

San Francisco Bay Conservation and Development Commission

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July 24, 2019

TO: Enforcement Committee Members
FROM: Brad McCrea, Regulatory Program Director (415/352-3615; brad.mcrea@bcdc.ca.gov)
SUBJECT: **Approved Minutes of July 11, 2019 Enforcement Committee Meeting**

1. Call to Order. The meeting was called to order by Chair Scharff at the Bay Area Metro Center, 375 Beale Street, Board Room, First Floor, San Francisco, California at 10:06 a.m.

2. Roll Call. Present were: Chair Scharff and Members Gilmore, Techel and Vasquez.

Not present was Member Ranchod.

Staff in attendance included Executive Director Larry Goldzband, Regulatory Director Brad McCrea, Chief Counsel Marc Zeppetello, Staff Counsel Karen Donovan, Chief of Enforcement Adrienne Klein and Enforcement Analyst Matthew Trujillo.

Also in attendance were Assistant Attorney General Shari Posner and Deputy Attorney General David Pai.

3. Public Comment Period. Chair Scharff called for public comment on subjects that were not on the agenda.

No members of the public addressed the Committee.

Chair Scharff moved to Approval of the Minutes.

4. Approval of Draft Minutes for the June 26, 2019 Meeting. Chair Scharff asked for a motion and second to adopt the minutes of June 26, 2019.

MOTION: Member Vasquez moved approval of the June 26, 2019 meeting minutes, seconded by Member Gilmore.

VOTE: The motion carried with a vote of 3-0-1 with Members Gilmore, Vasquez and Chair Scharff voting "YES", no "NO" votes, and Member Techel abstaining.

Chair Scharff requested to have an agenda passed out with the minutes, and possibly other relevant documents, attached. Ms. Donovan brought a copy of the agenda to the dais for the Committee to read. Mr. McCrea stated that the agenda and minutes would be distributed from now on.

Ms. Donovan acknowledged that a 24-hour turnaround to review the minutes is a short period of time. Because of the back-to-back August meetings, the Committee will probably have the minutes of the first August meeting approved at the first September meeting.

Member Gilmore stated that the Committee is having a difficult time with the paperless approach. It would be easier to receive one large and inclusive pdf file from staff. Chair Scharff agreed; it is difficult to receive the materials piecemeal.

Chair Scharff stated that the Committee should have received a copy of Executive Director Goldzband's Cease and Desist Order to Middle Harbor. The Commissioners may like one as well. Ms. Donovan agreed to institute the transmittal of orders as a practice.

5. Penalty Phase Policy Briefing. Ms. Donovan introduced the item. She noted the title of the report: *Enforcement Policies*, not simply *Penalty Policies*. Staff has incorporated input from examining a wide range of policies adopted by other entities: the federal EPA, the Virginia Department of Environmental Quality, and numerous state agencies.

- a. Elements incorporated in these enforcement policies are as follows:
 - (1) Recognition of value of well-developed compliance monitoring system. Assists in identifying and correcting violations, establishes a presence, and helps to target efforts.
 - (2) Recognition of the value of strong enforcement in deterring violations. A publically acknowledged and robust program serves as a deterrent.
 - (3) Environmental justice. This is included in the penalty policies of a number of entities.
 - (4) Recognition of the value of settlement, and the factors that should go into moving forward with a strategy that will result in settlement before going to a formal hearing.
- b. Programmatic elements are as follows:
 - (1) A process for prioritizing. Must be done due to limited resources; some agencies focus only on certain types of violations.
 - (2) Progressive enforcement, meaning how cases are elevated. Some cases are so egregious that gradual escalation may not be appropriate.
 - (3) Methodology/matrix for assessing administrative civil liability.
 - (4) Devoting penalty money to beneficial projects, termed Supplemental Environmental Projects (SEPs).
 - (5) Documentation and reporting. Serves many purposes, including ensuring that the community is made aware of how enforcement is running at the agency – the deterrent value.
- c. General policies are as follows.
 - (1) Recognition that each case is unique.
 - (2) Economic advantage and unfair competitive advantage gained from noncompliance must be fully eliminated. (This dovetails with deterrence.)
 - (3) Penalties should bear a reasonable relationship to the gravity of the violation.
 - (4) Penalties are designed to deter both the specific violator and similarly situated persons in the regulated community.
 - (5) Steps to calculating penalty are as follows.
 - (a) The economic benefit is a floor.
 - (b) The gravity of the violation is an important element.
 - (c) Litigation considerations (evidence, confidence of success, factors affecting success in litigation, precedential value of the case).
 - (d) Ability to pay. Most penalty policies are very explicit that the burden rests on the violator.

