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San Francisco Bay Conservation and Development Commission
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State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

Via Electronic Mail

Issued BCDC

October 21, 2020

Commission Cease and Desist Order:	CCD2020.001.00
Effective Date:	October 21, 2020
Respondent:	City of Oakland 1 Frank Ogawa Plaza, 11th Floor Oakland, CA 94612 **Attn:** Joe Devries, Assistant to the City Administrator

To City of Oakland:

I. Cease and Desist Order. Pursuant to California Government Code Section 66638, the City of Oakland ("City") is hereby ordered to:

A. Cease and desist from violating the McAteer-Petris Act ("MPA").

B. Carry out the measures described in the City's Encampment Closure and Park Restoration Plan ("Plan"), attached as Exhibit 01, in accordance with the revised deadlines set forth in the letter from the City ("Letter"), attached as Exhibit 02.

C. Fully comply with the Requirements of Sections III, IV, and V of this Cease and Desist Order ("Order").

II. Findings

This Order is based on the findings set forth below. The administrative record in support of these findings includes all documents cited herein and all documents cited in the Index of Administrative Record attached hereto.

A. The violations subject to this Cease and Desist Order occurred at three adjacent locations in Oakland within the Commission's Shoreline Band jurisdiction and public access areas required pursuant to BCDC Permit No. M2003.028.01 and BCDC Permit No. M2008.030.00 ("Permits"). The areas are depicted on Exhibit 03, attached, and include:

1. Union Point Park, subject to Permit No. M2003.028.01, for which the permittees are the City and The Unity Council.

2. Cryer Site Park, subject to Permit No. M2008.030.00, for which the permittees are the City and the Port of Oakland ("Port").

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3. A small beach area located between Cryer Site Park and Coast Guard Island Bridge ("Beach Area"), which is in the Commission's Shoreline Band jurisdiction and subject to the City's control.

B. According to City staff, Cryer Site Park is considered part of the larger Union Point Park, and the two sites are treated as a single contiguous park, although they were constructed pursuant to separate BCDC authorizations. Except where noted otherwise, for purposes of this Order, and consistent with City practice, references to "Park" or "Union Point Park" refer to the collective area encompassing both sites.

Factual Findings

C. On March 13, 2018, BCDC staff ("Staff" or "BCDC staff") received a report of a violent attack in an unauthorized homeless encampment at Union Point Park. 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." The report followed a phone call in January 2018 between Staff and a member of the public regarding the presence of homeless encampments in the Park.

D. On June 5, 2018, Staff received a report that the City had conducted a cleanup operation and declared a closure area in the southeastern portion of the Park on May 15, 2018. According to the report, an arson fire had occurred on May 24, 2018, in the restroom of Union Point Marina, which is immediately adjacent to the Park's public restroom. The report stated the arson followed numerous instances of break-ins and vandalism at the same restroom.

E. On June 12, 2018, Staff received several photos from a member of the public, dated June 7, 2018, depicting unauthorized encampments in the northwestern portion of the Park. The photos also indicated the presence of numerous tents and debris in the adjacent Beach Area in BCDC's 100-foot shoreline band jurisdiction, located outside the boundaries of the Park.

F. On June 18, 2018, Staff received a report that the City had conducted another cleanup operation and declared a formal closure in the central portion of the Park on June 13 and 14, 2018. According to the report, within days, the Park was repopulated with encampments.

G. On June 30, 2018, Staff received additional photos of the newly re-established encampments, along with reports of two instances of crime that had occurred nearby.

H. On July 28, 2018, Staff spoke by phone with City staff members who reported that the City had cleaned up the Park approximately 18 or 19 times. The City staff stated that during those cleanup operations, individuals living in encampments had been asked to leave the Park but had usually returned after each operation. The City staff reported the City was unable to conduct maintenance work in the Park, due to individuals threatening City workers. They also reported the City once had rangers operating in the Park who provided needed services and security, but that the rangers had ceased operations in the Park approximately five or six years prior to 2018.

DocuSign Envelope ID: 947497E9-E506-4EE9-A268-EC9829C473B8

I. On August 4, 2018, Staff received a report that many encampments previously located in the central or southeastern parts of the Park had relocated to the northwestern portion of the Park. The report also stated that Oakland Police reported that a member of the public had recently been severely beaten with a baseball bat in the Park and that there were repeated instances of threats, intimidation, and theft, making the area undesirable for the public.

J. On November 2, 2018, Staff received a complaint from a member of the public, who described a lack of law enforcement occurring at Park, and reported he had been physically assaulted once, threatened several times, and robbed three times in the Park.

K. On January 25, 2019, Staff received a report that the unauthorized encampments in the park were ongoing, and that a fire had occurred on January 23, 2019, in the northwestern portion of the Park.

L. On February 1, 2019, Staff, 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, formally expressing their concerns with the lack of maintenance and safe management of the Park.

