

# San Francisco Bay Conservation and Development Commission

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<b>Files:</b>	ER2018.028;
<b>Permits:</b>	M2003.028.01;
<b>Date Mailed:</b>	December 2, 2019
<b>35th Day After Mailing:</b>	January 6, 2020
<b>60th Day After Mailing:</b>	January 31, 2020
<b>Hearing Date:</b>	TBD

**VIOLATION REPORT  
ENFORCEMENT INVESTIGATION NO. ER2018.028  
CITY OF OAKLAND; THE UNITY COUNCIL**

**FAILURE TO RESPOND TO THIS VIOLATION REPORT BY COMPLETING THE ENCLOSED STATEMENT OF DEFENSE FORM AND ENCLOSING ALL PERTINENT DECLARATIONS UNDER PENALTY OF PERJURY, PHOTOGRAPHS, LETTERS, AND OTHER WRITTEN DOCUMENTS COULD RESULT IN A CEASE AND DESIST ORDER, A PERMIT REVOCATION ORDER, OR OTHER APPROPRIATE INJUNCTIVE RELIEF BEING IMPOSED ON YOU WITHOUT YOUR HAVING AN OPPORTUNITY TO CONTEST THEM OR TO INTRODUCE ANY EVIDENCE.**

The San Francisco Bay Conservation and Development Commission is issuing this Violation Report (“Violation Report”) and statement of defense form because the Commission's staff believes that you may be responsible for or involved with a possible violation of the Commission's laws and a Commission permit. The report contains a brief summary of all the pertinent information that staff currently has concerning the possible violation and reference to all the pertinent evidence on which the staff currently relies. All the evidence this Violation Report refers to is available in the permit and enforcement files for this matter located at the Commission's office. You can review these materials at the Commission's office or have copies made at your expense or both by contacting the Commission's staff at telephone number (415) 352-3600. This Violation Report also informs you of the nature of the possible violations so that you can fill out the enclosed statement of defense form and otherwise be prepared for Commission enforcement proceedings.

Issuance of this Violation Report and the enclosed statement of defense form is the first step in formal Commission enforcement proceedings. Subsequently, either the Commission or its enforcement committee may hold an enforcement hearing, and the Commission will determine what, if any, enforcement action to take.



Careful reading of and a timely response to these materials is essential to allow you to present your side of the case to the Commission. A copy of the Commission's enforcement regulations is also included so that you can fully understand the Commission's enforcement procedures. If you have any questions concerning either the Violation Report, the enclosed statement of defense form, the procedures that the Commission and its enforcement committee follow, or anything else pertinent to this matter, you should contact, Schuyler Olsson or Karen Donovan of the Commission's staff at telephone number (415) 352-3600 as quickly as possible. Thank you for your cooperation.

**I. Entity believed responsible for the illegal activity:**

**Name:** City of Oakland ("City")  
c/o Joe DeVries, Assistant to the City Administrator  
**Address:** 1 Frank Ogawa Plaza, 11th floor  
Oakland, CA 94612  
**Telephone:** (510) 238-3083

**Name:** The Unity Council  
c/o Chris Iglesias, Chief Executive Officer  
**Address:** 1900 Fruitvale Avenue Suite 2A  
Oakland, CA 94601  
**Telephone:** (510) 535-6900

**II. Brief description of the nature of the illegal activity:**

- A. Failure to make the designated area available exclusively to the public for public purposes such as walking, bicycling, sitting, viewing, fishing, picnicking, and related purposes, in Violation of Special Condition II.C.1 of Permit No. M2003.028.01 ("Permit").
- B. Failure to maintain the required public access area and improvements specified in Special Condition II.C.1 and II.C.2 of the Permit, in Violation of Special Condition II.B.4, "Maintenance".
- C. Failure to provide all required improvements within the public access area, in Violation of Special II.C.2 of the Permit, "Improvements within the Public Access Area", including missing public access signage, missing picnic tables, and a missing bicycle rack.

**III. Description of and location of property on which illegal activity occurred:**

The violations are located at Union Point Park, in the City of Oakland, Alameda County (see Exhibit 01).

