

SAN FRANCISCO BAY CONSERVATION  
AND DEVELOPMENT COMMISSION

ENFORCEMENT COMMITTEE MEETING

BAY AREA METRO CENTER  
YERBA BUENA ROOM, FIRST FLOOR  
375 BEALE STREET  
SAN FRANCISCO, CALIFORNIA

THURSDAY, MARCH 16, 2017

10:30 A.M.

Reported by:  
Ramona Cota

A P P E A R A N C E SEnforcement Committee

Greg Scharff, Chair

Mark Addiego

Marie Gilmore

Sanjay Ranchod

Jill Techel

Counsel to the Committee

Shari Posner, Deputy Attorney General  
Office of the Attorney General

BCDC Staff

Larry Goldzband, Executive Director

Adrienne Klein, Chief of Enforcement

Greg Ogata, Legal Secretary

Matthew Trujillo, Enforcement Analyst

Maggie Weber, Enforcement Analyst

Marc Zeppetello, Chief Counsel

I N D E X

	<u>Page</u>
1. Call to Order	4
2. Roll Call	4
3. Public Comment	4
4. Approval of Draft Minutes for February 16, 2017	4
5. Enforcement Strategy	5
6. Staff Report	53
7. Adjournment	67
Certificate of Reporter	68

P R O C E E D I N G S

10:35 a.m.

1  
2  
3 COMMITTEE CHAIR SCHARFF: We will call the meeting of  
4 the Enforcement Committee to order.

5 Do you want to call the roll?

6 MS. KLEIN: Good morning, Chair Scharff and Members of  
7 the Enforcement Committee, I will call the roll now.

8 Chair Scharff?

9 COMMITTEE CHAIR SCHARFF: Here.

10 MS. KLEIN: Member Addiego?

11 COMMITTEE MEMBER ADDIEGO: Here.

12 MS. KLEIN: Member Techel?

13 COMMITTEE MEMBER TECHEL: Present.

14 MS. KLEIN: And Member Gilmore?

15 COMMITTEE MEMBER GILMORE: Here.

16 MS. KLEIN: Good morning, Member Ranchod.

17 COMMITTEE MEMBER RANCHOD: I'm here.

18 COMMITTEE CHAIR SCHARFF: All right. I don't see any  
19 public comment light; I'm assuming we don't have any. Okay.

20 Then approval of the draft minutes. Can we get a  
21 motion for draft minutes?

22 COMMITTEE MEMBER TECHEL: I'll make that motion.

23 COMMITTEE MEMBER ADDIEGO: Second.

24 COMMITTEE CHAIR SCHARFF: Okay. All in favor?

25 (Ayes.)

1 COMMITTEE MEMBER GILMORE: And one abstention.

2 COMMITTEE CHAIR SCHARFF: That passes. One abstention.

3 All right.

4 Now it's back to staff.

5 MS. KLEIN: So this morning we will be providing you  
6 with a second presentation on the development of our  
7 enforcement strategy.

8 So just to remind you, we have been working on this to  
9 fulfill the strategic plan goal shown there.

10 So I wanted to quickly remind you of what we shared  
11 with you on October 20th, which was to outline the six-step  
12 regulatory process. And we went through the current  
13 practices for each of those six steps, the gaps in each of  
14 those practices and possible solutions to fill those gaps.  
15 We went over some next steps, which we will be reporting out  
16 on today, and your role.

17 I wanted to remind you of the comments that you gave to  
18 us at the end of the presentation and I will be coming back  
19 to these at the end of today's presentation for some  
20 discussion and input from you. Have a look at those. These  
21 were very helpful comments and we feel that the strategy  
22 dovetails very nicely with the feedback that you gave us and  
23 direction.

24 The two highlighted comments are what we have focused  
25 on the most since October 20th and I will be going into the

1 detail now.

2 So to give you the punch line of the presentation: Our  
3 proposal and recommendation is that we dedicate 80 percent  
4 of the staff resources to resolving the worse cases, which  
5 we have now identified; and that we then dedicate 20 percent  
6 of our resources to resolving the easiest paper violations.

7 So a little bit more review.

8 The six steps in the regulatory process that we shared  
9 with you in October are: How are permits prepared; what  
10 happens following permit issuance, also referred to as  
11 compliance assistance; and then four steps for how are  
12 violations discovered, catalogued, selected and resolved.  
13 And we are focusing on selection as in prioritization.

14 So the current selection, we really lack a current case  
15 selection system and as a result we are not resolving our  
16 highest priority cases.

17 We will be recommending, as I stated, that you support  
18 the long-term conversion of some of our resources away from  
19 enforcement to permit compliance.

20 And with this in mind please note that we, with  
21 sufficient person-power we could address -- at the outset 50  
22 percent of the violations could be avoided by investing in  
23 permit compliance because that would facilitate proper  
24 permit implementation, which is about 25 percent of the  
25 types of violations that we have and would reduce violations

1 by permit holders.

2 So you see that of the 50 percent unpermitted  
3 development that occurs, half of those parties have permits  
4 already. So they should know and we believe that if we were  
5 doing some permit compliance that we would reduce the  
6 repeat, the recurrence of violations by permit holders and  
7 we would achieve greater permit implementation.

8 So we don't have a good prioritization system. And  
9 this means that we have not been exclusively resolving the  
10 violations that have the greatest potential to harm the Bay  
11 or adversely impact existing required public access.

12 And we have learned through our prioritization effort  
13 that we are resolving some but not all of the right  
14 violations and we need to address our backlog.

15 COMMITTEE MEMBER GILMORE: Excuse me?

16 MS. KLEIN: Yes, Commissioner Gilmore.

17 COMMITTEE MEMBER GILMORE: I think I may have missed  
18 the October 20th meeting so I apologize if this is a repeat.  
19 Do we have an idea of the size of the backlog?

20 MS. KLEIN: We do. I'm going to show you momentarily.

21 COMMITTEE MEMBER GILMORE: Okay, thank you.

22 MS. KLEIN: Thank you. That's a great question and  
23 please ask away.

24 So we have developed two prioritization systems. One  
25 which has been the biggest effort is for physical violations

1 and the second is for paper violations.

2 We have scored 162 of our existing cases by six  
3 attributes in three different locations. And I am not using  
4 the word "jurisdiction" because our permits tend to, some of  
5 our permits go beyond our shoreline band. Some public  
6 access is required outside of our official jurisdiction. So  
7 the three locations are the Bay and the Upland - as opposed  
8 to the shoreline band - and the Suisun Marsh. And the six  
9 criteria that we have used are habitat value, durability or  
10 permanence, toxicity, amount and size, nature and type and  
11 visibility. And so for each of the three locations we are  
12 using the same six attributes but the criteria in each  
13 attribute is slightly different, slightly -- but quite  
14 parallel.

15 So we have developed a method. So I just want you to  
16 know that when we have scored a case we are just scoring on  
17 the initial report. So once we get into a case and pick it  
18 up we will undoubtedly discover more violations and we may,  
19 we will have to re-score. But just so that you know, the  
20 work involved in each of these cases would be for more than  
21 a single, physical violation. But that is the critical, get  
22 past go moment to identify the worst violations and  
23 prioritize and work on those.

24 COMMITTEE MEMBER RANCHOD: Could I ask a clarifying  
25 question?

1 MS. KLEIN: Please.

2 COMMITTEE MEMBER RANCHOD: So would something that's a  
3 public access violation fall in this category?

4 MS. KLEIN: Correct, Commissioner Ranchod, that would  
5 indeed be a physical violation.

6 COMMITTEE MEMBER RANCHOD: Okay.

7 MS. KLEIN: Yes, so unpermitted fill placement or the  
8 absence to provide an improvement or an amenity that is  
9 required by a permit, largely a public access amenity,  
10 correct. Or failure to maintain, that would also be a  
11 physical violation.

12 So this method that we've developed can address  
13 multiple violations, multiple types of issues, so we could  
14 have at any single property a violation in the Upland and in  
15 the Bay, for example.

16 The highest possible score for a violation in the Bay  
17 is 102 and for those in the Upland and the Marsh it's 96.  
18 For violations occurring in two of the three locations the  
19 highest score is 140.

20 So the results are robust. The priority order of our  
21 cases is consistent across analysts. So when we commenced  
22 this effort we scored cases together and we had to revise  
23 and update and hone and improve the criteria. And we were  
24 then able to score individually and feel very confident that  
25 we were choosing the correct score for each of the six

1 attributes and coming up with a consistent score for each  
2 case.

3 Finally. Well yes, I'll talk the backlog. There are,  
4 unfortunately as you can see, more cases than we can resolve  
5 at once.

6 So to show you the results. Here is a histogram of the  
7 results. Notice that the majority of the cases have a  
8 relatively low score and that is, I believe, good news.  
9 Fewer cases are severe. We have determined, not  
10 surprisingly as I said, that we should focus our efforts on  
11 the right hand side of the histogram. And the worst score  
12 is a 96.

13 A little more detailed for you so you can see. We have  
14 got three colors broken down by each of our three locations:  
15 Blue is Bay, green Upland and orange Suisun Marsh.

16 So looking at the cases at the right hand side of the  
17 histogram. There are 47 cases -- excuse me, 47 scores that  
18 are 50 and higher and that's at the 60, so you've got the 5  
19 right hand bars, sets of bars. Nineteen, or 40 percent of  
20 those worst cases are in the Bay jurisdiction with 60  
21 percent then in the Upland and Marsh.

22 So our recommendation is, as I said, to dedicate, do an  
23 80/20. So 80 percent of our resources toward the highest  
24 priority violations.

25 That's cases with a score of 60 or greater.

1           It's 32 of the 162 cases or about 20 percent or one-  
2 fifth of the total caseload.

3           We are working on 6 or 8 of these at the moment. You  
4 are familiar with two of them, Point Buckler and Marina  
5 Village.

6           This initiative will take three to four years so we are  
7 not getting to the backlog, we are getting to the worst  
8 priority cases, the highest priority cases.