M. On February 4, 2019, City staff responded by email to the joint letter, stating that the City's Encampment Management Team was aware of the concerns and had addressed issues at the Park on a regular basis. The email stated that the City received similar complaints about access to the Park and would continue to provide regular clean-up operations.

N. On February 7, 2019, Staff received a report of a new encampment of Recreational Vehicles ("RVs") at the Park's southeastern parking lot.

O. On January 14, 2019, the Oakland Parks and Recreation Foundation released their "2018 Report on the State of Maintenance in Oakland Parks", which stated that Union Point 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.

P. On March 19, 2019, Staff received a complaint from a member of the public, alleging a dramatic increase in the instances of crime in the Park's parking lots.

Q. On March 21, 2019, Staff received an email stating the City had aborted an attempted cleanup operation at the Park on March 19 after a group of homeless individuals, with the help of advocates, sought a Temporary Restraining Order in Federal Court against the City.

R. On April 5, 2019, Staff visited the Park to assess its 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* matter enjoining the City from cleaning the Park in a manner that violates the City's stated policies. The Court referred the parties to a magistrate judge for further negotiations

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regarding: (1) the City's voicemail policies and practices rand Vacate Notices for addressing issues relating to personal belonging; and (2) the City's policies regarding shelter availability. The Order stated that after the parties reached resolution on the listed issues, the City could clean and clear the Park in compliance with its stated policies.

T. Over the next several months, BCDC 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, May 17, May 24 (in which the reporter stated they would not bring their children to the area), June 24 (in which it was reported that a child had been shot in the Park), July 11 (when it was reported that conditions had deteriorated and rats were prevalent), July 23, and August 7.

U. On August 20, 2019, BCDC staff were notified by the Oakland City Attorney's office that the federal injunction had been lifted on August 12 and that the City would conduct a clean and clear operation on August 20.

V. On October 1, 2019, BCDC staff met with representatives from the City and The Unity Council, who informed Staff that on August 20, the City had conducted a clean and clear operation in the Park and its parking lots, including removing several tons of debris. The parking lots were declared formal closure areas, while the remaining portions of the Park were not. The City stated 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, Staff visited the site again and found that, while the parking lots had been cleared, there remained numerous tents and facilities in need of maintenance throughout the Park.

X. On October 22, 2019, BCDC 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 BCDC staff provided feedback on that plan.

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, and other complaints about multiple issues at the Park.

Z. On November 6, 2019, BCDC staff again met with City staff and provided additional feedback on their draft Encampment Closure and Park Restoration Plan. In particular, BCDC staff requested additional details about the timeline for fully restoring the Park after the encampments were removed.

AA. On November 8, 2019, BCDC staff again visited the Park to examine its condition. 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, barbeques, and

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benches; multiple picnic tables that had been burned to the ground; and other instances of poor maintenance. Furthermore, Staff found that numerous public access amenities required under the Permits were missing entirely, including one bicycle rack, four required public shore and/or Bay Trail signs, and several picnic tables. Staff was not able to fully assess the specific number of missing amenities and 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.

BB. Also, during the site visit on November 8, 2019, Staff observed numerous tents and debris in the Beach Area, which is located adjacent to and outside the boundaries of the areas required as public access under the Permits.

CC. On November 13, 2019, the City submitted an updated Encampment Closure and Park Restoration plan. City staff then presented this plan to the BCDC Enforcement Committee on November 20, 2019. At that meeting, the Enforcement Committee concurred with BCDC staff's plan to issue two Violation Reports, one for each Permit that had been violated, and to begin work on a proposed Cease and Desist order that would require the City to implement the Encampment Closure and Park Restoration Plan.

DD. On December 2, 2019, BCDC staff mailed two Violation Reports. One was issued for BCDC Permit No. M2003.028.01 and named the City and the Unity Council as co-respondents, while the other was issued for BCDC Permit No. M2008.030.00 and named the City and the Port as co-respondents. The specific violations subject to this Cease and Desist Order are outlined in those two reports.

EE. On January 6, 2020, the Port submitted a Statement of Defense in response to the Violation Report issued for Permit No. M2008.030.00, requesting that the Violation Report against it be dismissed by BCDC. The Port attached a copy of its lease with the City for lands on which the Violations occurred and pointed out provisions in the lease requiring the City to maintain the Park and associated public access improvements. The Statement of Defense asserted various legal defenses, including failure to state a claim against the Port and that the issuance of injunctive relief against the Port constitutes an improper demand of a gift of public funds. BCDC disputes the validity of the defenses asserted. However, the Port is not included in this Order. The injunctive measures in this Order require action by the City to bring the Park into compliance with the terms of the permits issued by BCDC.

FF. On January 14, 2020, BCDC staff met with City staff to discuss the two Violation Reports and the City's Encampment Closure and Park Restoration Plan. Staff again requested several changes to the Encampment Closure and Park Restoration Plan. In particular, Staff requested additional information regarding the City's plans to fully restore the Park after removing the encampments.

