

# **Definition Of Violations Resulting In Significant Harm to the Bay or Public Access**

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October 10, 2019

# Outline

- I. Review Section 11386 – Standardized Fines
- II. Review of the August 8 Presentation – NEPA and CEQA background
- III. Proposed definition of substantial harm

# Section 11386(a)

## Section 11386 Standardized fines

- (a) This Section shall apply to an enforcement action if the Executive Director determines:
- (1) that an alleged violation is one of the types identified in subsection 11386(e);
  - (2) that the alleged violation has not resulted in significant harm to the Bay's resources or to the existing or future public access; and**
  - (3) That the alleged violation can be corrected in a manner consistent with the Commission's laws and policies.

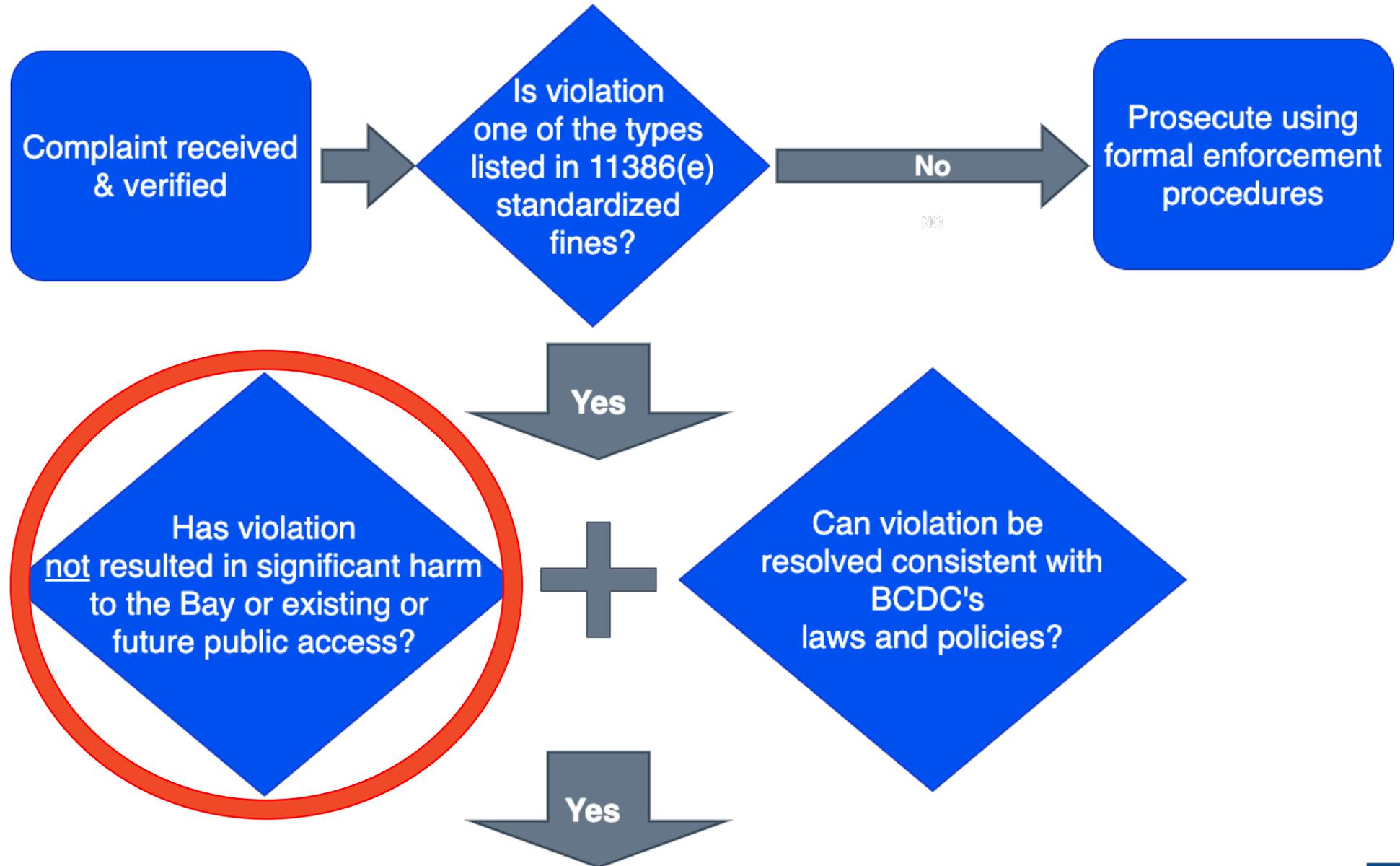
# Audit Recommendation

To ensure consistency in its enforcement program, the commission should perform the following regulatory actions by January 2021:

- **Create and implement regulations that define substantial harm**, provide explicit criteria for calculating the number of violations present in individual enforcement cases, and specify a process to handle any necessary exceptions to the criteria.