(e) SEPs. These play into penalty policies of the EPA, Water Board, etc.

Member Gilmore pointed out that some violators have deep pockets that enable them to go through the court system, using up staff time and resources in litigating the case. Other violators are not as sophisticated and find it easier to simply pay the fee. She asked about litigation considerations, sophistication, and the ability to pay and how these should be considered when staff becomes aware of that type of violator. Ms. Donovan agreed that the litigation risk and consideration of the use of resources are important; BCDC works with the Attorney General's office on these. At the same time, BCDC does not want to establish a message that the agency succumbs to threats – simply not wanting to go to litigation is not going to establish deterrence for those entities.

Chair Scharff asked what "litigation considerations" mean when put into policy. Ms. Donovan answered that some agencies explicitly state that litigation risk, or the situation that someone has deep pockets and can weight their side, is not a consideration as to whether or not the agency is going to bring an enforcement case, and not a consideration for entertaining whether or not to settle. Most agencies are specific about what litigation risk really means: taking a look at the challenges of the case and the ability to prevail. There is a precedential value in both losing and winning litigation.

Chair Scharff stated that the policy question is whether to have in the enforcement policies a statement that the agency does not take litigation considerations into account. Ms. Donovan said that the State Board does not have litigation risk in their consideration of how the penalties are calculated; it is more important in the overall enforcement policy. Litigation considerations might be relevant if we are going to incorporate language about when we would recommend moving toward settlement and when we would not.

Member Techel suggested taking a couple of the more recent cases and plugging them in, to look at the economic benefit and gravity – how this might be applied. Ms. Donovan agreed that this was a good idea.

Member Vasquez asked if the policy is for staff to do their rating of cases, or if it is for BCDC itself to set down the risks they are willing to take. Ms. Donovan stated that the enforcement policy is envisioned as the Commission providing guidance to staff and transparency for the regulated community as to factors, elements, and penalty calculations used in moving an enforcement case forward.

Chair Scharff agreed with the value of giving guidance to staff, but not with including information about litigation.

Chair Scharff mentioned SEPs: when we fine someone, the money goes into the Bay Fill Fund, but when we use SEPs, the money goes into a particular project. Looking at the regulatory framework, do we have authority to do that? Ms. Donovan answered that currently it is not clear that BCDC has that authority. It is an idea, a tool that has been specifically provided to other entities.

Chair Scharff felt that at this point we need to keep enforcement simple and not become distracted by a big policy like SEPs. He expressed concern about taking a different approach with small businesses, as Virginia does, which would require spending a lot of time deciding what constitutes a small business. Ms. Donovan agreed that some of these smaller issues should be tabled while BCDC tries to get an enforcement policy together.

Member Vasquez pointed out that every case is unique, so how do we develop a policy that

allows for fairness? How do you determine unfair business practice?

Member Gilmore commented that courts struggle with determining economic benefit all the time. She did not see how this Committee was going to come to that specific determination, other than eyeballing each situation.

Ms. Donovan suggested having staff bring concrete language from other agencies on calculating this to the next meeting. We do have statutory language in 66641.9 for calculating penalties. Some agencies take the perspective that there is no deterrent value to an enforcement program if you are not using the benefit someone derived through noncompliance as the floor.

