

San Francisco Bay Conservation and Development Commission Enforcement Committee

Minutes of Meeting
February 21, 2019
9:30 A.M. – 12:30 P.M.

375 Beale Street
Board Room – CR110
San Francisco, CA 94105
(415) 778-6700

Committee Members in Attendance

Marie Gilmore

Jill Techel

John Vasquez

BCDC Staff

Karen Donovan, Staff Counsel

Jaidev Kalra, Legal Secretary

Adrienne Klein, Chief of Enforcement

Brad McCrea, Regulatory Director

Matthew Trujillo, Enforcement Analyst

Marc Zeppetello, Chief Counsel

Also Presenting to the Committee

Mayor Joan Cox, City of Sausalito

Beth Pollard, Richardson's Bay Regional Agency

Rebecca Schwarz-Lesberg, Audubon California

1. Call to Order

Member Gilmore called the meeting to order at 10:00 a.m.

2. Roll Call

Ms. Klein called roll. She reported a quorum of three.

3. Public Comment

There was no public comment for items not on the agenda.

4. Approval of Draft Minutes for December 13, 2018 Meeting

MOTION: Member Vasquez moved to approve the December 13, 2018 BCDC Enforcement Committee Meeting Minutes as presented. Member Techel seconded. Motion passed unanimously.

5. Public Hearing and Vote on a Recommended Enforcement Decision and Proposed Cease and Desist Order No. CDO 2019.01, Salt River Construction Corporation.

A verbatim transcript of Item 5 was prepared and is posted at this link:

6. Briefings on the Management of Vessels in Richardson's Bay, Marin County by BCDC, RBRA, City of Sausalito and Audubon California.

Adrienne Klein, BCDC Chief of Enforcement, stated that the purpose of today's briefings was to inform the Committee how Richardson Bay is used for housing and vessel storage, and to seek guidance on the role BCDC should play as the local agencies work to develop and implement management strategies to reduce the number of vessels illegally moored in Richardson Bay.

- Ms. Klein showed photographs of the bay to give visual orientation. The most attractive locations to moor a vessel are near the shoreline of Sausalito.
- The Richardson Bay Regional Agency (RBRA) is successful at vessel abatement and conducts an annual census.
- Since 1997, RBRA's Harbor Administrator has removed over 1,000 vessels at a cost of over \$2 million. BCDC and RBRA have determined that vessel removal is an insufficient management strategy.
- At present there are approximately 220 vessels moored on publically owned property.
- RBRA historically has been unsuccessful at managing influx of vessels and conducting enforcement.
- People are illegally installing moorings on public property, making it easier for vessels to anchor out.
- RBRA does not require its Harbor Administrator to check the vessels to see if they meet Division of Boating and Waterway Vessel Safety standards, nor to register each vessel for limited-duration stays.
- Despite conducting efficient vessel abatement, RBRA has seen an increase of vessels arriving and staying in its waters.
- As a result of the absence of management enforcement, much of the anchor-out population believes they have a legal right to live in their boats on Richardson Bay.
- RBRA and the City need to identify common and divergent management goals, and to share resources to the extent possible.
- The BCDC Executive Director is not asking the Committee to take enforcement action against RBRA or the City. However, he believes that the Committee should be aware of local efforts underway to ensure their support and to anticipate their response to a possible request by RBRA to install moorings.

Ms. Klein described the regulatory framework that underlies today's discussion. She explained the McAteer-Petris Act, and read applicable findings from BCDC's San Francisco Bay Plan that established that residential use is not consistent with those regulations.

Ms. Klein explained the Richardson Bay Special Area Plan. Five local agencies and BCDC have similar goals, particularly the protection of natural resources, for Richardson Bay.

The plan's sections include Findings, Policies, and Plan Recommendations.

- It defines anchor-outs.

- It gives recommendations for the local governments, including generation of a cooperative agreement among them to administer the management of navigation planning, debris removal, obstructions to navigation, the regulation of anchor-outs, etc.
- It explains how development can be done.