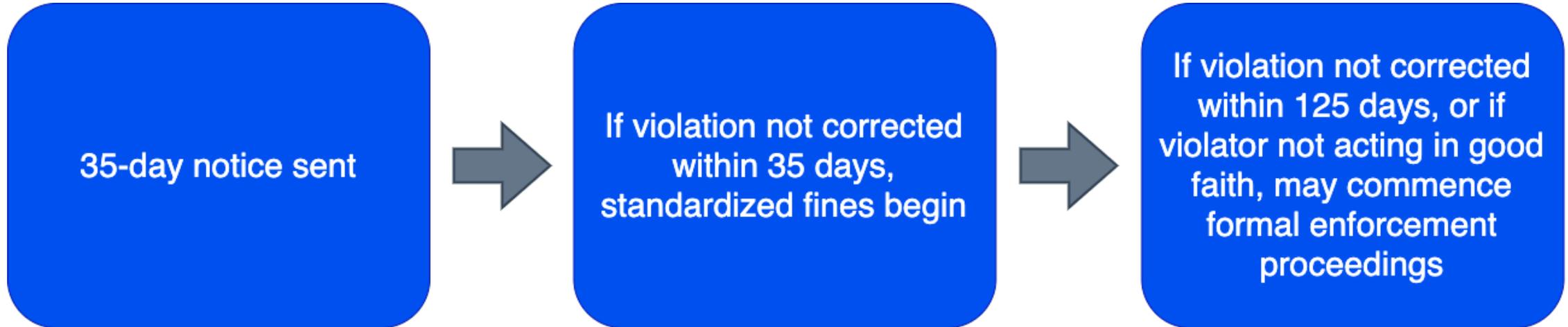
# Process

## Part 1



# Process

## Part 2



# CEQA (SLIDE 1 OF 2)

## Guideline section 15065. Mandatory Findings of Significance

Requires an agency to find that a project may have a significant effect where

(1) The project “has the potential to substantially degrade the quality of the environment; substantially reduce the habitat of a fish or wildlife species; . . . threaten to eliminate a plant or animal community . . . .”

\* \* \*

(3) The project has possible environmental effects that are individually limited but cumulatively considerable

\* \* \*

# CEQA (SLIDE 2 OF 2)

## Guidelines section 15382. Significant Effect on the Environment

“Significant effect on the environment” means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. . . . .

# NEPA – 40 CFR 1508.27

“Significantly” as used in NEPA requires considerations of both context and intensity:

- (a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. . . .
- (b) Intensity. This refers to the severity of impact. The following should be considered in evaluating intensity:

\* \* \*

(2) The degree to which the proposed action affects public health or safety

(3) Unique characteristics of the geographic area . . . .

\* \* \*

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.

\* \* \*

(8) The degree to which the action may adversely affect an endangered species or its habitat

. . .

# Proposed definition

Whether a violation has resulted in “significant harm to the Bay’s resources or existing or future public access” will be determined based on both the context and intensity of the alleged violation.

- (1) *Context* refers to the location of the violation and the characteristics of the area where it occurs. Areas with important environmental or ecological significance (e.g. habitat or refugia for sensitive species) are generally considered to be more significant than previously degraded habitat or areas with limited habitat value, and highly visible and/or frequently used areas are generally considered to be more significant than isolated areas with low visibility or infrequent usage.
- (2) *Intensity* refers to the severity of the impact and the degree to which it affects the environment or public access. Violations presenting significant ecosystem hazards (e.g. toxic or biohazardous fill) or involving large portions of a particular site may generally be considered to be more severe. In addition, violations that substantially interfere with the ability to use designated public access or encompass large portions of a designated public access area will be considered to be more significant.

Where multiple violations are alleged at a site, if a single alleged violation results in harm that is individually limited, but cumulatively significant when added to other violations at the site, this Section 11386 will not apply.

# Discussion

Is it appropriate to include this new definition in Section 11386?

Is a definition focused qualitatively on context and intensity appropriate?

Should the definition also encompass violations with cumulatively significant impacts?