Member Techel asked about the follow-up that happens when someone issues a permit. Ms. Donovan answered that the ideal is to have additional personnel to implement a compliance program. Member Techel asked if the person who issued the permit can be the one to follow up for a year or two.

Mr. McCrea responded that a challenge through the years is that permit staff come and go. BCDC needs a program that is resilient to the changing staff. Ms. Klein added that the permit analysts also have Permit Streamlining Act deadlines that take precedence over enforcement.

Member Vasquez commented that in the city and county realm, you do not get to occupy your house until you are issued the permit. It is not final until everything is ready. How can we create standing in that line of permitting? Ms. Klein answered that for limited major projects, in the last decade staff have been including a Certificate of Occupancy type of condition. However, it is not common. She agreed that we have a substantial problem with noncompliance because of the lack of signing off requirements on permits.

Chair Scharff asked why they do not include the Certificate of Occupancy with all of our permits. Ms. Klein stated that she felt that it was because of concern for the impact on our workload; it is a good question. Ms. Donovan added that every time you establish a reporting requirement, you need staff time to administer it. Having staff to follow up on report submissions and monitor them will be key to having a robust enforcement program. BCDC wants to pursue this.

Member Vasquez commented that the Air Quality District may issue the permit, but it is not final until all the work has been done. We need to take care of this in the beginning; developers and proponents of the project who know they must get a sign-off will be sure to find us. Mr. McCrea responded that if we had enough people to go to every site to ensure that the project is built in compliance with the permit, we could have a robust compliance program from the occupancy end. The second issue is all the violations that occurred years after the project is built. The bottom line is that you need a team to deal with all these different instances.

Ms. Klein stated that staff counsel John Bowers has suggested that BCDC consider adopting a practice in which securing a permit is a two-step process consisting of approval and then achieving the conditions that make it eligible for compliance.

Ms. Donovan stated that BCDC will add further discussion on these issues when it does the compliance briefing in a future meeting. We would like to look at our permit conditions to discern whether there are things we could be doing to further the compliance goal.

Ms. Donovan stated that she would like discussion on how to describe our progressive enforcement in the policies. There are some cases in which the gravity of the violation or length of time for which it is continued make the progressive approach inappropriate; a formal proceeding should be

culminated sooner rather than later. Staff will be bringing specific methodology to the Committee.

6. Briefing on Case Management Plan Proposal and Establishment of Time Frames for Cases.

Ms. Donovan introduced the item. She stated that Ms. Klein and Mr. Trujillo would be explaining milestones and timelines for case management to ensure that cases move. The presentation and proposals are focused on the incoming case load.

Ms. Klein described the current case management approach.

- a. We receive reports on potential issues from staff and the public. They automatically are entered into the GIS system.
- b. Staff manually validate the report.
- c. They use a scoring system to prioritize the case. Those with a score of 60 or greater are considered priority cases.
- d. Priority cases are activated. Low priority cases enter a queue and are not pursued until capacity allows.

Chair Scharff asked when it is that capacity allows. Ms. Donovan recognized the inflexibility in the system and said that staff resources could be used for better efficiency. Staff wants to change the practice as soon as possible to get these cases moving.

Mr. McCrea added that cases coming in with a rating below 60 are deemed worthy to work on if someone specifically calls and wants to fix the violation.

e. Ms. Klein continued that the majority of cases are resolved at the staff level using the standardized fine regulation.

f. For activated cases, a site visit typically precedes issuance of the 35-day enforcement letter. Staff does the file review, visits the site, and compiles the facts. Each case is unique and the letters are fairly customized; they include a recitation of the permit requirements, areas of noncompliance, steps necessary to resolve the violation, and associated penalties.

(1) The violator usually responds to the letter. Staff establishes a relationship and an informal plan of action.

(2) Staff works with the violator to resolve the case.

(3) Administrative penalties – \$30,000 per violation – tend to reach the administrative maximum within a year. Staff has begun to refer cases to the Committee at that point.