DocuSign Envelope ID: 947497E9-E506-4EE9-A268-EC9829C473B8

GG. Between January 28 and February 26, BCDC staff and City staff negotiated the provisions of the Encampment Closure and Park Restoration Plan and the requirements of the Cease and Desist Order, including deadlines for full restoration of the Park after removing the encampments. The City explained its concerns with committing to a fixed deadline, as full Park restoration will require new City funding, City Council approval, and a formal procurement process. Ultimately, BCDC staff and City staff agreed on a plan that includes a series of milestones as specified in greater detail in Section III below, including: removing all encampments from the Park and offering alternative housing options to the individuals affected; implementing near-term restoration and encampment enforcement measures; developing and implementing long term plans for park restoration, maintenance, and enforcement; and fully restoring the Park and its amenities. The Order also allows the Executive Director, upon request by the City, to grant time extensions of deadlines for appropriate reasons.

HH. On February 4, 2020, City staff reported to BCDC that they had successfully closed encampments in the majority of the Park, established a temporary reprieve zone, and relocated remaining Park residents to that zone, as required under Condition III.A below. The operation included: removing remaining debris from the former encampment sites in the Park and Beach Area; installing mesh fencing, wash stations, and portable toilets in the reprieve zone; and community engagement and assistance offering by Operation Dignity, a partner organization. The photos in the report indicated that three abandoned vessels remained on the beach, which the City has committed to removing by September 1, 2020.

II. On February 21, 2020, the City submitted a Statement of Defense in response to the Violation Report issued for BCDC Permit No. M2003.028.01. The City admitted that it had inadequately maintained the public access improvements required in the Permit and admitted that the violations had persisted since at least March of 2018. The City also noted that certain required amenities were still in place, although some were missing. In addition, the City noted that third parties had placed many of the unauthorized structures and materials in the Park.

JJ. Also, on February 21, 2020, the City submitted a second Statement of Defense in response to the Violation Report issued for BCDC Permit No. M2008.030.00. The City admitted that it had inadequately maintained the public access area and improvements required in the Permit, and that the violations admitted to had persisted since at least June of 2018. The City also that certain required amenities were still in place, although some were missing. In addition, the City noted that third parties had placed many of the unauthorized structures and materials in the Park.

KK. In both Statements of Defense, the City stated they are undertaking a needs evaluation to determine the extent of park maintenance needs, and included evidence regarding their efforts to address a significant increase in unsheltered people and the challenges the City faces regarding funding for parks and park maintenance. While BCDC staff

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disputes some assertions in the Statements of Defense, BCDC acknowledges the challenges the City faces regarding homeless encampments in City parks.

LL. On March 12, 2020, at BCDC's Enforcement Committee meeting, the Committee voted to adopt the proposed Order as written at that time. The proposed Order was tentatively scheduled for Commission consideration on April 2, 2020.

MM. On March 16, 2020 in response to the COVID-19 emergency, six Bay Area Counties, including Alameda County and the City and County of San Francisco, issued a public health shelter-in-place order. BCDC cancelled the April 2, 2020 Commission meeting, and the proposed Order was not presented to, or adopted by, the full Commission at that time.

NN. Also, on March 16, 2020, the City emailed BCDC staff a request to extend certain deadlines in the proposed Order by 30 days, explaining that the City had to re-deploy resources to emergency response efforts. Staff replied with an email granting the requested extension.

OO. On April 9, the City sent a letter to BCDC staff (Exhibit 02, "Letter"), requesting further extensions of between 60 and 120 days, depending on the measure, to the deadlines in the proposed Order. In the letter, the City stated that many of the Order's requirements would contravene the local shelter-in-place order and endanger public health, and that the City's encampment priorities were currently focused on following Center for Disease Control guidance and preventing the spread of the disease.

PP. On April 22, 2020, at a noticed Enforcement Committee meeting, the Enforcement Committee voted to adopt revisions to the proposed Order incorporating the revised deadlines requested by the City in the April 2, 2020 Letter. The conditions set forth in Section III below incorporate the revised deadlines as requested in the Letter.

QQ. On May 21, 2020, the Commission considered the Enforcement Committee's recommended decision, including a proposed Cease and Desist Order with the revised deadlines, and the arguments and comments presented by BCDC staff and the City. The Commission remanded the matter to the Enforcement Committee, directing that the Committee consider changes to the Extension of Time provisions of the Cease and Desist Order to recognize the impact of the coronavirus pandemic and the potential need for extensions to the deadlines related to the extension. In approving the remand, the Commission also requested that the Enforcement Committee Chair and the Commission be informed regarding extension requests and the actions taken on them.

RR. On August 13, 2020, at a noticed Enforcement Committee meeting, the Enforcement Committee voted to adopt revisions to the proposed Order to integrate language to recognize the changed circumstances related to the COVID-19 emergency. In the revisions adopted by the Enforcement Committee, the deadlines for clearing the encampments from the Park were tied to a defined "Triggering Event," which would include the adoption by the Oakland City Council of a resolution ending the previously

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declared local emergency or the lifting of the mandatory shelter in place order by the Alameda County Health Department.