The project site is comprised of all or part of the parcels identified as Alameda County Assessor Parcel Numbers (APNs) 018-0505-001, 019-0066-007-03, 019-0070-001-04, and 019-0104-001-03.

**IV. Name of owner who controls property on which illegal activity occurred:**

Parcel Numbers 018-0505-001 and 019-0066-007-03 are owned by the City of Oakland, controlled by the Port of Oakland Commissioners, and leased back to the City of Oakland. Parcel Number 019-0070-001-04 is owned by 2100 Embarcadero LLC, while Parcel Number 019-0104-001-03 is owned by East Bay Regional Parks District.

**V. Approximate date (and time if pertinent and known) illegal activity occurred:**

- A. The violations cited in Sections II.A and II.B have persisted since at least March 13, 2018, when it was first reported to the Commission that unauthorized encampments and associated debris were present in Union Point Park and that the Park was not available to the public for its intended purposes.
- B. The violation cited in Section II.C has persisted since at least November 3, 2016, when historical Google Earth aerial Imagery first demonstrates that a bicycle rack required by the permit was absent from the Park.

**VI. Summary of all pertinent information currently known to the staff in the form of proposed findings with references to all pertinent supporting evidence contained in the staff's enforcement file (the file is available at the Commission's office for your review; you should call the above listed staff enforcement officer to arrange to the review the file):**

A. **Relevant Files.** This violation report is based on the following findings and the relevant San Francisco Bay Conservation and Development Commission (BCDC) files including:

- 1. Permit File No. M2003.028.01; and
- 2. Enforcement File No. ER2018.028.

**B. City of Oakland and The Unity Council Permit.**

- 1. On March 25, 2004, BCDC issued BCDC Permit No. M2003.028.00 to the City of Oakland and The Unity Council to construct Union Point Park and related improvements and shoreline protection.
- 2. On August 13, 2004, BCDC issued Amendment No. 1 to Permit No. M2003.028.01 ("Permit") to the City and The Unity Council to install an outfall to drain stormwater from the park (see Exhibit 02).



3. The Permit includes Special Conditions related to Public Access, including but not limited to:
    - a. **Special Condition II.C.1, "Area"**, requires that the approximately 144,520-square-foot area (3.32 acres) along approximately 1,441 linear feet of the shoreline as generally shown on Exhibit "A" of the Permit, shall be made available exclusively to the public for public access for walking, bicycling, sitting, viewing, fishing, picnicking, and related purposes. If the permittees wish to use the public access area for other than public purposes, they must obtain prior written approval by or on behalf of the Commission.
    - b. **Special Condition II.C.2, "Improvements within the Public Access Area"**, requires the permittees to install multiple improvements in the public access area: landscaping (153,311 sq. ft); pathways (25,240 sq. ft); an entry plaza (9,868 sq. ft); sitting areas (803 sq. ft.); a playground (20,110 sq. ft); a pergola (2,025 sq. ft.); site amenities (including at least 30 benches, nine picnic tables, ten trash containers, and two bicycle racks); and signs (a total of four public access and/or Bay Trail signs of a design and at locations approved by or on behalf of the Commission pursuant to Permit Special Condition II.A)
    - c. **Special Condition II.C.3, "Maintenance"**, requires that the improvements authorized in the permit be permanently maintained by and at the expense of the permittees or its assignees, including but not limited to, repairs to all path surfaces and landscape berms; replacement of any trees, lawn, or other plant materials that die or become unkept; repairs or replacement as needed of any public access amenities such as signs, benches, and trash containers; periodic cleanup of litter and other materials deposited within the access areas; removal of any encroachments into the access areas; and assuring that public access signs remain in place and visible. Within 30 days after notification by staff, the permittees shall correct any maintenance deficiency noted in a staff inspection of the site.
  4. On March 29, 2005, staff approved a set of plans entitled "Union Point Park, Phase II," dated September 7, 2004, which specified the BCDC-approved design of the required public access area and associated improvements.
- C. On March 13, 2018, Brock de Lappe, the Harbor Master of Union Point Marina, which is immediately adjacent to Union Point Park, reported in writing to BCDC Staff that a violent attack had occurred in an illegal homeless encampment at Union Point Park (See Exhibit 03). The report was substantiated by a March 10, 2018, news article in the East Bay Times, entitled "Man hurt in apparent hatchet attack at Oakland homeless camp; 1 arrested" (See Exhibit 04). The report was preceded by a January 2018 phone call between Staff and Mr. de Lappe, during which Mr. de Lappe verbally