(4) After a year, the scope of violations for a case is usually partially resolved; in these cases staff tends not to bring them forward. However, these remaining violations are not usually resolved as expediently as staff had anticipated.

Member Vasquez asked what happens when the violator says they want to start working on the violation – does the fine stop accruing then? Ms. Donovan stated that the fines max out at \$30,000/violation. She described differences among cases. Someone trying to resolve their violations would not be the most appropriate candidate to take to an enforcement proceeding; but the resolution can take a long time.

Member Vasquez raised the issue of a business calculating that it may be cheaper to extend their violations out rather than fixing them – it is a business decision. Ms. Klein did not recall any instances of this. She felt that it is more a failure to prioritize; there are practical logistics of securing multiple bids, rainy seasons, illnesses, and so on.

Mr. Trujillo stated that the following proposed case management approach is an outline with details to come later.

g. Once a report is received, staff verifies that it is correct and determines whether there is enough evidence to support a decision of a violation.

h. A new step: substantiated allegations are assigned a file number and forwarded to the manager.

i. Unsubstantiated allegations are not pursued.

j. The manager reviews the file and determines high or low priority.

Member Techel asked how staff corresponds with someone submitting an allegation. Mr. Trujillo answered that staff sends somewhat of a template email and follows up if they need additional information.

k. Staff designs an enforcement plan for each case upon assignment. The plan includes:

(1) Date of notice of violation to responsible party

(2) Date by which violation should be resolved and fines paid

(3) Date by which failure to resolve violation triggers a formal enforcement action

(4) Proposed date to begin pursuit of an enforcement hearing (if necessary)

l. The manager approves the enforcement plan. The manager's approval is required to alter the enforcement plan.

m. Staff will create an Excel workbook with various tabs to be used as a case management tool. This way everything will be contained in one place.

n. Low priority cases will be investigated and prosecuted as capacity allows. Staff will devote some time to these cases. Any of these cases lingering for more than a year will be elevated automatically to a higher priority status and assigned an analyst.

Mr. Trujillo showed a comparison of the current approach versus the proposed approach and described the differences.

Member Techel asked if low priority violators are asked to fix the issue when they are sent the letter. Ms. Donovan responded that staff has talked about how to make initial contact with the violator.

Member Techel asked if violations resolved more quickly can avoid fines. Mr. Trujillo replied that each person receiving a 35-day Notice of Violation letter has 35 days to resolve the violation without being fined. After that, we have different fine schedules depending on the nature of the violation. Once the person resolves the violation, they receive another letter thanking them and stating that they owe this amount. They can appeal that amount to the Executive Director and Chair.

Chair Scharff did not think the low/high priority approach was going to work. They would have a queue, and after a year all the cases would suddenly convert to high priority; staff would then be working on formerly low priority cases. Chair Scharff felt that staff needs to think about it differently: after intake and prioritization, do an enforcement plan for every case right away. For low priority, the plan would have to work while having minimal staff time spent. Chair Scharff did not feel that putting anything in a queue would survive the process; it seems more efficient to deal with it promptly.

Member Techel agreed: after a year, the low priority cases then join the backlog. The letter should be sent immediately. Mr. Trujillo stated that staff had discussed doing just that. The hesitation is

that with every case we touch, there is going to be staff follow-up; every case takes time to monitor, collect fines, etc. Chair Scharff viewed it a different way: high priority cases get staff time while low priority cases get form letters and fines.

He asked what a case with a score of 20 would look like. Mr. Trujillo answered that you would have to go through the scoring criteria – many factors go into the prioritization. Chair Scharff stressed that we should have a simple process with an intake and prioritization on every case; we come up with an enforcement plan for every case; low priority cases have a low staff time enforcement plan. There is no queue.