SS. After the Enforcement Committee meeting, BCDC received a number of comments from residents of the adjacent Union Point Marina and the Union Point Marina Harbormaster expressing concern about the deteriorating Union Point Park situation and increasing threats to marina residents. The comments described several violent events, as well as threats and acts of vandalism.

TT. On September 17, 2020, the Commission considered the Enforcement Committee's recommended decision, including the proposed Cease and Desist Order with the revised deadlines for clearing the encampments, and the arguments presented by BCDC staff and comments presented by the City and the public, particularly the residents of the neighboring marina. The Commission expressed concern about the violent incidents that the marina residents described and remanded the matter to the Enforcement Committee, directing that the Committee consider adopting an order with defined deadlines ensuring that the encampments would be removed from the Park.

UU. On October 1, 2020, at a noticed Enforcement Committee meeting, the Enforcement Committee voted to adopt revisions to the proposed Order incorporating the revised deadlines.

VV. On October 15, 2020, the Commission considered the Enforcement Committee's recommended decision, including a proposed Cease and Desist Order with revised deadlines to undertake a partial and full closure and clearing of the encampments, and the comments from the City and the public. The Commission adopted the Enforcement Committee's recommended decision, including the Cease and Desist Order, without any changes.

Legal findings

A. The encampments and unauthorized activities in Union Point Park interfere with the use of the Park by the public for public purposes including walking, viewing, picnicking, and related purposes, in violation of Special Condition II.C.1 of Permit No. M2003.028.01 and Special Condition II.B.1 of Permit No. M2008.030.00.

B. Park amenities, including benches, picnic tables, bicycle racks, and signs, are either missing from Union Point Park or substantially degraded, in violation of Special Condition II.C.2 of Permit No. M2003.028.01 and Special Condition II.B.2 of Permit No. M2008.030.00.

C. The numerous maintenance issues detailed above, including accumulated trash, degraded landscaping, and damaged park amenities violate Special Condition II.C.3 of Permit No. M2003.028.01 and Special Condition II.B.4 of Permit No. M2008.030.00.

D. The encampments and unauthorized materials in the Beach Area adjacent to Union Point Park constitute unauthorized fill in violation of Section 66632 of the McAteer-Petris Act and the encampments could not be authorized consistent with San Francisco

DocuSign Envelope ID: 947497E9-E506-4EE9-A268-EC9829C473B8

Bay Plan Recreation Policy 3.g "Beaches", which states that "Sandy beaches should be preserved, enhanced, or restored for recreational use, such as swimming, consistent with wildlife protection", among other relevant Bay Plan policies.

III. Conditions

A. **Partial Encampment Closure and Re-establishment of Secondary Priority Area**. In January of 2020, consistent with the first draft Encampment Closure and Park Restoration Plan that the City developed, the City created a Secondary Priority Area at the northwest end of the park and temporarily relocated all individuals residing in the Park, including those residing in the Beach Area, to the Secondary Priority Area. The City then began providing services to the individuals residing in the Secondary Priority Area as described in the first draft Plan, including but not limited to portable toilets, wash stations, and weekly garbage pickup. Since that time, some encampments have emerged outside of the Secondary Priority Area.

To address the reemergence of encampments outside of the Secondary Priority Area, no later than November 15, 2020, the City shall conduct a second encampment closure intervention in the areas of the Park south of the Western parking lot, in the Beach Area, and all other areas outside the Secondary Priority Area and ensure that people residing in the Park outside of the established Secondary Priority Area are relocated to housing arrangements outside of the Park or are relocated to the established Secondary Priority Area. The City shall then clean up and remove any debris, abandoned vessels, or other unauthorized structures remaining in the other areas of the Park and the Beach Area outside of the Secondary Priority Area.

1. Within one week of removing all people residing in the Park outside of the Secondary Priority Area, the City shall submit documentation to BCDC, including photographic evidence, that the only remaining encampments are within the Secondary Priority Area. Thereafter, on or before the 10th day of the month, the City shall submit monthly updates, with photographic evidence, setting forth the conditions in the Park and the number of individuals and vehicles that have appeared in the Park and efforts to remove them.
2. Consistent with the attached Encampment Closure and Park Restoration Plan ("Plan"), the City shall continue to provide services to the individuals residing in the Secondary Priority Area as described in the Plan, including but not limited to portable toilets, wash stations, and weekly garbage pickup.

B. **Full Encampment Closure.**

Not later than February 12, 2021, consistent with the attached Plan, the City shall conduct an encampment closure intervention in the entirety of the Park and relocate all remaining individuals to a location outside the Park and Beach Area. Upon conducting the full encampment closure, the City shall remove all temporary amenities including fencing, portable toilets, and wash stations, and clean up and remove any remaining debris.

DocuSign Envelope ID: 947497E9-E506-4EE9-A268-EC9829C473B8

1. Within one week of the full encampment closure, the City shall submit documentation of the action to BCDC, including photographic evidence.

