

# San Francisco Bay Conservation and Development Commission

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January 11, 2024

**TO:** Enforcement Committee Members

**FROM:** Matthew Trujillo, Enforcement Policy Manager (415-352-3633;  
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**SUBJECT:** Approved Minutes of January 11, 2024 Enforcement Committee Meeting

**1. Call to Order.** The hybrid meeting was called to order by Chair Gilmore at 9:31 a.m. The meeting was held with a primary physical location of 375 Beale Street, San Francisco, California, and online via Zoom and Teleconference.

Chair Gilmore gave instructions to all attendees on procedures for participating in the meeting.

**2. Roll Call.** Mr. Trujillo called the roll. Commissioners Belin, Eisen, Vasquez and Chair Gilmore were present. A quorum was achieved.

Staff in attendance included Senior Staff Attorney Michael Ng (serving as Acting General Counsel), Enforcement Policy Manager Matthew Trujillo, Enforcement Analyst Rachel Cohen, Principal Enforcement Analyst Adrienne Klein, and Legal Secretary Margie Malan.

Chair Gilmore stated a quorum was present and the Committee was duly constituted to conduct business.

**3. Public Comment Period.** Chair Gilmore invited the general public to comment on items not on the day's Agenda.

Chair Gilmore gave instructions for members of the public to offer public comment.

No members of the public addressed the Committee.

**4. Approval of Draft Minutes from the November 9, 2023, and December 14, 2023 Enforcement Committee Meetings.**

**MOTION:** Commissioner Vasquez moved approval of the November 9, 2023 and December 14, 2023, Meeting Minutes; Commissioner Belin seconded the motion.

The motion was carried by affirmation with no abstentions or opposition.

**VOTE:** The motion carried with a vote of 4-0-0 with Commissioners Belin, Eisen, Vasquez and Chair Gilmore voting, “YES”, no “NO” votes, and no “ABSTAIN” votes.

**5. Enforcement Report.** Mr. Trujillo updated the Commissioners on new activity since the September 27 meeting.

Mr. Trujillo reported that since November 9, 2023, 5 new cases were opened, 7 cases were resolved. As of January 11, 2024, there were 71 unresolved cases. This is a net change of -2 since the last report.

Extension of time has been issued to the city of Sausalito and to the RBRA to remove two vessels from Richardson Bay. They were granted by the Executive Director and they were reviewed and approved by BCDC’s General Counsel prior to distribution.

The City’s extension is through March 31, 2024, and RBRA’s extension is through February 27, 2024.

That concludes Mr. Trujillo’s report.

No Committee members had comments or questions and no members of the public voiced any comments.

**6. Briefings by the Richardson Bay Regional Agency (RBRA) and the City of Sausalito.**

Chair Gilmore asked representatives of the RBRA and the city of Sausalito to identify themselves for the record.

Executive Director Brad Gross for RBRA identified himself and listed Harbormaster James Malcomb and Eelgrass representative Rebecca Schwarz-Lesborg as present.

Sustainability Manager Catie Thow Garcia with the City of Sausalito identified herself. Community and Economic Development Director Brandon Phipps with the City of Sausalito identified himself. Vice Mayor Joan Cox with the City of Sausalito was also present. Robert Mooney, eelgrass consultant for the City of Sausalito, was identified.

Principal Enforcement Analyst Adrienne Klein introduced this item:

- RBRA Settlement Agreement terms were listed.
- Four individual terms (4, 9, 10, 12) were highlighted and discussed.

RBRA Executive Director Brad Gross spoke:

- A listing of RBRA partners was shown.
- Milestones were discussed with concomitant timelines.
- A December 1, 2023, order by US District Court Judge William H. Orrick supported RBRA's position and codes.

Eelgrass Representative Rebecca Schwarz-Lesborg addressed the Enforcement Committee:

- The status of the RBRA \$2.8 million grant from the U.S. Environmental Protection Agency was updated.
- A monitoring update for 2023 was discussed.
- The Restoration and Adaptive Management Plan (RAMP) was detailed and explained.

RBRA Harbormaster Jim Malcomb presented the following:

- Vessel census and status were reviewed, and projections were discussed.
- Milestones and trends were shared with the group.
- Enforcement planning was explained.

Director Brad Gross talked about the Housing Program:

- There are four components: Funding, Temporary Housing Support, Case Management, and Marina Participation.
- The four components were expounded upon.
- Component status and developments were covered.

Adrienne Klein introduced details of the City of Sausalito Agreement. Status and current developments were briefly touched on.

City of Sausalito Vice Mayor Joan Cox addressed participants:

- An outline of topics to be covered was shared.

Brian Mathers discussed waterfront management:

- Five vessels are currently in anchorage.