9           COMMITTEE MEMBER RANCHOD: Can you give us a sense of  
10 those 32, how many are ongoing violations? If it's not  
11 handy you can come back to it later. I was just wondering  
12 if that was one of the factors we looked at for  
13 prioritizing?

14          MS. KLEIN: We did not. I'll let you guys.

15          MS. WEBER: One of the factors, I think it had to do  
16 with -- I forget under which factor but one of the criteria  
17 that we would look at is, was the violator a repeat  
18 violator. Like had we dealt with them before and opened and  
19 closed a violation; and so that was taken into account with  
20 the prioritization.

21          MS. KLEIN: By ongoing do you mean the impacts are  
22 worsening by the day?

23          COMMITTEE MEMBER RANCHOD: Yes.

24          MS. KLEIN: Half. I'm going to just -- and Matthew  
25 Trujillo has something to add.

1 MR. TRUJILLO: In terms of whether they're worsening by  
2 the day, it's kind of a complicated question because we, in  
3 looking at these cases, we did try to assess from what we  
4 could as much, get as much information as we could about  
5 what the current status was. Whether this was a very old  
6 case and if so, you know, what's the state now.

7 So that did inform our score but that's not really, you  
8 know, a specific criterion because it's also - and maybe I'm  
9 starting to speak out of turn here - but it would be  
10 something that would be very hard to assess because a lot of  
11 these are the result of a snapshot, they are the result of  
12 the submission of a complaint and then we just -- we do our  
13 best to kind of assess it from there.

14 MS. KLEIN: There is a case that the property owner has  
15 not allowed the public onto the property, that's one  
16 example, we have another case that involves many boats  
17 anchored offshore. And there are resource impacts  
18 associated with that ongoing activity but none of them, a  
19 lot of them are old and none of them are continuing, as it  
20 were, in terms of they are not, no one is putting more fill  
21 in the Bay. Point Buckler would be a very severe one and  
22 we hopefully are working to address that. And I can work on  
23 a more complete answer for you.

24 COMMITTEE MEMBER TECHEL: The six things you score on,  
25 they all -- can you give us an idea of how many points are

1 eligible in each range?

2 MS. KLEIN: That's a great question.

3 COMMITTEE MEMBER RANCHOD: And where does public access  
4 fit into those six? And if it's coming up I can wait.

5 MS. KLEIN: It has to be fairly simple so for each of  
6 the six attributes there can be a score of 1, 2 or 3. In  
7 several cases, such as Visibility, the score is either 1 or  
8 2. Sometimes our criteria, example Toxicity, the impact is  
9 either low, medium or high. It's fairly crude, we have a  
10 limited amount of information.

11 But for other categories - let me find the one for  
12 public access - they are quite specific and they were very  
13 interesting to develop. So we, for example, considered  
14 whether the violation in the case of public access was  
15 affecting the entire site, or in the example I just  
16 mentioned, no access, no public allowed on the property. Or  
17 it's isolated to one location on the property; there is a  
18 missing bench. So that's obviously a much, that would have  
19 a lower score. So we looked at the extent of the violation  
20 across the property and the severity, let's say, in terms of  
21 maintenance. Is it one of the features or is it all of the  
22 features. Have they abandoned it entirely or are they just  
23 doing less than a good job. Is that helpful?

24 COMMITTEE MEMBER TECHEL: Of the six that you listed,  
25 the attributes, I'm just asking where does public access fit

1 under those six?

2 MS. KLEIN: It fits under nature and type and use.

3 COMMITTEE MEMBER TECHEL: And if you can get a score of  
4 1 to 3 in each of those how do you get to 96?

5 MS. KLEIN: So there is a formula that is being used so  
6 we are not just adding up the 1s and the 2s. There is a  
7 formula because each of the different criteria is weighted  
8 differently. So we thought carefully about what factors  
9 contributed most to the severity of the violation. So we  
10 have -- we are concerned about toxicity. It is mentioned in  
11 the law but it's not -- it's not a priority issue but we  
12 also felt that we should consider toxicity in the  
13 prioritization of a violation.

14 So it's ranked I think slightly lower but we've got  
15 things grouped. It's mathematical and -- we looked at -- we  
16 had assistance and we actually considered how to prioritize  
17 things using several different -- I think we looked at four  
18 or five or six formulas with different weightings and they  
19 gave us very similar conclusions and so that gave us  
20 confidence that the ranking was quite solid.

21 MS. WEBER: Could I add something?

22 MS. KLEIN: Please.

23 MS. WEBER: And also just to clarify. For each of our  
24 areas of jurisdiction, the Bay, the Upland and the Suisun  
25 Marsh, those six attributes are weighed and analyzed for

1 each of those jurisdiction areas. So in cases where there's  
2 violations in the Bay and in the Upland we went through  
3 those six attributes for both of our jurisdiction areas and  
4 then the formula that we ultimately decided on weighs and  
5 varies and creates the number based on the six attributes  
6 for both jurisdictions.

7 COMMITTEE CHAIR SCHARFF: Thanks.

8 MS. KLEIN: We couldn't have done this without  
9 professional help.

10 Let's see here. I don't think I -- so we just added  
11 this red line so you could see the focus of the work. That  
12 represents the cases that we are focusing on.

13 So we have one exception to the ranking, to the  
14 priority ranking, and that is that we have a number of  
15 permittees, specifically the Ports of Oakland and San  
16 Francisco, they're large permit holders so by default they  
17 have a large number of violations. These are not  
18 exclusively the fault of the property owner, often the  
19 permits are co-permittees where there will be a tenant but  
20 the Ports are on their permits, and the Ports themselves  
21 have a number of violations.

22 We believe that -- you know, you had directed us to  
23 also attend to the worst violators and so we would like to  
24 work with these parties and kind of work with them, show  
25 them the aggregate cases and prioritize those and kind of

1 have them work their way through those cases. We think this  
2 creates an efficiency of resource use both for staff and the  
3 Ports and promotes future voluntary compliance.

4 And the combined aggregate score of each of the Ports'  
5 total number of violations would certainly end up in the  
6 high end of the, the severe end of the ranking.

7 So how should we address the 20 percent staff  
8 allocation?

9 Historically we have failed to do permit compliance.  
10 The permits are issued and the permittees are really on  
11 their own to voluntarily comply and that's a problem, so we  
12 would like to formalize that process. We expect the  
13 violations to be exclusively paper violations rather than  
14 physical violations. We expect the issues to be discrete,  
15 the time to be measurable and all resulting in a manageable,  
16 predictable investment of our resources.

17 We still need to develop this system. Obviously we are  
18 issuing more permits than we will be able to address so we  
19 have to think strategically about which permits we will be  
20 doing permit compliance with. I think, obviously, the major  
21 permits and material amendments, but we should also touch  
22 the non-material amendments, the minor permits, maybe even  
23 the region-wide permits so that we work across the board.  
24 And this addresses Step 2 in the 6 step regulatory process.

25 So the benefits. I think I got one step ahead of

1 myself. But essentially, as I mentioned in the beginning,  
2 this has the potential to eliminate 50 percent of our  
3 violations.

4 The challenge is that we don't have dedicated staff to  
5 do this but we are going to carve out a piece of time for  
6 that. And we have used volunteers in the past to do this  
7 and it is very likely that we will do that again in the  
8 future.

9 Please, Commissioner Addiego.

10 COMMITTEE MEMBER ADDIEGO: Adrienne, was there ever a  
11 time where the BCDC had dedicated staff that were for the  
12 most part exclusively in the field looking at compliance?

13 MS. KLEIN: No. We also don't have a dedicated field  
14 inspector. And as you may all know, it's easy to stay a  
15 little too chained to one's desk. I have tried in the past  
16 and we will also try to dedicate days a month to get out in  
17 the field for spot inspections. That's a great question.

18 So a little bit on the paper violation prioritization  
19 that we developed:

20 We assessed each paper requirement, if you will, by  
21 impact if not completed and by effort to achieve compliance  
22 by staff. We used three simple categories, which are high,  
23 medium and low, so this was a much more simple system to  
24 develop. We did it on our own in a day or two.

25 I thought it would be interesting for you to glance at

1 the types of paper, special conditions and documents that  
2 are required of our permittees. These are the high  
3 priority, what we have determined to be the high priority  
4 violations.

5 Next I've got the medium priority violations.

6 And we've distinguished, on the previous page we had if  
7 a project is built with no construction plans that would be  
8 considered a high priority violation. More commonly we'll  
9 have received and approved a set of construction plans but  
10 it's lacking some details. That would be much less  
11 significant and also easier to fix.

12 COMMITTEE CHAIR SCHARFF: So I just have a brief  
13 technical question. When you say "Executed Original of the  
14 Permit" that's the construction permit?

15 MS. KLEIN: It's the permit that you would, that you  
16 would issue if it's a major and it needs to be signed by the  
17 permittee. So essentially we enter into a contract.

18 COMMITTEE CHAIR SCHARFF: So it's our permit.

19 MS. KLEIN: It's our permit.

20 COMMITTEE CHAIR SCHARFF: It's our permit.

21 MS. KLEIN: It's our BCDC permit, correct.

22 COMMITTEE CHAIR SCHARFF: So when we say "submit the  
23 original" it's their signatures we want?

24 MS. KLEIN: Correct.

25 COMMITTEE CHAIR SCHARFF: Got it.

1 MS. KLEIN: And the low priority violations.

2 So we wanted to show you sort of -- we've got Staff  
3 Effort on the Y-axis and Impact to Bay Resources or Public  
4 Access on the X-axis and we -- just kind of a simple picture  
5 of we are focusing our efforts to capture the high impact  
6 violations.

7 We don't yet -- we haven't figured out how to measure  
8 the effort involved. There are a lot of external factors  
9 that determine that. Cooperation of the permittee/violator,  
10 who they hire, their abilities, their willingness. Those  
11 things really affect our effort.

12 And then 20 percent resource allocation to the paper  
13 violations that are brand new, that are easy to fix. And  
14 there is a payoff for that investment. And it's a nice way  
15 for us to balance out a work week or month with simple work  
16 to kind of offset the longer range, more intensive case  
17 efforts.

