit Application (JARPA).
- Status as February 22, 2021: Open, resolution pending. In conversation with the manufacturer, the engineer learned that the product he planned to use as part of his conceptual design is unsuitable for use in locations that experiences wave action. Therefore, he is in search of another product/material that can be assembled onsite to accommodate site access constraints while managing the total project cost. Staff provided some suggestions for the engineer's consideration and has set up recurring monthly meetings to promote ongoing engagement toward resolution.

5. Enforcement Case No. ER1990.026 located on managed wetlands at the Rich Island Duck Club, Port of Stockton, Suisun Resource Conservation District.

- Impact Prioritization Score: 90
- Location: A 1,025-acre managed wetland at the Rich Island Duck Club (Duck Club), Simmons Island, Solano County.

- **Authorization:** Consistency Determination No. 1985.006, issued to U.S. Army Corps of Engineers (USACE) authorized one million cubic yards (cy) of dredging in the Stockton Ship Channel, and disposal of the material at four locations one of which was the Duck Club where the authorization allowed placement of 350,000 cy of material over 100 acres to improve habitat, fill borrow ditches and maintain levees. The Consistency Determination requires removal of any unused material within 10 years of project completion, in accordance with a 1985 agreement between the USACE and Stockton Port District (Port) and a 1986 letter from USACE to BCDC stating the USACE/Port agreement is part of the Consistency Determination. The 1985 Agreement states that the Port has the right to sell, remove or otherwise dispose of any excess material and the Port agrees that if not all material is used or removed by July 1, 1996, Corps has the right to remove the material and charge Port with net cost associated with such removal.
- **Violation:** Ten years following project completion on July 1, 1996, BCDC staff notified the USACE, the Port and Duck Club needed to use or remove excess material to avoid a violation. The Port subsequently hired a consultant to prepare a dredged material management plan.
- **Staff and Enforcement Committee Action:** On November 30, 2006, the Enforcement Committee declined to initiate litigation after hearing the matter instead they directed the USACE, the Port and the Duck Club to:
 - Prepare a final detailed plan based on conceptual plan and completed additional engineering work, environmental review, obtain permits and complete construction, monitoring and reporting; or
 - Remove all excess material to an acceptable offsite location with a reasonable length of time, to be determined by the Enforcement Committee and Commission.
- Shortly before a follow-up Enforcement Committee meeting scheduled for May 10, 2007, the Duck Club presented a revised site restoration plan that raised a number of issues. During the 2007 Enforcement Committee meeting, the USACE and the Port confirmed their commitment to carry out the original plan with Port funding, but the Duck Club advocated for consideration of its plan. The Enforcement Committee directed the parties to work on a solution to rectify differences between the two plans and report back. The matter remains unresolved.
- **Proposed Case Management Plan:** Schedule call/meeting with parties to assess funding and capacity to finalize site restoration plan within a specified timeframe. If agreement between the USACE, the Port and the Duck Club cannot be achieved within specified timeframe, work with the Office of the Attorney General to consider whether to commence litigation.
- **Status as of March 12, 2020:** A letter was mailed December 17, 2019, to USACE to meet its obligations under the letter of agreement dated June 4, 1986. The Port of

Stockton retained Anchor QEA, an engineering, environmental sciences and planning and restoration consulting firm, to evaluate the past site remediation proposals and develop a new remediation proposal to which all parties can agree, and which is eligible for regulatory approval. Two in-person meetings were held with all affected parties followed by monthly telephone update meetings. A tentative resolution timeline had been scheduled with five milestones for potential presentation to the Committee for plan approval on/about May 2020 contingent on execution of a site visit to assess current conditions was postponed 6 weeks because of COVID-19 shelter-in-place orders. Ongoing remote and teleconference meetings with interested parties were planned to assure ongoing progress.