Mr. Trujillo asked how the Committee would feel about staff bringing low priority cases to them for resolution. Chair Scharff answered that the cases would be on the Consent Calendar in a clump, and a member could pull one for discussion – then it would be discussed at the next meeting. Otherwise, the Committee would just approve the findings and move on. Mr. Trujillo responded that the goal with the enforcement plan would be to not have fines racking up \$30,000 for minor violations – we want to get them resolved before it gets to that point. Chair Scharff agreed.

Ms. Donovan stated that staff can move forward on having a template and a quick and efficient means of making contact with each violator, telling the lower priority cases that a case has been opened and stating the necessary resolution. Another step is to decide if we need new statutory or regulatory tools to develop an efficient process for taking low priority violators to the Enforcement Committee for assessment. We need to decide when to take that step and how the Committee could handle those cases.

Member Vasquez saw two problems: we are trying to reduce the backlog, and to create a tool for not having a backlog and for dealing with minor violations very quickly. Why not start bringing those cases to the Committee, and refining the process as we go along? Mr. Zeppetello pointed out the necessity of amending the regulations in order to do that.

Member Gilmore felt it imperative to send the violators some notice during the prioritization process. Ms. Donovan agreed. Member Techel reiterated that we do not want low priority cases moving up to high priority.

7. Administrative Procedures and Rulemaking. Ms. Donovan introduced the item.

Ms. Donovan stated: It is intended to address how to make the determination that something needs regulatory changes and will require the use of the rulemaking process.

- a. The way the APA is written, what matters is that a guideline, manual, bulletin, etc. meets the definition of a regulation.
- b. The essential characteristics of something deemed a regulation are that the agency intends the rule or guideline to apply generally, and that it “implements, interprets, or makes specific the law enforced.”
- c. Ms. Donovan listed exceptions.
- d. She discussed some cases to show how the courts have looked at them.
- e. Mr. Zeppetello gave an overview of the rulemaking process.

(1) Once the Enforcement Committee comes up with the recommendations, staff would prepare a report to the full Commission, who would then vote to initiate a rulemaking process (as it did on the permit fees).

(2) The main requirement to start the rulemaking process is preparing a Notice of Proposed Rulemaking, which establishes a 45-day public comment period. We also need to prepare an Initial Statement of Reasons and the text of the proposed regulations.

(3) In this case, BCDC could consider having the Enforcement Committee hold the public hearing rather than the full Commission.

(4) We would need a meeting before the full Commission to adopt the amendments to the regulations.

(5) We would submit a package to the Office of Administrative Law, containing the text of the adopted regulations, an update to the Initial Statement of Reasons, and a response to public comments.

(6) Once the Office of Administrative Law signs off, the regulations are published in the Code of Regulations.

(7) We would submit the changes to NOAA as a program change to the Coastal Zone Management Program.

Chair Scharff asked the last time we changed a regulation using this process. Mr. Zeppetello replied that the permit fees were amended in 2008.

Chair Scharff asked for confirmation that currently, the BCDC Executive Director and the BCDC Chair can resolve these fines. Mr. Zeppetello confirmed. The fines accrue in accordance to the schedule and the regulations; once the violations are resolved, staff writes a letter stating that the violator owes an amount. The violator can appeal, and the regulations provide that the Executive Director and Chair resolve the appeal. That is for standardized fines. The regulations provide that if we do a formal Enforcement Action with a violation report, that goes to the Enforcement Committee or the Commission.

Chair Scharff asked why that system does not work for resolving standardized fines quickly – why a system of two people making a decision is not efficient and does not work. Ms. Donovan stated that we will discuss standardized fines in detail at the next meeting. The regulations are very specific about how enforcement proceedings go through the Commission. We would need to look at the regulations and how they discuss enforcement hearings, and figure out if we need any changes.

Ms. Klein explained that currently, BCDC has low priority active cases that all start the same way: with the 35-day letter.