18 COMMITTEE CHAIR SCHARFF: Can you just tell us what a  
19 Low Harm High Effort thing looks like?

20 MS. KLEIN: Well, not really actually, I can't. Well,  
21 it would be something that we -- the same initial steps are  
22 involved. We have to, we have to understand the permit  
23 requirements if there's a permit in place, so that's the  
24 initial step. And then we have to communicate the nature of  
25 the violations and the steps that the permittee or violator

1 has to take to fix the violation. So that's bread and  
2 butter, the same thing every time. It can be a little more  
3 complicated for an older permit, a poorly written permit.  
4 So that's the same effort.

5 The low effort would be they got the letter, they  
6 called us up, they said they wanted to meet or ask a couple  
7 of questions to make sure they understand what they have to  
8 do. They get a qualified person on board. So if it's a  
9 legal instrument, they have a lawyer that knows what he's  
10 doing. If it's project plans they have the architect or the  
11 landscape architect take care of them. If it's a legal  
12 instrument for a public access area they have the surveyor  
13 out on the site, they know where the edge of the Bay is,  
14 they get it done. And they do a good job and we approve it,  
15 that's low effort. Unfortunately, that doesn't happen quite  
16 as often as we'd like.

17 So the backlog that I think Commissioner Gilmore asked  
18 about. So currently. So when we did our scoring we had 162  
19 cases that we scored. Our current full caseload is 188  
20 cases. We have -- it's not quite fair to say we have six  
21 full-time staff doing enforcement. Clearly Matthew, Maggie  
22 and I are doing enforcement all the time. We have, as you  
23 know, Marc and John who do a lot for the enforcement program  
24 and they have many other responsibilities; and then Greg  
25 Ogata is giving us huge amounts of support. So that's our

1 capacity in terms of person-power.

2 We think it's too soon to close the non-priority cases  
3 because we don't have a method to reliably estimate the  
4 effort to resolve them, which we just talked a little bit  
5 about. Our recommendation is to wait a year and kind of  
6 reexamine based on our learnings. We are going to try to  
7 keep track of how long things take. But it may be that we  
8 all agree or that you recommend, that we recommend that we  
9 just -- we close the non-priority cases that we know we  
10 won't be able to get to.

11 This is a little drawing that we made up just to show  
12 you. The green bubble represents case work. So we're  
13 hoping with this strategy in place we have fewer cases on  
14 the books. This is, as you can see, a two to three to four  
15 year projection. We are doing a lot of program management  
16 developing this strategy and we hope to get things in place  
17 and increase our capacity to do case work and violation  
18 prevention. So the blue would be the permit compliance  
19 effort.

20 So other things that we have been working on which are  
21 all part of implementing the strategy:

22 We need to update the reporting form that staff uses  
23 when we receive reports of violations to get better  
24 information and include our prioritization system. That  
25 will be an internal piece of that.

1           We want to improve the website portal for reporting  
2 violations.

3           We have to create a system for integrating the  
4 prioritization attributes into the reporting form.

5           We are about to launch a new layer in our GIS database.  
6 We have got access to issued permits and resources and  
7 jurisdictional locations and we will now have a layer that  
8 shows us all of the enforcement cases that are open and  
9 closed and all of the issued ceased and desist orders. And  
10 that will be really useful because all staff shares incoming  
11 calls from the public and a lot of those calls are for  
12 reporting violations, so we will get more complete data  
13 sooner.

14           As I mentioned, we have to figure out the protocol for  
15 doing this new permit compliance initiative.

16           And at some point we think this year we'll be bringing  
17 to you some proposed changes to the regulations. They will  
18 be comprehensive changes but include some to improve the  
19 enforcement regulations.

20           So now we are looking again at the list of comments you  
21 provided to us on October 20th. I've reorganized the  
22 comments a little bit and color-coded them.

23           So we think we have a system that we have presented  
24 that will resolve the worst violations and address the worst  
25 violators.

1           We are commencing addressing paper violations because  
2 we agree they're important.

3           We are acutely aware of our backlog and, as I've said,  
4 want to put this system in place to kind of see how quickly  
5 or slowly we move and come back to an official decision  
6 about that in the future.

7           In yellow I've put that you directed us to use our  
8 tools, bring cases to the Committee quickly and make sure  
9 that there is clarity between the process for stipulated and  
10 contested orders.

11           And we think we do a pretty good job of using our  
12 tools. In terms of bringing matters quickly, I think you  
13 will recognize there is a tension between quickness and  
14 rightness. And we encounter externalities that slow things  
15 down and challenge us from following the letter of the law,  
16 as it were.

17           COMMITTEE CHAIR SCHARFF: Can you give an example of  
18 that? I guess I just don't really know what you mean. 'You  
19 encounter externalities that doesn't allow you to follow the  
20 letter of the law.'

21           MS. KLEIN: Well, one example would be I have been  
22 working with a restaurant in Sausalito for -- I was working  
23 with a restaurant in Sausalito. They did a fairly extensive  
24 remodel over the Bay. BCDC requires local discretionary  
25 approval to file an application as complete; and the City of

1 Sausalito never gave a complete -- they gave a discretionary  
2 approval but it didn't include the entire project. So the  
3 permittee, the applicant was never able to file the  
4 application as complete. It didn't seem quite fair to come  
5 down on them for a local jurisdictional issue so I sort of  
6 waited and cajoled and communicated and eventually dropped  
7 it. Now we're going to -- that's one of our cases that  
8 we're going to pick back up and close. That's one example.

9 COMMITTEE CHAIR SCHARFF: I think that's helpful. What  
10 came to mind, the question of should we change our rules to  
11 say, if local jurisdiction is provided then we do it. I'm  
12 just asking whether or not it's worth staff resources to be  
13 chasing -- what's the benefit to staff to really chase down  
14 that? And maybe there is a reason that it's worth it, but  
15 given the backlog in cases I just thought maybe we might  
16 want to consider are our rules the right rules given where  
17 we are?

18 MS. KLEIN: Yeah, that's a great -- this is what we  
19 want to sort of consider once the strategy is in place.  
20 That's good input and that's not something we would have  
21 predicted at the outset. There was also some difficulty  
22 with the representative so I didn't have a very effective --  
23 they didn't have a very effective representative, there were  
24 some health issues, so things like that.

25 Yes. So our goal is to bring things quickly. That is

1 absolutely our goal and we will continue to evaluate the  
2 factors that affect that and discuss them with you.

3 So regarding enforcement proceedings. You had asked  
4 that we have the respondents at different tables. I hope we  
5 have made that more clear. Let us know how we can make the  
6 proceedings run smoothly for all parties involved, the  
7 respondents, staff and you.

8 COMMITTEE CHAIR SCHARFF: Well I think from my point of  
9 view I think giving us enough time. I think we have been  
10 putting too much on the agenda, which we haven't been  
11 getting to and I think we have to be more realistic. You  
12 know, we always have the Commission meeting after so  
13 everyone can get here, but that limits our time and that  
14 creates some tension, frankly, between how much time we give  
15 the applicants who -- they're not applicants, the  
16 respondents, who always seem to want more time. We want to  
17 clearly give due process and have a thoughtful discussion.  
18 I think we continually run up against time issues.

19 COMMITTEE MEMBER ADDIEGO: Greg, I'm 100 percent with  
20 you. The last case in this hall with Scott's Seafood, the  
21 rush to judgment. Jill was working on some thoughts that  
22 she wasn't able to share completely with us and even our  
23 counsel advised us that the clock was ticking. So jamming  
24 them up against the other meetings is a problem.

25 COMMITTEE CHAIR SCHARFF: I think that's an internal

1 thing, we have to decide if we want to do it on days we have  
2 Commission meetings. Clearly I think that's where staff  
3 wants to go or is it for purposes of the Commissioners so we  
4 can get here?

5 MS. KLEIN: We wanted to accommodate you and minimize  
6 travel time.

7 COMMITTEE CHAIR SCHARFF: And what time did we start  
8 last time?

9 EXECUTIVE DIRECTOR GOLDZBAND: 9:30.

10 COMMITTEE CHAIR SCHARFF: 9:30, all right. Because it  
11 is hard to get here too early. I mean, it's not easy.

12 EXECUTIVE DIRECTOR GOLDZBAND: Saturdays are a  
13 possibility. (Laughter.)

14 COMMITTEE MEMBER TECHEL: I did think -- I've told so  
15 many people about the story that we were, had a time  
16 constraint and you came up with every public speaker gets 30  
17 seconds. Wow, that really went very well. I felt, I think  
18 everybody got out what they wanted to get out so sometimes  
19 the time constraint has been a creative piece.

20 COMMITTEE MEMBER ADDIEGO: Jill, I think that worked  
21 well in this environment but don't try it in your local  
22 jurisdiction.

23 COMMITTEE CHAIR SCHARFF: Right. No, we'd be run out  
24 of town in our local jurisdiction, right? I mean, 30  
25 seconds. And to be honest, the 30 seconds did not feel good

1 to me. I mean, I think everyone got out what they needed to  
2 say but, you know, I would rather have had a little more  
3 leeway on that. And frankly even if we started -- I think  
4 on those things we should probably start at 9:00 at the very  
5 least. And maybe we should consider on the really big ones  
6 having our own day for it as opposed to a Commission  
7 meeting. I think it depends on -- something like Scott's  
8 where we expect huge numbers of public speakers, the really  
9 contested ones. And with that said, we've probably done the  
10 two big contested ones right, Point Buckler and Scott's.

11 MS. KLEIN: We'll find out. Thank you.

12 So regarding promoting public awareness. That is  
13 something that we need to work on, we haven't developed a  
14 method for doing that. Again, we don't have a dedicated  
15 Public Information Officer.

16 COMMITTEE MEMBER ADDIEGO: I think the method was the  
17 size of the fine generated the public awareness so we're off  
18 to a great start. (Laughter.)