- reported the presence of homeless encampments in Union Point Park. This call is referenced in an email between Staff and Mr. de Lappe (see Exhibit 05), although Staff did not make any written notes or contemporaneously record the specifics of the call.
- D. On June 5, 2018, Staff spoke again with Mr. de Lappe, who reported that the City had conducted a cleanup operation in the eastern portion of Union Point Park on May 15 (see Exhibit 06), and had declared a closure area in that portion of the park (see Exhibit 07).
  - E. On that same June 5 phone call, Mr. de Lappe also reported that an arson fire had occurred on May 24, 2018, in the restroom of Union Point Marina, which is immediately adjacent to the public restroom at Union Point Park. According to Mr. de Lappe, the act of arson at the Union Point Marina restroom followed numerous instances of break-ins and vandalism at the same restroom (See Exhibit 08).
  - F. On June 18, 2018, Mr. de Lappe reported to Staff that the City had conducted a second cleanup operation in the middle third of the park on June 13 and 14, 2018, and had declared a formal closure zone in that area. However, as reported by Mr. de Lappe, within days, the park had allegedly already been repopulated with encampments (see Exhibit 09).
  - G. On June 30, 2018, Mr. de Lappe shared additional photos of the existing encampments which had been re-established in the park after the previous two closure operations, and reported two instances of crime that had recently occurred nearby (see Exhibit 07).
  - H. On July 28, 2018, Staff spoke by phone with City of Oakland staff members Brian Carthan and Herman Miller, who reported to staff that the City had already cleaned up Union Point Park approximately 18 or 19 times. During those cleanup operations, citizens living in encampments had been asked to leave the park, but they had usually returned after each cleanup operation. Mr. Cathan and Mr. Miller also reported that the City was generally unable to conduct maintenance work in the park, because certain inhabitants in the park were threatening City workers. Finally, they reported that the City once had Park Rangers in Union Point Park who provided needed services and security, but that the Park Rangers had been removed from the park approximately five or six years prior (See Exhibit 10).
  - I. On August 4, 2018, Mr. de Lappe reported to Staff via email that many of the encampments previously located in other parts of Union Point Park had relocated to the western third of the park (See Exhibit 11). Many, though not all, of these newly reported encampments were at the time of the report located on land subject to a

- separate BCDC Permit for Cryer Site Park<sup>1</sup>. On that same email, Mr. de Lappe reported that a member of the public had recently been severely beaten with a baseball bat in the park.
- J. On November 2, 2018, Staff received a complaint from a concerned member of the public, who expressed discontent with the lack of law enforcement occurring at Union Point Park, and reported he had been physically assaulted once, threatened several times, and robbed three times in the park (see Exhibit 12).
  - K. On January 25, 2019, Mr. de Lappe reported that the illegal encampments in the park were ongoing, and that a fire had occurred on January 23 in the Cryer Site Park portion of the park (see Exhibit 13).
  - L. On February 1, 2019, the Commission, along with the State Coastal Conservancy and the Association of Bay Area Governments, sent a joint letter to the City, the Unity Council, and the Port of Oakland, formally expressing their concerns with the lack of maintenance and safe management of the Park (see Exhibit 14).
  - M. On February 4, 2019, Joe DeVries of the City of Oakland responded by email, stating that the City's Encampment Management Team was aware of the concerns and had worked to address issues at the park on a regular basis. Mr. DeVries said the City understood more work was needed, and had received similar complaints about the park from other entities. Mr. DeVries stated that in the meantime, the City would continue to provide regular clean-up operations (Exhibit 15).
  - N. On February 7, 2019, Mr. de Lappe reported to staff that there was a new encampment of RVs that had populated the parking lot in the eastern section of the park (see Exhibit 16).
  - O. In late 2018 or early 2019 (precise date unknown), the Oakland Parks and Recreation Foundation released their "2018 Report on the State of Maintenance in Oakland Parks", which stated that the park was "completely unusable" and gave it a score of "F" – the lowest possible score in the report, and the only park in Oakland to receive that score (Exhibit 17).
  - P. On March 19, 2019, Staff received a new complaint from a new member of the public, alleging a dramatic increase in the instances of crime in the parking lots of Union Point Park (See Exhibit 18).
  - Q. On March 21, 2019, Staff received an email indicating that the City had aborted an attempted cleanup operation at Union Point Park on March 19 after a group of homeless individuals, with the help of advocates, filed a Temporary Restraining Order in Federal Court against the City (see Exhibit 19).