C. **Subsequent Closures and Encampment Prevention.** Starting immediately after the Full Encampment Closure, the City shall regularly monitor the Park and Beach Area to prevent the establishment of new encampments.

1. Regular monitoring shall be conducted throughout the Park, and starting upon full closure of all encampments in the Park, this regular monitoring shall extend to the area formerly enclosed by the Reprieve Zone.

2. No later than January 15, 2021, the City shall develop and submit for review and approval by BCDC staff a formal long-term encampment enforcement plan. The plan shall include: (1) regular monitoring of the Park and Beach Area; (2) protocols for identifying and responding to any persons or vehicles remaining in the Park overnight; (3) establishing and posting at the Park, in a clearly visible location, a reporting telephone number for area residents and stakeholders to report any incidents to the City, and regularly ensuring that posting is maintained and clearly visible; (4) a protocol for responding to reports of vehicles or tents in the Park within 48 hours; (5) a protocol for conducting subsequent encampment closures at the Park; and (6) any other measures as deemed necessary and appropriate by the City.

3. The City shall make changes to the plan as requested by Staff and resubmit that plan in a timely manner.

D. **Park Activation.** No later than January 1, 2021, the City shall submit information to BCDC on its plans to activate the Parks and promote their use by area residents, businesses, and other stakeholders. The information provided shall be sufficient to allow Staff to evaluate the planned measures and inform the City of any BCDC approvals required for such park activities. The City shall respond to requests from Staff for further information in a timely manner.

E. **Park Restoration, Maintenance, and Enforcement.** Consistent with the attached Plan and Letter, the City shall take the actions specified below to ensure that the Park and associated amenities remain well-maintained, fully accessible to the public, free of unauthorized encampments, and in full compliance with the Permits, in accordance with the following timeline:

1. **Near-term Restoration Measures**.
   a. No later than April 15, 2020, the City shall install and maintain temporary safety lighting in the northwestern parking lot area to promote safe use of this area and deter unauthorized activity.

   b. No later than November 1, 2020, the City shall install the missing bicycle rack required under Permit No. M2003.028.01 in accordance with the currently approved plans.

DocuSign Envelope ID: 947497E9-E506-4EE9-A268-EC9829C473B8

c. No later than January 1, 2021, the City shall submit to BCDC staff for review and approval its plans for installing missing public access signage as required under the Permits, including the proposed locations, specifications, and dimensions. The signage plans shall comply with BCDC's latest signage guidelines and signage graphics, found on the BCDC website.[1] The City shall make any changes to the plans requested by BCDC and resubmit the plans in a timely manner.

d. The City shall install the required public access signage within 60 days of receiving plan approval by BCDC.

2. **Needs Assessment**. No later than March 1, 2021, the City staff shall complete a needs assessment for the full restoration of the Park, for inclusion in a proposal during the City's mid-cycle budget process. At the same time, the City shall submit the needs assessment to BCDC staff.

3. **Long-term Maintenance Plan.** No later than September 1, 2021, the City shall develop and submit for review and approval by BCDC staff a long-term Maintenance Plan to ensure the City complies with Special Condition II.C.3 (Maintenance) of Permit No. M2003.028.01 and Special Condition II.B.4 (Maintenance) of M2008.030.00. The City shall make changes to the Maintenance Plan as requested by BCDC and resubmit the plan in a timely manner.

4. **Restoration Plan and Permit Amendment Request.** No later than September 1, 2021, the City shall develop and submit for review and approval by BCDC staff a comprehensive Restoration Plan for restoring the Park and associated amenities to a condition compliant with the requirements of the Permits. The Restoration Plan shall address all existing amenities required in the Permits, including bicycle racks, benches and seating areas, landscaping, pathways, picnic tables, the playground and pergola, public access and/or Bay Trail signage, restrooms, and trash containers. In the event that the City wishes to add new permanent safety lighting or retain and repair the existing lighting in the Park, the Plan shall also include a long-term plan for permanent lighting. The Restoration Plan shall include an assessment of the total cost required, a Scope of Work, and an implementation schedule with deadlines for completion of individual tasks. In the event that the Restoration Plan proposes changes to the Park's design, layouts, and/or amenities as set forth in the Permits and accompanying approved plans, the City shall also submit a formal request to amend one or both of the Permits, or, as appropriate, a request for plan review and approval by BCDC, in advance of commencing related work. Should the City question whether a permit amendment and/or plan approval is required, the City shall contact BCDC staff to receive guidance sufficiently in advance of the November 1, 2020, deadline. The City shall make changes to the Restoration Plan as requested by BCDC and resubmit the plan in a timely manner.