19 MS. KLEIN: And on the last two points: Recouping staff  
20 expenses. We have been doing a little -- so the provision  
21 of the law that -- there's criteria for assessing the  
22 administrative penalties in an order and one of those is the  
23 cost to the state and we have been in the violation reports  
24 showing you an accounting of hours. I don't think that's  
25 what you had in mind, it's not full, it's partial, so it

1 would only be for -- and those, all of the penalties go into  
2 the Bay Fill Cleanup and Abatement Fund, which is mandated  
3 to be used for Bay fill cleanup and abatement so it's not  
4 actually recouping staff expenses.

5 COMMITTEE MEMBER GILMORE: I'm sorry, so I have a  
6 question about that.

7 MS. KLEIN: Please.

8 COMMITTEE MEMBER GILMORE: So does the Commission have  
9 the authority to specifically tack on -- I don't know if you  
10 want to call it a penalty or a fine or whatever the language  
11 is, to start addressing staff costs or is that something  
12 that is wholly within the power of the Legislature?

13 Because my feeling on this is there is the penalty that  
14 you pay for being a bad citizen and dumping fill in the Bay  
15 or whatever it is that you're doing to the environment; and  
16 then there is the fine that you should pay because we have  
17 to haul you in front of BCDC and go through these, you know,  
18 enforcement hearings and that takes up staff time and  
19 resources that could be spent doing a number of other  
20 things.

21 And so it would be nice to know if the Commission has  
22 the authority, you know, basically in our permits to say, oh  
23 by the way, if you violate any of the permit conditions be  
24 aware that you will be paying whatever formula - I mean if  
25 we have the authority - whatever formula we come up with in

1 addition to whatever penalty you have for illegally dumping  
2 in the Bay. You know.

3 MR. ZEPPETELLO: I'll comment briefly. I think that  
4 the law is clear that the penalties need to go into the Bay  
5 Fill Cleanup and Abatement Fund. Taking staff costs into  
6 account is a factor in the amount of the penalty but it  
7 doesn't give us the flexibility to specifically allocate.  
8 But that is something.

9 One of the things we have been talking about internally  
10 and I think that Larry is considering is whether we want to  
11 come up with a proposal for how the money could be -- it  
12 needs to be appropriated by the Legislature but we may have  
13 some opportunities to be creative in exactly how that money  
14 - with the Commission's discretion - as to how that money  
15 would get used. But I think that what you're talking about,  
16 Commissioner Gilmore, is more an issue of possible  
17 legislative changes.

18 Or perhaps, just as an idea, the idea of putting  
19 something in a permit that would allow sort of a -- we would  
20 have to call it something other than a penalty, but a way to  
21 recoup.

22 COMMITTEE MEMBER GILMORE: Right.

23 MR. ZEPPETELLO: It's something we could think about.

24 COMMITTEE MEMBER GILMORE: I think we're creative  
25 enough to do that.

1 EXECUTIVE DIRECTOR GOLDZBAND: Of that I have no doubt.  
2 I want to sort of combine three things into one thing to  
3 sort of give you an idea about where I think we sort of need  
4 to head and we have all sort of talked around this a little  
5 bit.

6 Adrienne was totally correct in saying that the fines  
7 that you impose and that are paid go to the Bay Fill and  
8 Abatement Fund. The Bay Fill and Abatement Fund is what's  
9 called in state parlance a special fund. You have to have  
10 an expressed appropriation to spend those monies, both in  
11 terms of the amount and in terms of how it's actually to be  
12 spent.

13 So what we are going to have to do after this fiscal  
14 year is to determine: A, how much money is in the account  
15 because it's going to be far more on June 30 this year than  
16 it was on June 30 last year and that it was June 30 the year  
17 before because you're being very active, which is absolutely  
18 great. We are going to have to have a discussion with you  
19 and with the full Commission about how those monies should  
20 be spent and also how much of those monies should be spent.  
21 So that's sort of that part of it.

22 The other thing that I think you are going to see over  
23 the next year or so, and you'll remember the slide that  
24 Adrienne showed you that said that for the next year or so  
25 we are going to have to learn, assuming we use this priority

1 system, what works and what doesn't work.

2 One of the next tranches of issues we are going to have  
3 to deal with with the enforcement crew is what works best,  
4 what doesn't work as well in terms of tools and in terms of  
5 process. When we get that figured out and we then compare  
6 what our tools are versus the Coastal Commission's, versus  
7 the Water Board's, versus other state agencies that have  
8 enforcement policies and practices. Then we can come to you  
9 with suggestions about whether and how we should change the  
10 tools that we actually have.

11 I think that goes to your questions, Commissioner  
12 Gilmore, about how we could then go to the Legislature, go  
13 to the Administration and go to the Legislature and say:  
14 'Here, we have done the enforcement strategy. This is  
15 what's working, this is what needs to be improved. Let's  
16 work together to figure out whether and how we change our  
17 laws and/or regulations to do maybe in part what you're  
18 suggesting we do, which is --' and having received a  
19 violation four and a half years ago when I was driving, I  
20 recognize that you not only pay a penalty, a fine, but you  
21 also end up paying court costs if I remember correctly.

22 COMMITTEE MEMBER GILMORE: Right.

23 EXECUTIVE DIRECTOR GOLDZBAND: That's, I think, what  
24 you're trying to get at. And so my question is, do other  
25 state agencies do that? Is there a state law which allows

1 them to do that? Do they do that through a legislative  
2 situation, an actual statute or do they do that through  
3 regulation? That's the kind of stuff we'll have to figure  
4 out.

5 COMMITTEE CHAIR SCHARFF: And I think -- Marie, I  
6 think, raised a good point or maybe you did as well about  
7 the notion that putting it in the permit, because sometimes  
8 you can have it --

9 EXECUTIVE DIRECTOR GOLDZBAND: Sometimes that's the  
10 easiest --

11 COMMITTEE CHAIR SCHARFF: You have a contractual right  
12 to it, that if they violate the permit they then know this  
13 and that.

14 EXECUTIVE DIRECTOR GOLDZBAND: And one of the things  
15 that Adrienne and the crew have done over the past few years  
16 starting with the America's Cup permit, which was five years  
17 ago, four years ago, whenever it was, was actually start  
18 putting into the permit expressly what you are going to end  
19 up paying if you violate this thing. And that is an  
20 incredibly, I think, strong way to ensure that you don't  
21 have to work hard. That is that it's just automatic. And  
22 so that is another part of this puzzle that we will end up  
23 having to work through.

24 COMMITTEE CHAIR SCHARFF: That seems to be a very  
25 useful tool.

1 MS. KLEIN: Yes.

2 EXECUTIVE DIRECTOR GOLDZBAND: I think that Adrienne  
3 thinks so.

4 MS. KLEIN: Thanks for mentioning that, Larry. I had  
5 three points. Just so that you're aware, we do include in  
6 most of the permits a finding which outlines, you know, that  
7 states simply, we have an enforcement program and what the  
8 administrative penalty range is and that they could be  
9 subject to orders or legal action. It's not exactly what  
10 you're asking for but we do put that in the permits.

11 The bread and butter tool that we use, we have the  
12 administrative penalty authority and you've seen that at  
13 work in the orders that you've issued. The tool that we  
14 use, and you're going to hear about this from Matthew in a  
15 few minutes in our staff report.

16 One of our regulations is called the Standardized Fine  
17 regulation and that's when -- for most of the violations  
18 we'll issue a letter and it essentially starts a clock and  
19 the fines are predetermined based on the time it takes for  
20 the responsible party to fix the violation. And it's a very  
21 effective tool because we don't, we are not making any  
22 discretionary decisions, it kind of neutralizes our role a  
23 little bit, they're determined based on type of violation  
24 and duration to fix.

25 And at the completion of the violation we say, this is

1 what you owe, and they have the chance to appeal the amount.  
2 The decision to reduce by some -- by no or some amount or  
3 fully is in the hands of Chair Wasserman and Larry. So  
4 staff will prepare a memo summarizing -- they'll submit a  
5 letter, these are the reasons we want a reduction. We'll  
6 analyze it and present the information to the Chair and  
7 Executive Director. That works really, really well, it's an  
8 extremely effective tool. I don't know of other agencies  
9 that have that tool, I think they would be looking to us for  
10 that one.

11 And then to Larry's point on the America's Cup permit.  
12 The permittee needs to agree to that, right? That's not, we  
13 can't impose that without their agreement. In the America's  
14 Cup situation we used it because we wanted for violation --  
15 what they weren't opening -- the event was short, right?  
16 They had a trial run in the summer, it was short. Our tool  
17 that I just described, it wouldn't have worked to give them  
18 a 35 day grace period, the whole event would be over by the  
19 time the fines kicked in. So that was why they agreed to  
20 this. And there are other -- we can use it as a negotiating  
21 tool in an enforcement case but as a standard practice I  
22 think we would need regulation changes to do it on a regular  
23 basis.

24 COMMITTEE CHAIR SCHARFF: Well, but I mean, we do that  
25 when we grant building permits and approvals, development

1 approvals where we have, you know, you have to pay the cost  
2 of such-and-such. If you violate them or if we get sued or  
3 whatever you have to do that. And, you know, people agree  
4 because if they don't agree --

5 COMMITTEE MEMBER GILMORE: They don't get their permit.

6 COMMITTEE CHAIR SCHARFF: -- they don't get their  
7 permit. They just simply don't get it. Okay, you don't  
8 agree, that's fine, you don't have to but you don't get your  
9 permit. So most people agree.

10 COMMITTEE MEMBER GILMORE: Yes, it's very  
11 straightforward. And they understand it's part of the cost  
12 of doing business, yes. And so I guess my only issue is it  
13 seems like we have the power, the only issue is where the  
14 money goes, right?

15 MS. KLEIN: Mm-hmm.

16 COMMITTEE MEMBER GILMORE: It's not going to pay for  
17 staff time, but as we all know staff time isn't free, so.

18 MS. KLEIN: Mm-hmm.

19 COMMITTEE MEMBER GILMORE: And, you know, I guess I  
20 come back to, you know, the state appropriates our budget.  
21 And if they want to keep costs down it would seem to be very  
22 logical to get somebody else to pay for it, you know.  
23 Hence, put it in the permit, this is what happens if you  
24 violate it, and that money goes back to BCDC to recoup staff  
25 costs.