Ms. Klein explained local obstacles to eliminating the anchor-outs. BCDC staff feels that the political will to eliminate the anchor-outs has not historically existed. The RBRA has recently had increases in staff and scheduled meetings.

RBRA and the City have many aligned management goals. However, as part of its management strategy RBRA desires to install moorings in the bay and to place the anchor-outs on these moorings, while the City does not wish to pursue this strategy; this is one of the reasons it withdrew from RBRA.

Ms. Klein summarized four coequal goals to be achieved.

1. Protect the subtidal eelgrass habitat in the bay.
2. Protect the lives of the people living and conducting business on the bay.
3. Manage the bay in a manner consistent with state and local rules.
4. Manage the bay in a fiscally responsible manner.

Beth Pollard, Executive Director of RBRA, gave a presentation describing RBRA's current work program.

- She listed four takeaways.
 1. There are many complex issues.
 2. The agency is seeking a route that respects and addresses the various concerns and interests at play.
 3. RBRA is on a course to modify vessel requirements as a means of improving the health, safety, and management of the bay.
 4. Current steps include updating ordinance requirements and conducting a scientific marine ecology-based study to explore how moorings could be used as a means of improving the health, safety, and management of the bay.
- Ms. Pollard broke down the RBRA budget.
- Successes include good water quality test results, a pump-out boat available to everyone, getting funds to abate debris, a rapid response program for vessels in distress, and the formation of a Special Anchorage Association to improve vessel conditions and mariner skills.
- Of the 200 vessels in RBRA waters, about 50% of the people live aboard.
- Many boats are available and they are being sold for a minimal amount of money. There is little incentive to turn them in. Anyone can get a boat – you do not have to demonstrate knowledge of how to operate one.
- Boats are coming in as a result of new restrictions at other marinas and harbors.
- Challenges include the following.
 - The impact of vessels on valuable eelgrass.
 - Unsecured vessels breaking loose.
 - With the onset of the housing crisis, boats have become alternative housing.
 - Respecting and treating with dignity those who live on the vessels.

- People have lived on the bay for decades, but current policies do not account for that. RBRA seeks a middle path.
- In 2018 RBRA adopted Guiding Principles. With the goal of improving the health, safety, and management of the bay, RBRA's direction is to pursue the potential for secure moorings to achieve that goal. Ms. Pollard listed mooring advantages.
- RBRA has engaged Merkel & Associates to investigate the potential of moorings as a solution, via a marine ecology-based mooring feasibility and planning study.
- RBRA is poised to adopt an ordinance that strengthens vessel requirements.
- RBRA has adopted a policy of enforcement priorities that focuses on unoccupied vessels.
- RBRA is in regular communication with the City of Sausalito, the Richardson Bay Special Anchorage Association, and other stakeholders.
- Once the study is completed (targeted for July), RBRA will undertake policy discussions and decision-making.
- RBRA's request to BCDC is to recognize the following:
 - Challenges to the management and enforcement of vessels on the bay.
 - RBRA is looking for local solutions tailored to local conditions.
 - Moorings are a potential for achieving enforcement and improved health, safety, and management on the bay.

Mayor Joan Cox presented on behalf of the City of Sausalito.

- The city's perspective is that the problem is not as complex as it seems. Sausalito has developed a water management plan that respects existing laws and regulations, the environment, and the lives of those living on the bay.
- Sausalito's ultimate goal has not yet aligned with RBRA's; it is to protect the lives and well-being of anchor-outs by providing them needed services and placing them in marinas, not open waters.
- Although the City of Sausalito withdrew from RBRA in June 2017, they continue to meet, collaborate and cooperate. At that time the Sausalito City Council approved an updated Waterfront Management Plan.
- The city has been conducting robust community outreach.
- The city's priorities are as follows in order.
 1. Removal of marine debris.
 2. Removal of unoccupied vessels.
 3. Removal of unregistered vessels.
 4. Removal of vessels occupied by persons who are a danger to themselves or others.
 5. Removal of legacy occupied vessels that are licensed, registered, and in possession of a waste disposal contract or utilizing a similar form of service.
- In January the Sausalito City Council updated its waterfront management priorities to do two things:
 1. Confirm deferred enforcement of occupied boats already on our waters, to enable those residents to be reduced through attrition. This will be done by making social services and other resources available. The City would like to increase its live-aboard parameters to allow them to come off the water and into marinas.
 2. Immediate enforcement of the new 72-hour ordinance with respect to any new occupied boats entering its waters.