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<sup>1</sup> According to Anthony Reese, Real Estate Agent at the City of Oakland, Cryer Site Park is considered part of the larger Union Point Park and the two sites are treated as a contiguous park. Located at the northern end of Union Point Park, the Cryer Site area was constructed several years after the rest of the park, under a separate BCDC Permit (No. M2008.030.00), for which the permittees are the City of Oakland and Port of Oakland. Both sites are displayed on Exhibit 01 of this Violation Report.

- R. On April 5, 2019, Staff visited Union Point Park to assess the park's current condition, and found numerous tents and piles of debris throughout the park.
- S. On April 23, 2019, Judge Charles Breyer of the United States District Court for the Northern District of California issued an order in the *Le Van Hung v. Schaff* action enjoining the City from cleaning Union Point Park in a manner that violates the City's stated policies. The Court referred the parties to a magistrate judge on the issues of (1) the City's voicemail policies and practices regarding the phone number listed in the Vacate Notices; and (2) the City's policies regarding shelter availability. The Order stated that after the parties reached resolution on the listed issues, the City may clean and clear the park in compliance with its stated policies (see Exhibit 20).
- T. In the coming months, staff continued to receive multiple complaints about the state of the park and its parking lots from members of the public, some of whom had previously contacted Staff. These include communications on April 23 (see Exhibit 21), May 17 (see Exhibit 22), May 24 (see Exhibit 23), June 24 (in which it was reported that a child had been shot in the park – see Exhibit 24), July 11 (see Exhibit 25), July 23 (see Exhibits 26, 27, and 28), and August 7 (see Exhibit 29).
- U. On August 20, 2019, Staff received notice from Jamilah Jefferson of the Oakland City Attorney's office that the federal injunction had been lifted on August 12 and that the City would be conducting a clean and clear operation on August 20.
- V. On October 1, 2019, Staff met with representatives from the City and The Unity Council, who informed Staff that on August 20, the City had conducted an operation to clean and clear the park and its parking lots, including removing several tons of debris. The parking lots were declared formal closure areas, while the central portion of the park was not. The City clarified that many people and tents remained in the park after the operation, and that upon Staff's request, the City would consider a formal closure operation in the inhabited areas of the park. Also on that day, Staff visited the site and visually confirmed the presence of numerous tents in the park.
- W. On October 2, 2019, BCDC Staff visited the site again and found that, while the parking lots had been cleared as the City stated, there remained numerous tents and facilities in need of maintenance throughout the park (see Exhibit 30).
- X. On October 22, 2019, Staff again met with representatives from the City and the Unity Council. In that meeting, City staff shared a draft encampment closure and park restoration plan, and Staff provided feedback on that plan (see Exhibits 31 and 32).
- Y. In October and November of 2019, Staff received additional complaints about the park from members of the public, including the lack of enforcement of parking rules (see Exhibit 33), and other general complaints about multiple issues at the park (see Exhibits 34 and 35).

Z. On November 6, 2019, Staff again met with representatives from the City over the phone, and provided additional feedback to the City about the latest version of their draft encampment closure and park restoration plan. Specifically, Staff requested additional details about the timeline for park restoration efforts after the encampments were no longer present.