[1] For BCDC's Public Access Signage Guidelines, see: https://www.bcdc.ca.gov/planning/SSSG.pdf
For BCDC's Public Access Signage Graphics, see: https://www.bcdc.ca.gov/publications/signage/getSigns.html

DocuSign Envelope ID: 947497E9-E506-4EE9-A268-EC9829C473B8

5. **Progress Reports.** No later than 10 days after completing each task specified in the Restoration Plan, the City shall submit to the Enforcement Program Manager a written statement certifying that the task has been completed in accordance with the Restoration Plan. The statement shall be signed by the Oakland City Administrator or his/her designee and shall be accompanied by photographs or other evidence to document the completion of the task.

6. **Completion of Park Restoration**. No later than April 1, 2022, the City shall fully restore the Park to a condition compliant with all requirements of the Permits, as they may be amended. The City shall continue to maintain the Park and all associated amenities in accordance with the requirements of the Permits and shall prevent the establishment of new encampments in the Park and Beach Area in accordance with the Maintenance Plan and Encampment Enforcement Plan. Notwithstanding Section III.F.1 below, if the City determines that additional time is required to fully restore the Park, the City shall submit a written request for time extension no later than January 2, 2022. The request shall include: 1) an explanation of why additional time is required, and 2) a description of restoration actions that can be completed prior to April 1, 2022, and those that will require additional time. The Executive Director may grant an appropriate extension of time, for demonstrated good cause, based on the submitted request.

F. **Extension of time**.

1. If the City encounters any unforeseeable event arising from a cause or causes beyond its control, including an unforeseen limitation or restriction related to the COVID-19 emergency beyond what is anticipated in the Plans, that will delay timely compliance with the provisions of paragraphs III.A through III.E above, the City shall notify BCDC's Enforcement Program Manager by writing within five (5) business days of when the City first knows of the event. The written notice must describe the cause(s) of the delay, the anticipated length of time the delay may persist, the measures taken or to be taken by the City to prevent or minimize the delay, the schedule by which the measures may be implemented, and the additional time requested to comply.

2. The Executive Director may grant an appropriate extension of time, for demonstrated good cause, to comply with any provision of paragraphs III.A through III.E above. The Executive Director shall inform the Enforcement Committee Chair and the Commissioners of any extensions that are granted pursuant to section III.F.1. above, and the duration of the delay, within 20 days of granting the extension.

IV. Terms.

A. Under Government Code Section 66641, any person who intentionally or negligently violates any cease and desist order issued by the Commission may be liable civilly in the sum of up to $6,000 for each day in which such violations persist. In addition, upon the failure of any person to comply with any cease and desist order issued by the

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Commission and upon the request of the Commission, the Attorney General of the State of California may petition the superior court for the issuance of a preliminary or permanent injunction, or both, restraining the person or persons from continuing any activity in violation of the cease and desist order.

B. This Order does not affect any duties, right, or obligations established under private agreements or by the laws and regulations of other public bodies.

C. The City must conform strictly conform to the express terms of this Order.

D. This Order does not constitute a recognition of property rights.

E. This Order is effective upon issuance thereof.

V. Opportunity for Judicial Review. Under Government Code Sections 66639 and 66641.7(a), within thirty days after service of a copy of a cease and desist order and civil penalty order issued by the Commission, an aggrieved party may file with the superior court a petition of writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure.

For the San Francisco Bay Conservation and Development Commission

DocuSigned by:
Larry Goldzband
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LAWRENCE J. GOLDZBAND
Executive Director

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Exhibit 01

Union Point Park

Encampment Closure and Park Restoration Plan

September 2020

Re: Enforcement Investigation Nos. ER2018.028
Permits M2003.028.01 and M2008.030.00

I. Background

Union Point Park is a nine-acre waterfront park located near Coast Guard Island and along the Embarcadero shoreline in the City of Oakland. The park was dedicated in 2005 and is subject to BCDC Permit Nos. M2003.028.01 and M2008.030.00. Encampments began to appear in the central area of the park around 2015 as the homelessness crisis increased in Oakland. Over time this population grew to include the hill area, the area above the Western parking lot, and the Eastern parking lot.

II. Actions Taken Prior to COVID-19 Outbreak

In June 2018, the City's Encampment Management Team reduced the encampments in the park through clean-up and enforcement action. This effort was successful at removing encampments from the Eastern parking lot, the hill area, and most of the central portion of the park. A small group remained under the berm along Embarcadero and in the westernmost section of the park.

In March 2019, in response to a new group of people living in RVs that moved into the Eastern parking lot, the City planned a closure/enforcement action but a Temporary Restraining Order was granted in Federal Court halting the City's efforts. Although the City eventually prevailed in this case, the settlement conference extended over several months and the City was prevented by court order from enforcing the closure until August. In August 2019, the City performed a major operation resulting in the removal of vehicles from the parking lots.

On December 2, 2019, BCDC issued two violation reports relating to Union Point Park.

In January 2020, the City conducted cleanup and enforcement operations that required any individuals in encampments south of the Western parking lot to relocate, the area prioritized for public access. Legal closure notices were posted in the park January 24, 2020. Individuals located on the beach area adjacent to the Cryer Building were also required to relocate. In addition, portable toilets and wash stations were installed on the northwestern end of the park. Temporary mesh construction fencing was installed to demarcate an area outside of which would be prioritized for the maintenance of general public access to the park.