Community Development Director Brandon Phipps spoke:

- An update of Section 3a of the Cooperation Agreement was discussed.
- The City has updated its ADU Ordinance to comply with State ADU law.
- A draft EIR will be circulated for a 45-day review period.

Catie Thow Garcia discussed Eelgrass mitigation and damage avoidance:

- Status updates were mentioned and listed.

Vice Mayor Cox discussed terms of the Settlement Agreement. A section of the Agreement was quoted, “Goals in the Plan will include compensatory mitigations at a ratio of no less than 1.2:1, Mitigation areas to impact areas.”

Ms. Cox emphasized that the word “goals” was used in the wording found in the Agreement. This ratio should remain a “goal” and not a “requirement” because this level of mitigation 1.2:1 may actually be infeasible.

Outside organizations Coastal Policy Solutions and Merkel & Associates have opined that 1.2:1 mitigation ratio could be infeasible to attain given Richardson’s Bay natural geomorphology and ability to support Eelgrass.

The City of Sausalito has requested that the Settlement Agreement be revisited in regard to this mitigation ratio becoming a “requirement” instead of a “goal”.

In August 2023 Vice Mayor Cox requested that BCDC General Counsel provide a written analysis of BCDC’s position. Without this analysis being provided, BCDC staff announced on December 2023 that the 1.2:1 ratio in the Settlement Agreement is a “requirement” and not just a “goal” as stated in the executed Settlement Agreement.

According to Vice Mayor Cox, this BCDC position is in contravention of what regional experts opine is feasible.

Converting a goal into a requirement appears to be setting the City of Sausalito up for failure. This is puzzling considering the City’s long history of cooperation and rapid progress for meeting BCDC goals.

Vice Mayor Cox stated the City would prefer to continue working collaboratively moving forward. This goal is not in the Settlement Agreement with RBRA.

Vice Mayor asked why is BCDC turning a goal into a requirement and insisting on that goal only against the city of Sausalito and not the RBRA?

This is an issue of great concern for the City of Sausalito.

Chair Gilmore thanked the City of Sausalito and the RBRA for their presentations. Discussion by Commissioners ensued.

Commissioner Eisen had questions: Extensions have been requested to promote voluntary resolution. What exactly does this mean? Is a settlement agreement sought in lieu of an enforcement action with respect to these vessels?

Director Gross answered that the RBRA is not looking for settlements, but rather an amicable conclusion. Extensions have been a viable tool to attaining conclusions and avoiding costly litigation.

Commissioner Eisen wondered if there would be additional requests for extensions beyond the current ones.

Director Gross stated that over 35 people qualified for the Housing Vouchers Program and six vouchers are out right now. In 2024 additional extensions probably will be needed and hopefully the Enforcement Committee will be able to help.

Commissioner Eisen pointed out that the continued presence of boats were causing harm to the eelgrass which also was costly. Hopefully, a balance between current damage and extension benefits can be created.

Brian Mather was hopeful that the Vadura owners would not require costly litigation to satisfy Enforcement. Resources, costs and property rights need to be balanced thus the need for an extension. The boat has been there for 26 years. The boat is considered to be marine debris.

Commissioner Eisen suggested that the time is ripe for moving to a different strategy than what has been historically utilized.

The dispute between BCDC and the City of Sausalito is concerning. It seems that there must have been a basis for 1.2:1 mitigation stipulation in the Settlement Agreement. It would be useful to know what has changed to make this level of mitigation seem impossible.

Chair Gilmore felt that a future briefing by staff regarding the mitigation level dispute would be in order. Additional information from the experts involved would be very helpful and illuminating insofar as the infeasibility of this mitigation level is concerned. The staff's response to this information would also be in order.

Chair Gilmore asked for public comment.

Barbara Salzman representing the Marin Audubon Society commented: The possibility of having people go to other marinas as a possible option in the RBRA presentation raises concerns because marinas are only allowed liveaboards for protection purposes and it is very limited. How realistic is this as a relocation potential?

The City of Sausalito has been in the forefront of moving these relocations along. The change from a goal to a requirement in the Settlement Agreement is unexplainable.

**7. Hearing and Vote on a Recommend Enforcement Decision to Resolve Enforcement Case ER2000.004.00.**

(A verbatim transcript is available for this Agenda Item.)

**8. Hearing and Vote on a Recommend Enforcement Decision to Resolve Enforcement Case ER2021.044.00.**

(A verbatim transcript is available for this Agenda Item.)

**9. Adjournment.** Upon motion by Commissioner Eisen, seconded by Commissioner Vasquez, the Enforcement Committee meeting was adjourned at 11:19 a.m.