AA. On November 8, 2019, Staff visited Union Point Park to examine the current state of the encampments and of park maintenance. Staff found numerous tents, vehicles, and other evidence of people living in various areas throughout the park; substantial amounts of dead or overgrown vegetation; numerous piles of debris; substantial graffiti; poorly maintained restrooms, barbecues, and benches; multiple picnic tables that had been burned to the ground; and other instances of poor maintenance. Furthermore, staff found that certain required public access amenities were missing entirely, including one bicycle rack, four required public shore and/or Bay Trail signs, and several picnic tables (see Exhibit 36). Staff was not able to fully assess the specific number of missing required public access improvements, due to the presence of encampments which prohibited access to many portions of the park. Staff observed that the park was unavailable to the public for safe walking, picnicking, or related purposes. According to Google Earth imagery, the missing bicycle rack has been absent since at least November 3, 2016, but it is not clear how long the other missing amenities have been absent (see Exhibit 37).

BB. On November 13, 2019, the City submitted over email their latest draft of the encampment closure and park restoration plan (see Exhibit 38). Joe DeVries of the City then presented this plan to the BCDC Enforcement Committee on November 20, 2019. At that meeting, the Enforcement Committee concurred with Staff's plan to issue two violation reports for two separate permits on which violations had occurred (one for the City of Oakland and Unity Council, and one to the City of Oakland and the Port of Oakland), and to begin work on a stipulated Cease and Desist order (see Exhibit 39).

**VII. Provisions of law or Commission permit that the staff alleges has been violated:** Section 66632. Permit for Fill, Extraction of Materials or Substantial Change in Use of Land, Water or Structure; Application for Permits.

Violations of the Permit are identified in Section VI of this Report.

**VIII. If the staff is proposing that the Commission impose an administrative penalty as part of this enforcement proceeding, the amount of the proposed penalty:**

Staff is not proposing a penalty at this time.

**IX. Any other statement or information that the staff believes is either pertinent to the alleged violation or important to a full understanding of the alleged violations:** Staff has provided all necessary information in the findings outlined in Section VIII above.

**X. List of staff exhibits\*:**

Staff Exhibit 01	Site Map for Union Point Park and Cryer Site Park
Staff Exhibit 02	BCDC Permit No. M2003.028.01
Staff Exhibit 03	Email from Brock de Lappe
Staff Exhibit 04	East Bay Times article regarding attack in Union Point Park
Staff Exhibit 05	Email from Staff to Brock de Lappe
Staff Exhibit 06	Email from Brock de Lappe
Staff Exhibit 07	Email from Brock de Lappe
Staff Exhibit 08	Call notes with Brock de Lappe
Staff Exhibit 09	Email from Brock de Lappe
Staff Exhibit 10	Call notes with City of Oakland
Staff Exhibit 11	Email from Brock de Lappe
Staff Exhibit 12	Complaint from member of public
Staff Exhibit 13	Email from Brock de Lappe
Staff Exhibit 14	Joint letter to City of Oakland, Port of Oakland, and The Unity Council
Staff Exhibit 15	Email from Joe Devries
Staff Exhibit 16	Email from Brock de Lappe
Staff Exhibit 17	Excerpt from the "2018 Report on the State of Maintenance in Oakland Parks"
Staff Exhibit 18	Email from member of public
Staff Exhibit 19	Email from Joe Devries regarding Temporary Restraining Order
Staff Exhibit 20	Order granting preliminary injunction
Staff Exhibit 21	Complaint from member of public
Staff Exhibit 22	Email from Brock de Lappe
Staff Exhibit 23	Complaint from member of public
Staff Exhibit 24	Email from Brock de Lappe
Staff Exhibit 25	Email from Brock de Lappe
Staff Exhibit 26	Email from Brock de Lappe
Staff Exhibit 27	Complaint from member of public
Staff Exhibit 28	Complaint from member of public

Staff Exhibit 29	Complaint from member of public
Staff Exhibit 30	Photos from October 2, 2019 staff site visit
Staff Exhibit 31	Draft Encampment Closure and Park Restoration Plan (1)
Staff Exhibit 32	Meeting notes with City of Oakland
Staff Exhibit 33	Email from Brock de Lappe
Staff Exhibit 34	Complaint from member of public
Staff Exhibit 35	Complaint from member of public
Staff Exhibit 36	Photos from November 8, 2019 staff site visit
Staff Exhibit 37	Google Earth imagery demonstrating missing bicycle rack
Staff Exhibit 38	Draft Encampment Closure and Park Restoration Plan (2)
Staff Exhibit 39	Meeting Summary from November 20, 2019 Enforcement Committee

**\*Note:** Exhibits 02, 20, and 31 will be provided upon request. Any attachments to other exhibits that are not included with this Violation Report will also be provided upon request.