- Special legal counsel has confirmed that no “Special Anchorage Area” preempts the City of Sausalito from regulating where, when, or how vessels may anchor within the overlap of the “special anchorage area” and City waters.
- The City hired two part-time temporary technical specialists in July 2017 to assist with its waterfront management plan. They conduct surveys on the vessels that have shown that the majority have remained in the same location.
- In July 2017 there were 75 boats on the waters; in January 2019 there were 41.
- Since the start of the Waterfront Management Plan, they have abated 23 vessels as Marine Debris.
- They have also abated six vessels as part of the free Vessel-Turn-In-Program.
- Since November 2017, the City has issued citations for expired registration, nuisance and debris on the deck, and unlawful moorings.
- Since the start of the Waterfront Management Plan, Sausalito has marked 18 vessels as apparently unoccupied. They have removed 50 mooring balls/devices from the bay.
- Sausalito held two annual debris collection events in 2017 and 2018.
- Sausalito also contacted and offered services to the anchor-out population in 2017 and 2018.
- In November 2018 the City Council approved a pilot program to provide mobile showers.
- Public safety agencies rendered aid to vessels affected by severe windstorms in 2017 and 2018.
- The Sausalito Police Department must respond to various other public safety issues arising from waterfront activities.
- Mayor Cox listed the budget for enforcement efforts.
- The City believes that moorings are not necessary to enforce its Waterfront Management Plan. Any plan for moorings in RBRA water should undergo CEQA analysis.
- Sausalito is currently the only point of access for all 220 Richardson Bay anchor-outs.

The City of Sausalito’s requests to BCDC are as follows:

- To clarify BCDC’s intentions to enforce its policies on Richardson Bay.
- To allow Sausalito to continue its existing anchor-out plan to reduce the existing anchor-out population through attrition rather than severe enforcement action.
- To increase Sausalito’s live-aboard allocation from 10% to 15% per marina to facilitate transition from anchor-out to live-aboard.

Rebecca Schwartz-Lesberg, San Francisco Bay Program Director for Audubon California, spoke about the natural resources of Richardson Bay and how they are being impacted by these issues.

- Audubon is an environmental nonprofit whose aim is to protect birds, other wildlife, and their habitats.
- Audubon California manages the Richardson Bay Audubon Center and Sanctuary: 11 acres of upland habitats and 900 acres of open water sanctuary.
- The San Francisco Bay program focuses its efforts in three main areas:
 - Demonstration projects.
 - Policy engagement.
 - Species decline, which is monitored by applied scientists.

- San Francisco Bay is the largest estuary on the Pacific Coast of North America. Half of all fresh water in California passes through San Francisco Bay, and tens of thousands of birds pass through San Francisco Bay as they migrate.
- One of the most crucial natural resources here is eelgrass, a seaweed ecosystem that provides multiple benefits to wildlife and to communities.
 - Herring lay their eggs on eelgrass, and herring is the last commercial fishery left on San Francisco Bay – it is very important to protect the habitats that herring rely on.
 - Because eelgrass is planted in the soil, it helps reduce erosion and stabilizes the shoreline.
 - It is emerging as a key player in our response to ocean acidification.
 - Eelgrass is experiencing about 30,000 acres per year of decline worldwide. In the United States, one of the most common direct impacts to eelgrass is anchor scour: when anchors, chains, and other mooring tackle from boats physically drags through eelgrass and rips it up.
 - The eelgrass bed in Richardson Bay had reduced from 675 acres in 2009 to 335 acres in 2014.
 - Ms. Schwartz-Lesberg showed aerial photographs of anchor scour in the eelgrass bed. She explained an analysis which showed that out of 204 acres of eelgrass bed, between 50 and 84 acres were damaged. The average size of each mooring scar was about half an acre.
 - The State of California has made it a priority to protect eelgrass. For every acre lost, about 1.2 acres must be restored – and restoration is expensive and not always successful. The cost to restore the damaged or lost eelgrass in Richardson Bay would be \$3-6 million.