- Status as of July 3, 2020: Two virtual meetings have been held, to refine objectives and evaluation criteria and discuss, improve, and work toward consensus on two documents prepared by Anchor QEA. The first document identifies the existing conditions at the RIDC whereas the second summarizes two conceptual alternatives to beneficially reuse the dredged material onsite and provides approximately 14 criteria for evaluating each alternative. Due to COVID-19 shelter-in-place orders the parties were unable to meet onsite as a group; however, on June 11th, the consultants conducted a site investigation to validate the existing conditions assessment. The consultant is preparing a refined design alternative based on the group's feedback, which will likely be a modified version of a blend of the two conceptual alternatives. The group will meet again in July to discuss the site visit findings and the refined design alternative. Following agreement on a design, the group will pursue the requisite regulatory approvals.
- Status as of November 10, 2020: On September 10, 2020, staff provided a briefing to the Enforcement Committee on the final conceptual design plan and its benefits. The Port of Stockton's consultant, Anchor QEA, is pursuing regulatory approvals for this concept design.
- Status as of February 22, 2021: Open, resolution pending. On November 17, 2020, Anchor QEA made a presentation to the Suisun Marsh Plan Adaptive Management Advisory Team, to informally request permission from the USACE to authorize the concept design through its Regional General Permit 3 for Suisun Marsh Managed Wetlands Operations and Maintenance Projects. Anchor QEA also communicated directly with each resource agency about their respective permitting requirements for this project. The USACE determined that since the proposed work will be undertaken to resolve an enforcement action, the Suisun Marsh Managed Wetland Maintenance Permit was not appropriate; the RWQCB concurred. The consultant is in continued discussions with the resource agencies regarding the appropriate permit approaches with a goal of achieving project implementation as soon as practicable.

5. Enforcement Case No. ER1995.002 located at 22 Lucky Drive, Greenbrae, Marin County.

- Impact Prioritization Score: 64
- Authorization: No BCDC Permit. Pre-existing pile-supported single-family residence located on Corte Madera Creek in BCDC's certain waterway jurisdiction.
- Violation: Two episodes of placing broken rock, concrete and fill around and under the residence in Corte Madera Creek, illegal live-aboard, removal of marsh vegetation, repair of decks around house, residential expansion via an enclosure, installing of pilings. Since discovery of the violations and the opening of the case, the property has changed hands.
- Staff Actions: A 1994 onsite meeting and letter advising submittal of after-the-fact permit application. A 1995 office meeting to complete application, and two follow-up letters requesting additional information. A 1997 letter regarding illegal live-aboard. A 1998 onsite meeting and letter requesting after-the-fact permit application and letter from State Lands Commission (SLC).
- Proposed Case Management Plan: Contact current owner to solicit after-the-fact application. Resolve without fines if all unauthorized work is permitted or removed within specified timeframe. Coordinate with the SLC that owns the submerged tidelands on which this and other residences are located and with Marin County, from whom discretionary approval may be necessary.
- Status as of March 12, 2020: SLC staff had provided BCDC staff with a copy of the current lease. BCDC staff had not contacted the current property owner.
- Status as of July 3, 2020: On April 29, 2020, staff notified the property owner of the inherited violations. Staff received an immediate response and during a virtual meeting learned that the property owner has owned the property for four years, was unaware of the BCDC violations, wishes to elevate the residence, and has had trouble identifying technical experts to take on the job. Based on this information, staff proposed to resolve the violation as part of an application for a residential lift. Staff provided the property owner with the names of approximately eight coastal engineers that the owner is in the process of contacting. The owner gave staff a virtual tour of the existing conditions and shared two sets of 2017 architectural plans to raise the residence. Staff reviewed these plans and on May 29, 2020, provided the owner with guidance on the relevant provisions of the McAteer-Petris Act and San Francisco Bay Plan policies that should be considered in future designs. Staff shared their communications with the owner with the relevant resource agencies and local government. The owner is very cooperative.
- Status as of November 10, 2020: The property owner wants to elevate his residence but is having difficulty retaining technical experts to finalize and implement the project. Staff has worked to assist the property owner in obtaining assistance from

third parties for him to fully understand critical construction considerations. The owner informed staff that FEMA renewed his flood insurance and that he is working with Marin County to finalize authorization of an accessory dwelling unit.

- Status as of February 22, 2021: Open, resolution pending. Staff developed a proposed solution to allow interim retention of the portion of the unauthorized work not eligible for retroactive approval – a portion of decking and some shoreline protection - until the owner obtains permission to elevate the residence. Staff discussed this approach with the resource agencies, who concurred with the concept, and with the owner, who is willing to comply despite ongoing difficulty finding a qualified professional to pursue the many needed permits and to undertake the project.

6. Enforcement Case No. ER1998.013 located on publicly owned property adjacent to India Basin, northeast of Hunters Point Road, in the City and County of San Francisco.