1 MS. KLEIN: Great, thank you.

2 COMMITTEE MEMBER RANCHOD: Can I follow up on that?  
3 This is a helpful discussion. I don't want to wait another  
4 year before we come back with a recommendation for how to  
5 address this lack of flexibility in the use of funds. So  
6 it's great if we have more funds going into the Bay Fill  
7 Cleanup and Abatement Fund but I don't want to be here a  
8 year from now saying, okay, here are the recommendations,  
9 now let's take it to the Legislature. Anything they do will  
10 take another -- until January 1st to be implemented.

11 Why can't we - let's say if it's a lack of staff  
12 resources - compare the authority we have to other relevant  
13 state entities. If it's a lack of state resources to do  
14 that research and analysis why don't we go to one of the law  
15 schools here and say, we have a great project that we could  
16 use some help on. Go to Environmental Law Clinic or  
17 something. There's got to be other resources that can help  
18 us do a discrete analytical project that could then help  
19 inform actions by us. Because the Legislature is in session  
20 now. They are going to be looking at the next fiscal year's  
21 budget.

22 And if there was something obvious we could understand  
23 during the next couple of months such as -- well, even if we  
24 can recoup staff costs and other costs associated with  
25 enforcement, if it all goes into the Bay Cleanup Fund and it

1 doesn't help the Commission have actual staff resources to  
2 clear the backlog and do some of these things we have the  
3 same problem. So if we lack flexibility in how to utilize  
4 some of the funds associated with an enforcement activity  
5 that should be a fairly addressable issue that we can always  
6 tee up to somebody in Sacramento.

7 EXECUTIVE DIRECTOR GOLDZBAND: So let me answer that  
8 with I think at least three responses.

9 First of all, the Department of Finance wants us to do  
10 this and we have already talked with the Department of  
11 Finance. There are bigger issues for the Department of  
12 Finance than this and so the last thing I want to do is get  
13 the Department of Finance looking at us saying, we'll work  
14 with you on this but we actually have bigger things and  
15 better things to do right now. And so I have to sort of  
16 pick our battles a little bit carefully, especially because  
17 I think that, as you will hear in the Commission meeting, we  
18 have bigger battles that we are going to end up fighting  
19 this upcoming fiscal year. That's number one. It doesn't  
20 mean it's not important, it's just that you have to choose  
21 your priorities.

22 Number two. I think you're right in that it's probably  
23 pretty simple to actually - I say that looking at Marc - but  
24 it's probably pretty simple to compare what we do versus the  
25 Water Board versus other enforcement agencies. I don't

1 think that will take much time because candidly, you know,  
2 three or four calls from Marc to his counterparts can get  
3 you a pretty decent idea about what they do and it's going  
4 to take a lot of time.

5 The difficulty, candidly, is that -- and it's not  
6 difficult. The time sync from our perspective. And Steve  
7 who is over in the next room dealing with Bay fill would say  
8 this, is that as a state agency the last thing we want to do  
9 is simply propose something and take it to a state  
10 legislator. We are going to work it through the Resources  
11 Agency and through Finance and through the Department of  
12 Justice, candidly, because they help us with all this stuff,  
13 to make sure that they are fully in support of what we're  
14 doing and that takes a little bit of time.

15 The third aspect is that there is a budget cycle. So  
16 there is no way, candidly, given what, again, we'll talk  
17 about at the Commission meeting with whatever the federal  
18 budget is going to do, that the Department of Finance is  
19 going to take a look at our Bay Fill and Abatement Fund  
20 which barely has \$1 million dollars in it and decide to put  
21 that at the top of something else.

22 And candidly, I want you all as the Enforcement  
23 Committee to tell the Commission how you think those dollars  
24 can best be spent. So unless we can get that done within  
25 the next two months, which I don't think we are going to be

1 able to do, we are going to have to wait for the next  
2 Governor's budget. Which is not a bad thing, it's actually  
3 a good thing.

4 And the reason that's a good thing is that if we can  
5 get a -- if we can get that kind of plan into the Governor's  
6 proposed budget then it's basically clear sailing and it  
7 will happen. And it's a lot easier to, candidly, get  
8 something like that in the Governor's proposed budget than  
9 it is to get through the Legislature because this is a state  
10 agency that has a special fund that has decided it wants to  
11 spend those funds in a certain way and it's actually better  
12 for us to do it that way.

13 So I recognize that it's, I recognize that's a policy,  
14 nerdy, bureaucratic answer but I think that we are sort of  
15 stuck with it because of the timing and because of what's  
16 going on in DC.

17 COMMITTEE MEMBER RANCHOD: Okay.

18 EXECUTIVE DIRECTOR GOLDZBAND: Is that okay?

19 COMMITTEE MEMBER RANCHOD: Understood.

20 EXECUTIVE DIRECTOR GOLDZBAND: All right.

21 COMMITTEE CHAIR SCHARFF: We are now back to hearing  
22 questions and comments. Does anyone have anything further  
23 to say?

24 COMMITTEE MEMBER RANCHOD: Yes, I had a few more  
25 things.

1           On the backlog. Was I understanding correctly that the  
2 proposal on the backlog is to wait a year and not try to  
3 deal with 188 cases? We are carving off the 32, the ones  
4 with the highest harm, to focus on. I also want to hear  
5 more about why that is projected to take three or four years  
6 to deal with those cases.

7           And then we are proposing to leave the backlog for a  
8 year and then come back to it?

9           MS. KLEIN: Yes.

10          COMMITTEE MEMBER RANCHOD: Okay. I don't -- I'm not  
11 very satisfied with that path. Is there a way we can close  
12 the non-priority cases that are in the backlog with -- and I  
13 know that requires effort and work to address that but I  
14 really feel like we need to close that, we need to do some  
15 work on that backlog.

16          MS. KLEIN: It absolutely can be done, Commissioner  
17 Ranchod. I guess given my role I have an abiding concern  
18 about just taking them off the books as unresolved  
19 violations.

20          COMMITTEE MEMBER RANCHOD: I'm not saying --

21          MS. KLEIN: But it can be done.

22          COMMITTEE MEMBER RANCHOD: I'm not saying drop them.  
23 I'm saying, try to resolve them by proposing a settlement  
24 resolution to the party without spending weeks and weeks  
25 working up each one. If these are non-priority cases and

1 the harm has been evaluated and assessed as a low harm then  
2 why isn't there a way to at least attempt to resolve some of  
3 these more quickly?

4 MS. KLEIN: Manpower. I mean, it's really simple. You  
5 know, every case takes a lot of time. It's work. It  
6 doesn't happen without research, communication and effort.

7 COMMITTEE CHAIR SCHARFF: So I'm going to jump in on  
8 that just briefly because I guess I sort of had the same  
9 sort of thought. Maybe just slightly different but I think  
10 we're on the same thing about that.

11 Couldn't you just say, you go through the cases and you  
12 say, these are low harm, let's resolve them or whatever. We  
13 have this big backlog. And we say, the average fine would  
14 likely be X and so we offer them, you know, 40 percent of  
15 it. We don't write it up, we don't do it, they pay the  
16 fine, they're done and then they don't have anytime on any  
17 attorney's fees warring about it. That kind of stuff.

18 And then, you know, a lot of these paper violations or  
19 other things like that, you know. I mean, you can't assess  
20 it because, I mean. Is there no way to assess it? No way  
21 to assess it and cut the cases by doing something along  
22 those lines? Is that --

23 COMMITTEE MEMBER ADDIEGO: Greg, are you including  
24 compliance, though, in that scenario?

25 COMMITTEE CHAIR SCHARFF: I'm looking at saying,

1 there's how many cases that we are not going to get to in  
2 the next five years, total?

3 MS. KLEIN: One hundred and thirty, 70.

4 COMMITTEE CHAIR SCHARFF: So if we are going to do  
5 anything in the next five years is everyone better off if we  
6 said, if it's not a continuing violation, you didn't do it,  
7 fine, pay this fine, it's less than you'd have to pay  
8 before, we've gotten something, we're done.

9 Or is it better to just basically say, for the next ten  
10 years we're going to have a backlog of cases we never get  
11 to? I'm not so sure, I'm not so sure -- we are not  
12 suggesting dropping it, what we are suggesting is something  
13 in-between. At some point you get to these laches  
14 arguments. I mean, ten years ago you didn't have a full  
15 permit done; who cares. Right? I mean, it sort of gets to  
16 that point.

17 And so it seems that it's better to resolve it, take  
18 some money, it's not completely satisfactory and move on. I  
19 thought that's what you were saying.

20 COMMITTEE MEMBER RANCHOD: If we went through the time  
21 to work up these cases and score them, that's got to be  
22 relevant information to how we might resolve some of these.  
23 I get it there's additional work to figure out what a  
24 penalty amount or resolution would be. But as Greg is  
25 saying, I think there's got to be a way with at least some

1 of these to resolve them.

2 And it wouldn't be the same resolution as if we put in  
3 weeks and weeks of staff time to work each one up and maybe  
4 deal with it in two years but at least we're addressing the  
5 backlog, we're resolving issues that are hanging out there,  
6 both for the Commission and for permittees. And as in the  
7 real world there's lots of other things going on besides  
8 their BCDC permit, presumably, so I just feel like we need  
9 to --

10 And I get the issue of staff resources but then maybe  
11 we need to rebalance the proposal. You had 80 percent and  
12 20 percent. Well, maybe make it 70 percent and 15 percent  
13 and create 10 percent to deal with the 30 least harmful,  
14 easiest ones on the backlog.

15 EXECUTIVE DIRECTOR GOLDZBAND: I was actually going to  
16 say to me this is an entire matter of throughput. I mean,  
17 how are you going to spend, how are you going to spend your  
18 time dealing with the inputs that are coming at you and  
19 apportion them in a way that gets you where you want to be?

20 What we figured out as staff and what Adrienne proposed  
21 is the 80/20 rule which, you know, on the face of it looks  
22 pretty good. You're going to spend four days a week dealing  
23 with these lousy, horrible, miserable cases and you are  
24 going to spend one day a week getting rid of these paper  
25 violations and the like and that's just the way the world

1 works.