Since January 2020, Human Services has provided regular outreach and Housing Navigation efforts with individuals in encampments at the park. These outreach efforts are intended to provide housing options to unhoused residents, which would result in the reduction in the

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number of individuals in encampments at the park. The nearby Miller Community Cabins are being prioritized for encampment residents as those cabins become available.

The Public Works Department has additionally continued to provide weekly garbage service and the City has continued to provide portable toilet and hygiene stations near the northwest end of the park. More recently, through a newly approved program, the Public Works Department has placed at the park a trash dumpster, which is picked up every two to three days.

In February 2020, the City of Oakland Public Works Department conducted temporary repairs to restore power to lights within the Western parking lot.

After conducting the January 2020 cleanup and enforcement operations, the City intended to conduct a follow-up operation in September 2020 to relocate any individuals who were continuing to reside in the park.

III. Responding to the COVID-19 Pandemic

While subsequent studies and analysis have shown that SARS-CoV-2, which causes COVID-19, may have been present in the Bay Area as early as January 2020, public health concern began to grow toward the beginning of March 2020. On March 7, 2020, the Oakland City Administrator declared a local emergency due to the COVID-19 pandemic. The City Council confirmed the existence of a local emergency by Resolution No. 88075 on March 12, 2020. On March 16, 2020, the Alameda County Public Health Department issued a mandatory shelter in place order. On March 17, 2020, the City Administrator suspended towing of vehicles, including oversized vehicles like RVs, unless the vehicles are blocking access, causing an immediate hazard, or are deemed a public safety concern.

On March 18, 2020, the Governor of California issued Executive Order N-32-20, an order suspending certain provisions of the State Health and Safety Code and State Public Resources Code to allow for expenditures and shelter interventions related to homelessness.

On March 23, 2020, the Oakland City Administrator issued an Emergency Order that, among other things, suspended all City of Oakland policies and procedures related to homelessness encampments for the duration of the local emergency or until such time as the order is rescinded or the City Council terminates the emergency, whichever is the earliest. This included suspension of the City's Encampment Management Policy ("EMP") and its Public Works Standard Operating Procedure for Removal of Homeless Encampments ("SOP"). The City Administrator additionally authorized the adoption of interim temporary policies and procedures that are consistent with State and Alameda County orders, policies and procedures issued in response to the COVID-19 emergency as they relate to homeless encampments.

The City subsequently adopted a Temporary Encampment Management Policy ("TEMP") which currently serves as the interim temporary policy the City of Oakland will use for the duration of the local emergency, unless and until it is amended or superseded by any subsequent policies so promulgated.

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Additionally, on March 27, 2020, the Oakland City Council adopted Resolution No. 88077 C.M.S. requesting that the City Administrator follow the Center for Disease Control's Interim Guidance regarding homelessness encampments.[1] The Interim Guidance states

> *Lack of housing contributes to poor physical and mental health outcomes, and linkages to permanent housing for people experiencing homelessness should continue to be a priority. In the context of COVID-19 spread and transmission, the risks associated with sleeping outdoors or in an encampment setting are different than from staying indoors in a congregate setting such as an emergency shelter or other congregate living facility. Outdoor settings may allow people to increase physical distance between themselves and others. However, sleeping outdoors often does not provide protection from the environment, adequate access to hygiene and sanitation facilities, or connection to services and healthcare. The balance of risks should be considered for each individual experiencing unsheltered homelessness.*

Among other things, the CDC Guidance recommends the following:

- Unless individual housing options are available, local governments should not clear encampments during community spread of COVID-19. Clearing encampments can cause people to disperse throughout the community and break connections with service providers. This increases the potential for infectious disease spread.
- Local governments should encourage people staying in encampments to set up sleeping quarters with at least 12 feet by 12 feet of space per individual.
- Local governments should ensure nearby restroom facilities have functional water taps, are stocked with hand hygiene materials, and remain open to people experiencing homelessness 24 hours per day. If toilets or handwashing stations are not available, local governments should provide access to portable latrines with handwashing stations for encampments of more than 10 people.

In accordance with the CDC Guidance, the City's TEMP places emphasis on providing interventions focused on garbage/debris pickup, public health material provision, including the provision of hygiene facilities and supplies, and public health communications. Public health clean and clear interventions are to occur only where there are presumptive positive and/or confirmed cases of or exposure to COVID-19, confirmed cases of or exposure to other infectious diseases, excessive animal or vermin vector hazards, uncontrolled presence of biological hazards, a notice of public health emergency or need for encampment decompression as declared by a county, state, or federal public health entity, or where the location of the encampment is needed to provide services needed to address the COVID-19 health crisis. Similarly, factors to consider prior to conducting a public safety clear and clear intervention are provided in the TEMP. A partial or full closure is to occur only upon finding that, due to the presence of one or more of the

[1] https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Funsheltered-homelessness.html

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factors mentioned above, intervention is necessary to protect public health or safety. The TEMP additionally provides notice procedures regarding any of the above interventions.