Ms. Schwartz-Lesberg stated that at a technical level, the solution is not complicated. Doing it in a way that is protective of the community is where the compromise and nuanced solutions come in.

Public Comment

Andrew Thompson, Former Mayor of Tiburon and Chair of RBRA 1992-2004, strongly supported the RBRA plan to remove anchor-out vessels. The bay is not a housing alternative. He strongly objected to the proposed mooring field, which should be for true mariners. He agreed with California Audubon regarding the eelgrass. He questioned why we are spending \$100,000 on the Merkel study; the study has already been done by Audubon. We are failing by not getting state legislation to stop the dumping of illegal vessels in Richardson Bay; he charged BCDC to get this accomplished.

Chad Carvey, an anchor-out in Richardson Bay, stated that there are actually 110 anchor-out boats there. The problem is years of a lack of enforcement on things we all agree on: derelict anchor-outs. The vast majority of anchor-outs are hardworking, tax-paying people. The destruction of this community by attrition will not be accepted. They do not pollute the bay. The targeted study on eelgrass by Audubon is inappropriate: they should look at the 4,000 boats in the marinas taking up the most precious eelgrass area in the bay. Further, there are massive waiting lists to get a paid slip in any marina. Going to war with the anchor-outs will be much worse than the 1970s houseboat wars.

Barbara Salzman, Marin Audubon Society, reviewed the goals of the original Richardson Bay Special Area Plan. There was a significant public trust element, not mentioned today, that anchor-outs are permanent living in the bay, contrary to the public trust and therefore illegal. The RBRA has been lacking an enforcement program all this time. The problem is a lack of political will.

Alden Bevington, co-founder and primary liaison of Richardson Bay Special Anchorage Association, stated that he manages a website, anchoredout.org, which is an information service for communicating what is going on in the anchorage to people onshore and addressing the current problems. Members of the community have been living on the water for 50 years; it is a robust community but it is very marginalized. BCDC should first look at recognizing that this is part of the reality of southern Marin; what does it look like if it is well-managed? He then made some corrections to information given by the presenters. Regarding respect, his boat was seized by the City of Sausalito, held for 10 days, then crushed with all of his personal belongings inside. Also, the “crop circles” spoken about by the Audubon Society are the result of a single-point anchoring system that the Anchorage Association has been advocating against for the past three years.

Member Vasquez asked if Mr. Bevington considers himself a resident of the area.

Mr. Bevington affirmed. His boat was a documented vessel (U.S. Coast Guard). He was not paying unsecured property tax on it due to complicated reasons.

Reverend Paul Mowry, Sausalito Presbyterian Church, stated that the church serves hot lunches every Wednesday and most of their guests are anchor-outs. He has come to know many of the community, which is rich and diverse and has members who face hardships and challenges. He invited the meeting attendees to join them at any Wednesday lunch to meet the people. It is an old, established, unique community, many of whose residents are poor. He acknowledged that government agencies have tough positions, having to make decisions about people they don't know. Personal familiarity would alleviate the diminished sense of their humanity. Most of them have few good choices available. Compared with the rest of society, the footprint of the anchor-outs is miniscule.

Tom Kowalski, marina boat owner, stated that harm is being done. Degradation of the eelgrass is obvious. The Sausalito Abatement Program is working. The idea of a mooring ball field is folly: many of these boats are not navigable and cannot move to it. Because people have been living on these boats for 40-50 years does not make it legal. When they drag anchor they need rescue, which is not safe for the first responders or for them. He asked the Committee to look at the practicality of what is happening in the RBRA area.