2 But unfortunately, or fortunately for Maggie and  
3 Matthew and Adrienne, the work week is only five days.

4 COMMITTEE CHAIR SCHARFF: We can change that.

5 EXECUTIVE DIRECTOR GOLDZBAND: And we'll get money from  
6 the Bay Fill and Enforcement Fund in order to pay them  
7 overtime. But the key here is, the challenge or the  
8 question that really I think is before us is, is that 4/1  
9 split what you want to have happen or do you want to go  
10 3/1/1? Or do you want to have a 4/1 split that says, we  
11 don't care about the paper violations, they're just paper.

12 Would you rather spend that 20 percent of your time  
13 going through the -- starting from the left hand side as  
14 opposed to the right hand side and trying to close in a very  
15 standardized way that we would have to figure out how to do,  
16 go from the left hand side to the right, starting with the  
17 least -- starting with the penalties that have the lowest  
18 score.

19 I think your call here is to let staff know what you  
20 think the most valuable way is to have us deal with those  
21 cases. Is it -- and throw the paper violations in there too  
22 because that's the Friday work, as it were, that Maggie and  
23 Matthew would do, the one day a week work.

24 COMMITTEE CHAIR SCHARFF: Commissioner Addiego.

25 COMMITTEE MEMBER ADDIEGO: Along those lines. Adrienne

1 mentioned a missing bench, you know, a public amenity, a  
2 missing bench. Certainly no harm. But I would rather go  
3 for compliance on that than a fine. I don't know if any  
4 jurisdictions have success with amnesty when it comes to  
5 library fines or other fees and taxes but sometimes people  
6 take the occasion of an amnesty to make it right and it  
7 might be something that could be offered on the low end of  
8 the score.

9 COMMITTEE CHAIR SCHARFF: I think that's what you  
10 hearing from us is we don't really have enough information  
11 about the way you practice.

12 MS. KLEIN: Okay.

13 COMMITTEE CHAIR SCHARFF: We're thinking you can offer  
14 less fine, you can offer an amnesty to come into compliance,  
15 so we move forward on these. The question we have really  
16 is, does everything have to be worked up to the same  
17 professional standards you would normally do? Or can you do  
18 a less-than-perfect job, resolve the case, hopefully bring  
19 them into compliance. I think we'd all prefer compliance,  
20 right? We'd waive the fines in exchange for compliance, I  
21 think, right? Let's make it right.

22 The older the case, let's make sure they're not  
23 continuing the violations. If they're paper violations, yes  
24 they're important, I think they are, but how can we do this  
25 without spending huge amounts of staff time on it? What

1 incentives can we give people to do that? That's really the  
2 question.

3 And then the third part I raised, which I thought, was,  
4 let's look at our rules and say, are we really too  
5 bureaucratic? Do we really need all the stuff we ask for?  
6 When you ask for an original signature I was thinking, can  
7 we have people do Docu-Sign? I mean, you know. And maybe  
8 we do all that already.

9 MS. KLEIN: We accept digital, we accept digital  
10 signatures.

11 COMMITTEE CHAIR SCHARFF: So I'm just wondering why,  
12 you know. If there are ways that we can streamline. And  
13 maybe you can, maybe we do everything in a way that's not a  
14 problem and doesn't save us time. I don't know, we just  
15 have no information.

16 MS. KLEIN: I love everything you're saying, it's  
17 really a resource limitation. When you say, can you not do  
18 it, work it up all the way but resolve it. I mean, not  
19 working it up all the way means picking two of the seven  
20 permit violations. So is that, is that how you -- I mean,  
21 that's a way to work.

22 COMMITTEE CHAIR SCHARFF: What if you just sent a  
23 letter to everyone? Right? I think that's what you're  
24 saying. A letter to everyone that says --

25 MS. KLEIN: But that's, I mean, do you have any -- I'm

1 sorry, I'm a little overwhelmed by the suggestion. The  
2 permits are long, there are many special conditions, and we  
3 are looking -- we are looking at improving our permits.  
4 Jaime Michaels and her staff with us are working on  
5 simplifying and clarifying the permits. We know we need to  
6 go in that direction. We are in a -- we are in -- we want  
7 to get there.

8 COMMITTEE CHAIR SCHARFF: And I think it's ignorance on  
9 my part, I think that's why you're feeling -- because I know  
10 how that is, right? You know everything that's going on,  
11 you work with this on a daily basis and here you have people  
12 saying things that sound to you, come on, really?

13 EXECUTIVE DIRECTOR GOLDZBAND: It's not ignorance,  
14 Commissioner Scharff, I would argue that's not right. The  
15 key is, from perspective, what the Committee is willing to  
16 live with below the normal procedure that we have that gets  
17 you some modicum of contentment that we have done what we  
18 need to do and we can move on.

19 So what I would suggest is that we will go back and  
20 figure out the throughput question, because it's really a  
21 throughput question, and come up with some thing, and I  
22 don't know what it is, that we can get back to you on  
23 saying, here are our options with regard to how we can  
24 forward on that. I apologize, Commissioner Techel.

25 COMMITTEE MEMBER TECHEL: No, I think if they're not

1 going to be dealt with for five to ten years --

2 EXECUTIVE DIRECTOR GOLDZBAND: Then what's the use?

3 COMMITTEE MEMBER TECHEL: What's the use, yes. They  
4 may have --

5 EXECUTIVE DIRECTOR GOLDZBAND: I've got you.

6 COMMITTEE MEMBER TECHEL: They may have ten violations  
7 or three violations, but if we are not dealing with any of  
8 the violations --

9 EXECUTIVE DIRECTOR GOLDZBAND: I've got you.

10 COMMITTEE MEMBER TECHEL: -- is there another path we  
11 can follow?

12 EXECUTIVE DIRECTOR GOLDZBAND: We'll figure it out.  
13 And if there is we'll let you know.

14 COMMITTEE MEMBER TECHEL: And if the Enforcement  
15 Committee can say, we want you to find a way to reduce the  
16 backlog.

17 EXECUTIVE DIRECTOR GOLDZBAND: Right.

18 COMMITTEE MEMBER TECHEL: You can get creative on how  
19 you do it.

20 EXECUTIVE DIRECTOR GOLDZBAND: Well, it's not -- I am  
21 candidly less concerned about the credit that the  
22 Enforcement Committee and BCDC would get for reducing the  
23 backlog as much as I am concerned about the criticism of  
24 neighbors who would say, 'Oh, so you're letting so-and-so  
25 off scott-free.' It's like the other side of the coin that

1 I think we have to be concerned about too. And I'm not  
2 saying you don't do it because, because where you stand  
3 depends upon where you sit. But I do think that that's,  
4 it's that kind of an issue.

5 COMMITTEE MEMBER TECHEL: A follow-up that you made me  
6 think about when you said that: How often do we get a  
7 neighbor calling for enforcement? How much does that drive  
8 the wheel of what we work on?

9 MS. KLEIN: It's a Marin County specialty. (Laughter.)

10 MS. WEBER: The vast majority of our enforcement cases  
11 we find out by neighbors or members of the public that live  
12 nearby complaining. And it's usually not one phone call,  
13 it's one phone call a week followed up by emails, followed  
14 up by 'Why aren't you working on this yet?' So it's  
15 definitely -- people are very aware of what their neighbors  
16 are doing and want to make sure that they are playing by the  
17 rules, because they play by the rules and it definitely  
18 could get out of hand.

19 COMMITTEE MEMBER GILMORE: Can I kind of follow-up on  
20 that? And it's really sort of changing the course of this  
21 discussion and Adrienne and I had a conversation about this,  
22 I think at our last meeting.

23 MS. KLEIN: The Strategic Planning Workshop.

24 COMMITTEE MEMBER GILMORE: Right. So given the fact  
25 that the vast majority of our enforcement actions start out

1 being complaint driven by the public, by neighbors and  
2 whatnot. What has me concerned is -- and this is on a  
3 looking forward basis, I'm done with the backlog.

4 (Laughter.)

5 COMMITTEE MEMBER GILMORE: What has me concerned is  
6 that the permits that we have been issuing now are very,  
7 very complicated and a lot of them have to do with the whole  
8 sea level rise adaptation, okay. And what we are telling  
9 people is, okay, for the next 10 years you need to meet this  
10 level of sea level rise adaptation but know maybe 20 years  
11 down the line you've got to do something else, okay. So  
12 it's kind of trying to hit a moving target.

13 So my concern is, how do we enforce that? Because if  
14 we are waiting for the levy to flood and the neighbors to  
15 say, 'Hey, they didn't do their adaptation and we're all  
16 flooding' that's a little late. So Adrienne and I were  
17 having this conversation about how do we address that given  
18 the fact that our permits are getting more complicated,  
19 we're trying to hit a moving target and we don't have the  
20 staff resources. You know, what kind of plan do we even  
21 start looking to put in place?

22 And this is not necessarily something -- I don't think  
23 we can address today but I am just teeing it up for  
24 everybody because we are going to have to deal with it.

25 COMMITTEE CHAIR SCHARFF: That's a good point.

1 MR. ZEPPETELLO: And I would just maybe say, listening  
2 to your comments, I think that would be an area where we  
3 should try to build it into compliance, assurance and the  
4 permit follow-up so that it doesn't become an enforcement  
5 issue.

6 COMMITTEE MEMBER GILMORE: Exactly. But then we've got  
7 to build some sort of a system so like it pops up without  
8 physically having to go inspect it. It pops up on some sort  
9 of computer program, I have no idea if one of those exists,  
10 saying, you know, so-and-so who came in for a permit in  
11 2017, it is now 2023 and without actually going out to the  
12 site we know we have to check for whatever we told them they  
13 needed to do by 2023.

14 COMMITTEE CHAIR SCHARFF: So do we tie those permits --  
15 Like 2023, if it says that do we tie it to actual sea level  
16 rise that's occurred?

17 COMMITTEE MEMBER GILMORE: That's another issue.

18 COMMITTEE CHAIR SCHARFF: What if sea level rise is  
19 occurring faster or slower? I mean, I would assume it will  
20 occur faster but the world is always a more complicated  
21 place than I -- so I mean, if sea level rise, for instance,  
22 is occurring much slower than anticipated do we then have  
23 them go do it by 2023? Or on the other hand, if it's  
24 accelerating rapidly do our permits have that flexibility?