## Statement of Defense Form

### Enforcement Investigation ER2018.028

#### City of Oakland & The Unity Council

FAILURE (1) TO COMPLETE THIS FORM, (2) TO INCLUDE WITH THE COMPLETED FORM ALL DOCUMENTS, DECLARATIONS UNDER PENALTY OF PERJURY, AND OTHER EVIDENCE YOU WANT PLACED IN THE RECORD AND TO BE CONSIDERED BY THE COMMISSION, (3) TO LIST ANY WITNESSES WHOSE DECLARATION IS PART OF THE STAFF'S CASE AS IDENTIFIED IN THE VIOLATION REPORT THAT YOU WISH TO CROSS-EXAMINE, THE AREA OF KNOWLEDGE ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE WITNESS, AND THE INFORMATION YOU HOPE TO ELICIT BY CROSS-EXAMINATION, AND (4) TO RETURN THE COMPLETED FORM AND ALL INCLUDED MATERIALS TO THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION STAFF OR TO CONTACT **SCHUYLER OLSSON** OR **KAREN DONOVAN** OF THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION ENFORCEMENT STAFF BY January 6, 2020 MEANS THAT THE COMMISSION CAN REFUSE TO CONSIDER SUCH STATEMENTS AND EVIDENCE WHEN THE COMMISSION HEARS THIS MATTER.

DEPENDING ON THE OUTCOME OF FURTHER DISCUSSIONS THAT OCCUR WITH THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION ENFORCEMENT STAFF AFTER YOU HAVE COMPLETED AND RETURNED THIS FORM, ADMINISTRATIVE OR LEGAL ENFORCEMENT PROCEEDINGS MAY NEVERTHELESS BE INITIATED AGAINST YOU, IF THAT OCCURS, ANY STATEMENTS THAT YOU MAKE ON THIS FORM WILL BECOME PART OF THE ENFORCEMENT RECORD AND MAY BE USED AGAINST YOU.

YOU MAY WISH TO CONSULT WITH OR RETAIN AN ATTORNEY BEFORE YOU COMPLETE THIS FORM OR OTHERWISE CONTACT THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION ENFORCEMENT STAFF.

This form is enclosed with a violation report. The violation report indicates that you may be responsible for or in some way involved in either a violation of the Commission's laws, a Commission permit, or a Commission cease and desist order. The violation report summarizes what the possible violation involves, who may be responsible for it, where and when it occurred, if the Commission staff is proposing any civil penalty and, if so, how much, and other pertinent information concerning the possible violation.

This form requires you to respond to the alleged facts contained in the violation report, to raise any affirmative defenses that you believe apply, to request any cross-examination that you believe necessary, and to inform the staff of all facts that you believe may exonerate you of any legal responsibility for the possible violation or may mitigate your responsibility. This form also requires you to enclose with the completed statement of defense form copies of all written documents, such as letters, photographs, maps drawings, etc. and written declarations under penalty of perjury that you want the Commission to consider as part of this enforcement hearing. This form also requires you to identify by name any person whom you may want to cross-examine prior to the enforcement hearing on this matter, the area of knowledge that you want to cover in the cross-examination, the nature of the testimony that you hope to elicit, and the reasons that you believe other means of producing this evidence are unsatisfactory. Finally, if the staff is only proposing a civil penalty, i.e., no issuance of either a cease or desist order or a permit revocation order, this form allows you alternatively to pay the proposed fine without contesting the matter subject to ratification of the amount by the Commission.