Anne Libbin, Marin Audubon and Bayshore Studies, stated that the history of Richardson Bay and San Francisco Bay gives evidence that people did not take care of the environment. You cannot underestimate the ecological importance of the eelgrass beds to a temperate estuary environment. RBRA has neglected its obligation to care for a critical ecosystem.

Terri Thomas, restoration ecologist and marina resident, encouraged the implementation of the management around Richardson Bay to take into account the full public trust interest. The Richardson Bay Regional Area Plan includes 10 ecological communities. She expressed concern for the wildlife in the area. She applauded Sausalito's approach to the problem for the rapid changes they have accomplished. She did not see how a mooring field is going to change the anchor-out situation and the illegal anchors unless we have enforcement.

MOTION: Member Techel moved to close the public hearing. Member Vasquez seconded. Motion passed unanimously.

Committee Discussion

Member Techel asked the number of berths that exist. Mayor Cox replied that they have about 2,000 berths at the existing marinas.

Member Gilmore asked the actual number of anchor-outs. Mayor Cox stated that the number of occupied boats is about 100 out of the 200 on the water.

Member Techel stated that she had been impressed with the City of Sausalito's thorough approach to solving the problem. She asked about vessel removal. Mayor Cox stated that after a vessel is removed, it is stored so that it can be retrieved before it is abated.

Member Techel asked the timeframe before abatement. Lieutenant Bill Fraass, who oversees the marine patrol program, explained that there are two different types of vessels they are looking at.

- Marine debris are derelict vessels that are unseaworthy; they are marked on the water and there is a 10-day period for individuals to remove the vessel from the bay and repair or fix the vessel to make it seaworthy. After the 10 days, the vessel is removed and abated.
- Sausalito has a city ordinance that vessels moored in Sausalito waters for more than 72 hours can be impounded. Upon marking of a vessel, it is watched for 72 hours and then brought to a tow yard. If it remains unclaimed for 90 days, it is abated.

In both circumstances, after a vessel is marked, the registered owner is sent a certified letter. The department focuses on unoccupied vessels.

Member Techel asked how they handle new vessels coming in. Lieutenant Fraass replied that they attempt to make contact to advise people of the 72-hour ordinance. Some people leave Sausalito waters; in other cases, if people are not living on the vessel, it is towed after 72 hours.

Member Gilmore agreed with Member Techel that this is a lot of information to consider. It is a complex issue in terms of the people who are living aboard, and less complex if the vessels are abandoned. RBRA enforcement has been somewhat problematic. Her inclination regarding the mooring field is first to enforce the rules and regulations the agency already has on the books.

Member Vasquez asked the role today for the Enforcement Committee. Mr. McCrea answered that it was to obtain the information needed to bring the committee up to speed on the issue. He recommended scheduling another meeting where the committee can outline options and give more consideration. Member Vasquez pointed out that enforcing the rules is black and white, but we have heard from the community – including those trying to regulate the rules and those living on the bay – that it is a complex problem. We are talking about lifestyles. He liked what the city of Sausalito is doing, but looking at the legacy boats, should we wait for attrition to move them out? An additional discussion would be beneficial.

Member Techel appreciated all of the action at the local level and liked what they are doing – she agreed with local control. Enforcing fines does not help solve the problem. The mooring field does not sound like the solution to her. Making additional berths available for live-aboard seems like something to consider.

Member Vasquez noted the call-out to BCDC to seek legislation on the issue of boat dumping, which goes on up and down the waterways.

Member Gilmore liked the idea of local control; no one is closer to a community than the elected officials who are in a unique position to understand the issues. She applauded the City of Sausalito for the steps they have taken, and encouraged the regional agency to enforce the laws currently on the books. Based on what the Committee has heard today, they should come back for a fuller discussion. She did not want to direct staff to remove the anchor-outs at this point. This is going to be an ongoing issue, so the Committee should also arrange to receive updates.

7. Report of the Chief of Enforcement

Mr. McCrea stated that the item had been postponed.

9. Adjournment

Member Gilmore adjourned the meeting at 12:10 p.m.