Chair Scharff asked why standardized fine cases must be scored. Mr. Trujillo answered that it is a way of ranking cases for staff to determine which to do and make the best use of their time. Ms. Donovan added that a 35-day notice is a more substantial step than the one we have talked about with the template letter to the violator. There is some staff research that has to go into it including a site visit. There are only a certain percentage of the cases eligible for moving through standardized fines for which staff has the capacity to put together the 35-day notice letter. Currently, there are some cases for which staff just has not had the capacity to send a 35-day notice (which requires a level of investigation and detail). It is true that some cases are eligible for standardized fines that have been prioritized and made active, but that is not all of the cases eligible for standardized fines. For those other cases, we have not issued a 35-day notice yet.

Mr. Zeppetello addressed the question of why we would need changes for a Consent Calendar

to bring cases to the Committee if this appeal process under the standardized fines is actually working: BCDC doesn't need any changes for the cases that are resolved through the standardized process. However, they can explore the Consent Calendar for a different procedure for handling other cases.

Ms. Klein stated that currently staff let the regulation guide the conversion point from staff-level resolution to Enforcement Committee resolution. With the case management plan, if we ascribe an appropriate timeline given the issues, there will be a goal that does not rely solely on the one-year timeline. The standardized fine regulation and the appeal process both work very well. Ms. Klein was imagining the Consent Calendar to be for cases with a 35-day letter and accrued fines – they need to come to the Enforcement Committee because they are of different scale or have not resolved. The simpler, non-customized cases could perhaps have a different approach.

Chair Scharff said that not assessing the fines until the violation is resolved is confusing. You should have to pay the fines as you move along; if you never resolve the case, you never have to pay the fines. Ms. Donovan responded that this is a truism with some of our lingering cases that we are looking to change. If we were to use economic benefit as a floor, it would affect the amount of reduction you can seek on appeal. For cases going forward, staff is trying to change the process such that you would never be able to get into that situation because if you linger too long, you will go into some type of process.

Ms. Klein stated that not paying the standardized fine until the case is resolved makes the staff's work easier because usually when we do the initial engagement after the letter goes out, the first thing the responsible party wants to talk about is the fines. Staff can focus them on the issues needing to be resolved and indicate that when the appeal comes in, if they respond quickly, staff can support an appeal to the Executive Director and Chair.

Mr. Trujillo stated that the case management plan will serve staff very well because currently, there is a lot of uncertainty regarding the point in time to elevate. With a date in the plan, staff can go forward with a formal enforcement action. This will lead to better efficiencies.

8. Update on Middle Harbor Shore Park Enforcement Action. Mr. McCrea provided the update.

Last week BCDC's Executive Director issued a Cease and Desist Order directing the Port of Oakland to cease and desist from using any portion of the 40-acre Middle Harbor Shoreline Park for anything other than public access unless prior written approval is granted by BCDC.

The Port's non-compliance with the BCDC permit as it pertains to holding large ticketed and other special events in the public park was identified several years ago. BCDC staff has communicated the issue over the years with the Port. Nevertheless, these special events continue to occur without BCDC approval.

Since issuing the order last week, staff have not heard from the port. However, given the focused nature of the Cease and Desist order, there probably isn't much to discuss.

David Lewis of Save the Bay recently wrote a letter sharing his appreciation for BCDC's action on the case. He asked if we will be issuing a press release or otherwise raising awareness of BCDC's enforcement action. BCDC has no plans to do so, but staff welcomes advice from the Committee on this topic.

Member Gilmore stated that we are informing the Port not to do this again. This seems to be one of those situations where it is easier to ask for forgiveness than permission. What are the tools in

the toolbox for compliance? Ms. Donovan responded that the penalties available for violating an order are significantly greater than those provided otherwise. We also have permit revocation to use as a tool; we would look at the up sides and the down sides of that for this park, which is very important to the local community.

Mr. Zeppetello stated that we have the option of issuing a violation order for past violations and bringing an enforcement action to the Committee for penalties. The potential penalties for violations of this order are \$6,000/day by statute. In order to pursue them, the Committee would have to refer the matter to the Attorney General's office to bring an action in court. The earlier and easier option would be to issue a violation report for \$2,000/day for every event or day of event that they had.