IF YOU WANT TO CROSS-EXAMINE ANY PERSON ON WHOSE TESTIMONY THE STAFF HAS RELIED IN THE VIOLATION REPORT, YOU MUST COMPLETE PARAGRAPH SEVEN TO THIS STATEMENT OF DEFENSE FORM. THIS PARAGRAPH REQUIRES YOU TO SET OUT (1) THE NAME(S) OF THE PERSON(S) YOU WANT TO CROSS-EXAMINE, (2) REFERENCES TO ANY DOCUMENTS ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE PERSON, (3) THE AREA OF KNOWLEDGE ABOUT WHICH YOU WANT TO CROSS-EXAMINE THE PERSON, (4) THE INFORMATION THAT YOU BELIEVE CAN BE ELICITED BY CROSS-EXAMINATION, AND (5) THE REASON WHY YOU BELIEVE THIS INFORMATION CANNOT BE PRESENTED BY DECLARATION OR OTHER DOCUMENT.

You should complete the form as fully and accurately as you can as quickly as you can and return it no later than 35 days after its having been mailed to you to the Commission's enforcement staff at the address:

**San Francisco Bay Conservation and Development Commission**  
**375 Beale Street, Suite 510**  
**San Francisco, California 94105**

If you believe that you have good cause for not being able to complete this form within 35 days of its having been mailed, please complete it to the extent that you can and within 35 days of the mailing of the violation report send the statement of defense form completed as much as possible with a written explanation of what additional information you need to complete the form in its entirety, how long it will take to obtain the additional information needed to complete the form, and why it will take longer than 35 days to obtain the additional information, send all of this to the Commission's staff at the above address. Following this procedure does not mean that the Executive Director will automatically allow you to take the additional time to complete the form. Only if the Executive Director determines that you have shown good cause for the delay and have otherwise complete the form as much as is currently possible will be grant an extension to complete the form.

If the staff violation report that accompanied this statement of defense form included a proposed civil penalty, you may, if you wish, resolve the civil penalty aspect of the alleged violation by simply providing to the staff a certified cashier's check in the amount of the proposed fine within the 35-day time period. If you choose to follow this alternative, the Executive Director will cash your check and place a brief summary of the violation and proposed penalty along with a notation that you are choosing to pay the penalty rather than contesting it on an administrative permit listing. If no Commissioner objects to the amount of the penalty, your payment will resolve the civil penalty portion of the alleged violation. If a Commissioner objects to the proposed payment of the penalty, the Commission shall determine by a majority of those present and voting whether to let the proposed penalty stand. If such a majority votes to let the proposed penalty stand, your payment will resolve the civil penalty portion of the alleged violation. If such a majority does not let the proposed penalty stand, the Commission shall direct the staff to return the money paid to you and shall direct you to file your completed statement of defense form and all supporting documents within 35 days of the Commission's action. Of course, you also have the opportunity of contesting the fine from the outset by completing this form and filing it and all supporting documents within 35 days of its having been mailed to you.

If you have any questions, please contact as soon as possible **SCHUYLER OLSSON** or **KAREN DONOVAN** of the Commission Enforcement Staff at telephone number **415-352-3600**.

1. Facts or allegations contained in the violation report that you admit (with specific reference to the paragraph number in the violation report):

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2. Facts or allegations contained in the violation report that you deny (with specific reference to paragraph number in the violation report):

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3. Facts or allegations contained in the violation report of which you have no personal knowledge (with specific reference to paragraph number in the violation report):

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4. Other facts which may exonerate or mitigate your possible responsibility or otherwise explain your relationship to the possible violation (be as specific as you can; if you have or know of any documents, photographs, maps, letters, or other evidence that you believe are relevant, please identify it by name, date, type, and any other identifying information and provide the original or a copy if you can):

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5. Any other information, statement, etc. that you want to make:

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6. Documents, exhibits, declarations under penalty of perjury or other materials that you have attached to this statement to support your answers or that you want to be made part of the administrative record for this enforcement proceeding (Please list in chronological order by date, author, title and enclose a copy with this completed form):

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7. Name of any person whose declaration under penalty of perjury was listed in the violation report as being part of the staff's case who the respondent wants to cross-examine, all documents about which you want to cross-examine the person, area or areas of information about which the respondent wants to cross-examine the witness, information that the respondent hopes to elicit in cross-examination, and the reason(s) why some other method of proving this information is unsatisfactory:

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