On March 28, 2020, in hotels leased by the state and/or the county, Alameda County began offering hotel-based shelter interventions to individuals needing shelter due to COVID-19 exposure or risk.

IV. Restoration of Encampment Management After the COVID-19 Pandemic

For the remainder of the public health emergency, the City of Oakland's efforts will be focused on ensuring compliance with the TEMP and CDC Guidelines while continuing to provide sanitation services, weekly garbage pickup, and outreach to individuals remaining in encampments. BCDC has requested that the City review whether the public health and safety factors identified in the TEMP are present in Union Point Park and whether, due to their presence, necessitate an encampment intervention.

In accordance with the BCDC cease and desist order, the City will be required to recommence efforts to maintain the park free of encampments.

Timeline:

> **No later than February 12, 2021:** The City will undertake an encampment closure, complying with the procedural requirements of the TEMP or any subsequently adopted Encampment Management Plan, and will remove temporary mesh fencing, portable toilets, wash stations, and any remaining debris. In the event of litigation challenging the City's efforts to close the encampment, the City agrees to diligently defend and take the actions necessary to carry forward the commitment to close the encampment. In the event that a court order prevents the City from conducting the intervention within the timeline, the City will notify BCDC staff of the order and will meet and confer with BCDC staff to establish the earliest possible date to undertake an intervention that complies with legal requirements.
>
> The City will submit to BCDC a long-term Encampment Enforcement Plan outlining the City's presence within the park, protocols for when an individual sets up a new encampment, the City's 311 telephone service for reporting incidents, and any other measures deemed necessary and appropriate by the City.

V. Park Restoration Efforts

Union Point Park has sustained damage to landscaping and park improvements due to resource strain, deferred maintenance, and the unique challenges imposed by the present of persons experience homelessness. Long-term improvements to the park will continue to be impeded until an encampment intervention is able to occur.

In 2019, the City conducted a preliminary assessment of the damaged lighting that indicated a repair cost of up to $500,000. City staff are additionally examining the cost of additional repairs to the bathrooms, landscaping, benches, and other amenities, with the latest estimate totaling $1.2 million. These efforts were halted as the City was forced to prioritize emergency response

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to the COVID-19 pandemic, followed by a robust discussion surrounding significant citywide budget cuts that had to be adopted by June 2020. The mid-cycle budget amendments did not include a line item for long-term capital improvements to Union Point Park or for commencing a bid process to develop a needs assessment.

Due to the extent of the property damage a project of this scope and magnitude will exceed existing contract capacities and existing vendor/contractor capabilities. These large repair projects will need to be addressed through a standalone Capital Improvement Program (CIP) public project with corresponding formal procurement timelines, which will require City Council approval. Due to the extent of restoration to be addressed, any CIP public project may include additional discussion about broader improvements and modifications at the park, which could require an amendment to the existing BCDC permits for the park.

In the interim, staff will continue to seek temporary maintenance solution. As previously mentioned, in February 2020, the City of Oakland Public Works Department conducted temporary repairs to restore power to lights within the western parking lot area that impacts marina residents on a nightly basis. Although the park is closed from dusk to dawn, this lot serves as residential parking for the marina residents.

Timeline:

Upon Adoption of the CDO: The City will recommence engagement with community partners to discuss future activation of the park.

January 1, 2021: The City will provide BCDC staff with information in writing on proposed efforts for future park activation, with a request that BCDC inform the City of any approval necessary from BCDC for such park activation.

January 1, 2021: The City will submit a plan to BCDC for reinstalling missing public access signage.

November 1, 2020: The City will install any missing bicycle racks required under the Permits in accordance with the currently approved plans (three bike racks total).

March 1, 2021: City staff will conduct a needs assessment that would be included in a proposal during the two-year budget process for restoration of the park. A subsequent needs assessment by an outside contractor may be required after the City budget adoption.

June 30, 2021: City deadline for adoption of two-year budget.

September 1, 2021: The City will submit a comprehensive restoration plan and long-term maintenance plan and as necessary an application for amendments to BCDC permits to reflect modifications to the park, based on any park improvements approved by City Council. Timelines for implementation would be included in the plan or any submitted application for permit amendment. In the event that BCDC denies a requested application for amendments to the BCDC permits, the City will request to meet and confer with BCDC staff to discuss a revised application for amendment to the BCDC permits. The

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City would then submit to BCDC a revised application within a reasonable amount of time after the BCDC decision to deny the City's first application for amendment and after any conferral with BCDC staff.

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Secondary Priority Area:

On the following page, the secondary priority area is outlined in red and blue and allows for access to the pathway from the westernmost end of the park to the rest of the park. The goal is to prioritize public access to the portion of the park south of the western parking lot. Efforts to keep the walkway open will be in place by using temporary mesh construction fencing. The photo on the last page displays the zone in relation to the entire park for reference.