- Impact Prioritization Score: 36
- Authorization: Permit No. 1993.001 authorized City and County of San Francisco to place fill in the Bay to raise grade of previously filled area, riprap for shoreline protection, paving for public access pathways, boat launch ramp, landscaping, pile-supported fill for fishing pier, boat launch float and boardwalk; and fill in shoreline band for roads, public access, and open space.
- Original Violation: Failure to submit public access instrument required by original permit.
- Staff Actions: The City needs to vacate one or more street rights-of-way (ROW) to enable dedication of required public access area. BCDC staff met many times with City staff to achieve this requirement yet the City was unsuccessful in vacating the street ROW.
- Proposed Case Management Plan: Contact permittee to assess status and provide instructions to submit and obtain approval of legal instrument within specified timeframe to avoid 35-day enforcement letter or formal enforcement proceeding. Discuss additional actions in light of recent development plans.
- Status as of March 12, 2020: Staff contacted the San Francisco Department of Parks and Recreation (DP&R) and Public Works (DPW) to identify the appropriate contact persons to establish whether a number of street rights of way located within the public access areas have been vacated and transferred from DPW to DP&R for exclusive public use.
- Status as of July 3, 2020: Staff determined that, in addition to not recording the legal instrument, the permittees have not vacated the street rights of way; have not fully implemented the public access requirements of the permit at both the India Basin Shoreline Park and the India Basin Open Space Area; that a portion of the property subject to the permit is owned by the Port of San Francisco rendering the Port a de

facto permittee; that the unbuilt boat launch ramp will be built in the future at the India Basin Open Space Area by a private entity, Build Inc; and that the unbuilt fishing pier will be built by the permittee at the India Basin Shoreline Park but of a different design likely requiring a permit amendment. Staff is still assessing the compliance status of some other permit requirements. Staff has had several virtual meetings with representatives from the DP&R and BCDC permit staff. On July 2, 2020, staff visited the site and observed that the shoreline park requires minimal maintenance whereas the open space appears unmaintained and potentially inaccessible. Both sites lack public shore signage. Staff has discussed with its DP&R contact the likelihood that it will direct the permittees to comply with all of the permit's requirements, including implementing the public access improvements at both parks, with the exception of the fishing pier and boat launch ramp, and to develop and enter into an agreement between the parties that addresses how and when the fishing pier and boat launch ramp will be installed. This could enable case closure while recognizing that permit requirements will not be fully constructed for many years.

- Status as of November 10, 2020: Progress slowed by staff time limitations at DP&R and at BCDC. Internal coordinated communication occurred and permitting staff are proceeding with negotiations with Build Inc., DP&R, and the Port regarding a related major permit application tentatively scheduled for a Commission public hearing and vote in January 2021. Once the new permit is issued, the permit for this matter will be amended to assure that public access requirements reflect current site conditions.
- Status as of February 22, 2021: Open, resolution pending. Staff conducted a site visit on January 7, 2021, prepared a summary of compliance issues, and scheduled a meeting with the permittees on March 10, 2021, to discuss the compliance issues.

8. Enforcement Case No. ER1999.034 located at 1620 Fernside Boulevard, City and County of Alameda, US Army Corps of Engineers San Francisco District Permit SPN-2011-00164.

- Impact Prioritization Score: 28
- Authorization: Permit No. M1986.010 authorized repair and repositioning of existing single boat dock including pile driving, issued in September 1998.
- Violation: Construction of single boat dock and seawall on property formerly owned by U S Army Corps of Engineers that may be inconsistent with existing authorization.
- Proposed Case Management Plan: Investigate permitting status of site and conduct site visit, as necessary, to assess whether existing boat dock and shoreline protection are consistent with permit authorization and proceed accordingly.
- Status as of March 12, 2020: BCDC investigation found a current property owner who staff had not previously contacted.

- Status as of July 3, 2020: Staff has been unable to conduct a site visit due to COVID-19 shelter-in-place. Staff mailed a modified initial contact letter on May 20, 2020 not having found viable alternate means of communication, to which the respondents have not responded. On July 2, 2020, staff re-mailed the letter by certified mail and will determine a way to conduct a site visit to assess current conditions.
- Status as of November 10, 2020: Staff made written contact with the property owner on July 24th, spoke to her on July 28th, and fulfilled her request to review the permit history by electronically sharing the permit file on September 3rd. The property owner was unresponsive in the interim but has since agreed to meet with staff virtually on November 18th to develop an action plan to resolve the matter.
- Status as of February 22, 2021: Open, resolution pending. Staff obtained valuable information from the owners during the meeting on November 18th but has since had limited communication from them. Owners were unable to meet with staff in February 2021. The meeting has been rescheduled to March 3rd during which staff plans to seek their cooperation in submitting a permit application and committing to execute a permit.