25 MR. ZEPPETELLO: I think we are just starting to get

1 into that and Brad might be a better one to talk about it.  
2 But in Treasure Island, for example, there is a -- we  
3 developed a permit condition requiring monitoring and  
4 actions to be triggered based on the results of monitoring  
5 and so it's not tied to a specific date, it's tied to the  
6 results. But again, we need a tracking program so that it's  
7 not totally the applicant, that we're keeping track that we  
8 should be looking at the results.

9 COMMITTEE CHAIR SCHARFF: You know, I know some kids  
10 that can build an app for that.

11 EXECUTIVE DIRECTOR GOLDZBAND: Actually, the program,  
12 actually the program already exists, it's called Excel. I  
13 mean, it actually works and so we'll deal with that.

14 Let me also answer Commissioner Gilmore's query before  
15 -- I do want to give a chance for Matthew and Maggie to give  
16 you an update and we're heading toward noon.

17 One of the things that BCDC staff and Commissioners are  
18 going to have to start living with during the next five  
19 years that we haven't had to live with before is more  
20 uncertainty. And the permits that we are going to have to  
21 issue are going to have to allow for more uncertainty. I  
22 don't know what that means.

23 COMMITTEE MEMBER GILMORE: It's uncertain. (Laughter.)

24 EXECUTIVE DIRECTOR GOLDZBAND: It's uncertain in terms  
25 of how we are going to write something. But I can tell you

1 that it's going to have to happen because I think it is only  
2 going to get harder and it is only going to get more  
3 difficult to be out there and trying to do things on a day-  
4 to-day basis when you know that the next year it's going to  
5 look -- or in 10 years or in 30 year it's look fundamentally  
6 different than it does now. So that's all part of the  
7 uncertainty we're going to have to live with and we're going  
8 to have to account for in our permitting process.

9 COMMITTEE CHAIR SCHARFF: Anyone else?

10 MS. KLEIN: Thank you so much.

11 COMMITTEE CHAIR SCHARFF: Maggie and Matthew -- wait,  
12 you guys wanted to say something?

13 EXECUTIVE DIRECTOR GOLDZBAND: Yes, they have an update  
14 for you.

15 COMMITTEE CHAIR SCHARFF: You have an update.

16 MR. ZEPPETELLO: The next item on the agenda.

17 COMMITTEE CHAIR SCHARFF: Okay. Moving on to the next  
18 item, the staff report.

19 MS. KLEIN: So I will just tee that up and thank you so  
20 much for the great input and conversation, very helpful.

21 So I just want to give you a big picture snapshot and  
22 then Maggie will update you on the three enforcement cases  
23 that she has been managing and Matthew will give you a  
24 summary of some of the work that he has done at the staff  
25 level that you wouldn't see at the Commission.

1           So we've got the two fiscal years, we're only halfway  
2 through the current one, but you can see the caseload. We  
3 managed to close a lot of cases doing the prioritization,  
4 actually, so we did get rid of some of our backlog.

5           And then you can see the Bay Fill accounting as well in  
6 the bottom half of the screen there.

7           Maggie, I think you're --

8           MS. WEBER: Okay. So I am going to give you a quick  
9 update of what's been happening since you issued three  
10 orders, Park SFO, Marina Village and Point Buckler.

11           So for Park SFO, you might remember that all the  
12 violations to this enforcement case were located in the  
13 shoreline band and upland area as Adrienne was explaining  
14 before.

15           On August 4th the Commission issued the stipulated  
16 order and on September 7th all terms of the stipulated order  
17 were satisfied. And the permittees worked efficiently to  
18 complete that and I luckily spent little time on order  
19 compliance.

20           Unfortunately, though -- oh, here is what the maintained  
21 finger park looks like now, it's lovely.

22           But unfortunately, on December 29th of last year I  
23 received a report of a violation where the permittee was  
24 using public shore parking for valet overflow.

25           Unfortunately this was a repeat violation. It wasn't

1 subject to the stipulated order but it was cited in the  
2 enforcement report. Staff opened up a new enforcement case.  
3 The permittee apologized and promised to never violate their  
4 permit again, paid a \$100 standardized fine that's required  
5 by our regulations for repeat violations.

6 On January 3rd of this year I received a report of  
7 vandalism at the finger park. And per the permit the  
8 permittee is given 30 days to correct maintenance violations  
9 and the permittee did so.

10 Most recently the permittee has hired an attorney to  
11 invoke the reasonable rules and restrictions special  
12 condition which allows them under certain circumstances with  
13 evidence to limit the public access at the finger park to  
14 sunrise to sunset. I spoke with the attorney a few months  
15 ago and he said he would draft something and get back to me  
16 and I haven't heard from him since.

17 So moving on to Marina Village Associates.

18 COMMITTEE MEMBER GILMORE: Could I? Sorry.

19 MS. WEBER: Oh yes, of course, I'm sorry.

20 COMMITTEE MEMBER GILMORE: So one thing that struck me  
21 about this violation of parking in the shoreline access  
22 area. So here is the problem I have. Given how much it  
23 costs to park at the airport and the fine is \$100. If  
24 you're doing a cost-benefit analysis and you're the owner,  
25 you park there all day and violate the fine.

1 MS. WEBER: We've had that same discussion.

2 MS. KLEIN: That is one of the possible changes to the  
3 standardized fine regulation that we may recommend.

4 MR. ZEPPETELLO: The other thing I think, and maybe you  
5 were going to get to this, we told them that the next time  
6 it would be \$100 per car.

7 COMMITTEE MEMBER GILMORE: That's better.

8 MR. ZEPPETELLO: And it's the facility not, obviously,  
9 the parker.

10 COMMITTEE MEMBER GILMORE: Right, right.

11 MS. WEBER: And that would have been about \$1,500 a day  
12 since they were cramming cars into the area.

13 COMMITTEE MEMBER GILMORE: See, that's more reasonable  
14 because then it makes them think twice about doing that if  
15 they are not really benefitting from it.

16 COMMITTEE CHAIR SCHARFF: To follow-up on what you  
17 said: I agree. For the first violation maybe it's a mistake  
18 and they promise not to do it again. But then you go  
19 immediately to the second one. I like the per car because  
20 then it's obviously being done purposefully.

21 MS. WEBER: Yes. I forgot to mention that but after  
22 they sent us the \$100 check we wrote them a letter providing  
23 notice that that's how we would deal with the violation in  
24 the future. Thanks, Marc.

25 So the next order I am going to update you on is Marina

1 Village Associates. The violations to this enforcement case  
2 are located in both the Bay and the shoreline band. On  
3 November 3rd the Commission issued a stipulated order and  
4 since this issuance I have spent the majority of my staff  
5 hours working on compliance for this case.

6 As you may recall the stipulated order is set up with  
7 staggered deadlines that must be met to resolve all of the  
8 outstanding violations.

9 The first deadline was on November 3rd, 2016 and three  
10 of the seven required actions were not completed on time,  
11 leading to the accrual of stipulated penalties that the  
12 respondent signed on to when signing the order; subsequently  
13 several other items have also been resolved late, adding to  
14 the amount of stipulated penalties.

15 Presently, staff is working with Marina Village's  
16 attorneys to reach a solution for addressing the  
17 unauthorized riprap that was located on that east spit.  
18 It's still on-site. Winter storms and a comprehensive  
19 review of the entire east spit by a coastal engineer has  
20 raised greater concerns about erosion and flooding for the  
21 area than were known at the time the stipulated order was  
22 issued.

23 This photo right here is a playground that was required  
24 public access. It looks like a water park because there's  
25 about a foot of water at the east spit right here.

1           So the order that we issued required them to do an  
2 analysis of flooding and erosion at this area but now  
3 because we have had extensive discussions about what to do  
4 about that unauthorized riprap that was placed to the right  
5 adjacent of this structure that's clearly not doing what  
6 they intended it to do. We have proposed an amendment to  
7 the order that would require them to fix the flooding of  
8 this area so this won't happen next year.

9           So the final order I'm going to give you an update on  
10 is Point Buckler and John Sweeney. As you probably recall  
11 Point Buckler Island is located in the Suisun Bay and Marsh  
12 in Solano County.

13           On November 17th, 2016 the Commission issued a cease  
14 and desist and civil order against the Point Buckler Club,  
15 LLC and John Sweeney, the violators.

16           On December 14th the Regional Board assessed a \$2.8  
17 million penalty against the violators following their  
18 issuance of a cease and desist order back in August. Their  
19 process is slightly different than ours, they issue the  
20 order and then have a separate hearing for the penalty.

21           On December 15th, the next day, the violators filed a  
22 suit in Solano County Superior Court against BCDC and the  
23 Regional Board and both agencies' executive directors for a  
24 writ of mandate and complaint for injunctive and declaratory  
25 relief. The Court issued an interim stay postponing a

1 requirement for the violators to submit a complete permit  
2 application and penalty until the end of March. All parties  
3 have had discussions regarding the form of the complaint and  
4 the violator has agreed to amend and on March 29th all  
5 parties are scheduled to have a status conference with the  
6 Judge. The Attorney General, our Deputy Attorney General  
7 Shari Posner is handling that on our behalf.

8 On February 10th the violator submitted a Restoration,  
9 Mitigation and Monitoring Plan that they were required to do  
10 pursuant to the order to both the Regional Board and BCDC.

11 And last week on March 8th the Regional Board had a  
12 hearing on the plan and unanimously determined that the plan  
13 is inadequate, the plan submittal is a violation of the  
14 order and the violation of the order they decided to refer  
15 to the Attorney General's Office.

16 And the Regional Board's requirement for the submittal  
17 of a Restoration, Mitigation and Monitoring Plan is  
18 identical to the requirement that was established in our  
19 order that we issued, that you issued rather. So BCDC staff  
20 has also reviewed the Plan and agree with the Regional  
21 Board's findings and we are in a process right now of  
22 drafting a response to the violator with a determination  
23 that the submittal is inadequate.