Member Gilmore commented that with the \$6,000/day penalty, it might be worth it to them to continue having events. Mr. Zeppetello responded that we are limited by statute in terms of the daily penalties. Member Gilmore stated that she saw this as an issue. We need to think about whether our penalties and enforcement procedures for this kind of violation are adequate. Member Vasquez commented that there have been 19 events and nothing has happened; look at the economic value of that.

Ms. Donovan responded that we are in discussions with the Port. She pointed out that they are required to come to BCDC for advance approval in order to set conditions. We do not necessarily want to prohibit the events; we want to have a dialogue with the Port.

Member Gilmore stated that she has no interest in prohibiting the events – she just expects that the Port comply with the permit. Member Vasquez agreed.

Member Vasquez established with Mr. Trujillo that the Port has more events coming up in September and October. The Port agreed to submit for plan review, so staff expects them to meet the conditions of the permit. They need a permit amendment in which BCDC goes over the rules for events in general, which is not present in their current permit.

Chair Scharff stated that if it seems that they are not responsive, staff should come back to the Committee. Mr. Trujillo stated that Schuyler Olsson is going to be monitoring compliance.

Chair Scharff asked for confirmation that if the Port violates this, the Committee does not actually issue fines; we ask staff to sue them. Ms. Posner confirmed: it gets referred to the Attorney General's Office for enforcement. Chair Scharff asked if we have the option of issuing the \$2,000/day fines and taking it through the Enforcement Committee – is it a dual process? Ms. Posner said one is an issue of enforcing the interim CDO; she would check to see if we can also do a violation report for the past violations. Ms. Donovan stated that the regulations allow BCDC to issue another EDO if we feel that there is significant potential that they will continue to host these events without authorization.

Mr. McCrea explained that staff believe that the Port will comply with this Executive Director's order over the next 90 days. We will work through the process with them so that expectations are clear. He hoped that they would submit a request to amend their permit to have preauthorization for a certain number of events for a certain size, etc. Staff can talk about what those parameters are. That will actually make these special events much easier to hold. He described the permit issued for the America's Cup.

Member Techel asked about the extent of the damage to park property. Mr. Trujillo answered that there was damage to the landscaping that they believe has been fixed. The greatest damage has been closing off the public access to the west so that birds would not be disturbed.

Member Gilmore asked if this is also the case with some ongoing but separate maintenance issues. Mr. McCrea answered that Save the Bay and other organizations have raised concerns about the general maintenance of the park. Member Gilmore asked if we are going to push forward on the maintenance issues separately from the special event issues. Ms. Donovan stated that they are in discussions with them regarding both of these. Mr. Olsson is planning a site visit very soon.

Chair Scharff requested staff to brief the Committee on this topic in the future.

9. Report of the Chief of Enforcement. Ms. Donovan delivered the report. Ms. Donovan stated that at the previous meeting we had discussed the schedule for upcoming meetings and made some changes. The Committee has the new dates which have also been posted to the new BCDC website.

Staff is moving forward with improvements to the enforcement program in response to the audit, and meeting weekly to discuss active cases and take actions for moving them to resolution.

By Friday, BCDC must provide a required 60-day response to the State Auditor that gives the status of their response to each recommendation. The responses will be finalized today.

The next meeting will be July 24 at the SPUR Building, 654 Mission Street in San Francisco. Going forward, this building will be used for the second meeting of the month on Wednesdays. At the next meeting we will have a review of the standardized fine process, a discussion of possible actions to more efficiently resolve minor violations covered by standardized fines, a discussion and proposals on economic benefit, and a briefing on an enforcement action involving Union Point Park in Oakland.

Chair Scharff requested that copies be distributed beforehand for the Committee on anything that would be useful to have.

10. Adjournment. There being no further business, the meeting adjourned at 12:24 p.m.

DATED: _____

BRAD McCREA
Regulatory Program Director