24 So this was basically an update to show to you that  
25 even after we issue an order there is still lots of staff

1 time involved. Hopefully next time I give you an update  
2 Point Buckler and Marina Village will be resolved.

3 MR. ZEPPETELLO: I would just add one thing to Maggie's  
4 report on Point Buckler. After the King Tides in February I  
5 saw some pictures of Point Buckler. The levy had been  
6 breached in the northwest corner and there was water all  
7 over Mr. Sweeney's upland, it looked like a sponge; it may  
8 have dried out a little bit. Under the order he is not  
9 allowed to do anything going forward without applying for a  
10 permit and we haven't heard from him. So the Bay, at least  
11 in part, is continuing to erode the island.

12 MR. TRUJILLO: Hello, Committee. My name is Matthew  
13 Trujillo; I started with BCDC in October 2015.

14 Since then I have been doing enforcement on a number of  
15 cases. I want to say right now I have somewhere between 14  
16 and 18 in my queue. Many of those are not what we would  
17 consider high-priority cases, probably as many as four are  
18 but most are not.

19 What I am going to show you today is two case studies  
20 of enforcement cases that I have resolved in 2016 and kind  
21 of give you an idea of some of the takeaways and lessons  
22 learned on those.

23 The first one is Pier 39 here in San Francisco. It's a  
24 joint permit between the Pier 39 limited partnership and the  
25 Port of San Francisco.

1           The violation was the failure to install a kayak/small  
2 watercraft launch and appropriate public access signage by  
3 June 1st, 2013 as required by the permit. It falls within  
4 the Bay and the shoreline band jurisdictions.

5           I was giving it a prioritization score of 43.3 which is  
6 not the 60 threshold so this would be considered a low  
7 priority case. It took 11 months and 16 days to resolve for  
8 a penalty of \$1,000.

9           This is a quick overview of Pier 39. You can see where  
10 the kayak launch location was supposed to be. I just kind  
11 of gave you an idea of what the public access, the total  
12 public access is for that site. It's, I believe, the blue  
13 line. Forgive me, it's been a while since I looked at this.  
14 It's definitely all along that promenade along the shoreline  
15 there.

16           COMMITTEE MEMBER ADDIEGO: Matthew, can you give us an  
17 idea of your investment of time on that, on that one case,  
18 hour-wise?

19           MR. TRUJILLO: Hour-wise? I wouldn't say it was  
20 terribly high. I did approximately three, I think, site  
21 visits, say two hours apiece, and then about four letters  
22 which probably took about five to six hours apiece total,  
23 and then a number of phone calls. So I would say a good 24  
24 hours of work.

25           COMMITTEE MEMBER TECHEL: And how many phone calls did

1 you get asking you to look into this case?

2 MR. TRUJILLO: I don't think I got any.

3 COMMITTEE MEMBER TECHEL: Okay.

4 MR. TRUJILLO: This was internally reported by Ellen  
5 Miramontes and I picked it up. It was actually, it was  
6 actually reported for -- I think it was pending for awhile  
7 and I actually picked it up on December 8th, 2015.

8 Enforcement was paused for approximately six months  
9 between December 2015 and May 2016 because the respondent  
10 sought and obtained a time extension permit amendment to  
11 complete the project by May 31st, 2016. In essence they  
12 were made aware of this problem and they said, 'Okay. Hey,  
13 give us a chance to fix it' and the decision was made to go  
14 ahead and let them fix it.

15 However, they did not fix it completely and so  
16 enforcement recommenced on June 1st, 2016 and I issued a 35  
17 day letter on June 2nd, 2016. The 35 day letter is the  
18 bread and butter tool that Adrienne alluded to earlier. It  
19 gives them time to --

20 MS. KLEIN: Essentially --

21 MR. TRUJILLO: Please.

22 MS. KLEIN: Essentially we amended the due date in the  
23 permit's special condition and pushed it six months forward.

24 MR. TRUJILLO: So the respondent finally resolved the  
25 violation on July 25th, so that's after the 35 day grace

1 period that we give as a standard for people to resolve the  
2 violation before a civil penalty applies and so a \$1,000  
3 penalty had accrued.

4 The respondent appealed the penalty on August 15, 2016,  
5 which is actually very common for people to do. That appeal  
6 letter came in, I created a memo that summarized the case,  
7 gave a staff recommendation and forwarded it to Zack and  
8 Larry for consideration. The appeal was denied and they  
9 went ahead and paid the permit -- paid the penalty on  
10 November 23rd.

11 So the takeaway. This is a good example of how a  
12 seemingly simple and straightforward case can actually take  
13 a very long time to resolve.

14 What I try to do now is make sure that everything that  
15 needs to be done during that enforcement period is done. I  
16 don't give -- I try not to give them breaks like we did with  
17 the six months there and just -- if they need to do a permit  
18 amendment or they need to do whatever, do it within that  
19 time clock and fines will accrue during that time. There is  
20 always the option to appeal and it is up to Larry and Zack  
21 to decide what, based on the staff's recommendation, to  
22 decide whether or not they want to reduce that appeal -- I  
23 mean, reduce the fine or eliminate it all together.

24 Case number two: This is the Homewood Suites Hotel;  
25 this is over on the Oakland Estuary. It is another joint

1 permit between the hotel owners and the Port of Oakland.

2 The violation was the failure to maintain the public  
3 access parking spaces and signage as well as unauthorized  
4 fill within the shoreline band.

5 This was only within the shoreline band with a  
6 prioritization score of 33.

7 They did not have to pay a penalty on this one, the  
8 case duration was only 2 months and 19 days.

9 COMMITTEE CHAIR SCHARFF: So why didn't they have to  
10 pay a penalty?

11 MR. TRUJILLO: They resolved it, I believe they  
12 resolved the problems within 35 days of the letter.

13 So this just kind of shows you where the problems were.  
14 The public parking signs at the top there and then they had  
15 made some -- put some furnishings in their patio that were  
16 not called out in the plans or the permit and so we had them  
17 get plan approval to furnish the patio.

18 That's what they were supposed to have done. I  
19 observed that 4 of the 10 parking spaces had not been  
20 maintained and 5 of the 9 public access signs had not been  
21 maintained.

22 They had to seek and obtain written approval from staff  
23 to make any changes to the exterior areas of the hotel;  
24 that's a condition of the permit, a plan review condition.  
25 And they resolved it within 35 days.

1           COMMITTEE CHAIR SCHARFF: Why do we require approval on  
2 the furnishings on a patio? Isn't that -- we have so much  
3 work to do. I'm just asking?

4           MR. TRUJILLO: Because of the, the permit conditions  
5 stated that any exterior changes had to be approved through  
6 -- I mean, it was just a very general condition. So to the  
7 letter of the permit I had to, I felt obligated to require  
8 that.

9           MS. KLEIN: Matthew, am I correct in saying that the  
10 public shore trail is immediately adjacent to the outdoor  
11 patio and there is no grade separation or curb between the  
12 two?

13          MR. TRUJILLO: I wouldn't say that, I'm sorry.

14          MS. KLEIN: Oh, my error then.

15          MR. TRUJILLO: There is a fence and there is, I think,  
16 a landscaped area between the two.

17          COMMITTEE CHAIR SCHARFF: This is just -- I know we  
18 have a lot of work to do and this is not a criticism of  
19 staff in any way, don't take it that way. I am really  
20 asking more if in our systems if we -- I mean, it seems like  
21 given all the violations, to be worried about the kind of  
22 patio furniture, I just ask whether or not it's worth our  
23 time and whether or not, in fact, we are doing anything good  
24 for the public by saying, you know. And what standards we  
25 have to approve their patio furniture? I just -- I'm just

1 using it as an example, you don't have to respond to that.

2 MR. TRUJILLO: Right. No, that's a worthy question.

3 COMMITTEE MEMBER ADDIEGO: So was it placement of  
4 furnishings or the type? I mean, we don't get involved in  
5 the type necessarily.

6 MR. TRUJILLO: Not necessarily the fact is they placed  
7 stuff. However, I do want to note that they were actually  
8 planning to do a very large remodel of the entire patio area  
9 which would involve significant work and had I not informed  
10 them of their violation they probably would have gone ahead  
11 with the work without any permission from BCDC staff.

12 MS. KLEIN: I guess it comes back to the law says  
13 permits are needed for placement of fill or change in use.  
14 That is an older permit from the early 1980s. I don't think  
15 we do that so much anymore. And we are, we do exercise  
16 discretion and we do modify permits when we see conditions  
17 like that that don't make sense for the permittee or us.  
18 That's a great point.

19 MR. TRUJILLO: I'm sorry, I was inaccurate when I told  
20 you they resolved within 35 days. I had forgotten this  
21 slide.

22 What I wanted to point out about this case study was  
23 that this actually did involve some special circumstances  
24 and this actually comes up a lot.

25 They had to restripe their parking lot but this

1 happened during a wet weather time which made restriping the  
2 parking lot kind of impossible. The pavement was wet so  
3 they couldn't do it within the 35 days so they asked for  
4 permission to delay the repainting of the striping until  
5 they were planning to completely resurface the parking lot  
6 the next fall. So we granted the request. That's an  
7 example of some of the flexibility that we try to, you know,  
8 have when we work with these respondents.

9 Thank you for your time.

10 COMMITTEE CHAIR SCHARFF: Well thank you very much.

11 I believe we can with that adjourn so we are adjourned.

12 (Thereupon, the Enforcement Committee  
13 meeting was adjourned at 12:12 p.m.)

14 --oOo--

15

16

17

18

19

20

21

22

23

24

25 .

## CERTIFICATE OF REPORTER

I, Ramona Cota, an Electronic Reporter and Transcriber, do hereby certify that I am a disinterested person herein; that I recorded the foregoing San Francisco Bay Conservation and Development Commission, Enforcement Committee Meeting and thereafter transcribed it.

I further certify that I am not of counsel or attorney for any of the parties to said meeting, or in any way interested in the outcome of said matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of March, 2017.



---

RAMONA COTA, CERT\*\*478